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2505 2nd Avenue, Suite 500, Seattle, WA 98121 • T (206) 386-5566  F (206) 682-0675 • johnsonflora.com
AFTER EIGHT YEARS AS EDITOR OF BAR NEWS/NWLawyer, I AM STEPPING DOWN. I HAVE ACCEPTED THE POSITION OF EXECUTIVE DIRECTOR AT LAW Advocates, THE LEGAL AID AND VOLUNTEER LAWYER PROGRAM BASED IN BELLINGHAM. I WILL ALSO REMAIN ACTIVE IN OTHER LEGAL AND MEDIA PROJECTS AS TIME PERMITS. AS I WAS PUTTING THE FINISHING TOUCHES ON MY LAST NWLawyer CONTRIBUTIONS AS EDITOR, I GRACIOUSLY TOOK A MOMENT TO SIT DOWN WITH ME AND DISCUSS MY EXPERIENCES OF THE PAST EIGHT YEARS. — M.H.

When you became editor in October 2007, did you have an overall goal you wanted to achieve? If so, did you fulfill it?

During my interviews with the hiring committee and the WSBA Board of Governors, I said my top priority was to help make the publication more “human,” by which I meant more accessible, readable, and focused on the personal as well as professional concerns of bar members. When I compare the appearance and content of the publication now versus eight years ago, I feel justified in saying we accomplished that goal.

Your duties included writing a report of each Board of Governors meeting. How many of those did you attend over the years?

I attended around 80. And since I’m based in Bellingham, almost all of those were road trips for me. I’m proud to say my attendance record was nearly perfect. I missed only one meeting, and that was because I had an eye injury and was instructed by my doctor not to travel.

Did anything weird ever happen at one of those meetings?

Most bar members probably don’t realize that Board meetings are big productions involving a lot of people and logistics. Before the budget reductions in 2012, there were more meetings than we have now and they were more far-flung, with several trips each year outside of Seattle. It was kind of a traveling circus, but in a good way. So I can’t recall a meeting at which something weird didn’t happen. But the most entertainingly odd thing happened the night before a meeting in Wenatchee. The Board members, staff, et al, were sound asleep in a downtown hotel at about 4 a.m. when the fire alarm went off. We all scrambled downstairs into the parking lot while the fire department checked things out. Fortunately, it was just a light bulb that had popped and set off the smoke alarm. But I was treated to the better part of an hour visiting with some of our most esteemed members of the bar and bench shivering in their pajamas and nightgowns on the pavement.

Did you learn anything about lawyers in your role as editor that you hadn’t learned from practicing law?

As a litigator, I generally viewed my fellow litigators unfavorably. OK, I’m half-joking about that. Seriously, though, when practicing law, most of my interaction with other lawyers has been in an adversarial context, which goes with the job. Of course I have friends in the profession and get along well even with some of my regular opponents. But, as editor, I have had the pleasure of working with lawyers entirely in a collaborative role. Most of the authors who contribute to NWLawyer are practicing attorneys who volunteer their time to write for us. Dealing with lawyers in that setting was overwhelmingly positive. I edited, sometimes substantially, pieces written by some of the best-known and most influential members of the bar, as well as new members with little or no experience writing for this type of publication. I can recall no serious conflicts or complaints that came up in that regard. And I can remember only once that an author was openly miffed that we declined to publish a piece, an unsolicited submission.

How are lawyers as an audience?

Having been a newspaper reporter and editor for seven years before law school,
I knew that only a tiny percentage of readers reply to articles and that most of those who do speak up have something negative to say. I fully expected that to hold true for an audience of lawyers, and it did. It’s just human nature. I think lawyers and non-lawyers alike generally view media as a utility. Nobody calls the power company to thank them for providing electricity every day, but they’re on the phone the instant the power goes out. Likewise, most of our articles passed without response. We occasionally received heartfelt thanks, and we heard lots of opinions when we published articles on controversial topics. Many readers contacted the authors directly with compliments or questions. A few pieces drew reactions that would linger for a month or more as letters to the editor — the print equivalent of an Internet flame war.

Some of our more vocal readers were particularly ardent about specific issues, and others had a general distrust or disdain for the WSBA, the courts, or government in general. But that goes with the territory if you’re working with a governmental or quasi-governmental entity. The only difference is that our critics, being lawyers, tended to be slightly more detailed and included more references to sources of authority — the Constitution, court opinions — than the non-lawyer critics. But that’s what we’re taught to do in law school, so it just makes sense. I’m not sure how it turned out this way, but I managed to work in two professions where it’s good to have a thick skin. The public doesn’t spend a lot of time telling either journalists or lawyers how much they love us.

Speaking of issues, what were the biggest ones that came up during your time covering the Board?

By far the two issues that drew the most attention from readers and required the most work for us to deal with were same-sex marriage and the 2012 member referendum to reduce the annual WSBA license fee. Before same-sex marriage was taken up by the legislature and eventually the voting public, the Board passed resolutions supporting it. Bar membership was divided both on the issue of whether same-sex marriage should be legalized and whether the Board should be taking a position on the topic at all. Personally, I was in favor of same-sex marriage being legalized, but I tended to agree that from a public perspective, legalization was fundamentally a sociopolitical rather than legal issue and not something on which the Board should take a position.

To most people, even most lawyers, opinions expressed by the Board are seen as the official position of the Bar in general. And while I disagreed with them on the issue, I felt that opponents of same-sex marriage had a legitimate complaint in that regard. But to prove that I can be as wishy-washy as the next lawyer, my feelings have shifted a little now that same-sex marriage has been effectively legalized nationwide by the U.S. Supreme Court. Looking back at it, I can’t help but feel pride that our profession’s governing body was ahead of its time in supporting same-sex marriage. I believe they will be considered to have been on the right side of history, as lawyers were who stood up for abolishing slavery, giving women the right to vote, and other things we now take for granted.

As for the 2012 membership referendum, that was by far the most politically sensitive internal issue that arose during my tenure. We had to cover it objectively as a news story, even while knowing that jobs and the publication itself were in jeopardy. It was the only WSBA issue in which I publicly shared my personal opinion, which was that the damage done to the organization outweighed the small financial savings involved. I said that while realizing that it wasn’t really an economic issue for many members. The poor state of the economy was a factor, but I think it really was about members feeling they had become disconnected from the Bar’s leadership, and the referendum gave them the rare chance to vote with both their ballots and their wallets.

So at this point, after eight years as Bar News/NWLawyer editor and now the LAW Advocates gig, are you even still a lawyer?

Yes, proudly so. I have a few client cases left that I’ll continue handling as I transition into the LAW Advocates job. I am not taking any new cases of my own, although I will be open to pro bono work or other law-related projects that don’t conflict with my duties as executive director. I suspect I will be one of those lawyers who kicks the bucket while still an active WSBA member, although I hope that doesn’t happen at least until, let’s see, the Mariners win the World Series (which should give me a couple more decades).

For the past eight years, you published Bar News/NWLawyer pretty much yourself, right — single-handedly turning it into the magnificent award-winning publication it is today?

Yes. Come on.

To the contrary, it’s been a team effort all along, although the team was small at first. When I came on, it was pretty much me, Director of Communications Judy Berrett, Managing Editor/Graphic Designer Todd Timmcke, and Communications Specialist/Writer/Editor Stephanie Perry who put the publication together every month. I’m glad to say Todd and Stephanie are still there, doing fantastic work without much fanfare. I also have to credit the Bar leadership for not only keeping the publication alive during turbulent times but improving it and the whole communications department of the WSBA. Chief Communications Officer Debra Carnes and Communications Manager Jennifer Olegario came on board around the time of the member referendum turmoil (although the timing was coincidental) and helped revitalize the publication and get the WSBA Editorial Advisory Committee (EAC) involved in writing and soliciting content. The immediate past-chair of the EAC, Allison Pereya, did an outstanding job in that regard. While we used to scrape for content to fill out each issue, the challenge lately has been finding space for all the excellent submissions we receive.

Michael Heatherly was editor of the WSBA Bar News and NWLawyer from 2007 through September 2015. He now serves as executive director of LAW Advocates, the legal aid and volunteer lawyer program in Whatcom County. He also serves as a private mediator and arbitrator. He can be contacted at 360–312–5156 and northwestdrg@mhprom57.com.
No other Sun has lightened up my heaven; No other Star has ever shone for me; All my life’s bliss from thy dear life was given – All my life’s bliss is in the grave with thee.

~ Emily Brontë

A concrete pumping hose whipped and killed Teresa's childhood sweetheart.
Last month, two important events occurred that affect all WSBA members and, in fact, our entire profession. First, we participated in the annual celebration of Pro Bono Month and Pro Bono Week. We recognized the volunteer acts which thousands of us make to ensure that the promise of “justice for all” is realized by everyone, especially those who are most vulnerable and least able to defend their legal rights.

We celebrated the many who provide direct legal assistance to low-income individuals and families facing a wide range of legal problems, including domestic violence, sexual assault, eviction, foreclosure, debt collection/bankruptcy, and the denial or termination of essential governmental support. We also celebrated the many who provide direct legal assistance to military members and veterans, immigrants, persons with disabilities, and young people.

We also celebrated the volunteer work of many of us who work to secure and increase critical funding for our legal aid programs through federal and state funding. The Campaign for Equal Justice, the Endowment for Equal Justice, and numerous others are working all the time to raise the critical funds to help these “equal access to justice” efforts. We should take pride in our pro bono contributions and I personally thank each of you who volunteers with your time or your pocketbook. It is so important.

The 2015 Civil Legal Needs Study — A Sobering Message

While we celebrate the hard work and efforts of so many, the release of the 2015 Civil Legal Needs Study Update was startling. The study documents the continuing challenges facing low-income people and families and their continuing inability to get the help they need.

In 2002 and 2003, I served on a Supreme Court panel that oversaw the 2003 Civil Legal Needs Study. It was a groundbreaking effort to measure our profession’s ability to meet that promise of equal access to justice here in Washington state. The 2003 study told us that 78% of low-income individuals had civil legal problems, 88% of which were not served with the help of legal counsel. It was estimated that these folks had an average of three legal problems a year. This has been a baseline by which we have measured progress of our collective journey of service to those who find the courthouse doors closed to them because they can’t afford civil legal counsel.

Celebrating the Service of Helping Others

The 2015 Civil Legal Needs Study Update was startling. The study documents the continuing challenges facing low-income people and families and their continuing inability to get the help they need.
The 2015 study was conducted by the Office of Civil Legal Aid under the auspices of the Supreme Court’s special Civil Legal Needs Update Committee, an 11-member committee chaired by Justice Charles Wiggins. The Social and Economic Sciences Research Center at Washington State University conducted the study with rigorous protocols and systems to produce reliable results.

In summary, the new study tells us that approximately 70% of low-income individuals have civil legal problems, that 82% of those are not served, and that these folks actually have more issues now than in 2003, with an average of 9.3 problems a year. It is clear that not enough improvement is being made.

**The Message of Need for Help**

Beyond the statistics, to say that the study’s findings are sobering is an understatement. The 2015 update tells us that low-income Washingtonians face daunting problems at levels and across a set of problems well beyond the traditional areas of family law, landlord-tenant, and debt collection. These problems affect every aspect of life.

I encourage you to read the study (found at www.ocla.wa.gov/reports). Here are a few of the most significant findings:

- The most common legal problems have changed since the 2003 study. Healthcare, consumer/finance, and employment now represent the three areas with the highest percentage of legal problems.
- Who you are matters when it comes to whether, what type, and how many problems you are likely to experience. Race, ethnicity, and other personal characteristics affect the number and types of problems, the degree to which people experience discrimination or unfair treatment, and the degree to which legal help is secured.
- Victims of domestic violence and sexual assault are some of the highest number of problems per capita (19) of any group.
- Significant percentages of low-income households experience unfair treatment on the basis of their credit histories, prior involvement with the juvenile or adult criminal justice system, and/or their status as a victim of domestic violence or sexual assault.
- A majority of low-income people do not understand their problems have a legal dimension that would benefit from civil legal aid.
- Most low-income people have limited confidence in the state’s civil justice system.

**The Challenge to Each of Us**

The study results present a direct and immediate challenge to each one of us, both individually as attorneys and as a profession. We hold fast to the notion that civil society must adhere to a set of commonly accepted rules, processes, and procedures. We are a nation of
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laws and we value order to our society. We rely on these to ensure that justice is realized by those who look to us for help with their legal problems.

When our legal system effectively denies access to nearly 20% of our state’s population, and particularly those who are often the most vulnerable, our credibility and that of the entire justice system is challenged.

As attorneys, we serve the public. We have a responsibility to lead. As a profession and individually, we must work to ensure that all who face profound legal problems get the professional legal help they need.

We must work together to increase funding for our civil legal aid delivery system. Each one of us must donate some of our time and we must help financially. Each one of us must up our game in delivering pro bono services. And we must continue to work to find other ways — using technology, social media, and other vehicles — to ensure that all Washingtonians know of their rights and responsibilities and have the ability to effectively assert and defend them where and when necessary.

Whether a low-income person in need is served through the Northwest Justice Project, Columbia Legal Services, or the many volunteer lawyer programs across the state, we know that is not enough. The Access to Justice Board, the Legal Foundation of Washington, the Washington State Bar Foundation, the WSBA, the members of the Alliance for Equal Justice, and so many others are working very hard. We expect that the new Limited License Legal Technician program will add to this effort as graduates are licensed and grow in numbers.

Ultimately, we need to continue to look in the mirror and determine how we can do more. Our profession is here to help people. Let us each renew our commitment to the unique promise of our democracy — the promise carved into the marble of the U.S. Supreme Court building and the promise embedded in the Pledge of Allegiance — the promise of “Equal Justice Under Law.”

Bill Hyslop is the WSBA president and can be reached at whyslop@lukins.com.

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“Best interests of the child.” This is a standard familiar to many attorneys. It’s used in the application of a number of different laws, including paternity actions, child custody, visitation rights, support payments, placement and parental rights terminations, the provision of day care as part of child welfare services, school placement for short-term foster care, and on and on.

Employment of this standard demonstrates the state’s concern for the most vulnerable members of society. Decisions made in the child’s best interests often trump whatever rights may be held by adults, and rightly so. However, one area where this standard has not been adopted is the provision of special education services.

The result is often an obvious and natural tension between parents or caregivers of children with special needs and school districts. How this tension is managed can affect the receipt of adequate special education services for the child. This article examines the basis for that tension and discusses ways to effectively and productively address the tension while establishing a special education program for an individual public school child.

The Federal Effort to Provide Special Education

The historical journey of special education, although relatively recent, is complex and fraught with obstacles. Today, the primary law governing the provision of special education is the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq.

The first incarnation of this law, the Education of the Handicapped Act (EHA), was passed in 1970. In 1975, Congress amended the EHA, renaming it the Education for all Handicapped Children Act of 1975 (EHCA), but these amendments still fell short of improving much for children in need of special education. Describing the situation at the time of the 1975 amendments, the Supreme Court stated, “[T]he majority of disabled children in America were either totally excluded from schools or sitting idly in regular classrooms awaiting the time when they were old enough to drop out.”

Advocating for Special Education Services

by Elizabeth Polay, Diane Wiscarson, and James Gayton

Raising the Floor

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Can there be a standard more at odds with parenting than a “basic floor of opportunity”? Congress’ solution was further amendments to the law in 1990, which renamed the EHCA as the IDEA and tied federal funding for special education services to states’ development of a plan to educate students with disabilities. Under the IDEA, states must provide an educational plan tailored to the needs of each individual child. This document is called an Individualized Education Program (IEP) (20 U.S.C. § 1414(d)(3)(A)).

Despite all this legislation at both the federal and state levels, a tension often still remains between school districts and parents. The reason for much of that tension lies in understanding what the IDEA really requires of public schools.

One of the seminal cases examining the IDEA is Hendrick Hudson Dist. Bd. of Ed. v. Rowley (458 U.S. 176 (1982)). At issue was what special education services schools must provide to meet the IDEA requirement of providing a “free appropriate public education,” or “FAPE.” After examining the statutory language, the court observed that Congress had provided no substantive standard for schools providing special education.

The Court’s ultimate conclusion may not seem positive for parents and advocates of students with special needs. The Court required schools to provide “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” While the rule sounds great for students at first glance, the catchphrase from Rowley that has made its way into the special education vernacular is that the IDEA provides only a “basic floor of opportunity.”

A Clash of Standards

Can there be a standard more at odds with parenting than a “basic floor of opportunity”? What about parents’ dreams of providing the best for their children? What happened to the “best interests of the child” standard that is so prevalent in other areas of law? In special education, the “basic floor of opportunity” means only “access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child” (Rowley, 458 U.S. at 201).

For parents of, and advocates for, special needs students, the issue becomes what kinds of specially designed instruction and related services are necessary for a child to benefit from their education. While at first Rowley seems to provide very little for students, subsequent case law has established that students with special needs are entitled to more than what is initially evident from the face of the “basic floor of opportunity” standard.

Under this standard, the IEP must include services and support necessary for a child to benefit from their education. This means that a child who needs specially designed instruction for reading, writing, or math should receive that instruction. It also means that social, emotional, or behavioral issues at school will be addressed. A child could receive services from a speech-language pathologist, an occupational therapist, a physical therapist, a psychologist, or other specialist as a part of his IEP if it is necessary for the child to receive educational benefit.

Advocating for Special Education Services
Parents are often met with resistance from school personnel when advocating for their child’s educational needs, and understandably so. The IDEA is only a partially funded mandate, and although schools cannot use lack of money or budget concerns to deny services, the cost of such services is a consideration constantly looming in the background for school districts already strapped for cash. Administrative and judicial remedies are available if requests for services go unanswered or are denied, but an ultimate resolution can take a long time. In the meantime, inadequate services may be provided.

In addition, for families of children with special needs, litigation may not be a viable option because of the expense. Parents sometimes hire an attorney to help them advocate for their child without resorting to costly litigation, but what methods might be successful that parents may not know about or may not have already tried?

The remainder of this article details methods parents, advocates, and attorneys might use to ensure school districts meet the standard as explained in Rowley and, perhaps, even exceed it.

Evaluations and Data
If a parent or advocate believes a special education student is being underserved by a school district, one place to start is to request additional evaluations and data. Public school districts are required to evaluate students in all areas of suspected disability (20 U.S.C. § 1414(b)(3)). Under the IDEA, special education students must be reevaluated at least once every three years, but a parent may request additional evaluations of a student at any time with certain limitations. Because provision of a FAPE is not limited to academic needs but may also include any needs related to a child’s social, emotional, or behavioral health that impact that child’s ability to access his education, evaluations may likewise include assessments in any of those areas.

New evaluations can shed light on a student’s educational needs and must be considered by the IEP team, i.e., the group of individuals, including parents, who develop a student’s IEP at an IEP meeting. Data from these evaluations may be invaluable to parents and to the IEP team. If the IEP team agrees changes to the IEP need to be made based on the evaluations, then the IEP is revised to reflect those agreed upon changes.

Requesting Compensatory Education
If a parent believes a child has been denied a FAPE, that parent may request the district “make up” for that denial in the form of compensatory education. Compensatory education is meant to make up for any instruction or services a child was denied by a school district, and is usually provided by district staff at agreed upon locations. The general rule of thumb is one hour of compensatory education is provided for each day a FAPE was denied. A parent or advocate’s request for compensatory education can be made to the district’s special education director or other special education administrator.
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The IEP process can be overwhelming for parents. Any parent of a child with special needs knows how intimidating and frustrating it is to be in an IEP meeting.

Citizen Complaints
The IDEA requires districts adopt a system by which parents can file formal written complaints with the state educational agency if they feel a child is not receiving appropriate special education services (34 C.F.R. § 300.151). In Washington, these formal written complaints are called citizen complaints.

There are no costs associated with filing a citizen complaint, and the state educational agency is required to investigate alleged violations of the IDEA and issue a written decision within 60 days after receiving the complaint. This procedure makes citizen complaints an easy, cost-effective do-it-yourself method to employ in advocating for a child’s special education services.

Facilitated IEP Meetings
The IEP process can be overwhelming for parents. Any parent of a child with special needs knows how intimidating and frustrating it is to be in an IEP meeting. Reports, consent forms, and other documents are passed around for signature with little explanation of what is being signed, while parents struggle to control their emotions, understand what is being discussed, and advocate for their child, all at the same time. To make matters worse, sometimes relationships between parents and district staff have already deteriorated to the point that conducting a productive IEP meeting is nearly impossible.

In these situations, requesting a facilitated IEP meeting may be helpful. A parent or advocate can make a request of their child’s special education case manager or the district special education director to convene a facilitated IEP meeting.

If the district agrees, an impartial party is brought in to help the IEP team resolve outstanding issues and develop an appropriate IEP. During a facilitated IEP meeting, the entire IEP team is present. Generally, the district will pay for the facilitator’s services, making this a cost-effective option for parents. Another benefit of a facilitated IEP meeting is that the facilitator can ensure that the proper procedure is followed and that all IEP team members have an opportunity to participate.

Mediation
As lawyers, we are familiar with mediation as a voluntary process in which two or more parties can participate with a neutral third party to come to a resolution. Under the IDEA, districts are required to create procedures by which parents of students with disabilities may request mediation with districts at the expense of the state department of education (34 C.F.R. § 300.506). The main difference between mediation and a facilitated IEP meeting is that the entire IEP team does not have to be present for mediation.

In Washington, the Office of the Superintendent of Public Instruction (OSPI) contracts with the Sound Options Group to provide mediators. Parents may contact the Sound Options Group directly to request mediation with the district at no cost to the parents. An added benefit of both mediation and facilitated IEP meetings is that they can be scheduled in much less time than any administrative or judicial options, meaning that students who are being denied a FAPE will spend less time receiving inappropriate services if a resolution can be reached. This makes mediation another low-cost, efficient option for parents who think their child is being underserved by their local district.

Mediation is also a lower cost solution for school districts, so attorneys can help parents understand the benefits of mediation and why districts are often interested in pursuing mediation when requested. If parents choose to employ their administrative rights, the IDEA requires that “[w]ithin 15 days of receiving notice of the parent’s due process complaint … the [district] must convene a meeting with the parent and the relevant … members of the IEP Team” and try to resolve the issue without going to hearing (34 C.F.R. § 300.510(a)(1)). Alternatively, districts and parents may choose to waive the resolution session and use the mediation process instead (34 C.F.R. § 300.510(a)(3)). Thus, districts, knowing a matter has the potential to end up in mediation anyway, sometimes agree to mediation when requested to curb costs incurred by a later due process hearing request.

Due Process — The Remedy of Last Resort
If none of the above methods help resolve the issues between a parent and the school district, a parent has the right to request an administrative hearing called a due process hearing. Once an administrative final decision has been reached, further IDEA rights grant the parent the ability to proceed directly into federal court.

Some parents use this right to request reimbursement for an appropriate private school placement. In School Comm. of Burlington v. Department of Ed. of Mass., the Supreme Court held that if it is determined a school district failed to provide a FAPE and private services were appropriate, a court can order the reimbursement of those private special education services (471 U.S. 359, 369 (1985)). Almost 15 years and two sets of IDEA amendments later, the Supreme Court reaffirmed this obligation, and extended it to cases where the student never received any special education services from the district.

However, as mentioned earlier, many parents of students with disabilities do not have the time or the resources to wait for a decision from an administrative law judge or the federal courts in order to help their child. Before resorting to filing a due process hearing request, parents have several more cost-effective and timely options to advocate for their special needs child, as listed above. Attorneys hired to help parents with a child’s special education needs can help parents fully understand the many low-cost, efficient methods for resolving disputes before
resorting to litigation.

**Knowledge is Power**

Although not perfect solutions, there are methods that can help resolve the tension between the “basic floor of opportunity” and the “best interests of the child” standards. Knowledge is power in special education law, and knowledge of these methods of dispute resolution will hopefully give parents, advocates, and attorneys more power to help “[ensure] equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities,” as Congress intended.¹⁰

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**NOTES**

2. In Washington, the statutes and regulations that provide for the implementation of the IDEA are found in RCW 28A.155.010 et seq., and WAC 392-172A-01000 et seq.
5. While there have been revisions to the IDEA since its initial passage in 1990, there has been little substantive change in the sections at the heart of the Supreme Court’s decision in *Rowley*.
6. See 20 U.S.C. § 1414(a)(2). One limitation is that a district does not have to reevaluate a student more frequently than once per year, unless the parent and the district agree otherwise.
7. More information can be found on OSPI’s website at: www.k12.wa.us/specialed/disputeresolution/mediation.aspx.
WHERE ARE THE JOBS?
Young Lawyers Face Tough Employment Choices and Student Debt
by Vincent D. Humphrey II

Would you study law for three years, tack on an extra year to earn an LL.M., and incur a mountain range of student loan debt just to serve drinks at Applebee’s? For nearly 25 percent of new and young lawyers entering the job market today, working behind the bar, instead of working as a member of the bar, is their best available option.

The Great Recession forced the need for reinvention upon many industries, including the legal profession. Those who graduated in its wake — that lot of students called “The Lost Generation” — entered a job market as barren as the dust bowls of the Dirty Thirties.

Kim Letter (who asked that I not use her real name) is among the lost. “Initially,” she says, “I thought my time with Applebee’s would be short. I wound up working there for almost four years.” Letter graduated from law school, earned an LL.M., and entered the job market in 2011. “Frankly, I took whatever I could get,” she told me recently over the phone. Even after landing contract legal work here and there, she continued bartending at night.

“The student loan debt was not going away and it caused stress and frustration. I answered Craigslist ads and found a position with a legal referral company. I was making slightly more than minimum wage. I was a new lawyer working as a contract attorney, but there wasn’t really any guidance.”

Letter tried to see the silver lining. “Even though I
Most law firms toward a student loan balance, on top of a person who must pay $1,000 a month terminative factor in their job hunt. A debt is not just one factor, but is the de practicing law under severe debt load. munities, and the burdens arising from (such as mentor/mentee relationships), the need for leadership development. Added to this main concern was consistent employment as a top priority. Respondents overwhelm themes they believe underlay the legal profession. New and young lawyers were polled across the state the results of which mark new lawyers’ need for employment. New and young lawyers were polled across the state and were asked to identify the major themes they believe underlay the legal profession. Respondents overwhelmingly identified the need for secure, consistent employment as a top priority. Added to this main concern was the need for leadership development (such as mentor/mentee relationships), the need for access to supporting communities, and the burdens arising from practicing law under severe debt load.

For many, the amount of student loan debt is not just one factor, but is the determinative factor in their job hunt. A person who must pay $1,000 a month toward a student loan balance, on top of their living expenses, simply can’t afford to accept a public interest job that pays $28,000 annually. That law firms, government employers, and corporate legal departments are not hiring the armies of counsel they once were is the grim reality of today’s job market.

“I specifically chose to open my own shop instead of endlessly job-hunting,” says Samuel ben Behar, whose father ran a successful solo law practice in California for 30 years. Having watched his father build his practice gave ben Behar the needed confidence to strike out on his own. “I feel like attorneys are part of only a handful of professions that have that option and I’m choosing to take advantage of it.” ben Behar’s decision shows how many new lawyers are using the drab job market to redefine work-life balance expectations for the legal profession.

ben Behar realizes he’s not making a six-figure salary with bonuses, but states, “I make my own schedule and I’m able to provide what I feel is a more personalized service to my clients than a larger firm. I don’t have artificial deadlines or hourly quotas to fill. I can even take off at three on Fridays if I want and no one yells at me.”

The solo life is not for everyone, but some are finding strength in numbers. Amber Rush, Eli Marchbanks, and Colin McHugh founded MRM Law Group near the Oregon border in Vancouver, Washington. Their business model: go after the untapped market.

The group was inspired by the book Blue Ocean Strategy: How to Create Uncontested Market Space and Make Competition Irrelevant. Most law firms compete for the same market base that occupies the upper echelon of society. But the MRM Law Group has reaped success by targeting the “Blue Ocean,” the untapped market that lacks competitors and is a playground for people who are willing to embrace innovation.

“We get out and volunteer,” Rush tells me. “It may seem cliché, but at our firm we are very active in the ABA and the WSBA and giving back and getting involved is a key factor to breaking in to the legal market. This can lead to finding jobs, opportunities, and building your reputation in the legal community.”

McHugh relies on informal meet-ings with other members of the legal community, investing significant time in networking over coffee. “This helps you gain that valuable experience by either offering to help or listening to some of the issues that attorney is fac-ing. They might not be able to offer you a job, but [MRM Law Group has] gained business from other attorneys that were too slammed to take on the work themselves. Sometimes you have to knock on a ton of doors, but it is worth it in the end.”

Very few new lawyers are guaranteed a job upon graduation. Whether you are seeking work while employed as a bartender, by hanging your own shingle, or by being an innovator, getting a job in this market (like anything else worthwhile) takes hard work. According to Marchbanks, “Remember, you are never ‘unemployed.’ If you are not currently working in a legal job and that is your goal, then looking for a job is your job.”

Letter’s story has a happy ending. She finally landed the job she’d always dreamed of, working as a criminal prosecu-ctor. But she hasn’t forgotten her days sporting an apron and polo shirt adorned with pins and buttons and other “flair.” “When I worked at Applebee’s, it was sometimes embarrassing when I would see someone I know come in to the restaurant when they knew I was a lawyer. But I come from a strong background and you have to just push through it,” she says. That’s true for us all — sometimes we need to just push through it. NWL

**For Nearly 25 Percent of New and Young Lawyers ... Working Behind the Bar, Instead of Working as a Member of the Bar, Is Their Best Available Option.**

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**Vincent D. Humphrey II** is an attorney with Humphrey & Associates, PLLC, where he practices family law, real estate, and civil litigation. He is the current chair of the Washington Young Lawyers Committee and is the 2015 recipient of the WSBA Outstanding Young Lawyer Award. He can be reached at vincent@halegalteam.com and 206-946-8580.
Is There a Case for Bringing LLLTs into a Firm?

Does It Make Good Business Sense?

A discussion by Jerry Moberg and Greg McLawsen

Limited License Legal Technicians (LLLTs, usually said “triple-L-Ts”) are now a reality in Washington. LLLTs, of course, are legal professionals who have not completed law school nor the Rule 6 Law Clerk program, yet hold a license to practice law in Washington state, albeit in a limited fashion.

The wisdom of the program has been questioned, including whether it will help close the access to justice gap and whether LLLTs will adequately serve their clients’ legal needs. While we believe those are still worthy discussions, they are not ones we engage here. Instead, we address the issue of whether it could make good business sense for lawyers to incorporate LLLTs into a firm, as lawyers are now permitted to do.

Upon completion of the required instruction, passing a “bar examination,” and 3,000 hours of lawyer supervised “law-related” work experience, a LLLT is entitled to a limited license. A LLLT must maintain malpractice insurance and pay annual licensing fees. LLLTs can practice solo or within a law firm. If they are in a law firm, they may have some ownership of the firm, but may not have a controlling interest. One commentator has pointed out that this rule makes Washington the first state in the nation wherein “non-lawyers are authorized to share fees with lawyers and have ownership interests in law firms,” though Washington, D.C., also has such an allowance.

The authors of this article come from two practice areas identified by our Bar Association as underserved. Jerry Moberg has a civil litigation practice that includes a growing family law component. Family law is thus far the only practice area approved for LLLTs, though additional areas are likely to be approved in the coming year. Greg McLawsen runs an immigration law firm focused on serving families. Though not yet approved as a practice area, both Greg and Jerry agree that it is possible that LLLTs will be authorized to practice immigration law in the future.

Can LLLTs offer unique value to firms?

JERRY: I currently have two paralegals enrolled in the LLLT program and believe it will be a benefit to have licensed LLLTs practicing in my firm. First, a LLLT can operate without direct supervision of the attorney. He or she can take in clients, meet with them, and perform the allowable services with a fair amount of independence. Since an LLLT’s rates will likely be less than an attorney’s, these services should be available to more clients at an affordable rate. To be successful, the law firm will have to create efficient and streamlined procedures.
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Interactive webpages, well-designed document engines, and efficient office procedures will enable a firm to profitably provide a valuable legal service to the underserved “middle class.”

GREG: I’m skeptical about whether it will make financial sense for firms to use LLLTs, at least in the near future. The jury is out on whether LLLTs will be substantially less costly than recent law graduates. As chair of the WSBA Solo and Small Practice Section, I know it is not uncommon for recent graduates to freelance for $25/hour. Why hire a “lawyer lite” when you can just hire a lawyer? And a paralegal practicing in a firm, under attorney supervision, can do all the drafting allowed of a LLLT. Sure, efficiencies can be achieved by deploying technology. But value may be captured from such efficiencies regardless of having a LLLT involved. Some simple drafting processes can be mostly automated. To the extent legal drafting can be automated, the remaining “touch” might best be left to an attorney’s discernment.

Finally — as explained in more detail later — a small slice of a small pie is, well, small. To the extent LLLTs succeed in lowering the cost of legal services, there will be less value for a firm to capture. I suspect few small firms will have the sophistication needed to run a LLLT practice at a volume high enough to be worth the effort. (Though if anyone can do it, Jerry is probably the one.) Certainly price point isn’t the only way for a business to complete, but if LLLTs aren’t performing comparable work for less than a lawyer, the program is not serving its intended purpose.

In the balance of this piece, we examine some basics of how a firm might stand to benefit financially from LLLTs and discuss the merits of various models.

**Case 1: The Associate Model**

Law firms traditionally capture profit from the margin between labor costs and the rate billed to clients. On this familiar model, an associate billed to clients at $150/hour may be compensated at $50 or $75/hour. Will firms be able to capture value by selling the hourly services of LLLTs at a markup?

GREG: First, as noted above, there’s an open question as to whether LLLTs will be much lower cost than recent law graduates. If not, one may as well use a new associate. But assuming LLLTs will have a lower price point, that makes them challenging on the traditional associate billing model. If a LLLT earning $40/hour is billed out at $80, a firm captures a modest $40/hour. A solid 40-hour workweek would render $1,600, from which a firm would still have to pay overhead associated with the LLLT. The law firm would have to achieve extraordinary volume to make this model significantly profitable.

A second, deeper issue concerns the price elasticity of demand in the legal services industry. In order for LLLTs to pencil out for firms, such demand needs to be elastic, meaning that a reduction in price will increase demand for services. While that outcome seems intuitive, it is not simply true by necessity. LLLTs will bring work into a firm only if there is a latent market of clients who already want to purchase services but can’t stomach the price — the Washington...
Supreme Court’s recently updated Civil Legal Needs survey suggests that price may not be the biggest barrier to getting legal assistance.

JERRY: I am not as confident as Greg that there are a large number of $25/hour lawyers out there practicing. It would be hard to meet even minimal overhead costs at that rate. Therefore, I think the most likely route for many will be to use LLLTs at a rate of $65–75 per hour. At that rate, the LLLT’s salary and overhead is covered with a reasonable profit margin. In metropolitan areas, that rate will be higher.

CASE 2 ASSOCIATE MODEL 2.0

A variation on the traditional model involves LLLT services billed at flat rates to clients. Although fees vary across communities, it may be reasonable to expect that a LLLT will be able to assist in “simple” dissolution for fees of $1,000 or less. A few counties in Washington permit the client to enter a decree by mail without a personal appearance, which can further assist the client in obtaining an affordable dissolution.

JERRY: Flat-rate LLLT billing is an important alternative. We are looking at a flat rate for qualifying dissolutions at around $750 from filing to decree. At that number, to be profitable, the procedures have to be streamlined and efficient. We are looking at a highly interactive web page where the client inputs most of the information and the LLLT creates the necessary documents and advises the client. This rate assumes that a majority of the clients will be willing to file in a “mail-in county” to avoid the cost of traveling to and attending a court hearing. Otherwise, the client would present the pleadings pro se at the final hearing.

GREG: Again, streamlined or automated processes are profitable regardless of who is pulling the technology lever. Flat rates offer some increased opportunity for firms, since the rate is not tied directly to the hourly involvement of a LLLT. Ultimately, however, a percentage of a small fee pencils out to a small profit and volume is required to achieve substantial gains. Many lawyers struggle enough with the administration of a traditional firm. My guess is that few will have the appetite for creating a well-oiled legal-technology cyborg.

CASE 3 CREATING A VERTICAL

A different approach to LLLTs — not mutually exclusive of the preceding approaches — focuses on the possibility that they will expand the law firm’s client base and refer higher value business to the firm’s lawyers. When the “simple” dissolution handled by a LLLT becomes complicated, it can then be completed by an attorney within the firm.

JERRY: In the law firm context, LLLTs will have much greater flexibility in handling the case. If the LLLT is bumping up against the limitations of the LLLT license, the attorney can take over responsibility of the file and assign additional tasks to the paralegal or the LLLT. In a solo LLLT practice, the LLLT can consult with the attorney and after the attorney provides appropriate documents and written instructions regarding whether and how to proceed, the LLLT may be able to continue the representation. If the dissolution becomes complicated, the attorney may have to intervene. This would require a renegotiation of the fee agreement. In flat fee cases, this can be problematic unless the client clearly understands that if complications arise, the flat fee will be renegotiated. The best protection against starting a dissolution that seems simple and becomes complicated is to screen the case at the entry stage to determine if it “qualifies” for a flat fee arrangement.

GREG: It seems reasonable that LLLTs will generate some referrals for legal work beyond matters they can perform. But is this a reason to bring them in-house within a firm? Couldn’t the same result be achieved with a referral arrangement — going both ways — between independent LLLTs and a firm? Sure, the firm captures revenue if the LLLT referral is in-house, but as discussed above, I’m skeptical that the profit from such work would be worth it for the firm.

Moreover, recall that the raison d’être for LLLTs is to meet the needs of community members who cannot afford traditional legal services. Merely because a LLLT’s case has become complex does not mean that the client will then be able to afford the services of an experienced attorney. And finally, attorneys struggle enough to attend to traditional marketing, plus content marketing through blogs and social media. Will they now agree to add the administrative overhead for a LLLT, merely in hopes some small fraction of her clients will refer high-end work?

The Bottom Line

Whether or not LLLTs can help a firm’s bottom line remains to be seen, but we agree that these are exciting times for lawyers willing to envision a more creative future.

Greg McLawsen is an immigration attorney taking the path less traveled. The managing attorney of Puget Sound Legal, he is passionate about using technology and creativity to improve law for clients and attorneys alike. He chairs the WSBA Solo and Small Practice Section, has served on the WSBA’s Future of the Legal Profession task force, and is a co-organizer of the Seattle Legal Technology and Innovation Meetup group. McLawsen can be found at www.pugetsoundlegal.net and on Twitter (@mclawsen). Ephrata attorney Jerry Moberg completed his term as WSBA governor for District 4 in September. Born in Spokane, Moberg received his undergraduate degree from Gonzaga University and his law degree from Gonzaga University School of Law. His firm, Jerry Moberg and Associates, has offices in Ephrata and Moses Lake. Contact him at jmoberg@jmlawps.com.
At the same time that I was a freshman at the University of Washington, a fellow teen at the University of California in Santa Cruz named Jesse Thorn began hosting a radio show on KZSC called The Sound of Young America: A Show About Things that Are Awesome. Over the next few years, Thorn developed that show from an indie college radio fixture to one with nationwide syndication. Even as a college student, Thorn interviewed musicians, comedians, and actors with a humor and maturity far beyond his age.

In 2007, several years after college graduation, he launched the podcast *Jordan Jesse Go!*, a chance to collaborate with his former KZSC host Jordan Morris, and do so without having to worry about whether their childish college humor would offend the broadcast radio audience.

I listened to JJGO from episode one because I loved those guys. I remember sitting on I-5 on a Friday afternoon at a standstill near Mercer Street laughing in my car, frankly not caring if traffic would move or if I looked like a complete goofball.

What I’m trying to get at is this: I was into podcasts before they were cool. It’s the closest thing I have to being a hipster. I dig podcasts way before *Serial*, way before the *TED Radio Hour*. And having had a commute ranging from 30 minutes to an hour most of my adult life, or spending 90 minutes in the gym several times a week, I had plenty of time to consume and enjoy.

For attorneys who are constantly on the road, a good set of podcasts makes the time in the car going from courthouse to courthouse more productive and enriching. My Seattle University School of Law 2012 classmate John Cyr estimates he spends 30 to 35 hours a month driving to courthouses around Puget Sound and in the adjacent counties. “I like listening to things that surprise me, things I don’t necessarily plan for,” Cyr said. “I like having a depth of thinking and still be able to focus on the road ... [a good podcast] is like having an interesting person sitting in the seat next to you.”

I consider myself a podcast savant, and have carefully curated over the years a selection of shows that satiate all aspects of my life (see my author biography). This list, the Top 10 Podcasts for Lawyers, is not a list of 10 podcasts that sound like CLEs, or my favorite shows. Lawyers are intelligent people with a curiosity for content, sociable people who want to talk culture, and folks who find more humor in clever wordplay and comedic timing than goofball slapstick.

So, with this stereotypical definition of my target audience, I present the definitive but non-exhaustive list of the Top 10 Podcasts Lawyers Should Download (listening is optional).

For the Wordsmith

1–2) Lawyering can be as much about effective communication as it is about intelligent analysis. A Slate production, *Lexicon Valley*, explores the meanings of idioms in our language with an emphasis on the etymology and evolution of words and phrases. While *Lexicon Valley* may be the podcast for the attorney with an undergraduate degree in English, the attorney without the same confidence in their writing should subscribe to the *Grammar Girl* podcast. *Grammar Girl* is like an audio version of Strunk and White, with easy to understand explanations of grammatical issues like “affect vs. effect,” how to use pleasing parallel structure in your paragraphs, and how to properly use punctuation: colons, for example.
For Your Funny Bone

3) John Hodgman, esteemed writer for McSweeney’s, author of The Areas of My Expertise and More Information Than You Require, and editor of the humor section of the New York Times Magazine hosts JUDGE JOHN HODGMAN, a spoof of the court shows on daytime television, which themselves are a parody of the legal system. Hodgman rules on heated disputes between friends and couples, such as whether a machine gun is a robot (one litigant says a machine gun is mechanical, programmable, and performs a repetitive task, thus a robot), or whether a woman who lost a bet and thus was barred from wearing an ugly pair of Crocs in public for a week breached that contract by wearing them in her front yard.

For the Political Junkie

4) A three-for-one on the list, these network Sunday political shows release audio versions of their programs. MEET THE PRESS, THIS WEEK, and FACE THE NATION are staples for anyone with an interest in politics. If you can ignore the awkward moments when Chuck Todd points to poll numbers (which you’d be able to see if you downloaded the video version) or when audio from B-roll runs in the background, listening to the shows on your Monday commute makes up for missing the shows to have Sunday brunch. Best part: significantly fewer commercials. Honorable mention to Slate’s Political Gabfest, which has some of the most insightful analysis of national politics, but which can go long and sometimes becomes a little banal.

For the J.D./MBA Joint Degree Holder

5–6) When the Great Recession struck in 2008–09, reporters at National Public Radio launched the PLANET MONEY podcast to explain the crisis to listeners who didn’t know the difference between a credit default swap and getting credit from a vendor at a swap meet. For the three years that followed, the Planet Money team dissected the ongoing economic crisis, the housing bubble, and all that was too big to fail. The podcast has recently explored supply chain economics by tracing back the origins of a T-shirt product, and the Chinese currency devaluation. Worth downloading from the archives is the collaboration with This American Life titled “The Giant Pool of Money” from May 9, 2008, about the housing crisis. The podcast pieces are longer and more complete than the versions broadcast on radio. American Public Media’s MARKETPLACE podcast provides the same content as is broadcast nationwide on public radio, but we on the West Coast can download and listen as soon as it’s broadcast in the east. All the market analysis you need, but in time for the beginning of your commute home.

For the Life of the Party

7) Attorneys are serious people, present company usually included. But on the weekends, we loosen up with dinner parties, evening cocktails, tailgating, or brunch with friends and colleagues. For something to talk about other than a judicial opinion, a demanding client, or the work you’re ignoring until Monday, we turn to pop culture for our banter. But, and again I am stereotyping our profession, we want to talk about culture with more substance than US Weekly or TMZ. Jesse Thorn, the creator of the Maximum Fun podcasting empire, rebranded his show, The Sound of Young America, as BULLSEYE as more and more NPR member stations began to carry it each year. His interviews of cultural icons are among the best-prepared, most insightful, and most worthwhile in radio. Do not miss his annual holiday comedy specials, sampling the best of the year’s stand-up albums and live performances, and the hilariously awkward moment in 2014 when Thorn asked Seattle native Ishmael Butler, half of the hip-hop group Digable Planets, about Macklemore.

Honorable mention to Dinner Party Download and NPR’s Pop Culture Happy Hour, featuring content that is not broadcast on the airwaves. The best part about Pop Culture Happy Hour is that episodes are sometimes fun-sized, like a Halloween Snickers, at 15 minutes apiece for that last little stretch of roadway before home.

For He or She Who Lives and Breathes the Law

8, 9, 10, and more) Finally, yes, there are many quality podcasts about the law, for lawyers specifically, that won’t put you to sleep the same way an afternoon CLE PowerPoint presentation will. Among my favorites are several from the Legal Talk Network. Specifically worth highlighting are NEW SOLO, a weekly half-hour show for the solo practitioner, THE LEGAL TOOLKIT, a general interest talk show about tech and resources for attorneys, LAWYER2LAWYER, where two hosts discuss the legal topic du jour, and Above the Law’s THINKING LIKE A LAWYER, where topics in pop culture and in the news are discussed through a legal lens. Independently produced LUNCH WITH LAWYERS, a shorter weekly podcast launched in March that focuses on mentorship in the legal profession, gets a nod and a listen. If I were still managing my own small firm, the Gen Why Lawyer Podcast about branding and marketing would also get a nod and a download. Honorable mentions go to This Week in Law and Life of the Law, a pair of podcasts about general interest legal topics that are well-informed and interesting. NWL

RANDY TRICK is a deputy prosecuting attorney in Grays Harbor County. His personal top 10 list includes Bulls-eye*, Jordan Jesse Go!*† My Brother My Brother and Me,*† the Indoor Kids, ESPN Fantasy Football Podcast, Radiolab, On The Media, How Did This Get Made?*, Planet Money, and the CBC’s Day 6. Shows indicated with * are not suitable for all audiences. Shows with a † are part of his favorite source, the Maximumfun.org network. Trick can be contacted at randy.trick.esq@gmail.com.
Being a bar association volunteer has many rewards, including great networking with colleagues, the opportunity to have an impact on the future of the legal profession, and more. As a bar volunteer for state, local, and national bar associations, I have benefited both personally and professionally from travels around the Northwest, throughout the country, and even internationally. Volunteerism has many perks!

As I write this, I’m on a plane back to Seattle from the ABA Annual Meeting in Chicago, a once-yearly mob scene of over 7,000 lawyers from around the world. It is worth noting that from time to time the annual meeting is held in Canada, requiring a passport and inspiring many amused remarks about why the “American” bar association is meeting in the land of hockey, maple syrup, and single-payer healthcare. Even though my schedule in the Windy City was packed with committee meetings, I found time for a morning walk around Navy Pier with a friend, enjoyed Chicago’s famous deep-dish pizza (you have to eat sometime), and much, much more. If the award-winning combination of traveling, networking with colleagues, and helping bar associations do great work appeals to you, then read on for some tips on how you, too, can become a bar junkie.

1 Reimbursement means “thank you for your work.”

Being a bar association volunteer means you will often give many hours to “the cause.” Your hard work will pay off, though, as many bar associations offer their volunteers travel reimbursements or stipends. Some groups even have a scholarship fund to help first-timers or those who wouldn’t be able to afford attendance — it never hurts
to ask. Air or mileage, lodging, ground transportation, meals, and a per diem are expenses that bar associations may reimburse in full or in part. For example, I was asked to serve on a CLE panel for the most recent WSBA Real Property, Probate and Trust Midyear Meeting held at the Davenport Hotel in Spokane. I enhanced my professional knowledge (who knew that “lien priority” was such an impossibly broad topic?), met new people I otherwise might not come in contact with, and my travel expenses were reimbursed by the WSBA. Take note that, particularly in large organizations such as the ABA, you will have to work your way up through entity leadership, since funded positions are heavily sought after. Be sure to ask questions of the organization’s staff, who are very well versed in the funding structure and with reimbursement policies and procedures. I rely on the experience of other bar junkies, especially those who have been volunteering for a while, to help me develop a personal strategy of volunteering for bar associations that I enjoy and that appreciate the work I do.

2 Roommates (or travelmates) are your new best friends.

When you’re traveling on an organization’s dime, make your per diem go as far as possible. Check the conference advance registration list or the Facebook event page to find others you might know to help keep the expenses low. If you aren’t invested in staying on-site and can tolerate a walk or a short taxi ride, there are often cut-rate deals found on discount travel websites. Using lodging sites like AirBNB is also an option, and your host may be able to help make restaurant and entertainment recommendations and give you “locals only” information. Spend some time researching the area near the conference hotel. Staying offsite is the key to enhancing your experience if the hotel is in an empty part of town, such as near the airport. If you’re driving, use social media, list serves, and the Internet to find carpool mates. This is an area where attending the same conferences year after year can be beneficial, not only because you get to know other lawyers who are attending, but because you just might find a new friend who is happy to be your travel buddy.

3 Become an expert frequent flier.

If your volunteerism involves a fair amount of air travel, be sure to sign up for your favorite airline’s frequent-flier program. Depending on the amount of time you spend up in the air, staying loyal to one airline may help you achieve frequent-flier program status. I can’t say my life changed immeasurably when I became an Alaska Airlines MVP (I’m pretty sure half of Seattle is also basic-level MVP), but the occasional upgrade to first class and the free checked bags are great perks of frequent travel. Think about using your frequent flier miles strategically, such as when there is no reimbursement or stipend available. Also, consider signing up for the airline’s credit card, which...
often comes with perks, like a free companion fare (great for taking a spouse or partner along), and you will earn those valuable miles faster.

4 Make your trip an actual travel experience.
I often stay an extra day in desirable cities, especially if I haven’t been there before, to sightsee and decompress from a busy meeting and networking schedule. If you have friends you can stay with there for free, all the better. Airfares are sometimes even lower if you’re able to come home on a Monday rather than on a packed Sunday evening flight. On the way out, think about leaving town mid-week when fares are lower.

5 Become an expert packer.
Find “smart packing” tips on a website or attend a seminar. Think carefully and pack strategically to maximize your clothing options. That business suit (and heavy dress shoes) you packed? Take a break from the popcorn-and-ramen dinners that mark a busy work week. If you’re already dressed up, why not go to a nice dinner at a special restaurant you might not otherwise go to? Keep the rule of thumb in mind that we wear 10% of our clothes 90% of the time. The more you travel to lawyer meetings, the more you’ll want to avoid overpacking by including only your go-to outfits.

In conclusion, there are just as many “traveling lawyer” tips as there are bar associations you can get involved in. If you are like me and enjoy volunteering to give back and help improve our profession just as much as you love exploring new places and having fun new experiences, then I hope you will take these tips to heart. Please don’t hesitate to contact me for more intrepid traveling tips. Bon voyage and many happy returns, and I hope to run into you at a lawyer meeting soon.

Dainen Penta is a community associations attorney with the Seattle firm of Leahy Fjelstad Peryea. He served as 2011–12 president of the former Washington Young Lawyers Division and he is the 2015 president-elect of the Asian Bar Association of Washington. He is active in the American Bar Association and is the 2015–16 chair-elect of the WSBA Tort, Trial, and Insurance Practice Section’s Self-Insurers and Risk Managers Committee. Penta is the alternate regional governor for the National Asian Pacific American Bar Associations-Northwest Region. When not traveling the world for lawyer meetings, he isn’t quite sure what to do with himself. He can be reached at dainen.penta@leahyps.com.
The Redemption of Herbert Niccolls

THE REDEMPTION OF HERBERT NICCOLS JR.
by Nancy Bartley

Reviewed by Allen Bentley

On Aug. 5, 1931, a boy broke into the Asotin general store. He was armed with a stolen handgun. Before long, he heard the voices of men who'd come to investigate: “Come out before anyone gets hurt.” Crouching between some boxes and the vinegar barrel, he fired a shot. The boy was Herbert Niccolls, Jr., 12 years old, hungry and shoeless. The man he shot and killed was John Wormell, 73, Asotin County’s sheriff.

In The Boy Who Shot the Sheriff, Nancy Bartley provides an account of the shooting and of events that followed — Niccolls’ arrest, his trial, his sentence, his years at the Washington State Penitentiary, and his conditional release, after which he settled down in Hollywood, where he worked as a corporate accountant and freelance writer, married, had a son, and dropped from public view.

In 1931, although Washington had enacted special procedures for addressing criminal conduct by juveniles, homicide was excluded. Thus, Niccolls was tried as an adult. His court-appointed lawyers decided on a plea of insanity. The trial attracted publicity across the United States and even in Europe. The spectacle of a 12-year-old facing possible execution or life imprisonment aroused widespread indignation and sympathy for the accused.

The trial evidence showed that Herbert Niccolls was out of control. He had stolen tricycles, cash, a gun, and automobiles. He had set fire to a church and, in the commotion, stolen the offering. Niccolls came from a dysfunctional family. His father was in an Idaho mental institution, having been adjudicated insane after shooting and killing a friend of his wife’s. Niccolls’ mother had neglected, mistreated, and ultimately abandoned her children. Niccolls was placed with a foster family, but his thievery led to revocation of his placement and he was sent to an Idaho reformatory. His grandmother, who had recently moved to Asotin, persuaded Idaho officials to release him to her. The grandmother testified that Niccolls was not insane like his father, but was “possessed by a demon.” The jury’s verdict was guilty. The “barefoot boy murderer,” as he became known, was sentenced to life imprisonment.

Niccolls’ trial and sentence are just the starting point for Bartley. The Boy Who Shot the Sheriff also tells the fascinating story of how Niccolls was the pawn in an epic struggle between Washington Governor Roland Hartley and Father E.J. Flanagan. Hartley was a no-nonsense conservative who had been elected on a tough-on-crime platform. Flanagan was a priest who had founded Boys Town, a Nebraska shelter and school for troubled boys. Flanagan and his admirers believed that Niccolls should be released to Flanagan’s program, and quickly, before he could absorb criminal skills from the hardened inmates at Walla Walla. Flanagan came to Washington to meet Hartley. Hartley declined to attend a reception arranged to welcome Flanagan to Washington. Then Flanagan made a series of radio addresses, broadcast throughout the West, urging Hartley to release Niccolls to his program. The broadcasts served to harden Hartley’s position: he would not let Flanagan “make a monkey out of him.”

In 1933, Clarence Martin succeeded Hartley as governor. Martin took a personal interest in Niccolls, exchanging birthday cards and visiting him at Walla Walla. Eventually, Martin arranged to have Niccolls moved from the Walla Walla to Eastern State Hospital. In 1940, after Eastern State reported that Niccolls was not a danger — and after losing his party’s nomination for a third term — Martin granted Niccolls a conditional pardon.

Throughout the book, Bartley cuts from the governor’s mansion in Olympia to Flanagan’s school in Omaha and the prison at Walla Walla. As the story unfolds, Bartley imagines the thoughts and emotions of Niccolls, Hartley, Flanagan, and Martin. In doing so, she achieves her goal of creating literary characters whose emotions ring true. Those emotions fill gaps that would otherwise remain, despite the newspaper articles, official records, correspondence and interviews on which the book is based.

Some things in the practice of criminal law have changed since Niccolls’ Depression-era trial. High-profile cases now attract high-profile advocates. Judges, prosecutors, and defense attorneys now seldom mingle. It is hard to imagine at the conclusion of a contemporary trial that the judge, prosecutor, defense lawyers, clerks, a deputy sheriff, and the defendant would pose for a formal group photograph. This group did.

Yet other things haven’t changed much. Martin was sympathetic but unwilling to stake his political future (while he had one) on Niccolls’ good behavior in the community. Today, political considerations still limit elected officials in the exercise of their clemency authority. And accounts of the crimes committed by so-called “barefoot boys” — like the case of Colton Harris-Moore, the “barefoot bandit” from Orcas Island — still make for intriguing reading today, as does this book.

Allen Bentley, a former assistant United States attorney (Southern District of New York) and former assistant federal public defender (Western District of Washington), is a solo practitioner in Seattle. He is an active member of the Southwest Seattle Historical Society and can be reached at abentley@concentric.net.
BIGLAW
by Lindsay Cameron
2015; 304 pp.; Ankerwycke; $27
Nearly two years into her job as an associate at a premier Manhattan law firm, Mackenzie Corbett is living her fantasy: big salary, high-profile deals, boyfriend, and designer clothes. But she’s also overworked, exhausted, and tormented by a bitter senior associate. When she’s given the chance at a prestigious assignment, she’s determined to endure whatever it takes to close the biggest deal in the firm’s history. But when Corbett finds herself the focus of a devastating investigation, her dream job spirals into a nightmare.

Debut author Lindsay Cameron is a former “biglaw” corporate attorney.

The Court and the World: American Law and the New Global Realities
by Stephen Breyer
2015; 400 pp.; Knopf; $28
In this timely book, U.S. Supreme Court Justice Stephen Breyer examines the Supreme Court’s work in an increasingly interconnected world, where public and private activity—from national security policy to epidemic outbreaks—requires the Court to consider circumstances beyond America’s borders.

Justice Breyer argues that as the world has grown steadily smaller, the Court’s horizons have inevitably expanded: it has been obliged to consider a great many more matters that now cross borders. Ensuring the smooth operation of American law in harmony with other jurisdictions, says Breyer, has brought American jurists into a new role as “constitutional diplomats” in an ever-changing world.

Career of Evil (Cormoran Strike)
by Robert Galbraith
2015; 512 pp.; Mulholland Books; $28
J.K. Rowling’s crime-thriller alter ego, Robert Galbraith, has been hard at work penning another twist-filled mystery. A gruesome package containing a woman’s severed leg is delivered to Robin Ellacott, but her boss, private detective Cormoran Strike, isn’t exactly shocked. Strike can think of four prime suspects—and, of course, the police go right for the least likely one. Strike and Ellacott start their own investigation into the other three, but as more frighteningly violent acts follow, their time is running out.

Corrupted
by Lisa Scottoline
2015; 432 pp.; St. Martin’s Press; $28
Corrupted is the newest legal thriller by prolific author and former lawyer Lisa Scottoline. Bennie Rosato, founder of the Rosato & DiNunzio law firm, confronts a case from her past that still haunts her: defending Jason, a 12-year-old boy who was sent to juvenile prison for fighting a bully. After years in the juvenile justice system and a troubled adulthood, Jason is indicted for killing the former bully, and Rosato feels compelled to defend him to right the wrongs he suffered years ago. Read our interview with Scottoline in the June 2015 NWLawyer.

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In celebration of Veterans Day, Judge Ronald Cox of the Washington State Court of Appeals was kind enough to allow me to interview him regarding his experiences in the military and its impact on his legal career.

Judge Cox took his oath of office as a judge on the Washington State Court of Appeals in January 1995, following his election to an open position on that court. He has served a term as the presiding chief judge of the entire court. He also served a term as Chief Judge of Division One of the court, which is headquartered in Seattle. Prior to becoming a judge, he worked in a Seattle law firm. Cox is a graduate of the University of Washington School of Law and the United States Military Academy at West Point, New York. Following successful completion of ranger and airborne training after graduation from West Point, he served in a succession of command, staff, and instructor assignments in Germany, Vietnam, and the United States. He holds various awards and decorations for his military service.

Why did you go into the military?

I grew up in Hawaii, where my home was located in the foothills overlooking Pearl Harbor Naval Base. My father was a civilian employee at that base. I attended Punahou School in Honolulu and participated in Junior ROTC there. As a result of these and other experiences, I sought and obtained a nomination to the U.S. Military Academy at West Point from Senator Hiram L. Fong, one of the U.S. senators from Hawaii at the time.

What branch of the military did you join and why?

Upon graduation from West Point in June 1966, I was commissioned as a second lieutenant in the U.S. Army. My class and other West Point classes of that era served as platoon leaders and company commanders in the Vietnam War. I commanded a mechanized infantry company that operated near the Cambodian border of Vietnam during the period 1968–69. The experiences of my class before, during, and after the war are chronicled in the book *The Long Gray Line* by Rick Atkinson. For example, 30 of the 579 members of my graduating class were killed in action during the war. Another member of my class was killed by North Korean border guards in a savage attack in the Demilitarized Zone in 1975.

How did that impact your life?

The Vietnam War was hugely unpopular from the mid-1960s on. And there was then a draft. Unlike now, the public did not then separate the unpopularity of that war from those who served in it. For these and other reasons, large numbers of my class and other West Point classes of that era chose to resign our commissions when our service obligations ended. Many who chose to resign then pursued careers in medicine and law. I decided to go to the University of Washington School of Law. Upon graduating from law school, I joined the Seattle law firm now known as K&L Gates. I practiced there for over 20 years and left as a partner after I was elected to an open position on the Washington State Court of Appeals.

What were some skills you picked up that you still use now?

Perhaps the most important skill is the ability to focus on making important decisions under pressure. The ability...
to truly understand how my decisions impact the lives of real people is equally important.

What motivated you to be a judge?

Throughout my career as a lawyer, I continued to perform public service by participating in various bar association activities. I also served on various boards dealing with the education and welfare of children. When the opportunity to perform public service as a judge arose, I took it.

How does your service experience impact your perspective on the bench?

Service in the armed forces gives one the opportunity to live and work with a broad range of people from very diverse backgrounds. I think that experience keeps me grounded in understanding the diversity of backgrounds of those who appear before our courts.

Are you still connected to your experience as a service member and/or how do you give back to the veterans community?

I was recently the guest speaker at a WSBA event devoted to providing legal services to current members of the armed services and veterans. As a result, I joined the Washington State Veterans Bar Association (WSVBA). I continue to look for appropriate ways to support the veterans community.

What are the biggest issues you see in the veterans community?

Proper support from the Veterans Administration is one of the obvious answers. That problem has many facets and will not soon be fixed, even with the best of intentions of those tasked with finding solutions. Homelessness and lack of employment are also right up there.

What impact do you believe lawyers can make to serve veterans?

Providing legal advice to assist veterans — the subject of the WSBA conference where I was the guest speaker — is one way. As I previously mentioned, I
am looking for additional ways to serve veterans, appropriate to my position as a judge.

There are over 600,000 veterans in our state. Many veterans, especially those returning from Iraq and Afghanistan, are facing distinct barriers to successful reintegration into civilian life, and legal issues are a part of these barriers. This Veterans Day, please take the time to thank a veteran for their service.

One way to do this is through participating in the WSBA’s Call to Duty Initiative, which is designed to inform, inspire, and involve volunteer attorneys in meeting the legal needs of veterans and their families. We will provide you with the tools and trainings to put your legal skills to work at one of our Days of Service or through one of the many volunteer opportunities around our state. As part of the pledge, the WSBA will support you by providing resources, both legal and non-legal, to serve veterans; education and CLEs; and the chance to answer the various calls to duty in serving veterans.

For more on the Call to Duty Initiative, see these articles in previous issues of NWLawyer:

- “Answering the Call” (SEP 2014), by Bina Hanchinamani Ellefson (www.nwlawyer.wsba.org/nwlawyer/september_2014/?pg=40&pm=1&ul=friend)

Chris Lybeck is an assistant counsel in the U.S. Navy Office of General Counsel practicing primarily contract and employment law. In his spare time, he enjoys reading, hiking, and spending time with his wife and son. All opinions expressed in this article are the author’s and do not represent the views of the U.S. Navy or the United States Government. Lybeck can be reached at christopher.lybeck@navy.mil.
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Courts are increasingly moving online with electronic filing systems and access to court records. For many, this represents an improvement in efficient retrieval of records and processing of cases. However, this move adds an additional barrier to the justice system for others, such as individuals representing themselves in court. Washington state is in a unique situation with 39 independent county clerks who each face different challenges in providing online access, and a 35-year-old state system that lacks modern case management and calendaring.

With this in mind, in 2013 the Washington State Access to Justice Board began a project to develop best practices for access to electronic court records. The experience of developing the Washington State Access to Justice Technology Principles provided a guide for the Board as it set out to create “Best Practices for Providing Access to Court Information in Electronic Form.”

Thanks to a grant from the ABA, the Board was able to fund a project manager and a crucial stakeholders’ meeting. Beginning with an advisory committee that examined existing electronic filing arrangements and developed key considerations for an accessible system, the development of the Best Practices included a survey of the Washington county clerks and a survey to other states with elected clerks and statewide court case management systems.

The participation of the Washington Association of County Clerks (WACC) president was vital to the success of the project, resulting in 33 survey responses and important representation at the stakeholder meeting. The surveys were analyzed to produce a first draft of best practices, which was shared with the advisory committee in preparation for a stakeholder meeting. The stakeholder meeting provided an opportunity for in-depth discussion on each of the proposed principles. Following the meeting, the Best Practices were edited and refined with the advisory committee. The final Best Practices can be divided into three main categories: accessibility, cost efficiency, and privacy and security.

**ACCESSIBILITY**

Courts have an obligation to citizens to maintain public records in an electronic form to the extent feasible so that court users can access public information in the most convenient way.
for the user. Users should be able to conduct a search for all relevant information from records for the entire state on a single site. The process for obtaining documents should involve intuitive interfaces and easy-to-understand terminology to assist in the search function. Language translation should be provided to the extent feasible. Users should be able to search with a variety of options such as by party names or case numbers and from both individual and corporate accounts. Finally, users should be able to access court documents directly from the court’s docket.

**COST EFFICIENCY**

Access fees should be as low as possible and reasonably related to the cost of maintaining and providing access to the information. Before paying for access, users should have the opportunity to verify the identity of documents before having to pay for them. Fees should be waived for persons of limited means and should not be charged to legal services programs, pro bono attorneys, public defenders, court-appointed attorneys, or public entities.

**PRIVACY AND SECURITY**

Data should be secure to comply with all relevant state and court rules, and privacy controls should be maintained to protect the privacy of non-public records. Finally, credit-reporting and similar agencies should be required to update information frequently so that expunged records do not influence individuals’ reports.

The Administrative Office of the Courts has been actively working towards a solution for updating the records system. In 2013, they entered into a contract with Tyler Technologies to license its Odyssey case management program for use by Washington’s trial courts. The state is currently piloting implementation of the Odyssey system and continuing to develop processes and practices that conform to and advance Washington law and Supreme Court Rules and policies. This process is addressing some of the issues identified in these Best Practices, but the implementation of the Best Practices in Washington remains a work in progress.

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**BEST PRACTICES**

1. **Court obligation to provide access to court information in electronic form**

To the extent that a court maintains its public records and documents in electronic form, it should provide all court users access to that information, to the extent it is feasible, in the way that is most convenient for the user. This principle does not apply to records and documents protected by “practical obscurity” policies.

2. **Implementation of security and privacy software features and procedures that ensure compliance with policies set forth in statutes and court rules**

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Systems implemented to provide public access to court electronic records and documents must ensure the security and privacy of those records, preventing unauthorized access to non-public court records.

Court users should be able to conduct a search for relevant information on a single site for records for an entire state.

Access to documents through docket
Although this may not be the only means of access to them, court users should be able to access court documents directly from the court’s docket.

Ease of use
The processes for accessing court information should be easy to use for both infrequent and frequent users. Ease of use includes:
- Intuitive interfaces
- Easy-to-understand terminology to assist in the search function
- Language translation capability, to the extent feasible and affordable
- Ability to search for cases and documents using party name or case number, with initial screening for case type
- Ability to verify that a person whose records are found is the person for whom information is sought
- Easy-to-manage password function
- Availability of both individual and corporate accounts

Reasonable access fees
Fees charged for access to electronic court information should be as low as possible, should be reasonably related to the cost of maintaining and providing access to the information, and should not serve as a barrier to court user and/or public access to such information. These principles should apply whether access services are provided by a public entity or by a contractor operating a system on behalf of a public entity. Such fees should be uniform across a state, set at the state level by legislation, court rule, or court policy.

Opportunity to verify the identity of a document before having to pay for it
If fees are charged for access to or downloading of a document, a user should be provided with some means of verifying that the document to be accessed is the document the user desires before purchasing a copy of the document.

Exclusion of certain entities from payment of fees
No fee should be charged to legal services programs, pro bono attorneys working with a legal services program, public defenders, court-appointed attorneys, or public entities.
Waiver of fees for persons of limited means

If a general fee system is in place, fees should be waived for persons of limited means. The administration of the fee waiver process is as simple as possible for persons seeking access to court information, through implementation of these practices:

- Court users are informed of the availability of fee waiver on the website through which access is provided and how to find and use the fee waiver process.
- Court users are again informed of the availability of fee waiver in the course of the process of requesting access to a court record — at the point that arrangement for payment of a fee is made.
- The fee waiver application is as easy as possible to complete.
- Court users are provided with a means for estimating whether they are eligible for a fee waiver.
- If a filing fee waiver has been approved in a case, it applies automatically to the payment of electronic court record access fees by the party for whom the filing fee waiver has been approved, for documents in that case.
- If a fee waiver is denied, the court user is informed of the reasons for denial and the availability of appeal or any other remedy. NWL
I am a community association lawyer. A lot of people have no idea what that means. Others think I spend all day writing letters to homeowners, ordering them to remove their flock of pink plastic flamingos from their front lawns. That’s not accurate, though I did once correspond with a resident about a one-story, homemade New Year’s outdoor display depicting a bottle pouring blue liquid into a martini glass. He wanted to keep it up all year by adding things like shamrocks and Easter bunnies to avoid the time restrictions on exterior holiday decorations. I was almost disappointed when he decided to give up the fight and take it down.

Simply stated, community association lawyers like me help the boards of directors for condominium and homeowners’ associations with running their associations. We work directly with boards or professional managers, who are long-suffering but strangely upbeat. Associations range in scale from a few condominium units to communities of single-family homes the size of small towns. They are created through the recording of a document called a declaration of covenants. Associations are typically nonprofit corporations, and are subject to the state’s Homeowners’ Associations Act, RCW 64.38, or one of two condominium statutes — the Condominium Act, RCW 64.34, or the Horizontal Property Regimes Act, RCW 64.32, the latter of which applies to older condominiums and has a scary-sounding name. Every year the State Legislature toys with the idea of adopting what’s called the Uniform Common Interest Ownership Act (UCIOA), which would apply to all types of associations, but the bill keeps getting passed over in favor of other proposed laws with less cumbersome acronyms.

I think of community associations like little private governments that people generally are not excited about, but that are a part of the deal if you want to buy a home in a particular community or building. Most association decisions are made by an elected board, which people customarily try to avoid being on. Boards are usually made up of three or more homeowner volunteers, who almost invariably are surprised at the amount of unpaid work that is involved. Fortunately for most of the board, there is usually one board member who does the vast majority of the work, just like any high-school group project. The best board meetings involve cheese plates or cookies.
A 2014 report from the Foundation for Community Association Research determined that Washington is home to more than 10,000 community associations, which have a total of more than two million residents. Meanwhile, the “community” of community association lawyers in Washington is relatively small. You could probably fit us all into the lobby of an office building at the same time, which we would not likely object to so long as drinks and light appetizers were served. Chances are, if your condominium or HOA has a lawyer, it is either me or someone I know.

The declaration of covenants is the “constitution” of the community. All actions of the board must comply with the provisions of the declaration, which can only be amended by a vote of the owners. The bylaws are usually easier to change and generally set forth the procedural aspects of running an association, including how voting and meetings work. There are also “rules and regulations” that tell owners and occupants the specifics of what to do and what not to do. (Sneak peek: Window coverings that are white or beige when viewed from the exterior of the home are good. Making lots of noise at night is bad.) These papers together are called the association’s “governing documents,” a copy of which is given to each new owner and promptly shoved in a drawer somewhere, since they are among the most boring and tedious documents to read on the face of the planet.

Governing documents are often haphazardly updated over the years, internally inconsistent, and fail to address critical issues. Community association lawyers have to spend a lot
of time interpreting them, which feels a lot like putting together a jigsaw puzzle with missing and overlapping pieces. I review these documents for clients every day and have grown to love them despite their flaws.

The legal issues faced by a community association are a grab bag of grab bags. For example, we advise associations about multi-million dollar repair projects, fair housing concerns, property easements and encroachments, elections, insurance coverage, anti-harassment protection, and view restoration. (Note: I have learned that people either love or hate trees. There is no in-between.) A lot of issues involve figuring out who is responsible for repairing different parts of the building and who pays for those repairs, since a primary purpose of an association is to preserve the shared areas of the community. These issues often involve a faulty toilet, though I have been involved in two legal matters involving overflowing bathtubs and alcohol. I am currently working on a repair-cost-responsibility matter involving a leaky window that prompted a condominium-unit tenant to cut an eight-by-eight-foot hole in the exterior wall, exposing his bathroom’s innards to passersby.

The legal issues faced by associations have evolved as technology, society, and applicable laws have developed. We are now analyzing questions such as whether “vaping” is prohibited under no-smoking covenants, whether “couch surfing” is a violation of rental restrictions, whether rental caps limiting the number of rentals at any one time are ever enforceable (courtesy of a recent state Supreme Court case that limited its decision to the specific facts), what to do about personal drones and privacy, whether a community should regulate in-home “e-businesses” selling questionable items such as weapons, and whether an occupant may grow or use marijuana in the community.

We often get involved when there is an issue involving enforcement of the governing documents, since associations are tasked with taking reasonable efforts to ensure that owners comply with the provisions. (This is the aspect of our jobs in which we really do act as the “Pink Flamingo Police.”) These provisions include a handy catch-all “nuisance” clause that covers a lot of the weird stuff that happens in communities. Enforcement matters at our firm have involved a woman who believed she was being attacked by birds; a “house flipper” who chopped down a forest of protected trees on association property to restore a view; a resident whose topless sunbathing was defended by her stepmother because “she looks good, what’s the problem?”; and an owner who undertook an unauthorized structural remodel that caused the upstairs unit to sink several inches. In other words, when a client calls me with an enforcement problem, I usually have absolutely no idea what they are going to present me with. I sometimes laugh to myself about the absurdity of a new matter until I realize that it is my job to solve
“The Mystery of the Super Loud Air-Conditioning Unit.”

Associations are also parties to litigation on occasion, though board members are mostly protected individually against liability for their association-related actions. A lot of our work involves reaching resolutions before a lawsuit gets filed. However, newer condominiums are frequently involved in construction-defect lawsuits with the developer, and associations have to be wary of premises liability matters.

Some community association lawyers focus their practices on recovery of delinquent assessments. Assessments pay for things like maintenance of the common parts of the condominium, liability and property insurance, and certain utilities. If an owner fails to timely pay his assessments, there is an automatic lien on the property. If the homeowner’s insurance has homeowner’s insurance.

The good news is that, due to the breadth of issues we encounter in our practice, a typical community association lawyer rarely lives the same day at work twice. The bad news is that, at any time, we may get a phone call from a client about a four-alarm condominium fire caused by someone’s hyperactive pet marmoset who likes to play with matches … and neither the pri-

tive pet marmoset who likes to play

the worst thing was that there was
an automatic lien on the property.

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Allison Peryea is a shareholder at Leahy Fjelstad Peryea, a downtown Seattle law firm whose practice focuses on representation of community association clients. She rents a condominium unit in Seattle, and once got in trouble for failing to break down her cardboard boxes in the recycling bin. She can be reached at allison.peryea@leahyps.com.
Lifelong learning

BY RENATA DE CARVALHO GARCIA

“Do you still go to school?” These were the words my daughter, who was three years old at the time, bluntly shouted in the middle of her preschool classroom when she found out that I was dropping her off so I could go to law school. Her disbelief was genuine and my amazement was immediate. At that moment, I became overly conscious of something I already knew: I would never stop going to school. I left her classroom and walked to criminal procedure class consumed with parental guilt and hardly prepared to discuss Terry stops. If only I had known about mindfulness in the law back then.

Today, I am in grade “CLE,” but, unlike law school, I am in charge. I am able to choose when and what to learn to be a better lawyer, and that means learning a lot more than just about the law. Yes, the law is constantly changing and lawyers who don’t keep up with it will fall behind. Frequently overshadowed skills, such as office management and the ability to manage stress and address mental health issues, are also essential in sustaining the practice of law and maintaining a healthy work-life balance.

Fortunately for lawyers, their clients, and the general public, this concept has been recognized and codified in the new MCLE rules (APR 11) taking effect on Jan. 1, 2016, which gives lawyers the opportunity to customize their continuing education to best meet their needs. The new approved course subjects provide an opportunity to earn continuing legal education credit for topics like lawyer-client issues, office management, personal development, and stress management, in addition to black letter law. Alternatively, starting next year, credits may also be earned by writing, teaching, mentoring, judging law school competitions, and providing pro bono legal services — activities that can be done at any time and are essentially free.

Despite good intentions and the good old New Year’s resolution not to procrastinate, demanding schedules and the absence of motivation can often result in frantically cramming courses every three years during November and December. The upcoming elimination of the live credit requirement means courses can be taken from the comfort of homes, offices, beach houses, or even beaches, for those with good anti-glare screen protectors. And, as always, in-person seminars and learning opportunities will continue to be available for those who prefer to earn credits that way. Although the total credit requirement is still the same (45 credits), the increased flexibility of the new MCLE rules is designed to create more meaningful learning opportunities. As my daughter and I are well aware, despite all life demands and countless exceptional reasons to procrastinate, one thing is certain: learning is a lifelong journey.

RENATA DE CARVALHO GARCIA is the WSBA MCLE manager and can be reached at renatag@wsba.org.

Smart education

Fewer restrictions, more options, better outcomes.

The new MCLE rule (APR 11) taking effect on Jan. 1, 2016, gives lawyers the opportunity to customize their continuing education to best meet their needs. Lawyers will be able to take advantage of new MCLE-approved course subjects and activities to address important topics like lawyer-client issues, office management, personal and professional development, and stress management, in addition to the standard ethics and law and legal procedure subjects. The increased flexibility is designed to create more meaningful learning opportunities to support excellent lawyer-client relationships and office practices and improve work-life balance, job satisfaction, and career stability, which should ultimately benefit clients as well as lawyers. Here is a quick reference guide:

6 ETHICS CREDITS

Ethics credits can be earned by writing, participating in a structured mentoring program, or attending or presenting courses in ethics.

15 LAW & LEGAL PROCEDURE CREDITS

At least 15 credits must be earned from attending approved courses (live or recorded) in the subject of law and legal procedure.

24 OTHER CREDITS

The remaining 24 credits can be earned in the above categories, as well as in the new subject areas:

• Professional development
• Personal development and mental health
• Office management
• Improving the legal system

Or by engaging in approved activities, such as:

• Legal writing
• Legal teaching
• Providing pro bono legal services
• Judging law school competitions
• Participating in a structured mentoring program

NO LIVE CREDITS REQUIREMENT

The 2013–15 reporting group (the group that needs to finish credits by Dec. 31, 2015, and certify by Feb. 1, 2016) will need to meet the current MCLE requirements. The 2014–16 reporting group will be the first group affected by the new MCLE rules. All credits will be migrated to the benefit of the lawyer, i.e., “general credits” will be migrated to the new reporting system as “law and legal procedure credits.”

For more information, go to www.wsba.org/mcle.
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At its Sept. 17-18, 2015, meeting in Seattle, the WSBA Board of Governors approved the final draft of its response to Governance Task Force recommendations that would revise how the WSBA is governed, which will be sent on to the Washington Supreme Court for consideration. In other business, the Board tabled a decision on the timeline for reviewing proposals by the Escalating Cost of Civil Litigation Task Force to overhaul many areas of litigation; discussed creating a policy governing expression of religious, spiritual, and cultural practices at WSBA functions; continued its discussion of diversity and inclusion efforts; and approved the budget for fiscal year 2016.

Governance Task Force
The Board approved the final version of its response to recommendations presented in 2014 by an independent Governance Task Force. The Task Force proposed 16 changes to the way in which the WSBA is governed, including proposals to alter the makeup and selection of the Board and emphasize the Bar’s role in regulating the legal profession, with a secondary emphasis on its role as a trade organization. Some of the Task Force proposals had initially drawn criticism from Board members, and the Board formed a committee to craft a response. The Supreme Court has had a work group of justices simultaneously reviewing the Task Force report. The Court will decide whether to implement some or all of the proposals, most of which would require changes to the WSBA Bylaws and possibly some court rules.

The Board has debated the Task Force proposals piece by piece at its public meetings over the past year, with the comments being distilled into the report approved at the September meeting. While Board members bristled at some of the Task Force proposals initially, the official response doesn’t oppose most of the proposals outright and adopts most of them. It also offers explanation of the existing governance structure and practice from the Bar’s point of view for the court to consider. It also provides feedback on the recommendations containing the most dramatic or controversial changes.

Among the Task Force proposals the Board does directly oppose in its response are those to change the name of the governing body to the Board of Trustees, increase the governors’ terms of office to four years, require the Bar president to be chosen from among sitting Board members only, reduce the number of elected positions on the Board, and give the Supreme Court veto power over any dismissal of the WSBA executive director or chief disciplinary counsel.

Regarding number of Board positions, the Board agreed with a proposal to add public members to the Board, but felt those additions should not come at the expense of existing district-elected and at-large positions. Regarding Supreme Court veto power, the Board voted to support veto power of an executive director’s dismissal only if the director had been dismissed for refusing a Board directive to disregard or violate a court rule or order. The Board opposed court veto power for any dismissal of the chief disciplinary counsel, noting that the executive director, not the Board, has full hiring and supervisory responsibility for that position and that maintaining the director’s authority in that regard is vital to ensuring the independence of the chief disciplinary counsel.

Escalating Cost of Civil Litigation
The Board voted to table a decision on the timeline for reviewing a set of recommendations presented by the Escalating Cost of Civil Litigation Task Force. Some of the recommendations involve dramatic changes to existing civil practice, including limits on discovery and statewide requirements regarding case scheduling, judicial assignment, and mandatory mediation. The Board received the report at its July meeting and anticipated reviewing the report and compiling a response over the coming several months. However, at the September meeting, some Board members voiced concerns about the complexity of that process, which likely would resemble the year-long project the Board has just completed regarding the Governance Task Force recommendations.

The ECCL proposals would need to be implemented primarily by court rules, putting the decision in the hands of the Supreme Court rather than the WSBA. The Board considered a motion to entirely opt out of officially reviewing and commenting on the ECCL proposals. However, the Board voted to table the motion and reconsider the issue after an upcoming meeting between the WSBA officers and the Court at which the proposals are expected to be discussed.

Policy on Religious/Spiritual/Cultural Practices
The Board heard the first reading of a proposed policy regarding religious, spiritual, and cultural practices at WSBA functions, such as CLE seminars and board meetings. The proposal contains guidelines regarding decision-making around whether religious, spiritual, and cultural practices should be included in WSBA events. Examples of situations where the policy might come into play would be at a CLE where the event organizers would like to demonstrate a cultural/religious practice for an educational purpose, or a speaker wanting to ask attendees at a meeting to observe a moment of prayer or meditative mindfulness.

The Board and staff will discuss the issues and proposed policy and action will be considered at a future meeting.

Diversity and Inclusion
The Board continued its wide-ranging discussion of the WSBA’s role in improving diversity and inclusion throughout the profession. Included in the discussion were results of a survey of current and incoming Board members showing which of four key performance indicators they felt the WSBA most needs to emphasize in measuring the progress of diversity and inclusion efforts. The area receiving the most votes as the top priority was “Retention of Bar members from underrepresented groups (at 5, 10, and 20 years).” The second highest overall vote-getter was “The percentage of Bar leadership
(including the Board, boards, committees, task forces, panels, and section leadership) identifying with underrepresented diversity groups.” Statements involving diversity of WSBA staff and CLE faculty rounded out the four areas included in the survey. In another part of the survey, regarding implementation of greater diversity and inclusion, members showed strongest support for “Efforts to increase representation of underrepresented groups within the entity” (WSBA sections, boards, committees, and panels), and “Eliciting input from a variety of perspectives in their decision making.” WSBA staff were asked to return to the Board with some specific recommendations as to how to implement the key performance indicators and other points of discussion.

Chach Duarte White, president of the Latina/o Bar Association of Washington, told the Board that inclusion involved more than just inviting minority lawyers to join in discussion with the WSBA. She urged the Board to also consider the opinions expressed by minority lawyers and take specific action. In particular, she asked whether the WSBA could help the minority bar associations communicate with one another as well as with the WSBA, noting that the minority bar associations generally lack funding or staff for such efforts.

2014–15 WSBA President Anthony David Gipe noted that the WSBA previously had sponsored regular meetings of the presidents of the minority bar associations for that purpose but the program faltered because the presidents who initiated the project moved on and their successors didn’t follow through. However, in response to such concerns, the Board voted to provide $1,500 to reimburse the non-local travel expenses of a minority bar association representative to attend each Board meeting held outside the Seattle area in fiscal 2016. The associations would take turns in sending a representative.

2016 Budget
The Board approved the WSBA budget for fiscal 2016, which calls for $16.4 million in revenues, $18.6 million in expenses and $2.2 million to be spent from reserves. The budget figures were only slightly changed from the draft debated by the Board at its July meeting. The approved budget projects $9,062 in net income for CLE operations, an area that has been subject to financial fluctuations over the years and received significant attention during budget planning in the past year.

Michael Heatherly was editor of the WSBA Bar News and NWLawyer from 2007 through September 2015. He now serves as executive director of LAW Advocates, the legal aid and volunteer lawyer program in Whatcom County. He also serves as a private mediator and arbitrator. He can be reached at 360-312-5156 or northwestdrg@mhpro57.com.
WSBA Elder Law Section

Inspiring a New Generation of Advocates

The Peter Greenfield Senior Advocacy Internship

by Sage Graves

Over his distinguished 40-year career, Peter Greenfield worked tirelessly to serve Washington’s senior population. To honor Peter’s work in advocacy and his active participation in the Washington State Bar Association (WSBA), the WSBA Elder Law Section created the Peter Greenfield Senior Advocacy Internship and established a fund to sustain it.

Prior to his retirement in 2010 from Columbia Legal Services (CLS), Peter worked on behalf of the thousands of seniors and others living in poverty in Washington. Despite the efforts of attorneys and advocates like Peter, low-income seniors in Washington receive assistance for less than a quarter of their legal problems. As the size of Washington’s older population continues to grow, the need for continuing legal advocacy on behalf of vulnerable seniors only becomes more urgent. The Peter Greenfield Senior Advocacy Internship is a vehicle for increasing awareness of, and interest in, the practice of elder law on behalf of low-income clients.

Peter Greenfield

Peter earned his J.D. in 1970 from the University of Chicago Law School, where he received a National Honor Scholarship for all three years and the Edwin F. Mandel Award for his work in the school’s legal aid clinic. Over his noteworthy career, Peter Greenfield accumulated a wealth of knowledge on a number of legal issues that directly affect Washington’s senior population. These include long-term care, substitute decision-making, economic security, and basic needs such as housing and nutrition.

In 2005, Peter and others started a collaborative effort to make public guardianship services available in Washington, a goal that had long eluded advocates in Washington. Peter served as chair of the WSBA Elder Law Section’s Public Guardianship Task Force, which issued a report urging the Legislature to address the unmet need of incapacitated adults who had no resources to pay for guardianship and no family or friends to volunteer as guardians. By 2007, the Washington Office of Public Guardianship (OPG) began to provide guardianship services for low-income, incapacitated individuals who otherwise had no one to serve in a volunteer capacity. Peter also worked to restore funding in 2009 when a budget crisis threatened to defund the OPG.

Peter also spearheaded the development of the CLS “Senior Bulletins and Pamphlets,” materials that continue to be relied upon by elder law attorneys across the state who depend on the timely and complicated legal information conveyed in an easy-to-understand format. Peter developed and maintained these invaluable materials with the input of legal services attorneys, volunteer lawyers in private practice, and staff members of state and federal agencies. Now seniors, families, and professionals can go to www.washingtonlawhelp.org/issues/aging-elder-law to find an abundance of helpful information on a variety of legal issues, including elder abuse, financial exploitation, guardianships, powers of attorney, wills and estate planning, and Social Security benefits.

Peter is not only known for his professional accomplishments, but also for his ability to make a lasting personal impact on the committees for which he served. Dick Sayre, of Sayre, Sayre & Foss, recalls, “When Peter joined the [WSBA Elder Law Section] Executive Committee, it was our common practice to have a working lunch, so much so we had a lunch agenda. Peter considered this uncivilized, and held out for convivial lunch time where we interacted with each other ... we all enjoy our personal time together during lunch, and our relationships are better for it.”

Now retired, Peter said that he is “better exercised and less sleep-deprived than [he has] been since high school.” He has found that a large and satisfying part of his retirement has been spent in more relaxed and meaningful time with family and friends.

The Peter Greenfield Senior Advocacy Summer Internship

In an effort to honor Peter’s work and encourage a new generation of elder law advocates to pick up where he left off, the WSBA Elder Law Section Executive Committee (Executive Committee) created the Peter Greenfield Senior Advocacy Internship. The position provides an intern with the opportunity to advocate for low-income seniors through legal research, writing, community education, and other types of advocacy.

To ensure that students from each of Washington’s three law schools have the opportunity to partake in the Peter Greenfield Senior Advocacy Summer Internship, the scholarship is offered to students at each law school on a rotating basis. Interns work in CLS’s Seattle office for 10-12 weeks in the summer and receive a $5,000 stipend funded primarily by the WSBA Elder Law Section.
THE ELDER LAW SECTION
The practice of elder law focuses on an array of legal issues particularly important to older people but important to many others as well. These issues include retirement and estate planning, powers of attorney, guardianship and other forms of substitute decision making, private and public long-term care, healthcare financing, and abuse of vulnerable individuals. The Elder Law Section offers opportunities for education and consultation on issues relevant to elder law practice. Occasional seminars are complemented by the Section’s active list serve — an ongoing conversation among members responding to questions and sharing insights. The Section also offers opportunities for exploration of systemic problems identified by members and for policy advocacy on administration-of-justice issues. To get involved and learn more about the Elder Law Section, please contact Section Chair Amy Freeman at amy@amyfreemanlaw.com.

Five interns have now spent their summer working at CLS under this scholarship. Each of these student interns have learned more about the broader theme of elder law while supporting the systemic reform that was the hallmark of Peter’s work.

The Work of Current and Former Interns
Alain Huynh, Gonzaga University School of Law graduate and 2013 recipient of the internship, spent his summer at CLS working on a variety of issues that affect Washington’s low-income senior population. First, Alain helped to develop a brochure to explain what a physician’s order for life-sustaining treatment (POLST) is. Alain also assisted with “mitigation between the City of Seattle and residents of the International District regarding a streetcar line that [could] potentially disrupt access to the District’s low-income community centers, health facilities, and adult-living homes.” Finally, Alain was able to help undocumented immigrants, who had been denied state-mandated Charity Care services, receive the basic medical care they were legally entitled to.

Brett Carnahan, a recent Seattle University School of Law graduate and 2014 recipient of the internship, worked primarily on issues concerning guardianship. Brett explained, “There are so many folks out there who need guardians but lack someone in their life who can perform that important role. The State funds the [OPG] to assist those people for whom those services are not available. My supervisor and I researched ways to improve the viability of that state office so it could continue to function for years to come.”

University of Washington School of Law student and 2015 internship recipient Katie Peterson researched a number of issues, including financial exploitation, benefits, and housing. Specifically, Katie researched the “viability of mandatory incentive programs that would provide increased low-income housing to seniors.” Additionally, Katie researched the possibility of applying for a waiver to allow for a standard medical deduction in Washington state to help seniors receive full SNAP [Supplemental Nutrition Assistance Program] benefits. Finally, Katie also “met with organizations working directly with low-income, minority, and immigrant senior populations to assess needs and establish stronger relationships with CLS.”

The Future of Elder Law — An Intern’s Perspective
Katie, Brett, and Alain all noted how the internship affected their outlook on elder law and Washington’s current legal infrastructure. Katie explains, “My time with CLS has made me question a lot of the assumptions that I had as to how effectively our laws and systems protect the elderly.” She says, “Throughout the summer it has become very clear to me just how easy it is for elderly individuals to slip through the cracks of these protections, especially when they don’t have family or friends to assist them.”

Brett expressed a concern for the financial security of Washington’s aging population. He points out, “I think that the situation of a growing elder population should wave red flags for every
working person in this country. The cost and complexity associated with elder care should be a big concern for us, as health care costs continue to soar. Medicare will only grow in size as elders require more services and longer duration of care (because they are living longer).”

Alain says that, while the laws themselves might be an effective tool to protect vulnerable adults, more needs to be done to ensure that corporations and individuals are abiding by the law. He says, “So much of my work at CLS was mitigating existing wrongs and downfall of the [laws]. Rather than abiding by the WACs and regulations requiring hospitals to provide Charity Care, I experienced so many hospitals attempting to circumvent these rules. This makes it difficult for such laws to fulfill their purpose...while I recognize that lawmakers have enacted procedures to protect these vulnerable populations, harms are still being committed every day.”

A Call to Action
In addition to noting the strengths and deficits in the current systems that assist and protect seniors, the interns expressed hope for the future. As the interns noted, however, if current legal shortcomings are to be improved or eliminated, a new generation of advocates must step forward to pick up where Peter and other advocates like him left off. Brett says, “I think Washington has made strides to protect its citizens, with laws such as the VAPO (Vulnerable Adult Protective Order) statute, for example. Recent changes were made to that law in 2015, but not without intervention from attorneys representing the WSBA Elder Law Section. These attorneys paid careful attention to changes in the law and ensured that the law would remain strong to protect our vulnerable seniors.”

Brett continues, “As a younger generation of new attorneys, we have an obligation to keep that momentum and protection moving forward. I hope that more law students will see the impacts of elder law attorneys in practice and follow in their footsteps. We have big shoes to fill in that regard.”

Similarly, Katie says, “In order for our elderly to be fully protected, increased protections should create community support that seniors need instead of relying on elderly individuals to have community support of their own. For example, developments may include simplified benefit applications for seniors, improved processes for assisted decision-making for elderly individuals with no friends or family, and creating an organized and concerted effort by attorneys, financial advisors, medical professionals, and others who are in a position to see the signs of abuse and exploitation to catch these cases early on.”

The Peter Greenfield Senior Advocacy Internship — An Important Tool for Action
All three interns communicated a desire for this internship to continue for many years in the future — both to inspire law students to pursue elder law, but also because the internship presents a unique opportunity for students to gain practical, hands-on experience working in civil legal aid.

Katie’s career coach at the University of Washington suggested that she apply for the internship because of her strong interest in elder law. Grateful for the opportunity, she says, “As far as I’ve seen, this internship is the only of its kind as far as access to the elder law community and the most current and widespread elder law issues. This internship gives a unique perspective that pinpoints the intersections between the issues and parties involved in elder law. As a longstanding institution in this area of law, [CLS] is a well-connected starting block for anyone wanting to explore a career in elder law.”

Now graduated, Alain reflects on the internship and says, “My biggest gripe about law school is the fact that, unless you luck out, there are not enough opportunities for students to actually experience what it is like practicing law. This internship was one of those few opportunities that felt reflected what it was actually like to lawyer.”

Brett states that the internship “is crucial to continuing the exposure of elder issues.” He adds, “Without elder law attorneys, the problems of guardianship, health care affordability, and abuse/neglect issues will only continue to grow. Seniors are a major vulnerable population, and they need and deserve our protection. An internship like this is one step in the direction of a better future for this population.”

Coming Full Circle
During his career, Peter worked tirelessly on behalf of Washington’s growing senior population. Although Peter’s work will leave a permanent mark on the elder law community, unfortunately, as the interns noted, issues that negatively affect elderly individuals persist. In order to ensure the safety, health, and well-being of Washington’s seniors, future advocates, indeed, “have big shoes to fill.”

Support from the legal community of the WSBA Elder Law Section’s Peter Greenfield Senior Advocacy Summer Internship is making a difference in the lives of seniors in Washington. The WSBA Elder Law Section is proud of this tradition and is grateful for the continued support. NWL

The executive committee of the WSBA Elder Law Section would like more law students to consider a future in elder law. To keep this invaluable scholarship program going, the WSBA needs support. To donate online, simply go to www.mywsba.org/donation.aspx. Alternatively, to donate by mail, checks can be made payable to the Washington State Bar Association, Attn: Peter Greenfield Fund, 1325 4th Avenue, Suite 600, Seattle, WA 98101.

SAGE GRAVES is a third-year law student at Seattle University School of Law and a volunteer for the WSBA Elder Law Section. At Seattle University, Graves is a Dean’s List student and the executive editor of the Seattle Journal for Social Justice. She intends to practice elder law after graduation and can be reached at gravess2@seattleu.edu.
Douglas County Courthouse

Douglas County was carved out of Lincoln County on Nov. 28, 1883. It is named after politician Stephen A. Douglas (1813–61), Abraham Lincoln’s (1809–65) opponent in the 1860 presidential race. Douglas, a senator from Illinois, was the chairman of the U.S. Commission on Territories at the time Washington Territory was established. The county seat is Waterville. Stephen Boise was the first settler in what would become Waterville, arriving in 1883. Howard Honor arrived the following year. A. T. Green, later known as the “Father of Waterville,” arrived in 1885 and purchased Stephen Boise’s claim and in October 1886 platted the townsite. Waterville became the county seat on Nov. 2, 1886. The town was incorporated in 1890. At 2,662 feet above sea level, Waterville occupies the highest elevation of any incorporated town in the state.

In 1905, a stately brick courthouse, still in use today and listed on the State Historic Register, replaced the original wood frame courthouse built in 1889. A modern addition was completed in 2006.

As of June 2006, Douglas County had an estimated population of 35,700. East Wenatchee (population 11,420) and Bridgeport (population 2,075) are the largest towns. Agriculture, especially apple, pear, and cherry orchards, and wheat, provides a significant percentage of the county’s employment. In recent years, some Douglas County growers, like their peers in Chelan, Grant, and Okanogan counties, have begun converting orchards into vineyards to take advantage of Washington’s burgeoning wine business. Douglas County falls within the 18,000 square mile Columbia Valley appellation.

Sources: Excerpted from essay #7961 on www.historylink.org. Additional research resources can be found at www.historylink.org/index.cfm?displaypage=output.cfm&file_id=7961. Photos by Todd Timmcke.
On April 17, 1939, William O. Douglas — a native of Washington — took his seat as Associate Justice of the United States Supreme Court. He was then 40 years old, one of the Court’s youngest members and the second youngest ever to serve. More than 36 years later, Justice Douglas finally resigned his seat in 1976. Much occurred during his tenure on the Court — the longest of any justice. But it was this work under the burning sun of eastern Washington with migrant workers that gave legs to Douglas’ legal career.

Early Years

Douglas was raised by his mother and siblings in Yakima, Washington. They lived in a house on what is now North Fifth Avenue. Douglas routinely hiked the hillsides of Yakima and Selah. It was on these hikes that Douglas’ love of nature — a passion he would pursue for his entire life — first took flight. As he grew older, Douglas made extended trips through the Cascade Mountains, hiking, fishing, and camping for weeks at a time.

His mother prodded him to do well academically and, as a result, Douglas was Yakima High School’s valedictorian and earned a scholarship to Whitman College in Walla Walla. Without a scholarship, affording college would not have been possible. His family was not poor, exactly, but still financially distant from a higher education. To pay the bills, Douglas picked cherries as a summer-time job during college.

In 1918, he served 10 weeks in Whitman College’s Students’ Army Training Corps. This service, however, created what remains an ongoing controversy. According to the New York Times, Douglas’ service amounted to nothing more than predawn marches through Walla Walla’s streets in pedestrian clothing. But Douglas claims he served, not with the Students’ Army, but rather in Europe for three months as an Army private during World War I. (Douglas had a particular tendency to fib.) This claim is a consequential one: Douglas is buried at the Arlington National Cemetery, a resting place reserved for war veterans — a burial he would not have received solely based on his service at Whitman College.

Douglas left Yakima in 1922. He tended sheep on a train to the East Coast in exchange for his passage. There, he enrolled at Columbia Law School, paying his tuition with a $75 loan from a fraternity brother. Douglas excelled at Columbia and, in 1925, he earned a position at the esteemed New York law firm Cravath, where he practiced bankruptcy law. He spent less than one year in private practice with Cravath, however, and returned to Yakima where he met his first wife (one of four).

A Native Son

Douglas eventually went east again and, in 1927, he joined Columbia Law School’s faculty, moving on to teach at Yale a year later. From there he joined the SEC, becoming its chairman in 1937. When Louis Brandies announced his retirement from the Supreme Court in 1939, a successor was sought and it was Douglas’ roots as a Washingtonian that factored most prominently in his selection.

Senators from western states, including Washington, demanded that Roosevelt appoint a Westerner, a region then unrepresented on the Supreme Court. Given his Yakima roots, Douglas was a leading candidate. An intense campaign underscored Douglas’ ties to the Pacific Northwest and to bolster his Western connection, William Borah, a Republican senator from Idaho, called Douglas a “native son” of the West. Roosevelt nominated Douglas in March 1939, and less than a month later, the Senate confirmed the appointment.

Douglas was also nearly the nation’s president. During the 1944 Democratic National Convention, Douglas campaigned hard for the office of the vice president. While President Roosevelt noted his preference for either “Harry Truman or Bill Douglas,” it was, of course, Truman who received the nomination. Had it been Douglas,
upon Roosevelt’s death, he would have taken a different seat — the seat in the Oval Office.

A Natural Law for Mankind — and Trees

Douglas’ upbringing in the Pacific Northwest strongly influenced his judicial and legal philosophies. Douglas devoutly believed in a “natural law” — that rights preexist the Constitution. For that reason, according to Douglas, individual rights should take precedence above all else. One of his former law clerks is quoted as saying Douglas “stood for the individual as no other justice ever had.” His fear of the government’s ability to oppress the individual “was genuine and unmatched.” This philosophy provided the foundation for what is perhaps Douglas’ most successful attempt at creating a durable legal philosophy, which is embodied in the Supreme Court’s 1965 decision, Griswold v. Connecticut. Writing for the majority, Douglas found a “right to privacy” in what he called the “penumbras” of the Bill of Rights. This decision, as we have seen, factored primarily among the obstacles overcome on the road to the Supreme Court’s recent same-sex marriage decision.

In 1972, Douglas extended this position concerning individual rights to its logical conclusion, arguing in a dissent to the Supreme Court’s decision, Sierra Club v. Morton, that the environment too has rights. The case is now best known as the “Trees Have Standing” case.

Douglas wrote in his dissent:

The critical question of “standing” would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. Contemporary public concern for protecting nature’s ecological equilibrium should lead to the con-
The year 1965 was notable in civil rights history. A peaceful voting rights march led by Martin Luther King Jr. in Selma, Alabama, turned violent when state troopers attacked protestors with tear gas and night sticks. As a result, President Lyndon B. Johnson urged Congress to pass voting rights legislation, and signed the Voting Rights Act of 1965 into law in August. This article, written by Norman B. Ackley, first appeared in the July/August 1965 issue of the Washington State Bar News. Ackley went on to become a member of the Legislature representing Seattle and later a King County Superior Court judge who worked for reform in family courts.

The Practice of Law in Mississippi
by Norman B. Ackley

A number of Washington state lawyers have been able to get away to Mississippi recently to serve as volunteers in civil rights law offices there for periods ranging from ten days to several months. I recently returned from a two-week tour of duty and on this admittedly limited basis make the following report, which covers the questions most commonly asked by other lawyers, and a few personal observations:

Two weeks is really just long enough to begin to get the feel of things. It should be longer. But it was worthwhile. It’s not like starting out a new practice. You just go to work in one of the several civil rights offices working for the full-time lawyers who are already there. They have plenty of files to hand you.

The volunteers don’t get paid a salary. They are loaned part of their travel expenses paid upon request and availability. They may expect to be called on to do legal civil rights work on criminal charges (e.g., walking downtown in “mixed groups” is a breach of the peace). You will be asked to interview witnesses and take statements on such cases as you are able; prepare complaints on suits to desegregate public housing, work on civil rights claims filed by local Negroes who have been injured by law enforcement officers, help arrange new offices, and prepare a variety of other things.

Rutland’s noting their police again, you will probably be allowed to practice in Mississippi, much of it done in defense of criminal cases. Mississippi has a peculiar practice that allows any practice under the supervision of a lawyer. If, however, if the police have already done the job, the objective is not to arrest a defendant but to keep him from being convicted of a crime. The volunteers can be used for public housing, which they can, but may not be helpful in Cases for discrimination.

The legal aid volunteers in Mississippi are working in one car with a rather usual state of the art.

You won’t have much meaningful communication with anyone in the office except for the states attorney or whatever since you’re living there. You’ll be thinking you are.

(Continued on Page 30)

50 Years Ago: Civil Rights Law in Mississippi
ing work on cases on appeal; prepare complaints on suits to desegregate public facilities; work on civil suits wherein local Negroes who have been beaten by the police sue for monetary damages under the civil rights act; help arrange bail for arrested marchers or any one of many other things.

Unless they change their policy again, you will probably be allowed to practice in the Mississippi courts at least in defense of criminal cases. Mississippi has a peculiar provision that anyone can practice unless two of the Mississippi Bar object. They did at first, but withdrew the objections quickly when tendered the defense of the cases. You can expect to be treated politely when tendered the defense of the cases. You can expect to be treated politely by the Mississippi bench and bar but you won’t be invited to dinner and not even to lunch.

You probably won’t be the target of any actual threats or violence but you will be cautious enough not to do any foolish things like driving after dark along Mississippi roads or in a car with an out-of-state license at any time.

You won’t have much meaningful communication with anyone in the white community because they’ll be thinking you are an outside agitator, probably a commie . . .

You won’t have much meaningful communication with anyone in the white community because they’ll be thinking you are an outside agitator, probably a commie, and to them a “white n****r.” So you’ll live in Negro sections and for the most part eat in Negro restaurants, partly because of loyalty to “The Movement” and partly because they really don’t allow you any choice. It’s a case where everything and everybody is either black or white in the most literal sense.

Some progress is being made. The civil rights battle is being fought on three fronts: direct action, court action, and education. The lawyers are involved almost exclusively with the court action front. Here progress is slow but demonstrable. Now they are bringing suits wholesale rather than retail. Court orders to integrate parks one-at-a-time have resulted in their simply being closed down one-at-a-time. So when I left the LCDC office they were working on one suit to integrate all of the state parks in Mississippi.

The civil rights law offices by themselves could do nothing. Their clients are the civil rights workers in the field project offices. They are the ones who bring in the cases. They are tremendously brave, fiercely dedicated young people. Most of them have their feet on the ground; a few are out-and-out radicals and this should not be surprising especially in the context of Mississippi today. They are fighting the system and the system is evil.

Every civil rights worker, and every Negro who is active in the movement, who is arrested in Mississippi this summer will have a lawyer to defend him if he wants one. This in itself is a tremendous improvement in due process from last summer.
These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of NWLawyer at http://nwlawyer.wsba.org or by looking up the respondent in the lawyer directory on the WSBA website (www.wsba.org) and then scrolling down to “Discipline History.” As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.

Disbarred

Steven Miles Cyr (WSBA No. 33411, admitted 2003), of Portland, OR, was disbarred, effective 8/12/2015, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 8.4(b) Criminal Act, 8.4(c) Dishonesty, Fraud, Deceit or Misrepresentation, 8.4(i) Moral Turpitude, Corruption or Disregard, Joanne S. Abelson acted as disciplinary counsel. Steven Miles Cyr represented himself. Dana Laverty 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.

Resigned in Lieu of Discipline

Heath Michael Irvine (WSBA No. 32237, admitted 2002), of Spokane, resigned in lieu of discipline, effective 9/4/2015. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.15A (Safeguarding Property), 8.4(b) Criminal Act, 8.4(c) Dishonesty, Fraud, Deceit or Misrepresentation, Joanne S. Abelson acted as disciplinary counsel. Heath Michael Irvine represented himself. The online version of NWLawyer contains a link to the following document: Resignation Form of Heath Michael Irvine (ELC 9.3(b)).

Suspended

Michael Joslin Davis (WSBA No. 25846, admitted 1996), of Gig Harbor, was suspended for two years, effective 8/12/2015, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 8.4(b) Criminal Act, 8.4(c) Dishonesty, Fraud, Deceit or Misrepresentation, Joanne S. Abelson represented himself. Douglas W. Vanscoy was the hearing officer. James M. Danielson was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation to Two-Year Suspension; Stipulation to Suspension; and Washington Supreme Court Order.

Reprimanded

Christopher Lee Neal (WSBA No. 33339, admitted 2003), of Kennewick, was reprimanded, effective 8/6/2015, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property). Jonathan Burke acted as disciplinary counsel. Anne I. Seidel represented Respondent. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Suspended

Marriya Christine Wright (WSBA No. 36374, admitted 2005), of Spokane, was suspended for two years, effective 8/20/2015, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 8.4(b) Criminal Act, 8.4(d) Prejudicial to the Administration of Justice, Joanne S. Abelson acted as disciplinary counsel. Milton G. Rowland represented Respondent. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation to Two-Year Suspension; Stipulation to Two-Year Suspension; and Washington Supreme Court Order.
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**SMITH ALLING, P.S.**

is pleased to announce that

**Matthew C. Niemela**

has joined the firm as an associate.

Matthew graduated from the University of Washington in 2011 with a double major in Political Science and Communication. As an undergraduate, Matthew was active in his fraternity, Phi Kappa Tau. Matthew attended the University of Washington School of Law and externed at the Washington State Court of Appeals, Division II, before he joined Smith Alling as a Rule 9 Intern. Matthew graduated with High Honors in Law from the University of Washington School of Law in March of 2015 and is a member of the Order of the Coif. In his spare time, Matthew enjoys exploring Washington’s outdoors and following Washington Husky Football.

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**Announcements**

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Opportunity for Service

Washington State Bar Foundation
Board of Trustees
Application Deadline: Dec. 1, 2015

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the Board of Trustees of the Washington State Bar Foundation. Appointees will serve the remainder of a three-year term ending on Sept. 30, 2018. All WSBA members in good standing are eligible for this volunteer position. The Washington State Bar Foundation is a 501(c)(3) nonprofit supporting WSBA programs that advance justice, diversity in the legal profession, and public service, including Moderate Means, Call to Duty, and implementation of the WSBA Diversity & Inclusion Plan. For more information about trustee responsibilities and the Washington State Bar Foundation, please contact foundation@wsba.org. Please submit a letter of interest and résumé no later than Dec. 1, including any past fundraising or Board leadership experience, to Washington State Bar Foundation, 1325 Fourth Ave. Suite 600, Seattle, WA 98101-2539, or by email to foundation@wsba.org.

WSBA News

Notice of Hearing on Petition for Reinstatement of Peter A. Slowiaczek

A petition for reinstatement after disbarment has been filed by Peter A. Slowiaczek, WSBA No. 23649, who was admitted in 1994 and disbarred in 2004. At the time of his suspension and disbarment, Mr. Slowiaczek practiced in Pierce County, Washington. A hearing on Mr. Slowiaczek’s petition will be conducted before the Character and Fitness Board on Friday, Dec. 11, 2015. Not later than 5 p.m. Nov. 11, 2015, anyone wishing to do so may file with the Character and Fitness Board a written statement for or against reinstatement, setting forth factual matters showing that the petitioner does or does not meet the requirements of Admission to Practice Rule 25.5(a). Except by the Character and Fitness Board’s leave, no person other than the petitioner or petitioner’s counsel shall be heard orally by the Board. Communications to the Character and Fitness Board should be sent to Kevin Bank, Counsel to the Character and Fitness Board, Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or to kevinb@wsba.org. This notice is published pursuant to APR 25.4(a).

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 meeting will be held on Sat., Dec. 5, at the WSBA offices in Seattle. For more information or to attend, email newlawyers@wsba.org.

2016 License Renewal, MCLE, and Sections Information

Complete your license renewal and MCLE certification online — it’s easy. License renewal must be completed by Feb. 1, 2016. Please note: Our service provider will charge you a separate, non-refundable transaction fee of 2.5% on all bank card transactions. There is no transaction fee if you renew online and mail in your check.

Payment plan option available. If you are experiencing financial challenges, you may contact us about our payment plan option available to all active and inactive members. Payment plans are for three months beginning Dec. 1 and all fees must still be paid in full by Feb. 1, 2016. A one-time hardship exemption is available for active attorney members who qualify. Visit wsba.org/licensing to learn more.

Join or renew your Section membership. As the Section membership year is Oct. 1, 2015, through Sept. 30, 2016, we encourage you to join or renew sections now to receive the full benefit of the membership.

Certify MCLE compliance. If you are in the 2013–2015 reporting period (Group 3), then you are due to report CLE credits and certify MCLE compliance. All credits must be completed by Dec. 31, 2015, and certification must be completed online or be postmarked or delivered to the WSBA by Feb. 1, 2016. Visit wsba.org/MCLE to learn more.

Judicial members. Please note that you are required to certify your compliance with the Code of Judicial Conduct. You must complete the certification by Feb. 1, 2016.

Dates to Remember

Dec. 1, 2015: Enrollment deadline for optional payment plan; Dec. 31, 2015: Group 3 (2013–15) members must complete required MCLE credits; Feb. 1, 2016: Request deadline for optional hardship exemption; Feb. 1, 2016: License renewal, payment and Group 3 MCLE certification must be completed online, postmarked or delivered to WSBA.

Submit Proposed Changes to Superior Court Civil Rules and Civil Rules for Courts of Limited Jurisdiction

Pursuant to the four-year cycle established by the Supreme Court, each year brings up a different set of rules for the WSBA Court Rules and Procedures Committee’s attention. In 2015–16, the Court’s cycle requires the Committee to review the Superior Court Civil Rules (CRs) and Civil Rules for Courts of Limited Jurisdiction (CRLJs) together with Mandatory Arbitration Rules (MARS) and Superior Court Special Proceedings Rules (SPRs). Suggestions regarding these rules or questions about the Committee should be directed to Sherry Mehr at sherrym@wsba.org. Interested individuals are encouraged to participate in the work of the Committee. For more information and a schedule of committee meetings, see www.wsba.org/legal-community/committees-boards-and-other-groups/court-rules-and-procedures-committee.

New MCLE Rule Takes Effect in 2016

The new MCLE rule taking effect on Jan. 1, 2016, gives lawyers the opportunity to customize their continuing education to best meet their needs. Lawyers will be able to take advantage of new MCLE-approved course subjects and activities to address important topics like lawyer-client issues, office management, personal and professional development, and stress management. The increased flexibility is designed to create more meaningful learning opportunities to support excellent lawyer-client relationships and office practices and ultimately improve work-life balance, job satisfaction, and career stability.

At least 6 credits must be in ethics and professional responsibility. At least 15 credits must be from attending ap-
proven courses in the subject of law and legal procedure. The remaining 24 credits can be earned in the above categories, as well as in new subject areas and activities that include professional development, personal development and mental health, office management, improving the legal system, or participating in a structured mentoring program approved by the MCLE Board. There is no live credit requirement. The new rule can be found at www.wsba.org/licensing-and-lawyer-conduct/mcle/apr-11-rules-and-regulations.

WSBA Board of Governors Meetings
Nov. 13, Seattle; Jan. 28–29, 2016, Seattle
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

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

Legal Community
Gonzaga Law Review Call for Submissions
Deadline: Dec. 18, 2015

The Gonzaga Law Review is seeking articles for its upcoming third volume of the 51st Edition. Articles may have an academic or practical focus and should address topics related to the legal field.

Submissions for this edition will be due by Dec. 18, 2015. If you have already written an article, please feel free to submit it to the email address below. If you are interested in publishing and have yet to start on an article, feel free to contact the Review to discuss the requirements for publication. If you would like to submit or have any questions, please contact Megan Machynia or Michela Keefe at gulr@lawschool.gonzaga.edu or visit our submissions page at www.law.gonzaga.edu/law-review/submissions.

ABA Honors Three Lawyers with 2016 Stonewall Awards for LGBT Community Work
The American Bar Association (ABA) announced the recipients of its third annual Stonewall Award: Evan Wolfson, Abby Rubenfeld, and Thomas Fitzpatrick. The accolade is sponsored by the ABA Commission on Sexual Orientation and Gender Identity. The awards will be presented at the ABA’s Midyear Meeting on Feb. 6 in San Diego.

Evan Wolfson, the founder and president of Freedom to Marry, is considered by many as the father of same-sex marriage movement, according to the commission’s press release. He founded Freedom to Marry in 2001 and wrote Why Marriage Matters: America, Equality and Gay People’s Right to Marry in 2004.

Abby Rubenfeld was co-counsel for some of the plaintiffs in Obergefell v. Hodgges, the 2015 U.S. Supreme Court case that found a constitutional right to marry for same-sex couples. A former chair of the ABA’s Individual Rights and Responsibilities Section, she was also involved in overturning Tennessee’s sodomy law in 1996.

Thomas Fitzpatrick, the first openly gay ABA Board of Governors member, is also receiving the Stonewall Award. A partner with the Seattle firm Talmadge Fitzpatrick Tribe, his work has involved expanding the ABA’s diversity goals to include sexual orientation and gender identity and creating the Commission on Sexual Orientation and Gender Identity.

30th Annual Goldmark Award Luncheon
The Legal Foundation of Washington’s 30th Annual Goldmark Award Luncheon will be held Feb. 26, 2016, at the Sheraton Seattle Hotel. The event includes a Pro Bono Council meeting, ATJ Forum, Rainier and Baker Cup presentations, leadership celebration, and more. The Charles A. Goldmark Distinguished Service Award is named in honor of Charles A. Goldmark, a prominent Seattle attorney who played a singularly important role in the creation of the interest on lawyer’s (and LPO’s) trust account (IOlTA) program. See www.legalfoundation.org for more information.

WSBA Lawyers Assistance Program (LAP)

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

Casemaker Online Research
Casemaker is a powerful online research library provided free to WSBA members. Read about this legal research tool on the WSBA website at www.wsba.org/casemaker. As a WSBA member, you already receive free access to Casemaker. Now, we have enhanced this member ben-
Learn More about Case-Management Software
The WSBA Law Office Management Assistance Program maintains a computer for members to review software tools designed to maximize office efficiency. LO-MAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact lomap@wsba.org.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in October 2015 was 0.066%. Therefore, the maximum allowable usury rate for November is 12%.

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.
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Mac Archibald

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Mac has over 20 years of experience mediating cases in Washington, Oregon, and Alaska. He has mediated over 1,500 cases in the areas of maritime, personal injury, construction, wrongful death, employment, and commercial litigation.

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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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646 F.3d 659 (9th Cir. 2011).

*State v. Pruett*
143 Idaho 151 (2006).


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**CLE Calendar**

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

**BUSINESS**

Antitrust Annual Seminar
Nov. 4, Seattle and webcast. 6 CLE credits. Presented by WSBA in partnership with the WSBA Antitrust, Consumer Protection and Unfair Business Practices Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Corporate Counsel Institute
Nov. 6, Seattle and webcast. 3.5 CLE credits, including 1 ethics. Presented by WSBA in partnership with the WSBA Corporate Counsel Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**CREDITOR DEBTOR**

Collection of Judgments
Dec. 9, Seattle and webcast. 6.5 CLE credits, including 5 ethics. Presented by WSBA in partnership with the WSBA Creditor Debtor Rights Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**EMPLOYMENT LAW**

Labor and Employment Law Conference
Nov. 20, Seattle and webcast. 6.75 CLE credits. Presented by WSBA in partnership with the WSBA Labor and Employment Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**ESTATE PLANNING**

Fall Probate Seminar
Dec. 2, Seattle and webcast. 6 CLE credits. Presented by WSBA in partnership with the WSBA Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

**ETHICS**

Ethical Dilemmas for the Practicing Lawyer
Nov. 19, Seattle and webcast. 4 CLE ethics credits. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

The 13th Annual Law of Lawyering Conference (Day 1)
Dec. 10, Seattle and webcast. 6 CLE ethics credits. Presented by WSBA; 800-945-
The 13th Annual Law of Lawyering Conference (Day 2)
Dec. 11, Seattle and webcast. 6 CLE ethics credits. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Fall Family Law Seminar
Dec. 4, Seattle and webcast. 6 CLE credits. Presented by WSBA in partnership with the WSBA Family Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

GENERAL PRACTICE

Everything You Need to Know About Metadata
Dec. 18, Seattle and webcast. 6 CLE credits, including 1 ethics. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

2015 Best of WSBA CLE (Day 1)
Dec. 30, webcast moderated replay. 6 CLE credits, including 1 ethics. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

2015 Best of WSBA CLE (Day 2)
Dec. 31, webcast moderated replay. 3.5 CLE ethics credits. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

LEGAL LUNCHBOX SERIES

Understanding and Navigating Generational Differences
Nov. 24, webcast. 1.5 CLE credits. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

December Legal Lunchbox
Free recorded seminar available for download during the month of December starting Dec.1. 1.5 CLE credits. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

MARITIME LAW

Current Issues in Maritime Law
Nov. 5, Seattle. 7 CLE credits. Presented by WSBA in partnership with Federal Bar Association of the Western District of Washington Admiralty Committee; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

REAL PROPERTY

Fall Real Estate Seminar
Dec. 16, Seattle and webcast. 6 CLE credits. Presented by WSBA in partnership with the WSBA Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Classifieds

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Large office space to be available for sublet in a beautiful, 22nd-floor suite at 1111 Third Avenue, in downtown Seattle. Reception is included, with paralegal support available on a contract, as-needed basis. This 188.5 sq. ft. interior office space includes use of a large exterior conference room, newly remodeled common areas (including on-site gym and locker room and bicycle storage), and a warm, collegial group of experienced criminal defense lawyers. Contact ian@gordonsaunderslaw.com or robert@gordonsaunderslaw.com for more details.


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