

Washington State Bar
Association

NWLawyer

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FEDERAL PROSECUTION TRENDS
A LOOK AT WASHINGTON'S BROKEN PROBATION MODEL
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NOV 2016

ON THE DOCKET

CRIMINAL LAW ISSUE



30



39

30 What if Your Client is Actually Guilty?



A Day in the Life of a Criminal Defense Attorney
by Omar Nur

33 Federal Prosecution Trends in Washington

by Patrick Preston and Jack Guthrie

39 Footing the Bill for White-Collar Defendants

Liability Insurance and Indemnification in Corporate Criminal Defense
by Isham M. Reavis

44 Trials for Teens by Juries of Their Peers

Youth Courts Provide Peer-Driven Justice
by Michael Cherry

47 Weighing the Evidence at Trial

A New Approach to Eyewitness Identification
by Judge Michael Schwartz

17 Police Dogs

Best Practices for Law Enforcement
by Bremerton Chief of Police Steve Strachan

21 In the Footsteps of Clarence Darrow

Fiction and Reality for Modern Criminal Defense Lawyers
by Aimée Sutton and David S. Marshall

28 "Serious Offenses" and Competency Restoration

Involuntary Competency Restoration
by Jake Stillwell



17



21

ON THE COVER: Kitsap County Sheriff's dog Heiko. Photo by Jon and Rach Photography.

NWLawyer

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

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COLUMNS

7 **Editor's Note**
Serving Our Veterans
by Linda Jenkins

9 **President's Corner**
I Am Not a Lady
by Robin L. Haynes

DEPARTMENTS

4 **Inbox**

12 **Treasurer's Report**
by Jill Karmy

14 **Literary Lawyer**
Trials of The Century: A Decade-by-Decade Look at Ten of America's Most Sensational Crimes
Reviewed by Noel Brady

24 **Perspectives**
It's Just a Misdemeanor:
A Look at Washington's
Broken Probation Model
by Brandon Rain
and Matthew Sanders

50 **OnBoard**
Sep 29-30 Board of Governors
Meeting, Seattle

68 **Beyond the Bar No.**
Quinn R. Dalan

ESSENTIALS

54 **Summer Bar Exam Pass List**

58 **Need to Know**
News and Information for
WSBA Members

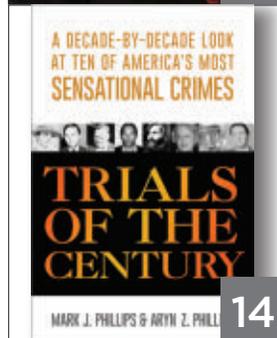
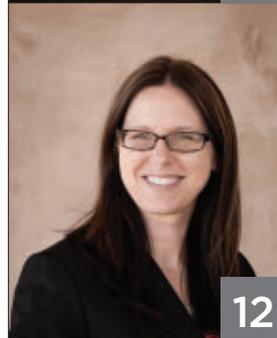
60 **Announcements**

62 **Discipline and Other
Regulatory Notices**

63 **CLE Calendar**

64 **Professionals**

66 **Classifieds**



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Inbox

Let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to nwlawyer@wsba.org. NWLawyer reserves the right to edit letters for clarity and space. NWLawyer does not print anonymous letters, or more than one submission per month from the same contributor.

Disability and NWLawyer

Although the title of the article “Hiring Employees with Disabilities: A Priceless Return on Investment for Law Firms” [JULY/AUG NWLawyer] implies that it will describe the “priceless return on investment” that employers can receive by hiring an employee with disabilities, the article itself is laden with the prejudicial beliefs which are a major cause of the barriers to employment for people with disabilities. Speaking of the decision process to hire a person with disabilities in early 2013, the author states that although she “was excited at the idea of hiring an employee with disabilities,” she had her reservations, because “as a law firm administrator, [she is] challenged to, ‘staff smarter,’ motivate [...] employees to work to their full potential at all times, and provide top-notch customer service to [the firm’s] attorneys and clients. [...] How could [she] bring in an employee with developmental disabilities without it being a distraction and affecting productivity in [the] office?”

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The implications here are clear. Even as late as 2013 at one of the largest firms in Washington, there was a fear of hiring an employee with disabilities, as that employee would not fit with the goal of staffing smarter, would have a negative impact on the motivation of other employees, and hinder the level of service provided to the firm's attorneys and clients. Additionally, the employee would be a distraction and negatively impact the productivity of the office. While the author does refute her initial assumptions in part, she does not do so explicitly. What is perhaps most disturbing is in a section titled "The benefits of hiring employees with disabilities." The author lists that "labor costs are minimal," "employees with disabilities have a lower-than-average rate of absenteeism," and "an increase in employee morale and a sense of pride that your organization has established a working relationship with a person with a disability."

Why hire an employee with a disability? Why not simply because where the individual has the right skills for the job they can be just as good of a fit as any other person? What are the benefits of publishing an article which mentions without refuting emphatically the prejudicial beliefs which hinder the employment opportunities of individuals with disabilities? What are the benefits of publishing an article which states that the reward of hiring a person with disabilities is not simply that they can be great at the job but because "labor costs are minimal" (much of the disabled community has historically been and remains underemployed and underpaid) and that the organization can essentially pat themselves on the back for "establish[ing] a working relationship with a person with a disability" (is this really extraordinary and worthy of pride?).

While I note that the content of the magazine does not necessarily reflect the view of the WSBA, I also find it hard to believe that such an article would be published if most any other minority group were put in place of persons with disabilities. As someone who is blind, it has frustrated me tremendously in past job hunts where employers were quite obviously pre-

occupied and transfixed upon my disability rather than my qualifications for the job. In publishing this article, I believe the WSBA has only served to reinforce those barriers, whether intentional or not.

Charmaine Ko, Vancouver, BC

RESPONSE FROM THE EDITOR:

I am sorry to hear about the tremendous frustration you have experienced. There is no article we can print in *NWLawyer* that could cover the myriad of experiences of disabled individuals in our community, from attorneys with advanced law degrees and greater inherent ability to self-advocate, to those like Paige, the woman described in this article, who is a nonverbal young person with severe intellectual disabilities. The job program described in this article earned a leading law firm praise from the employee's mother ["Like every mother, I want my daughter to have opportunities," *The Seattle Times*, March 22, 2016], and mine as well.

The law at its finest is a privileged and powerful profession that has the unique ability to affect change for people with disabilities. You will continue to see issues around disability discussed in these pages, written by those who are leading by doing and graciously willing to share what works

for them. *NWLawyer* may not present the unique experiences of every disabled individual, and we may not even get it right, but we will keep talking and inviting those ideas.

L.J., Ed.

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Just before my husband retired as a U.S. Navy chief, he was part of a group from Naval Air Station Whidbey Island who were positioned on rotation at the cargo terminal at Sea-Tac International Airport to meet the remains of fallen service members from Afghanistan and Iraq. Their orders were to escort the service member's remains from the point they landed, never leaving their side until they were given to a funeral director. The reason they did this, as my husband will tell you with classic military stoicism, is "so that they would never be alone."

Nov. 11 is Veterans Day. I grew up in the military, lived and attended schools on various military bases, and ultimately married a sailor while I was in law school. My father was an officer in the Army. My father-in-law, both grandfathers, my grandfather-in-law, numerous aunts, uncles, and cousins all served in the military — most of them in times of war. Living my entire life as part of the extended, tightly knit U.S. military family means that I know of too many service members who died for their country, and too many veterans who left some of their spirits behind on bases, ships,

and in war zones. Many veterans today suffer from debilitating emotional trauma, pain, and disabilities.

Service to your country is not a highly paid profession. Often, military members have financial issues stemming from poor pay, health issues, constantly moving, and the challenges of transitioning to civilian life. The unique nature of having a "job" in the military can result in conflict and legal problems, including with creditors, housing, criminal law, guardianships, and schools. The stress of life in a military family takes an especially hard toll on relationships. Many of our family law practitioners will know this all too well.

So what can you do? For lawyers and other legal professionals, there is a unique opportunity to give one Saturday to volunteer at the WSBA's next Call to Duty Day of Service. You can take the WSBA Call to Duty Pledge at wsba.org/Call2Duty and be notified about opportunities in 2017. The American Bar Association (ABA) also recently started its veterans legal services initiative to lead a "holistic, sustainable effort to ensure that veterans have access to justice and

receive the legal support they, their families, and their caregivers deserve."

Learn more about the ABA program and find valuable information about representing veterans and their families at ambar.org/veterans.

For our WSBA members who are currently serving in the military and veterans now in law practice, I send you our sincerest thanks for your service.

The theme of this issue of *NWLawyer* is criminal law. Our Editorial Advisory Committee (EAC) worked for months, writing and finding authors to share current information on criminal law issues and practice. I would like to thank the EAC's former chair, Isham Reavis, for his leadership in putting this issue together.

LINDA JENKINS is the *NWLawyer* editor and can be reached at nwlawyer@wsba.org.

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I Am Not a Lady

“Just be a lady, kiddo.” That sentence was uttered to me with seemingly good intentions by a leader in our profession within the last year. It was not meant to be ironic or sarcastic. It was meant as advice as to how I should behave as a youngish woman in a professional leadership position. The leader who said that to me was a man.

Leaving the “kiddo” comment aside, the trend of unsolicited, express advice to me from men who have never been in a leadership position has caught on faster than Pokémon Go. The advice comes in a variety of forms and it always includes the repeated refrain, “let me know how I can help you with your presidency.” A specific subset of that advice is about how to be a “lady leader” or a “lady lawyer” — again, this advice is almost exclusively from men. Imagine for a second if I had told a man how to be a “gentleman leader” or a “guy lawyer.”

Telling a professional woman, or any woman, to be a “lady” or to “act like a lady” is offensive, period.

I am not suggesting that woman attorneys (not lady lawyers) should be unprofessional or impolite, but being polite or professional are not gender-loaded terms like “lady.” The first hit on my Google search of the phrase “act like a lady” is an advertisement for the Steve Harvey book, *Act Like a Lady, Think Like a Man*, a relationship advice book geared toward women but written by a man.¹ Slogging several pages through links of critiques and praise for Mr. Harvey’s book, the Google search reveals articles about how to “act like a lady” — some written by actual ladies. Some choice advice: “Have good posture... Be charming... Don’t use profanity...” and my personal favorite from the same article: “Consider a simple dress over pants. While there’s nothing wrong with wearing pants, dresses

and skirts bring out your femininity and show off your curves better than pants do.” I’ll make sure not to slouch during the first BOG meeting that I chair.

The term lady itself is loaded and privileged. From Merriam-Webster: “A woman who behaves in a polite way... A woman of high social position... A man’s girlfriend,” or “...A woman receiving the homage or devotion of a knight or lover.” Originally, “lady” was the female analogue of “lord,” and it can still be the title for the wife or daughter of an aristocrat. The original lady was undoubtedly white. A lady is demure, soft, and often silent. She has no existence without her relation to a man.

in *Inc.* magazine said women are better leaders because “women are necessarily efficient” and quotes the president of a toiletry company that sells its wares to luxury hotels, who says, “Between our jobs, kids’ homework and extracurricular activities, household responsibilities, and community commitments, women are forced to have exceptional time-management skills.”³ A U.S. Department of Labor survey from 2013 reinforces this stereotype — 82% of working women spent time doing household chores daily, compared to just 65% of working men. While there is statistical support for women being necessarily efficient, perhaps we should be more concerned about the fact

IMPLICIT BIAS

To learn more about implicit bias, check out the website for The Kirwan Institute for the Study of Race and Ethnicity at The Ohio State University (“The” is intentionally capitalized for our college football fans): kirwaninstitute.osu.edu/about/#overview.

Harvard’s Project Implicit Bias is a great resource on these issues as well, and you can take a series of implicit bias tests: implicit.harvard.edu/implicit/takeatest.html.

Those are antonyms to terms associated with leaders — bold, strong, articulate.

In July, I was honored to present at the Washington Defense Trial Lawyer’s annual convention on the topic of authentic leadership and bias in our profession. While preparing my presentation, I came across a number of articles about why women make good leaders. The underlying tone of many of them was, “Spoiler alert: women can be leaders, too.” An article in *Business News Daily* from April 29, 2016, cites as reasons women make great leaders: They are empathetic; they are nurturing; and they value work-life balance.² An article

that men cannot operate a vacuum.

So am I just being sensitive? Why does this matter to our profession? Institutionalized sexism and unconscious bias are hindering the progress of women in our profession.

In September, law firm partner Kerri Campbell sued her firm Chadbourne & Parke as part of a \$100-million class-action lawsuit against the firm on behalf of current and former women partners based on gender discrimination.⁴ She is the third big firm partner to bring a gender bias suit in 2016. Women are leaving law firms in large numbers — as of 2014 women were twice

as likely as men to leave law firms.⁵ Women who identify as racial minorities face even more significant barriers — as of 2016, 85% of minority women attorneys in the U.S. quit large law-firm practice within seven years.⁶

While it's true that just a few years ago women made up almost half of all enrolled law students and law school graduates, today women make up just 18% of equity partners in private practice and just 21.5% of all partners (equity and non-equity) in our country.⁷ Women make up 47.8% of sum-

mer associates and 44.7% of all associates in private practice, but they do not seem to be advancing professionally. Women make up about a third of the U. S. Supreme Court, a third of active judges in the Federal Circuit Court of Appeals, and a third of active Judges in U.S. District Court. Our state Supreme Court is actually a majority women with a woman chief justice. Washington state's two federal bankruptcy courts — the Eastern District of Washington and the Western District of Washington — do not

have a single woman judge currently.

Even more problematic, woman attorneys on the whole earned 77 cents on the dollar to men in a salary-based comparison in 2014.⁸ Women equity partners in the 200 largest U.S. firms earn 80 cents on the dollar compared to their male colleagues. As of 2016, the wage gap is widening the profession charged with protecting individual rights. The attorney pay gap is the largest of any professions. When I rattled off these statistics to another leader in the profession just two months ago, the leader said, "Maybe the problem is women just aren't as ambitious." That leader is a man. The same man asked me if I had a "rich husband" so that I could "play president" this year.

In 2012, the WSBA commissioned a comprehensive membership study, which studied seven diversity groups: older members (40+), racial minorities (12% of membership), sexual orientation minorities (9% of membership), women (45% of membership), parents or caregivers (38% of membership), attorneys with disabilities or impairments (21% of membership), and military personnel or veterans (13% of membership).⁹ While there's certainly crossover or intersection among the groups, certain findings ring true for woman attorneys in Washington: Women experienced relatively high professional barriers compared to other groups, despite comprising almost half of the membership and slightly more than half of the population of Washington.

The barriers included:

- **Social barriers:** Instances when women were excluded, misunderstood, or treated differently by supervisors, colleagues, or clients due to being a woman.
- **Barriers to opportunity:** Instances when women received fewer direct opportunities to work with clients or had limited responsibilities compared to their male peers or less training than their male peers.
- **Barriers to advancement:** Instances when women did not receive a raise or a promotion due to being a woman.

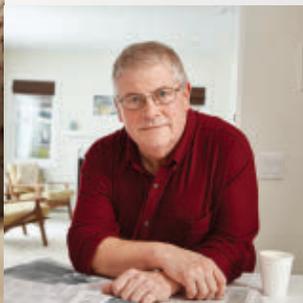
So why does the word "lady" matter in any of this? The term presumes a certain set of behaviors, attitudes, and expectations about how women should be. Those behaviors, attitudes, and expectations are often at odds with what we expect in an attorney.

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a place of inherent, unconscious, or implicit bias — the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. Regardless of whether those biases are explicit or implicit, the impact on hiring, mentoring, promotion, and retention of woman attorneys is often the same. Recognizing our biases and privileges, and understanding that those are not bad things, allows us to be conscious of them in our decision making as leaders and professionals. Allowing such biases to continue unchecked leads the profession to situations where second year law students in Washington reported attending a negotiations class in which the professor advised that women are bad negotiators — in 2016. During a law school negotiation competition debrief, I personally was told that I should “consider letting the men talk first when I am a lawyer.” That was in 2003.

Language is powerful. Language can be damaging. We cannot hide from the reality of the terms in addressing bias — and using nice words will not get us to the heart of the problems. So stop calling me a lady and stop referring to professional women as “lady lawyers” or “lady judges.” Instead, let’s start having the difficult conversations to break down the barriers to success for all attorneys. **NWL**

WSBA PRESIDENT ROBIN HAYNES can be reached at robin@mcneice-wheeler.com. Follow her personal Twitter and Instagram @GirlWonder34.

NOTES

1. You may want to skip that book and just read this Huffington Post piece written by a man about why Mr. Harvey’s book is problematic: “*Think Like a Man* Isn’t Just Sexist: It’s Offensive to Pretty Much Everyone” by Nico Lang www.huffingtonpost.com/nico-lang/think-like-a-man-is-offensive_b_1449409.html.
2. www.businessnewsdaily.com/7738-women-leadership-career-views.html.
3. www.inc.com/kevin-daum/7-reasons-women-executives-make-better-leaders.html.
4. I am not presuming merit to any of these suits, but these suits are certainly trending in 2016. abovethelaw.com/2016/08/biglaw-firm-hit-with-100-million-class-action-gender-discrimination-lawsuit/. Tracie Ribeiro sued Sedgwick in July. Michele Burke Craddock sued LeClairRyan in January.

5. www.washingtonpost.com/news/on-leadership/wp/2014/02/18/large-law-firms-are-failing-women-lawyers/ A former male colleague of mine joked that women are leaving law firms more quickly than men because they are smarter.
6. This column doesn’t particularly touch on the huge barriers facing attorneys of color, especially women of color, in the profession, but we’ll get to that conversation this year. www.abajournal.com/magazine/article/minority_women_are_disappearing_from_biglaw_and_heres_why/.
7. ABA Commission on Women, “A Current Glance of Women in the Law 2016,” as updated May 2016. www.americanbar.org/content/dam/aba/marketing/womencurrent_glance_statistics_may2016.authcheckdam.pdf.
8. This comparison is based on full-time wage earners, not flex time or other options. The argument about women having to raise children does not apply to this data. www.abajournal.com/news/article/pay_gap_is_greatest_in_legal_occupations/.
9. www.wsba.org/About-WSBA/Diversity/Membership-Study.

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Each year the Board of Governors appoints a new Treasurer. I am honored that my fellow governors unanimously elected me to serve as your treasurer for fiscal year 2017. It has been my pleasure to serve on the Budget and Audit Committee of the Board of Governors for the past three years. I particularly want to thank my immediate predecessor, Karen Denise Wilson, for her exceptional leadership as your treasurer last year.

I'd like to tell you a little more about me and my background before I share information about the Board's decisions on setting 2018-20 license fees.

I grew up in Walla Walla. Many of you associate this region with a booming wine country. But this area was not always covered with grapevines. My family lived on a 40-acre horse farm just outside town, surrounded by onion and wheat fields. The influx of vineyards and wineries really hit while I was away for college. Returning to Walla Walla now is a remarkable experience — the downtown has been transformed with art galleries, boutiques, and tasting rooms. This transformation has been mostly positive for the town, but certainly has come with growing pains as the area is still learning how best to embrace the new culture.

I see a lot of similarities to the legal

profession. When I started law school in 2000, legal research was done primarily with hard copy books. When I took the bar exam in 2003, most applicants were handwriting the essay portion. In my first few years of practice for medium-sized insurance defense firms, I was engaged in a very traditional law practice that did not allow a lot of flexibility for working mothers.

I sit now, in 2016, in my solo practice office in southwest Washington, master of my own calendar, utilizing a cloud-based practice management database so I can work virtually anywhere, and with a remote receptionist to handle incoming calls. The legal profession is changing rapidly. Even the way we market our practice is changing. This is an exciting time to be a lawyer and an exciting time to be part of the Board of Governors. The WSBA and its Board are continuing to find ways to adapt our member services to help you thrive in this great profession. I bring this excitement for change and growth to my service as your treasurer.

2018-2020 Lawyer License Fees

This year, I was proud to chair the WSBA Strategic Planning Committee. As part of this process, the Board adopted strategic goals for the next three years. One of our goals include

enhancing member services to properly equip licensed professionals with the skills they need to succeed in this changing profession. Once we set our goals, we spent a year discussing the cost to implement these services in conjunction with our mandatory regulatory functions.

License fees are the main source of funding for WSBA programs, services, and operations. As fiduciaries, the Board must set license fees at a level that enables the Bar to continue to meet our regulatory obligations, advance our mission, provide value to our members at reasonable cost, and preserve a prudent level of reserves. On Sept. 29, following extensive examination this year of historical, current, and projected revenues, expenses, license fees, and reserves, the Board adopted lawyer licenses fees for the period 2018-20 as follows: \$449 in 2018, \$453 in 2019, and \$458 in 2020. These levels reflect the Board's deep commitment to support the WSBA as an integrated bar, provide a high level of member benefits that ensure licensed professionals thrive in their practices, while also preserving minimum operating reserves of \$2 million.

For additional background and information on the development of license fees, I encourage you to read the Treasurer's Report in the July/August issue of *NWLawyer*, and the WSBA's financial information page, <http://wsba.org/treasurer>. As a solo practitioner, I certainly understand the impact of increased license fees. If you are interested, the WSBA offers several exemptions and a payment plan. There are two exemptions: (1) a one-time hardship exemption for members whose current household income is equal to or less than 200% of the federal poverty level; and (2) the armed forces exemption. Under the payment plan, you may pay your license fee in three installments. For more information, see <http://www.wsba.org/exempt>.

During my term, the Board will make important policy decisions about the FY18 budget; and engage in long-range planning to support the Bar's programming, services, and operations well into the future. Through-



on our clients' objectives. Whatever the course.

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It wasn't set in stone at first... Miranda gave the States leave to devise other "fully effective means" of protecting arrestees' rights.



But people got used to it. Even C.J. Rehnquist who'd spent years chipping away at Miranda, forebore to overrule it in Dickerson.



... and not just our national culture.



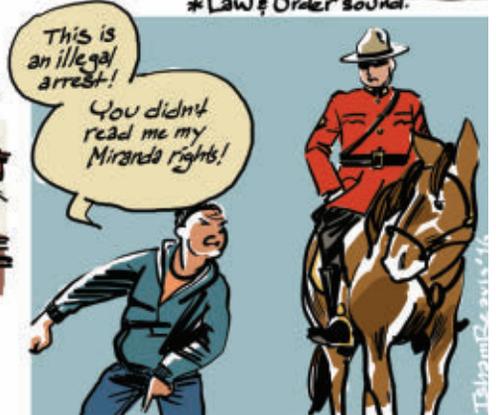
In CANADA, the U.S. Constitution has no force. And the Canadian Supreme Court declined to import Miranda, in R. v. Sinclair.

No right to counsel at interrogation, though.

But while U.S. law stops at the border, Law & Order doesn't.



And many Canadians raised on America's "national culture" know exactly what rights they are due...



out the year, I hope to provide insight and solicit your feedback on these and other fiscal issues that face the organization. Please don't hesitate to contact me if you have any questions. **NWL**



JILL KARMY was elected to the Board of Governors in September 2014. She is the managing member of Karmy Law Office, PLLC,

in Clark County. Her practice consists of representing injured workers before the Department of Labor and Industries, Board of Industrial Insurance Appeals, and superior and appellate courts. Karmy has been an Eagle member of the Washington State Association for Justice since 2006 and previously served on the WSBA Board of Bar Examiners. She received her undergraduate degree from Pacific Union College in California and her law degree from Lewis & Clark Law School. She can be reached at jillkarmy@karmylaw.com.

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Arnold v. City of Seattle,

185 Wn.2d 510, 374 P.3d 510 (2016)

(attorney fees recoverable in administrative proceeding where back pay is awarded)

Coomes v. Edmonds School Dist. No. 15,

816 F.3d 1255 (9th Cir. 2016) (reversed dismissal of employee's claim of wrongful discharge in violation of public policy)

Kim v. Lakeside Adult Family Home,

185 Wn.2d 532, 374 P.3d 21 (2016) (establishing cause of action for breach of adult abuse reporting statute)

Chism v. Tri-State Construction,

193 Wn. App. 818, 374 P.3d 193 (2016)
(successfully restoring in-house counsel's RCW 49.52 wage claim for unpaid bonuses)

Segura v. Cabrera,

184 Wn.2d 587, 362 P.3d 1278 (2015)

(TFT submitted successful amicus brief on damages)

Albertson v. State, DSHS,

191 Wn. App. 284, 361 P.3d 808 (2015) (court affirms CPS abuse investigation duty and reverses CPS verdict on abuser as alleged superseding cause)

Bright v. Frank Russell Investments,

191 Wn. App. 73, 361 P.3d 245 (2015)

(fee recovery in employment discrimination case)

State v. Sykes,

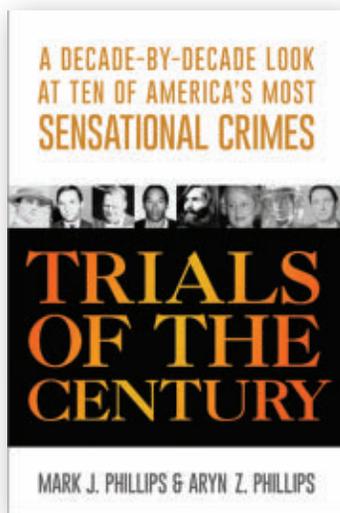
182 Wn.2d 168, 339 P.3d 972 (2014)

(Drug Court therapeutic proceedings not subject to open courts requirement of Washington Constitution)

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Celebrity Intrigue and Public Disbelief

Trials of the Century: A Decade-by-Decade Look at Ten of America's Most Sensational Crimes

by Mark J. Phillips and Aryn Z. Phillips; 2016; Prometheus Books

REVIEWED BY NOEL BRADY

When three gunshots rang out at Madison Square Garden on June 25, 1906, a new form of entertainment was born. It was the height of a new industrial period marked by fantastic wealth from railroads, oil, and banking. The vast majority of Americans could hardly imagine the extravagant lifestyles of the ridiculously rich, but wealthy industrialists like Andrew Carnegie and John D. Rockefeller had risen to a status never before seen. Their lives played out like soap operas to the struggling masses, and the press was quick to seize any opportunity to provide their readers what they wanted.

The Gilded Age sets the scene for the first chapter of *Trials of the Century*, a new book by Mark J. and Aryn Z. Phillips, a father and daughter who are California attorneys. Their book opens on that day in 1906 when Pittsburgh millionaire Harry K. Thaw fatally shot visionary architect Stanford White during a performance at Madison Square Gar-

den, one of many New York landmarks that White designed. Thaw had spent years seething over the ongoing affair between White and his wife, stage starlet Evelyn Nesbit. The case provided an elite cast of characters that defined the excess of the time, and the press couldn't resist.

Sensational newspaper headlines foretold the news media's impact on the justice system through the century. The story was front-page news beginning the day after the shooting with headlines like "Harry Thaw, in Jealous Frenzy, Shoots Stanford White to Death" in the *Washington Post*, and "For a Woman, Thaw Kills Most Noted Architect" in the *Los Angeles Times*.

Jump to chapter 10 and June 1994, when another murderous saga was about to unfold on television screens across the country. Millions of Americans watched the breaking news captured live from helicopters — O.J. Simpson in a white Ford Bronco led a dozen police cruisers in a two-hour, low-speed chase through Orange County, California. Once again, the characters were wealthy, famous, and widely admired. From an accused NFL Hall of Famer to his "Dream Team" of lawyers, each seemed perfectly cast in a made-for-TV legal thriller.

Amid the birth of digital media and growing racial tension across the country, the trial of O.J. Simpson involved 25 prosecuting attorneys, 150 witnesses, and 16,000 objections lobbed by attorneys, all feeding an endless parade of cameras and reporters. After the year-long trial, the jury deliberated for 40 minutes and presented a verdict that stunned the nation. They found Simpson not guilty in the murders of his ex-wife Nicole Brown Simpson and her friend Ron Goldman. The book quotes Larry King during an airing of *CNN*'s "Larry King Live" on the morning of the verdict: "If we had booked God and O.J. was available, we'd move God."

From crime scene to courtroom, *Trials of the Century* succinctly presents the important facts of 10 of the best-known criminal trials of the 20th century in chronological order, one trial per chapter. Finely crafted historical descriptions set each chapter against the backdrop of a new era in American society and politics. Thoroughly researched profiles flesh out victims, defendants, and attorneys. And with each trial, the

authors describe an evolving press that seems to grow more ravenous for sensationalism to capture readers.

The third chapter unfolds amid the jazz clubs and bootlegging of the Roaring 20s. Post-war peace and prosperity had given way to new celebrities like Charles Lindberg and Babe Ruth. Fatty Arbuckle was the king of two-reel comedies and the highest paid actor of his time, until Sept. 5, 1921, when he was charged with the rape and murder of bit-part actress Virginia Rappe. The book lays out Arbuckle's history in rapid detail, revealing the path that inadvertently led him to become the media's next dramatic fixation.

Celebrity and public disbelief made the Fatty Arbuckle case an instant media sensation. Newspapers appeared on front stoops with block-letter headlines — "Arbuckle Ready to Give Bail," "Orgy Girls Offered Bribe to Keep Mum," and "Fatty, Movie's Falstaff, Falls from Film Throne as Evidence Web Tightens." Immediate focus on the case by local and national papers was overwhelming and uniformly biased against Arbuckle, the authors write. Despite previous sensational coverage of murder trials, police detectives and prosecutors were still learning how to protect jury pools from the pervasive daily coverage by reporters who seemed to stop at nothing to turn a fact or quote into a story to propel the case from one day to the next. In Arbuckle's case, full acquittal of the wrongful charges against him came after three trials.

Chapters that follow continue to build on the media's mounting lust for sensational crimes and celebrity intrigue. Set in the "glory days of café society," chapter five details the 1943 murder of New York socialite and brewing heiress Patricia Burton Lonergan, a case characterized in newspapers as "New York's greatest murder thriller in years?"

Chapter six delves into the 1950s, the post-War War II era of Elvis Presley and suburban prosperity. In 1954, Cleveland, Ohio, physician Sam Sheppard was falsely accused of murdering Marilyn Sheppard, his beautiful wife and mother of their two children. The trial saw hundreds of reporters squeeze into a 1,200-square-foot courtroom with both prosecution and defense within arm's

reach of reporters. It was a scene later described as a “carnival” by the U.S. Supreme Court and a “Roman Holiday for the news media” by an Ohio Supreme Court justice. The case eventually would inspire a TV series and feature film called “*The Fugitive*.” Again, the press quickly jumped to convict Sheppard.

“Something intangible about the Sheppards, other than just celebrity, combines into an elixir that continues to enthrall,” the authors write. “And in that mix it’s impossible to separate the story from the storyteller, to determine if the national media found a story of interest to its readers and reported it, or if they fanned a tiny ember into an undeserved firestorm.”

With perhaps the most grisly account of a crime scene in the book, chapter seven paints the horrific murders of eight nursing students in 1966 Chicago, just as the National Guard was responding to historic race riots in the city.

Chapter eight somehow manages a thoroughly descriptive, informative, and engaging account of the Tate-LaBianca

murders by Charles Manson and the young female members of his cult, “The Family.” In a single chapter, the authors craft a gripping account of an infamous mass murder and bizarre trial that turned 1960s hippie culture on its end and against itself.

The book closes with what might go down as the first “Trial of the Century” for the 21st century. For their epilogue, the authors chose the trial of single mother Casey Anthony, who was accused in the 2008 murder of her two-year-old daughter. The account foretells a future of a gawking society and a relentless press bent on satisfying what it craves. It takes the opportunity to pull in media pundits like Nancy Grace, who proclaimed Anthony’s guilt from the start, and large media organizations like ABC, which was eager to pay Anthony \$200,000 for a photo of her presumed dead daughter. Ultimately, a jury returned with a verdict of not guilty in Anthony’s trial.

The final chapter ends by exploring the rapidly expanding roles of social

media and the 24-hour news cycle that serves an audience demanding instant coverage — anytime, anywhere.

While many previous books have borne similar titles, this version of “*Trials of the Century*” offers significantly more than an encyclopedic compendium of famous crimes. With lean, thoroughly researched and crisply written accounts, the authors have produced a work that puts those cases in the context of their time, exploring the impact of an ever-ravenous, ever-evolving media. It’s a fast read that avoids the wonk of the law and delivers insight into the lives of both victims and the accused, as well as the legal tactics and personal histories of many of the 20th century’s most celebrated attorneys. **NWL**

NOEL BRADY is the online communications specialist at the WSBA. He spent nine years as the criminal justice reporter for the former *King County Journal*. He can be reached at noelb@wsba.org.

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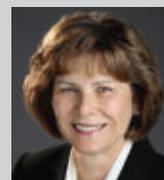
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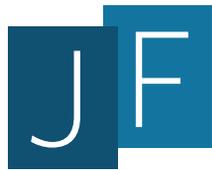
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POLICE DOGS

Best Practices for Law Enforcement

by Bremerton Chief of Police Steve Strachan

In the midst of the ongoing national conversation about police practices and accountability, police K-9s are an element of law enforcement that usually receives positive attention because people generally love dogs.

However, the dynamics of police K-9s are an integral part of that ongoing conversation and the best practices that many departments are adopting. I have been a police officer for almost 30 years, the last 12 leading four different law enforcement agencies. Each has had K-9s, and although I have never been a K-9 officer myself, I have been attentive to the policies, practices, and risks these programs carry. Police K-9s are often the most popular presentation for public groups, and K-9 handlers often spend a lot of their time doing these demonstrations. The K-9s are very well trained and are extraordinarily effective additions to our law enforcement tools; their

amazing senses allow us to track the bad guys, arrest violent criminals, and increase safety for officers. They are “force multipliers,” allowing us to search large areas quickly and effectively.

However, we are also very aware of the historical baggage borne by police dogs. Just as police officers in general bear the weight of historical protection of what was often an unjust status quo, police K-9s have a negative perception among some groups. When I started as an officer in Minnesota, one suburb of Minneapolis had a large population of Holocaust survivors, and the department there did not have a German shepherd K-9 because of the emotional reaction to it. K-9s can represent the militaristic element of police. It is critical that we make sure the use of police dogs is balanced with community perceptions and our commitment to defending all rights for everyone.

Our policies and training focus on using force legally and appropriately, and using a K-9 partner can constitute a use of force. Departments track and assess use of force by K-9s under the same criteria. As we continue to scrutinize and balance community expectations of our police officers, K-9s are an essential part of that conversation.

The emotional connection people have with dogs creates many of the same feelings officers have for their K-9 partners. Although they are working dogs, subject to extensive training and high demands, most K-9s are also an important member of the handler’s family, going home every night and often spending their retirement with the handler. That emotional connection with a working dog can make their passing even more difficult.



Several years ago in Bremerton, a handler was pursuing a violent suspect and his K-9 partner went ahead to take him down. The suspect shot and killed the K-9 before firing at the officer. The officer was able to find cover before shots were fired at him. The handler believes to this day that had the K-9 not been there, the outcome would have been quite different. Just two years after that violent encounter, the same handler with a new K-9 pursued a suspect into a wetland area. The dog went in after him, and the suspect held the dog's head underwater, drowning him.

Many years ago, when I served as a SWAT team member in another state, we had an extremely violent suspect holed up in a cellar. A Rottweiler K-9 was sent down a steep staircase in the dark to force him out, and the suspect repeatedly struck the K-9 on the head with a pipe. The K-9 just kept coming at him, and the suspect eventually surrendered. These cases are illustrative of the effectiveness of K-9s in not only tracking suspects, but in helping officers arrest extremely violent and dangerous people. Most K-9 officers will also have a story or two about a violent suspect who would not attack their K-9, because while they may have been more than willing to hurt a human officer, the suspect refused to harm an animal. It is a strange commentary on human nature, but one we have often seen.

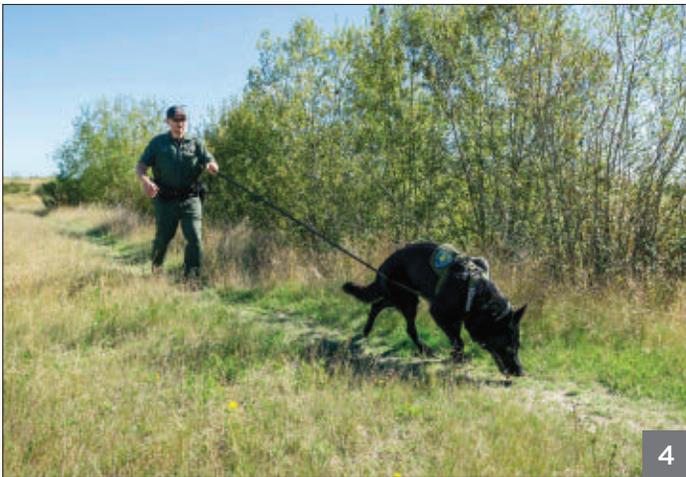
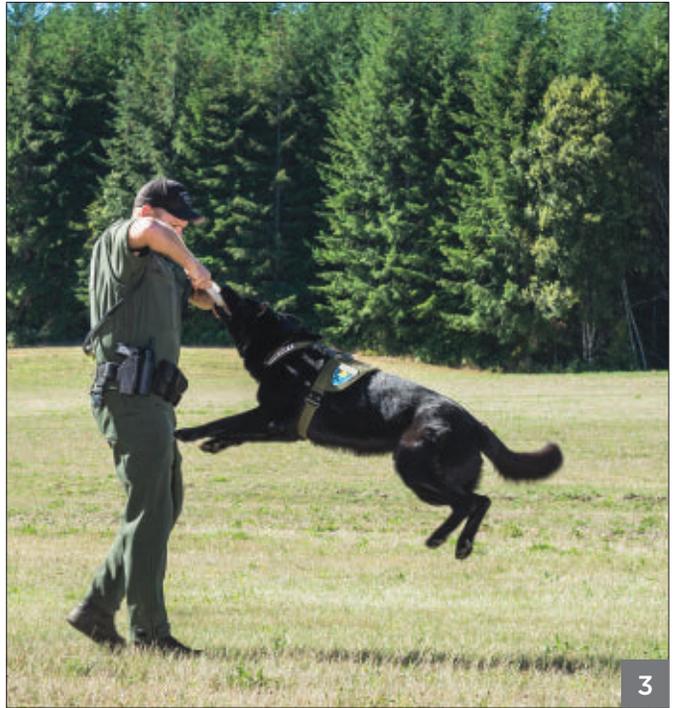
Bremerton's current K-9 teams — Officer Bryan Hall and his German shepherd partner Ando, and Corporal Duke Roessel and his black Lab partner Dusty — help us locate illegal drugs, track fleeing suspects, and arrest violent criminals. Dusty was one of the first K-9s in Washington state to be trained specifically to ignore marijuana, once Initiative I-502 passed in our state. He is certified in other substances, like methamphetamine and heroin, but will not “hit” on marijuana. We work and train closely with Kitsap County's Deputy Baker and K-9 Heiko, Deputy Hedstrom and K-9 Titan, Poulsbo Officer Keller and K-9 Kilo, and K-9 teams from the Washington State Patrol.

K-9s are one part of what can be a constructive conversation about what we, as a society, expect from our law enforcement agencies. Best practices in training, tracking use of force, and being transparent with the community, are all reflected in the way our K-9 teams work. **NWL**

STEVE STRACHAN is the Bremerton chief of police, and previously served as Kent police chief and King County sheriff. He can be reached at steven.strachan@ci.bremerton.wa.us.



PHOTOS BY JON AND RACH PHOTOGRAPHY, WWW.JONANDRACH.COM.



1-4, Kitsap County K-9 Deputy Aaron Baker and Heiko;
5-6, Bremerton Police K-9 Officer Bryan Hall and Ando.
Photographed in Poulsbo by Jon and Rach Photography.





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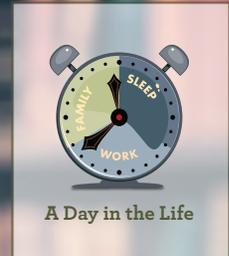
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IN THE FOOTSTEPS OF CLARENCE DARROW

Fiction and Reality for Modern Criminal Defense Lawyers

by Aimée Sutton and David S. Marshall

A lot more law students initially contemplate careers in criminal law than those who eventually pursue them. Here is our perspective for lawyers who have steered clear of crime on what life is like for those of us who didn't. Many people enroll in law school with images of themselves as criminal defense lawyers because of the drama that seems inherent in the work. Perhaps *To Kill a Mockingbird* could have focused on a challenging contract Atticus Finch had to write for the sale of a hardware store or on his ordeal persuading the Maycomb County planning office to approve a new subdivision. Instead, Harper Lee took the easy way to dramatic intensity — she gave Finch a rape trial.

How does the reality of criminal defense work measure against its portrayal in fiction? Well, the fiction is a lot more exciting than the lives we live (you guessed that, didn't you?), but we do experience some of the drama that inspires the fiction.

For example, the dramatic crucible in most criminal lawyer fiction is the jury trial. In real life, criminal defense lawyers do try cases, and usually before juries. In criminal trials, liberty is on the line. Every now and then, for some defense lawyers, life is on the line. When one knows that one's client will go away for many years if the trial goes badly, it's easy to keep one's mind in the game.

Trials happen often in criminal cases because compromises that satisfy both sides are difficult to find. In civil litigation, the dollars can be sliced very fine to get to a settlement everyone can live with. In criminal cases, though, stark and unavoidable divides separate categories of outcomes: guilty or innocent, felony or misdemeanor, imprisonment or community service hours, sex offender registration or not. Compromising is especially difficult in sex offense cases, a big part of our practice.

The defendant usually does not want to agree that he or she is even a low-level sex offender.

Criminal defense at the trial court level is not a desk job. Most criminal defense attorneys spend the bulk of their time on the road — in the courthouse, interviewing witnesses, and visiting clients in various jails. Every law job is part scholarship, part action. In trial-level criminal defense, the balance tilts strongly toward action.

There are motions to file and briefs to write, of course. But the variety of issues in criminal practice is not as great as what many civil litigators encounter, so a criminal lawyer's legal research and writing skills get exercised less vigorously and maybe less frequently.

A criminal defense lawyer spends a lot of time reading police reports and talking to cops. From this comes wisdom that most lawyers don't receive. Detectives often give us handy tips, such as, "Follow the server to the restaurant's credit card machine so no one can steal your identity." Thus one can live more safely — or just become paranoid. Crimi-

"How does the reality of criminal defense work measure against its portrayal in fiction?"

nal defense lawyers also see a lot of text messages and selfies that teenagers should not be sending. This can make you a parent who gives lots of lectures and frequently inspects phone histories.

Atticus Finch lost that rape case, but most fictional criminal defense lawyers do well in trial. They enjoy happy endings. In the real world, Finch's experience is more common. In

most criminal trials, the defense loses. That's the way it should be; if a prosecutor's office isn't winning a big majority of the cases it brings, it is bringing cases it should not and putting a lot of innocent people in jeopardy. Most prosecutors show proper restraint in charging and compromising cases, so defense attorneys must learn to endure rejection by juries.

Even though prosecutors are always defense lawyers' adversaries, rela-

tionships with opposing counsel are not as vicious as they are frequently portrayed in popular fiction. In real life, defense lawyers hope to face off against excellent prosecutors — lawyers with a sense of proportion, attention to nuance, and empathy that embraces crime perpetrators as well as crime victims. And it happens more often than TV shows would have you think. Encountering such prosecutors is one of the satisfactions of the work.

Criminals are not popular people, not as a group, at least. But we find it easy to care about our clients — even when we know they have done terrible things. Often, we even like them. That's because we get to know them. Like everyone else, they are complex mixtures of strengths and weaknesses, virtues and vices. We look for the good, and we usually find some.

Most criminal defendants are easy to work with. They are in deep trouble, so they are scared. They know they

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"Most criminal defense attorneys spend the bulk of their time on the road — in the courthouse, interviewing witnesses, and visiting clients in various jails."

depend on our help and they often express gratitude for it. Of course, there are some exceptions — for example, the mentally ill, many of whom become criminal defendants. But divorce lawyers often have more difficult client relations than we do.

Civil litigation, in our experience, can get nasty. We've seen some very low blows struck there. For some reason, this doesn't happen as much in criminal law. Maybe it's that the criminal bar — prosecutors and defense attorneys together — is smaller. Its members see each other around the courthouse often. In small professional communities like the criminal defense bar, most people find the price of acting like a jerk is too high. Or maybe it's that a lot of criminal practice takes place in court, where judges are on hand to deal with bad behavior. Whatever the cause, we appreciate the civility of criminal practice.

Ask any 10 civil litigators what they dislike most about their work, and 10 will say, "Interrogatories!" In criminal litigation, there are no interrogatories. In criminal cases, court rule obliges both sides to provide discovery — for prosecutors, quite a lot of discovery; for defense lawyers, a lot less. Both sides escape the case-after-case grind of answering routine interrogatories.

On rare occasions, a criminal defense attorney will get a good plea bargain because a state's witness is desperate to avoid trial. Maybe the parents of a child complainant are adamant that the child not testify. But, unlike civil lawyers, criminal defense lawyers don't get good deals because opposing counsel fear trial. Prosecutors go to trial often, and unlike attorneys with contingent-fee cases, prosecutors don't suffer a pay cut when they go to trial and lose. A criminal defense lawyer gets no mileage from saying ominously during negotiations, "It looks like we'll have to take this to trial." Sometimes, though, one gets mileage from showing that one intends to fight the prosecutor every inch of the way. No one likes to work evenings and weekends.

When trial comes, defense lawyers face the challenge of finding jurors who will apply the rules — legal rules that defy the way the brain actually works. Is it humanly possible for a juror to presume the defendant innocent throughout his trial for a heinous

crime? Or to presume him innocent of all of a variety of crimes tried at one time? Is it possible for a juror not to be influenced at all by a defendant's choice not to testify? The bedrock principles of an American criminal trial sound great, but defense lawyers never find it easy to get them applied.

For us, the worst part of the job is enduring the minutes between learning the jury has reached a verdict and hearing the verdict announced. It's especially rough in sex cases, because Washington law allows no release pending sentencing or appeal. If the news is bad, the client sitting next to us will immediately be taken to jail and probably won't taste freedom again until he has spent years in prison. It's therefore not joy we feel when a client is acquitted. It's tremendous relief. Our client has dangled over the abyss, but we've managed to pull him or her back to level ground. Life can go on.

And after a good night's sleep, we're ready to go at it again. **NWL**



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It's Just a Misdemeanor

A Look at Washington's Broken Probation Model

by Brandon Rain and Matthew Sanders

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Misdemeanors and their consequences don't attract much public attention. We refer to them legally and colloquially as petty offenses, a label that attracts less public attention and scrutiny than felonies. It's easy to conclude from this lack of public interest that misdemeanors have little impact on offenders or society. However, do not be deceived. The majority of criminal charges filed are misdemeanors. In King County, 43,726 misdemeanors were filed in 2014, compared with 6,371 felonies. Contrary to common belief, the long-term consequences of a misdemeanor conviction persist well past the sentencing date. The collateral consequences can be significant (e.g., employment consequences, license suspensions, travel restrictions, gun rights), but the immediate consequence of most misdemeanor convictions in Washington is probation. While the concept of probation does not seem problematic on its face, the laws governing its implementation in Washington can devastate an offender's life beyond what reasonable minds would agree is an appropriate punishment for the underlying crime. This rings particularly true for indigent defendants.

Misdemeanor Sentencing

Washington divides misdemeanors into two classes: simple misdemeanors are punishable by a maximum of 90 days in jail and a \$1,000 fine, and gross misdemeanors that have a maximum punishment of 364 days in jail and a \$5,000 fine. Under state law, the sentencing court may suspend some or all of the jail time on stated conditions, which commonly include law-abiding behavior and compliance with court-ordered treatment.¹ At sentencing, it is common practice for the court to impose the maximum amount of jail allowed (either 90 or 364 days) and then suspend most, if not all, of the sentence. All or some of this suspended jail time can then be imposed at a later date if probation is violated.

Courts have broad discretion in setting conditions of probation for misdemeanor convictions. Conditions are lawfully ordered if they tend to prevent the commission of future crimes or reasonably relate to the offender's duty to make restitution. While modern cases upholding this vast discretion quote mid-20th-century opinions that "probation . . . is a rehabilitative measure, and as such is not a matter of right but is a matter of grace, privilege, or clemency to the deserving," (See, e.g., *City of Aberdeen v. Regan*, 170 Wn.2d 103, 108 (2010) (quotations omitted)), the 21st century reality is that in most courts all offenders — deserving and undeserving alike — receive a probationary sentence.

The practical effect of this framework is that convicted pet-

ty offenders are placed on probation for two years with a large amount of jail time hanging over them. To assist with an offender's rehabilitation, sentencing courts frequently inquire into an offender's chemical dependency or mental health and then order the offender to undergo an evaluation and treatment. This decision may occur even when the court-ordered treatment bears no relationship to the underlying criminal conduct. Unfortunately, treatment typically must be done at the offender's own expense at an agency selected from a court-approved list of predominantly for-profit businesses. And if the offender doesn't comply with the treatment, they are in jeopardy of having some or all of that suspended jail time revoked, even if they have maintained law-abiding behavior. This approach to punishment can be particularly problematic for indigent offenders.

Treatment Costs and Ability to Pay

The majority of offenders are indigent. The Office of Public Defense estimates that 81% of misdemeanor and felony defendants in 2014 in King County were appointed an attorney, and the U.S. Bureau of Justice put this number at 82% nationwide in 2000. To be eligible for a public defender in Washington, you must be statutorily indigent. In practice, this typically means that you must either already receive state assistance or that your income must be 125% or less of the federal poverty line. For a household of one, 125% of the 2015 poverty line is \$14,721 per year. This comes out to a monthly income of zero to \$1,226 per month.

Measured against even the high end of this income range, the costs of treatment are staggering. Outpatient chemical dependency treatment is estimated to cost on average around \$1,500. Mental health treatment costs can vary widely, as there can be more state-funded resources available, but for-profit agencies will typically charge a rate equivalent to chemical dependency treatment. A one-year domestic violence treatment program costs on average \$1,400. Thus, even "well-off" indigent offenders will be expected to pay over 10% of their income for any court-ordered treatment or risk going to jail. For people already living at or below the poverty threshold, finding an extra \$150 a month to pay for treatment is an insurmountable barrier.

Despite the fact that most offenders are indigent, and despite the relatively large costs of treatment, there is no legal requirement for the sentencing court to inquire into the offender's ability to pay for treatment. The punitive paradox presented when an indigent offender's jail time is suspended on condition that they engage in self-funded treatment is evident. Not only is there a low chance of successful treatment due to an inability to pay, but there is also a corresponding-

ly high chance that the offender will serve a jail sanction in the future as a consequence of failing to comply. In some courts, these sanctions are imposed *seriatim* over a span of months or years for repeated noncompliance, thereby eliminating any chance the offender has at establishing stability in the community.

These types of probation hearings can admittedly place judges in something of a predicament. On the one hand, the defense argues that the offender can't pay for treatment and the court shouldn't punish someone for being poor. On the other, it is a violation of the court-ordered conditions and the court hears the lack-of-funds explanation all the time on probation calendars (or at least 81% of the time). Sadly, there is no statutory guidance to assist the court with making appropriate rulings in these situations. Instead, the decision of what to do is left entirely to the court's discretion. Unsurprisingly, judges exercise their discretion differently.

Unpredictable Sentencing

In some cases, the inconsistency of jail sanctions between judges and jurisdictions can be shocking. Judges are human and exercise their discretion in very different ways. Some judges are sensitive to the issues described above. Some are not.

In an extreme case handled by one of the authors, an indigent non-DUI offender was ordered into a Tacoma court after failing to engage in court-ordered treatment during three years of probation, but also having maintained law-abiding behavior for the previous two years. The offender informed the court that he did not do the treatment because he could not afford it. The court informed him that he had received repeated warnings regarding treatment in the past, and since he had been given three years to complete the program his "lack of funds argument was simply not compelling." Nothing in the record demonstrated the offender had an ability to pay for treatment, and in fact, all the evidence pointed to the contrary.

Regardless, consistent with a prior warning to the offender and this particular judge's notorious sentencing practice, all remaining suspended time was revoked on all six gross misdemeanor counts for a total sentence of 1,847 days (5.07 years).² This sentence also carries a certain bitter fiscal irony. During the course of litigating that excessive sentence, defense counsel learned through a public disclosure request that the city was paying \$97 per day per jail bed to the private jail where the offender was housed. Assuming this offender got a third of his sentence off for good behavior, the total direct cost to the city for his

"There is no legal requirement for the sentencing court to inquire into the offender's ability to pay for treatment."

incarceration (for failing to do a \$1,400 treatment program) would be just over \$120,000. To compound this irony, because this was a misdemeanor sentence that must be served in a local jail instead of a prison, exactly zero of the approximately \$120,000 would be used for the offender's treatment or rehabilitation during his years of incarceration.

This type of extreme sentence is not just caused by judges with draconian views on punishment. It is also encouraged by the common practice of suspending the maximum sentence and placing each offender on probation. The downstream effect of this practice is that the decision of whether to impose jail, and how much to impose, is deferred to a future date. The catalyst for punishment shifts from the underlying criminal conduct to the offender's non-compliance with probation, with the length of the jail sanction determined more by the nature of the probation violation than the circumstances of the actual crime. Thus, offenders with varying degrees of culpability are subject to similar maximum liability at probation violation hearings. In this way, courts impose jail sanctions for probation violations on the deserving and undeserving alike.

This approach creates many opportunities for inconsistent and inappropriate sentences. It gives rise to situations where offenders receive light jail sentences initially, and then months or years after the plea, receive a much more severe sanction. It fails to appropriately distinguish between levels of culpability and it increases the potential that indigent offenders will be disproportionately punished at violation hearings. Routine back-end punishment of this nature also flies in the face of how probation is traditionally conceptualized, where courts recognize that "[t]he decision to place the defendant on probation . . .

reflects a determination by the sentencing court that the state's penological interests do not require imprisonment." *Bearden v. Georgia*, 461 U.S. 660, 670 (1983).

A Modified Approach to Misdemeanor Sentencing

The current misdemeanor probation model

should be re-examined. History has taught us that judges do not readily relinquish their discretion. Thus, a legislative change is necessary to ensure more critical thinking during initial sentencing hearings to avoid unpredictable results at probation hearings and the disproportionate impact that probationary conditions can have on indigent offenders.

Concern regarding judicial consistency in sentencing decisions is not new, and lawmakers first addressed it 35 years ago for felony sentencing. Prior to the 1980s, felony sentencing was left primarily to the discretion of the sentencing judge. Observers noted the huge sentencing discrepancies depending on the judge, and eventually the state and federal governments enacted large-scale sentencing reforms setting forth guidelines and sentencing ranges that place limits on a judge's discretion at sentencing.

In Washington, this statutory scheme is referred to as the Sentencing Reform Act of 1981 (SRA). The purpose of the SRA was "to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders, which structures,

but does not eliminate, discretionary decisions affecting sentences" (RCW 9.94A.010). While fraught with its own issues, the SRA has at least achieved a modicum of consistency between cases. Thus, someone convicted of unlawful possession of a controlled substance in Everett is likely to receive a sentence somewhat similar to what he would receive had he been convicted in Olympia.

While the SRA was a sweeping and complicated statutory overhaul, we propose a less-intrusive modification to the misdemeanor sentencing statutory scheme. The principal problems highlighted in this article have been the routine practices of a) placing all offenders on probation with a maximum suspended jail sentence and b) ordering treatment in many cases regardless of the offender's access to treatment. We therefore propose two additional steps a court must take when sentencing a misdemeanor and imposing probation.

First, we acknowledge at the threshold that for some types of misdemeanors, probation is presumably appropriate. The Legislature has already addressed two classes of misdemeanors, DUI and DV convictions, and granted courts authority to take five years of jurisdiction after conviction in these cases. Using this legislative determination as a guide, we conclude that probation is presumably appropriate for these two classes of offenses. Conversely, in all non-DV and non-DUI cases, there should be a presumption of no probation. The court should examine the underlying criminal conduct and determine whether a jail sentence is appropriate. If jail is imposed, then, upon completion of that sentence, the case is presumptively closed.

Second, because the imposition of court-ordered treatment has a high potential to disproportionately impact indigent offenders, and because indigent offenders represent a significant majority of the offender population, the decision to order treatment for a misdemeanor conviction demands careful judicial scrutiny until it is made available to all offenders at no cost. If the court orders treatment, then the court must make written findings of fact that justify imposing probation. Nonexclusive factors could include: 1) the offender's criminal history; 2) the nature of the offense; 3) a nexus between the treatment

and the underlying criminal conduct; 4) the availability of affordable treatment options and the offender's ability to pay for treatment; and 5) the offender's willingness to participate in treatment and benefit from it.

Treatment is ineffective unless the participant is willing and able to engage in the treatment process and should only be imposed on petty offenders when there is at least some indication that it may be successful. Additionally, a meaningful inquiry into the offender's ability to pay for treatment is critical and consistent with the recent appellate trend requiring trial courts to take this into consideration before imposing nonmandatory costs, e.g., *State v. Blazina*, 182 Wn.2d 827 (2015) (interpreting RCW 10.01.160(3) and prohibiting trial courts from imposing non-mandatory costs and fees if the defendant is unable to pay). If, after considering these factors, the court finds that treatment is appropriate, then the court may impose this affirmative condition.

This proposed legislative change forces the court to think critically about the consequences of probation at the time it is ordered and gives some statutory guidance to help courts make these sentencing decisions fairly. Additionally, it gives an appellate court a working framework to review a sentence challenged for unreasonable conditions. While only requiring an additional two subsections in RCW 3.66, this proposed change would have a drastic impact on how misdemeanors

are treated post-disposition in courts of limited jurisdiction. This proposal (while sure to draw fire from those accustomed to our current system) installs safeguards into the current model that are necessary to prevent jailing people for being poor and to prevent the counter-productive and devastating, long-term probationary consequences for petty offenses. We need to keep things in perspective when sentencing this class of offense. After all, they're just misdemeanors. **NWL**

NOTES

- 1 For driving under the influence and domestic violence convictions, the court may place the offender on probation for five years. For all other offenses, the court may take up to two years of jurisdiction. Periods of jurisdiction are also tolled when an offender fails to appear at a court hearing, such that an offender who pled guilty to a misdemeanor in 1994 could be subject to a maximum jail sanction in 2016 if he had failed to appear at a hearing in 1995 and just now quashed the warrant.
- 2 Even when in excess of one year, this jail time must be served in a local jail because the case was not a felony charge. *State v. Besio*, 80 Wn. App. 426 (Div. 1 1995). Local jails are designed to house individuals who are detained pretrial and for short-term incarceration. Local jails, unlike state prisons, rarely (if ever) have rehabilitation or educational programs, typically have very limited facilities for exercise, and usually do not develop any type of release plan for offenders.



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"SERIOUS OFFENSES" & COMPETENCY RESTORATION

The Statutory Broadening of Involuntary Competency Restoration for Mentally Ill Defendants Charged with Nonviolent Misdemeanors

by Jake Stillwell

Criminal justice reform has finally entered the realm of public discussion, and a big part of that conversation is the relationship between mental health issues and incarceration. A recent study found that almost 17% of adults in local jails have a serious mental illness.¹ But what happens when a defendant with these challenges is not competent to stand trial? It is axiomatic that the government cannot prosecute people who lack the capacity to understand the nature of the charges against them or to participate in their own defense.² But if a defendant is found not competent to stand trial, is that it? Must the charges be dismissed and the defendant released from custody? Not necessarily.

The Due Process Clause of the 14th Amendment protects an individual's liberty interest in avoiding the unwanted administration of antipsychotic drugs.³ However, the Constitution does allow the government to forcibly medicate mentally ill defendants into temporary competency specifically to be prosecuted for serious offenses.⁴ This is obviously an extreme measure. Thus, in *Sell v. United States*, the U.S. Supreme Court pronounced that before any defendant can be subjected to involuntary competency restoration, the government must show that the proposed treatment is 1) medically appropriate; 2) substantially unlikely to have side effects that may undermine the fairness of the trial; 3) medically necessary to significantly further an important government interest; and

4) that there are no less intrusive alternatives.⁵ In Washington state courts, the government must prove each factor by clear, cogent, and convincing evidence for what is colloquially known as a *Sell* hearing before involuntary competency restoration can be ordered.⁶ Forcible medication is a powerfully invasive tool that the court has cautioned prosecutors and judges to wield rarely.⁷

Washington state law specifically authorizes courts to order competency restoration for certain defendants.⁸ RCW 10.77.088 permits involuntary competency restoration for people charged with nonfelony offenses, including misdemeanors. To pass constitutional muster, the statute states that involuntary restoration is only permitted when a person is charged with a misdemeanor that is also defined as a serious offense.⁹

But digging a little deeper quickly reveals that "serious offense" encompasses a wide array of nonviolent conduct. For example, the statute defines criminal trespass in the second degree as a serious offense.¹⁰ In other words, if a person struggling with mental illness is caught sleeping outside a business after hours, he or she could be sent to a state hospital to undergo forcible medication specifically to be prosecuted for that crime. Also under the umbrella of "serious offense" is malicious mischief in the third degree, which is defined as "writ[ing], paint[ing], or draw[ing] any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal

property owned by any other person,"¹¹ otherwise known as graffiti.

In addition to the listed offenses, the statute provides a catch-all provision that permits any misdemeanor to be considered "serious" for competency restoration purposes if certain factors are met.¹² To put this in perspective, Thomas Sell, the petitioner in *Sell*, was indicted for, among other things, attempted murder of an FBI agent.¹³ While there are certainly less serious cases than Sell's that warrant competency restoration, tagging an underpass or sleeping outside a business should not be one of them.

In *Born v. Thompson*, the Washington Supreme Court expressed its disapproval of governments using *Sell* and RCW 10.77 to forcibly medicate certain misdemeanants into competency. The court stated:

As to the interest in prosecuting misdemeanors, the U.S. Supreme Court recently stated in regard to restoring a defendant to competency through administration of antipsychotic drugs that "[t]he Government's interest in bringing to trial an individual accused of a serious crime is important." *Sell v. United States*, 539 U.S. 166, 180 (2003). Implicit in this statement is the premise that the relative importance of the governmental interest in prosecuting those charged with crimes correlates to the seriousness of the crime. The government simply does not have the same interest in prosecuting misdemeanor defendants as it does in prosecuting defendants charged with felonies.¹⁴

The Court went on to note the senselessness of involuntarily restoring those charged with simple misdemeanors, explaining that “one charged with [a simple misdemeanor] could spend 29 days in mental health evaluation and care for a crime that carries only a 90-day jail term at most.”¹⁵ Simply put, when it comes to low-level offenders, “[t]he individual liberty interest at stake [when a defendant is charged with a misdemeanor] weighs more heavily in the balance than the government interest in public safety and prosecution of misdemeanors.”¹⁶

Of course, those who cannot grasp the concept that they are charged with a crime, or are unable to assist in their own defense are in need of services. And a common justification for competency restoration among low-level offenders is that they will receive the medication and treatment they need to get better. But involuntary competency restoration is not about long-term care, and its purpose is not to help the defendant live a healthy and fulfilling life. Rather, the point of competency restoration is to temporarily medicate someone solely for the purpose of standing trial, with no concern that the person may slip back into incompetency. Many of these individuals are cast right back to the street once their case has been resolved and their medication has served its limited, pragmatic purpose. Competency restoration is about case disposition, not care.

The state Legislature has given courts broad statutory latitude to order involuntary competency restoration for defendants charged with nonviolent misdemeanor offenses. Given the significant liberty interest in avoiding forcible medication, it is understandable that the Washington Supreme Court has expressed its clear discomfort with such breadth. The *Sell* court went to great lengths to create a rigorous judicial test that should be employed in only rare, serious circumstances. It would behoove the Legislature to re-examine the definition of “serious offense” for incompetent misdemeanor defendants and amend the law to align more closely with *Sell* and *Born*. In the meantime, criminal law practitioners and judges should thoroughly scrutinize each *Sell* factor before ordering

involuntary competency restoration.

The *Sell* court declared that involuntary competency restoration can only be used in rare circumstances when a defendant is charged with a serious offense. Our state law should reflect the spirit and letter of that ruling. **NWL**



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NOTES

1. *Addressing Mental Illness in the Criminal Justice System*. Justice Blogs. (Posted Dec. 1, 2009, updated Sept. 15, 2014), www.justice.gov/opa/blog/addressing-mental-illness-criminal-justice-system (online blog of the U.S. Department of Justice).
2. See, e.g., *Drope v. Missouri*, 420 U.S. 162, 171 (1975); see also RCW 10.77.010(15) (“‘incompetency’ means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.”).
3. *United States v. Ruiz-Gaxiola*, 623 F.3d 684, 691 (9th Cir. 2010).
4. *Sell v. United States*, 539 U.S. 166, 179 (2003).
5. *Id.*
6. *State v. Hernandez-Ramirez*, 129 Wn.App. 504, 510-11 (Div. II 2005).
7. *Sell*, 539 U.S., at 180.
8. RCW 10.77.084(b).
9. RCW 10.77.092(1).
10. RCW 10.77.092(1)(e) (citing RCW 9A.46.060(16) and RCW 9A.52.080).
11. RCW 10.77.092(1)(e) (citing RCW 9A.46.060(19) and RCW 9A.48.090).
12. RCW 10.77.092(2).
13. *Sell*, 539 U.S., at 170.
14. *Born v. Thompson*, 154 Wn.2d 749, 756 (2005).
15. *Id.* at 757.
16. *Id.*

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A Day in the Life

What if Your Client Is Actually Guilty?

A Day in the Life of a Criminal Defense Attorney by Omar Nur



As a bright-eyed, young law student, the idea of practicing criminal defense law both exhilarated and frightened me. Images of TV's great legal dramas — *Matlock*, *Perry Mason*, and the like — swirled in my head. It fascinated me how they were able to masterfully navigate the courts and characters to achieve an acquittal for their client by the end of the show. I too wanted to guide my future clients through the system and help them escape the cold grip of injustice. At the same time, the thought of losing, and the resulting life-changing consequences of a guilty verdict for my client, seemed far more than I could handle. What could I do if my client were actually guilty? Or, worse yet, innocent and wrongfully convicted? The thrill of a real-life courtroom drama continued to capture my interest as I made my way through law school and into practice as an attorney, representing people charged with crimes.

Today, most people perceive my line of work through the same lens I once did — what they see on TV courtroom dramas (now it is through more modern shows, such as *The Good Wife*, *Law and Order*, or *Better Call Saul*). Many of the same perceptions and questions exist. Are you in trial every day? You must hate prosecutors and cops, huh? What if your client is actually guilty? How can you represent criminals?

Most of the perceptions or impressions people have are far from accurate.



Sure, I go to court fairly often, but actual trials do not come as frequently as one might imagine. As for representing “criminals,” all my clients are innocent unless found guilty by a jury. And even though they are on the other side of the system, I understand and appreciate the hard work of law enforcement and prosecutors. After all, I want to live in a safe community as much as anyone else.

Typically, I start my day by reviewing my calendar and my daily notification email from the Washington Court Case Notification Service. This email lets me know which courts my clients have hearings in that day. Every once in a while, there is a surprise hearing not on my calendar for some reason, and I have to act quickly to arrange coverage or rework my schedule to accommodate. When I get to court, I locate my clients, go over any new updates, and let them know what we will be doing with their case. Sometimes we need to continue a hearing, set it for motions, or confirm for trial. Afterward, I check in with the prosecutors on my cases. When the judge comes out, I wait for my clients’ cases to be called. I then communicate with the court what is going on, resolve any issues, obtain new hearing or trial dates, and sign any notices or waivers.

After court, I head back to the office with a stack of cases and instructions for my assistant: schedule these hearings; request this information; update clients; etc. There will usually be a list of phone messages and emails to return. Then, I likely have to prepare for a consultation with a new client. Most often it is the first time my client is in legal trouble; usually a single misdemeanor-level offense (maximum sentence of 90 days in jail and a \$1,000 fine, or 364 days and a \$5,000 fine for a gross misdemeanor), but still very scary. The client is worried, nervous, and usually has a lot of questions. “How will this affect my job? My family? My life? Will I have to go to jail? How long? Can you guarantee a dismissal?”

The first consultation is usually very routine for me, but not always. More serious offenses — felonies with serious collateral consequences, domestic violence enhancements, and other aggravators — increase the cause for concern, the anxiety, and the pressure on me to do a good job. When I first started, the stress of it

was too much. I had days where I found myself unable to focus or complete my work tasks. I was not happy and I regretted entering this profession.

I always knew practicing law was stressful, but you really do not know how bad it can be until you find yourself in the thick of it. Realizing I could not do it all on my own, I asked for help.

Talking to a counselor helped me develop the skills and tools I needed to properly deal with the stress and anxiety. With these tools and resources, I am able to better manage my practice and effectively represent my clients. It is a work in progress, though. Most days are good, but when it is too much to handle, I know I have someone I can call, someone who will help me get grounded and stay focused so I can be at my best for my clients.

After lunch, I typically have a few more hearings — for example, an arraignment for a new client and a disposition on another case. I have already gone over the process with my client at this point, and my client is familiar with what to expect. When my client’s case is called, I stand before the judge, acknowledge my presence and the presence of my client, I waive formal reading of the complaint, the client enters a plea of not guilty, I address any probable-cause issues, and discuss conditions of release. The court sets conditions and the next hearing dates. Then I rush off to a different court for my next case.

Disposition could be a dismissal, a plea to an amended charge, a plea of guilty as charged, or another type of resolution. In a recent disposition, I worked out a pretty good deal for my client. The prosecutor agreed to dismiss the case after my client completed a two-day anger management class and stayed out of trouble for 12 months. This is what we refer to as a stipulated order of continuance. So now the ball is in our court, so to speak. If my client does what she is supposed to do, the case goes away in one year. But if my client violates the terms of the agreement — such as a new law violation or failure to complete the conditions — the agreement specifies the judge will hear the case based only on the police reports and determine whether my client is guilty or innocent. There is no jury and no opportunity to question witnesses; all those rights were waived. I

go over the agreement and stress these issues to my client. My client understands the terms and is grateful for the opportunity to avoid trial and a possible criminal conviction.

After my last hearing of the day, I usually go back to the office for more work. There are more emails and phone messages to respond to, motions to write, research to do, clients to contact, witness interviews to prepare for — it never ends. When the workday is over, there is sometimes a social event or a roundtable to attend, and I usually go. This gives me an opportunity to chat with my colleagues, say hello to the judges, make some jokes, and unwind a little. Afterward, I head home to my sanctuary. I water my garden, tend to my chores, maybe exercise or go for a run. Then it’s on to the next day, the next case, client, hearing, trial, or challenge.

Criminal defense is a different kind of law practice. It is not a paper-pushing job. You don’t sit behind a desk all day doing research and writing or document review — quite the contrary. As a criminal defense attorney, you go places, manage personalities, run a business, work with (or against) people. You are in court, in the field investigating, in jail meeting with your clients, or wherever the job takes you. You are their lawyer, their confidant, their counselor, and their crisis person. Everyone’s problems are yours to solve, and the expectations are high.

Above all else, criminal defense can be the most rewarding practice. My clients are not criminals or bad people. Most of them are normal folks who found themselves in the wrong place at the wrong time. Typically, it is a one-time mistake, a misunderstanding, or other circumstance that put them in their predicament. As I have learned, it can happen to anyone, even you. And when it does, you will want the help of a good attorney to guide you through the system and to help you achieve justice. **NWL**



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FEDERAL PROSECUTION TRENDS IN WASHINGTON



by Patrick Preston and Jack Guthrie

Former United States Attorney Mike McKay has a saying about his prior post as the top federal prosecutor

for the Western District of Washington: “There is this much federal crime out there,” he emphasizes as he spreads his arms wide, “but only this much the U.S. Attorney’s Office can prosecute,” bringing his hands back together and forming a tight circle with his fingertips and thumbs. True to this illustration, the prosecution trends of any federal district reflect the use of finite governmental resources to target a U.S. attorney’s chosen areas of emphasis — consistent with national priorities, the law enforcement priorities of federal agencies, and the congressional intent behind laws that spur prosecution of specific crimes.

Washington state is divided by the Cascade Mountains into the Eastern and Western federal districts. Each has a U.S. attorney who guides the prosecutorial discretion of career assistant U.S. attorneys. Criminal Division assistants may prosecute diverse federal crimes ranging from abortion clinic access offenses to insurance fraud to wildlife violations and everything in between.

While office units include complex crimes, criminal enterprises, general crimes, and terrorism and violent crimes, specific criminal conduct investigated by federal agencies such as the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Customs and Border Protection (CBP), Drug Enforcement Administration (DEA), Health and Human Services (HHS), Immigration & Customs Enforcement (ICE), and the Federal Bureau of Investigation (FBI) may fall into multiple categories. Although there are approximately 4,500 federal crimes, around 80% of federal prosecutions involve one of four categories that typically implicate interstate conduct or national monetary or security concerns: drugs, immigration, firearms, and fraud.¹

The resources of the U.S. Department of Justice (DOJ), which oversees 93 U.S. attorney offices across the nation and U.S. territories, often seem boundless to those targeted for federal criminal investigation and their defense counsel. But federal prosecutors must choose which matters they will seek to charge on the strength of the evidence and the federal interests served in light of the

above policy objectives. Even when both criteria are satisfied, DOJ authorizes a federal prosecutor to decline to seek charges if the target is subject to effective prosecution in another jurisdiction, such as state court, considering whether appropriate sentencing consequences exist there or “an adequate non-criminal alternative to prosecution” exists. While uniformity might be expected in charging and case dispositions within Washington’s relatively small geographic area — compared, for example, to the broad expanse of the Ninth Circuit — this is not always true, as notable prosecution trends in Washington’s federal districts illustrate.

Rethinking the War on Drugs?

A widespread public perception is that the “War on Drugs,” a 45-year-old relic of the Nixon administration and the Comprehensive Drug Abuse Prevention and Control Act of 1970, has failed its primary objective of reducing illegal drug trade and consumption. Among the war’s notable detractors, in 2004 then-U.S. Senate candidate Barack Obama declared: “The

Although there are approximately 4,500 federal crimes, around 80% of federal prosecutions involve one of four categories: drugs, immigration, firearms, and fraud.

war on drugs has been an utter failure. We need to rethink and decriminalize our marijuana law. We need to rethink how we're operating the drug war."² Such rethinking has been evident in the subsequent decriminalization of marijuana in states such as Washington, Alaska, Colorado, and Oregon, and authorization of some form of medical marijuana in the District of Columbia and the majority of states.

But federal drug prosecutions nationally have seen only a slight decrease over the past decade, with drugs consistently comprising the largest single federal offense type, including marijuana sentencings as a quarter of all drug cases. According to statistics by the U.S. Sentencing Commission (USSC), federal guideline sentences involving drugs as the primary offense category constituted 34.2% of all sentences nationally in 2005.³ For the same year, Washington had even higher percentages of federal drug sentences statewide, with 36.4%

in the Eastern District of Washington (EDWA) and 37.4% in the Western District of Washington (WDWA).

By 2015, the EDWA saw only a modest decrease to 34.2% of defendants sentenced for drug crimes. The most common drugs in these cases were methamphetamine and other substances, including pain medications such as Oxycontin, with the overwhelming majority involving trafficking instead of simple possession. Likewise, the WDWA saw 31.7% of drug offenders sentenced the same year, with methamphetamine and heroin as the most common illegal drugs. Both districts were comparable to 31.9% nationally and the predominance of methamphetamine as the single most commonly targeted drug.

In 2012, Washington voters approved Initiative 502 to legalize possession of small amounts of marijuana by adults 21 and older and to provide a licensing scheme for producers, processors, and retailers. Historically,

marijuana cases represented a large portion of federal drug prosecutions in Washington, in keeping with the national trend. In 1995, the USSC reported that 19.8% of the EDWA's drug sentencings and 25% in the WDWA involved marijuana crimes. A decade later, those numbers had grown to 29.3% for the EDWA and 26.4% for the WDWA in 2005. While the passage of I-502 did not end federal marijuana prosecutions, a significant downward trend was noticeable by 2015 with only 9.2% of EDWA drug sentencings and 9.3% for the WDWA, in stark contrast to 24.8% nationally. The five-year trend in the EDWA was the most precipitous, falling from 37.4% of drug sentencings in 2011 prior to state decriminalization.

Yet the "War against Marijuana" remains federal law for now, with cannabis still classified as a Schedule I controlled substance alongside heroin and LSD and subject to harsh criminal penalties. Notably, the DEA in August 2016 refused a petition by the governors of Washington and New Mexico to change the Schedule I classification of marijuana, maintaining its view that marijuana has no currently accepted medical use, remains unsafe even under medical supervision, and has a high potential for abuse.

Even if rethinking the war on drugs continues at a glacial pace, reforms are underway and the legal landscape is changing. For example, individuals charged with certain drug crimes now may participate in the Drug Reentry Alternative Model (DREAM) program in U.S. District Court for the WDWA by successfully completing drug rehabilitation to obtain case dismissal. In the EDWA, probationers may participate in the Sobriety Treatment and Education Program or STEP. From an agency perspective, the DEA is broadening eligibility for medical marijuana research licenses, a decision that may one day cause the agency to reclassify marijuana as a regulated medicine on par with prescribed pharmaceuticals. And a 2014 congressional appropriations rider that prohibited DOJ's use of funds to prosecute people for marijuana crimes when they are compliant with state medical marijuana laws was recently upheld by the Ninth Circuit Court of Appeals.⁴



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Immigration Crimes: The Revolving Door of Illegal Re-entry

Immigration crime sentencing was 29.3% of the national total in 2015, second only to drug sentencing. The significant federal emphasis on prosecuting immigration offenders parallels the standing of ICE as the second-largest criminal investigative agency in U.S. government behind the FBI. Roughly two-thirds of all defendants in federal court last year were sentenced for either immigration or drug crimes.

In 2015, Washington's percentages for immigration sentencing were significantly lower than the national totals, with 11.6% reported for the EDWA and 10.4% for the WDWA. Each federal immigration prosecution, however, represents an exercise in prosecutorial discretion that consumes a portion of the U.S. District Court docket, U.S. Marshals Office services, U.S. Probation and Pretrial Services resources, and federal public defender workload.

In the EDWA, immigration sentencing has fallen dramatically over the past five years. In 2011, 40.8% of EDWA federal sentencing involved immigration crimes, surpassing even drug prosecutions. By 2015, however, that number stood at 11.6%, following an apparent exercise in prosecutorial discretion to direct resources to other cases. By comparison, WDWA immigration sentencing has experienced a gradual decline from 15.8% in 2011 to 10.4% in 2015.

For Washington's federal districts, the vast majority of immigration convictions were for illegal re-entry, which constituted all of the EDWA immigration prosecutions last year. Defendants prosecuted for this crime previously entered or attempted to enter the U.S. illegally or had been deported. The federal emphasis on prosecution of illegal re-entry, according to an analysis of USSC data by the Pew Research Center, included a precipitous 28-fold increase from 690 cases in 1992 nationally to 19,463 in 2012. Spiraling recidivism rates match this prosecution trend, according to a 2015 USSC report that found: "[T]he average illegal reentry offender was deported 3.2 times before his instant illegal reentry prosecution, and over one-third (38.1%) were previously de-

ported after a prior illegal entry or illegal reentry conviction."⁵



Firearms

Federal prosecution of firearm crimes generates a consistent caseload, tracking the investigative priorities of several agencies including the ATF. Federal law imposes enhanced and mandatory prison time for armed and repeat offenders often involved in a broad variety of crime, ranging from narcotic traffickers to violent gangs to domestic and international arms traffickers. Frequently, convictions involve possession of a firearm by felons or people otherwise prohibited from having a firearm.

Federal firearm prosecutions in Washington recently outpaced the national average. Compared to 10% of firearm crime sentencing nationally in 2015, the EDWA saw 12.1% and the WDWA 13.2% for the same period. While the WDWA's trend has tracked steadily upward from a mere 3.8% in 1995 to 7.7% in 2005, the EDWA has remained stable at 13.7% in 1995 and 13.8% in 2005.



White-Collar Crime and Fraud

White-collar crimes include bribery, counterfeiting, embezzlement, forgery, money laundering, and criminal tax offenses for USSC statistical purposes. The distinct USSC category of fraud

includes offenses designated as such under the federal criminal code, including bank, healthcare, mail, and wire fraud.

The prosecution of white-collar crime and fraud has fluctuated over the past two decades in Washington. While defendants sentenced for fraud comprised only 3.3% of the EDWA sentencing and 12.5% in the WDWA in 1995, a decade later the EDWA had risen to 5.8%, but the WDWA decreased to 9.9%. Last year, the EDWA showed a continued increase to 12.6%, while the WDWA continued to decrease to 8.5%.

Likewise, non-fraud white-collar crimes lacked uniformity in 2015, with the EDWA reporting a slight decrease to 5.8% compared to 6.1% a decade earlier. The WDWA caseload shrank to 3% compared to 8.5% a decade earlier.

The DOJ sought to implement white-collar reform in September 2015 through the issuance of a new policy entitled "Individual Accountability for Corporate Wrongdoing."⁶ Also known as the Yates Memo, this policy conditions cooperation credit for companies under investigation for white-collar criminal and civil misconduct upon disclosure of all relevant facts about people involved in misconduct. Although the policy provides a strong incentive for such companies to identify wrongdoers, only time will tell whether it spurs an uptick in white-collar and fraud prosecutions at the federal level in Washington.

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Other Prosecution Trends

Other categories of federal prosecution emphasis include child pornography, environmental crime, public corruption, and terrorism.

While the USSC combined child pornography with prostitution offenses in its reports two decades ago, the increase in child pornography prosecution now merits its own category and constituted 6.6% of EDWA sentencing last year and 3.9% in the WDWA. These cases, although small in volume compared to the previously mentioned crimes, often require significantly more work for investigators, attorneys, and the courts,

including analysis of computer forensics and weighing of mitigation and risk issues from detailed psychosexual evaluations.

Although several environmental statutes contain criminal penalties based on strict liability, environmental prosecutions have hovered at or below 1% in both of Washington's districts in the past five years. Notably, the Washington Attorney General's Office recently increased its emphasis on prosecuting environmental crimes under parallel state statutes.

The prosecution of public corruption cases, including federal indictment of state

and local officials and employees, has not generated significant caseloads compared to the offense categories explored above. Prosecution of foreign and domestic terrorism involves issues of national security and widespread public concern, including heightened media attention on prosecution of the "Millennium Bomber," Ahmed Ressaam, and the 2011 attempted bombing of the Martin Luther King Jr. memorial march in Spokane. Again, however, such prosecutions have not generated significant trends by volume.

Lastly, for fiscal year 2015, the USSC reported receiving information on 71,184 federal sentencing guideline cases, of which only 181 involved a corporation or other organizational offender. In Washington, the rare sentencing of a corporation after federal prosecution has not deviated from this trend.

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Eastern and Western Filing and Trial Trends

Overall, the EDWA and WDWA have seen a dramatic drop in felony filings over the last five years.⁷ According to statistics maintained by the Judicial Council of the Ninth Circuit U.S. District Court, the EDWA had approximately 26% fewer felony criminal case filings per judge for a 12-month period ending in June 2015 than during the 12-month period ending in June 2013 (a five-year high mark). More dramatically, the WDWA experienced a 39% drop since its five-year high mark in mid-2012.⁸ These statistics also show that felony cases are consistently pending longer each year, with a median last year of 11.8 months in the EDWA compared to 8.6 months in the WDWA.

At the same time, criminal trials were down to a mere 2.6% of the WDWA criminal caseload and 5% in EDWA. Twenty years ago, the reverse was true, with 6% in the WDWA and 3% in EDWA.

Conclusion

Federal prosecution trends in Washington largely mirror the national prosecution of drug, immigration, firearms, and fraud crimes. While a statistical pie may be sliced many different ways, Washington's federal prosecutors are demonstrably continuing to fight the national war on drugs, in-

dict recidivist illegal immigrants, and pursue armed felons. Whether those priorities shift over time to get tough on other offense categories, such as white-collar crime or environmental enforcement, will depend upon the ever-changing executive branch, including U.S. attorney appointments after the presidential election and evolving agency directives. **NWL**



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

NOTES

1. See S. Klein and I. Grobey, *Debunking Claims of Over-Federalization of Criminal Law*, 62 Emory L.J. 1, 6 (2012) (citing data from the Statistics Div., Admin. Office of the U.S. Courts).
2. President Obama as a U.S. Senate candidate, debate at Northwestern University, Jan. 21, 2004.
3. The United States Sentencing Commission maintains online annual sentencing statistics based for each U.S. fiscal year (Oct.

1 through Sept. 30) dating back to 1995 for the nation and all federal districts. See www.uscourts.gov/topic/data-reports.

4. See *United States v. McIntosh*, --- F.3d ---, 2016 WL 4363168 (9th Cir., Aug. 16, 2016). Robert R. Fischer, an EDWA federal public defender, successfully argued on behalf of the Washington defendants in *McIntosh*.
5. See "Illegal Reentry Offenses", USSC report (April 2015) (www.uscourts.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/immigration/2015_Illegal-Reentry-Report.pdf).

6. Available at <https://www.justice.gov/dag/file/769036/download>.

7. An outlier difference between Washington's districts is the significant volume of misdemeanor offenses from Western Washington's military bases and heavily used national parks and forests. For example, the WDWA saw 204 misdemeanor traffic cases commenced in 2015, while there were none in the EDWA.

8. See "Judicial Council of the Ninth Circuit, U.S. District Court, Caseloads and Statistics" (www.ce9.uscourts.gov/statistics/district_court.html).



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FOOTING THE BILL FOR WHITE-COLLAR DEFENDANTS

Liability Insurance and Indemnification in Corporate Criminal Defense

by Isham M. Reavis

I had the privilege of spending three weeks in an old North Carolina courtroom this summer, assisting a stellar team of attorneys as they mounted their defense against allegations of a massive fraud. The Old North State is outside my jurisdiction; I was there in a non-lawyer, technical support and consulting role. Freedom from the pressure of spotting objections or conducting cross-examination left me space to appreciate the trial craft on display.

One aspect that stood out as noteworthy was the scale of the defense case. The government called expert witnesses to explicate the target business's financial data or tax returns, and the defense called experts to counter those analyses. The government called dozens of witnesses and offered hundreds of exhibits, and the defense had witnesses and exhibits in similar number. The respective cases in chief took approximately the same number of days to present.

In criminal defense, you more commonly see reasonable doubt defenses, where little testimony and few exhibits are offered — usually for good reason. Too often, favorable witnesses are vulnerable to potentially fatal cross-examination. And, correspondingly, too often exculpatory evidence has no safe proponent through which to introduce it. Sometimes the facts just aren't on your side, so the less that gets in, the better. Besides, doesn't the prosecution bear the burden of proof? But watching a trial play out as a clash between equal forces rather than asymmetrical warfare, I was impressed with another reason for the prevalence of leaner defense cases: How does someone pay for all this?

It's no secret that lawyers cost a lot, and the problem is compounded for federal white-collar prosecutions; you're up against the vast resources of the federal government. Indictment usually comes after lengthy investigation, which means voluminous, sometimes Augean, discovery to wade through. Defending against charges based on complex business transactions often means getting the jury to understand how things really happened, instead of the simplistic where-there's-smoke-there's-fire explanation on offer from the prosecution — and that means financial analysts and expert witnesses. But when your liberty is on the line, even a large price tag may seem reasonable.

Soon, more white-collar defendants may have to figure out how to pay those defense bills. While federal white-collar prosecutions have been trending down for some time, with 2015 (the most recent year for which Department of Justice (DOJ) statistics are available) seeing fewer than any year in the Obama administration,¹ the wind may be changing. The DOJ released a policy statement in September 2015 (the Yates Memo,² discussed in more detail in the April/May 2016 issue of *NWLawyer*³), in which it sets a goal of holding more individuals criminally responsible for corporate malfeasance instead of simply charging the corporations. If the DOJ keeps to this course, how will these future defendants cover their legal expenses?

The three most common routes for funding a defense are: pay for it through insurance, pay for it through the company, or pay for it by yourself. Increasingly, though, there are complications along each path.

The Federal Public Defenders (FPD), of course, continue to provide extraordinary representation to their clients without charging a dime. They bring to the table experience, dedicated support staff, and the extensive re-



sources of the National Litigation Support Team. A recent study showed FPDs get better results, on average, than private Criminal Justice Attorneys (CJA)!⁴ But the FPD's mission is to serve indigent clients, and those who can afford to hire a lawyer should. This article is aimed at affording the private attorney of choice.

\$\$ Liability insurance

Most corporate insurance policies include coverage for defending directors and

officers against claims arising out of the business, including criminal charges. This coverage comes with a catch. Because of wrongful and intentional acts exclusions in almost every policy, liability for actual criminal conduct is not covered. Meaning that if a criminal defendant loses, or even "loses," the insurance company is not responsible for the cost of the defense.

The second "lose," the one in quotes in the previous sentence, is there because even many successful defense outcomes

don't result in an outright dismissal or acquittal. Did you bargain 10 felonies with a guideline range of 30 years down to a single count with a six-month agreed sentencing recommendation? Were you convicted at trial of a single false-statement count, but wrested "not guilty" from the jury on the other 49 counts? Most lawyers, and most clients, would consider these wins. But to an insurance company, they're still convictions, and therefore likely excluded from coverage.

Insurance companies pay to defend against criminal charges in the first place because, until the case is decided, there's no easy way to determine whether there was an intentional, wrongful, and therefore excludable act. The duty to defend therefore extends to all conceivably covered conduct — even if the policy ends up not covering it. In many states, insurance companies will then often proceed under a "reservation of rights" letter, advancing payments for the moment but warning the insured defendant that those payments may be taken back depending on the outcome of the case. But in Washington courts (and federal courts applying Washington law), the reservation of rights is not sufficient. As our Supreme Court held in *National Surety Corp. v. Immunex Corp.*,⁵ an insurance company may not unilaterally alter the terms of a policy by in effect inserting a reimbursement provision if such a provision was not explicitly present:

Where the insurance contract is silent about the insurer's right to reimbursement of defense costs, permitting reimbursement for costs the insurer spent exercising its right and duty to defend potentially covered claims prior to a court's determination of coverage ... would amount to a retroactive erosion of the broad duty to defend[.]⁶

But there are complications.

First, insurance companies can include reimbursement clauses in their policies. *Protection Strategies, Inc. v. Starr Indemnity & Liability Co.*,⁷ a case out of the Eastern District of Virginia, involved such a clause. Protection Strategies, a defense contractor, came under investigation for bribery and fraud in connection with a NASA contract, and its insurer, Starr, paid to defend the company's officers. The policy excluded coverage for deliberate

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

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

- CHLOE ANDERSON
Attorney at Law



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fraud and provided that payments made in connection to a loss later determined to be uncovered “shall be paid to the insurer by the insured.”⁸ When Protection Strategies officers pleaded guilty, Starr sought and received a declaration of non-coverage and a right to recoup its payments. The court wrote:

[while] there is a split among courts regarding whether a reservation of rights letter is sufficient to reserve a right to recoupment not found within the insurance contract, the cases uniformly suggest that recoupment is an available remedy when it is expressly written into the policy.⁹

The Fourth Circuit affirmed last year.¹⁰ Since *Immunex* puts Washington on the side of states where a reservation of rights letter will not suffice, expect to see more reimbursement clauses, such as that in *Protection Strategies*, going forward. I have encountered them myself.

Second, even without a reimbursement clause, insurance payments may cease when there is a determination that the loss conduct is not covered — when, for example, there has been an admission or determination of guilt. Depending on where the line is drawn — entering a plea agreement? acceptance of a change of plea? entry of judgment after sentencing? — coverage may not continue through the sentencing phase. And insurers frequently do not wait, instead filing a separate declaratory judgment action to determine coverage, as was the case in *Protection Strategies* and *Immunex*. This leaves the defendant with a simultaneous civil case to defend in addition to their criminal case.

\$\$ Corporate indemnification

Corporations that indemnify their directors, officers, or key employees will invariably carry insurance, so the issues discussed above apply equally to this method of defense funding. Interposing the additional layer of the corporate employer adds another wrinkle because with business-related crimes, both the individual and the corporation are potential defendants — and in every codefendant case, there is the potential for a conflict of interest.

The potential for conflict has increased following the DOJ’s Yates Memo, which seeks to recruit corporations themselves

for the task of rooting out individual wrongdoers within the company. The corporation’s provision of “all relevant facts relating to the individuals responsible for the misconduct” to the DOJ is a prerequisite for receiving cooperation credit:

Companies cannot pick and choose what facts to disclose. That is, to be eligible for any credit for cooperation, the company must identify all individuals involved in or responsible for the misconduct at issue, regardless of their position, status or seniority, and provide to the Department all facts relating to that misconduct.¹¹

Corporate cooperation is therefore critical to the determination of whether to let the corporation off with a fine, DOJ oversight, or a criminal charge, aka the “corporate death penalty.” This puts the corporation in an uncomfortably adversarial posture toward the individual defendant whose defense it is supposed to fund.

The Yates Memo is silent on the subject of corporate indemnification, most likely by design. A previous DOJ policy statement, the 2003 Thompson Memo,¹² similarly made corporate cooperation in investigating and prosecuting individuals a factor in the DOJ’s decision whether to charge the corporation itself. Factors indicative of cooperation, or lack thereof, included a corporation’s willingness to waive attorney-client privilege and “whether the corporation appears to be protecting its culpable employees and agents,” including “through the advancing of attorneys fees.”¹³

These provisions of the Thompson Memo raised serious Sixth Amendment issues. In fact, they did more than raise them. In *United States v. Stein*,¹⁴ the Second Circuit affirmed dismissal of criminal charges against 13 employees of consulting firm KPMG, holding that the Thompson Memo’s coercive policies had in effect transformed their employer into an agent of the government and deprived them of their Sixth Amendment right to counsel. In the face of sustained opposition from corporations, the bar, and members of Congress,¹⁵ the DOJ withdrew the Thompson Memo’s more controversial aspects.

The DOJ presumably wishes to avoid another firestorm and has not resurrected the Thompson Memo’s more aggressive provisions in the Yates Memo. Yet

the Yates Memo’s policies will inevitably pit employee against employer when both are under federal investigation, complicating situations where the latter is footing the bill for the former’s defense.

There is another issue: Corporations that are under investigation and whose key employees are being prosecuted sometimes go under. If the company goes into bankruptcy or receivership, funds paid to an attorney may be subject to claw back.

\$\$ Self-funding

What should be the simplest means of paying for defense is ironically the least secure. Criminal forfeiture puts defendants wishing to hire their own defense in a precarious position by giving the government vast authority to deny funds to do so.

Criminal forfeiture provisions are found in various sections of the U.S. Code, including 18 U.S.C. § 982 (miscellaneous criminal forfeiture, including mail and wire fraud), § 1963 (RICO forfeiture), and 21 U.S.C. § 853 (narcotics forfeiture). Each makes property connected to a crime (the language varies between sections) forfeitable upon conviction. But even from the outset of a case, the government can obtain restraining orders — often obtained ex parte in conjunction with the indictment — freezing property or funds the government alleges are forfeitable. And in *United States v. Monsanto*,¹⁶ the seminal case for our current criminal forfeiture regime, the U.S. Supreme Court held that there is no exception, even from a pretrial restraining order, for funds a defendant was planning on using to hire an attorney:

Congress decided to give force to the old adage that “crime does not pay.” We find no evidence that Congress intended to modify that nostrum to read, “crime does not pay, except for attorney’s fees.”¹⁷

\$\$...Ouch.

And since *Monsanto*, the view for would-be self-funded defendants has, if anything, dimmed. In 2014’s *Kaley v. United States* decision,¹⁸ the U.S. Supreme Court revisited criminal forfeiture and held that a defendant could not even challenge a grand jury’s probable cause determination at a pretrial post-restraint hearing. Dissenting, Chief Justice Roberts painted a stark picture of the issue’s importance: The petitioner’s codefen-

dant, whose assets had not been seized and had therefore been free to hire a lawyer of her choice, had been tried separately and acquitted in less than three hours.¹⁹

[T]he “right to select counsel of one’s choice [is] the root meaning of the constitutional guarantee” of the Sixth Amendment.²⁰

And finally, Roberts recognized criminal forfeiture’s potential for abuse:

The possibility that a prosecutor could elect to hamstring his target by preventing him from paying his counsel of choice raises substantial concerns about the fairness of the entire proceeding.²¹

If there’s a bright spot to the criminal forfeiture prospects, it’s to be found in another recent U.S. Supreme Court decision, *Luis v. United States*.²² The holding was good — the government may not freeze legitimate, un-

tainted assets needed to retain counsel of choice — but on such *sui generis* facts that there’s likely little future application. How often in the future will the government seek to seize assets it concedes have no connection to a crime? No, hope comes from Justice Elena Kagan’s dissent, in which she calls *Monsanto* “a troubling decision” and hints that she may be willing to overrule it along with *Kayley* (which she authored!).²³ Perhaps, if Justice Kagan finds allies on the changing court, she yet will.

But the law is the law, and dissenting opinions are not. So long as *Monsanto* (and *Kayley*) remain in force, a defendant’s ability to pay his or her own lawyer is precariously dependent on the government’s fancy. In 2015, the federal government used criminal forfeiture to seize approximately \$4.2 million in Washington.²⁴ Who knows how much of that may have been earmarked for putting on a good defense?

\$\$ Conclusion

Getting paid, or worrying about getting paid, is one of the less enjoyable aspects of lawyering — or any job, really. Even well-heeled clients, when facing criminal charges and the gauntlet of associated issues, may have difficulty affording legal fees they would easily afford under other circumstances. It remains to be seen how the new white-collar regime telegraphed by the Yates Memo — to say nothing of changes in the insurance industry or the uncertain future composition of the U.S. Supreme Court — will change the practical effect of the Sixth Amendment’s right to counsel of choice. **NWL**

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NOTES

1. For the curious: in 2015, the DOJ filed 5,233 cases it deemed “white collar,” against 7,827 defendants. In 2014, it was 5,829 cases against 8,459 defendants. In 2013, 6,300 cases against 9,299 defendants. In 2012, 5,964 cases against 8,927 defendants. In 2011, 6,516 cases against 10,133 defendants. In 2010, 6,437 cases against 9,525 defendants. And in 2009, 5,982 cases against 8,610 defendants. This information is from Table 3A of the United States Attorneys’ Annual Statistical Report for each respective year. These reports, and reports for other years, are available at <https://www.justice.gov/usao/resources/annual-statistical-reports>.
2. Memorandum from Sally Quillian Yates, Deputy Attorney Gen., U.S. Department of Justice to the Assistant Attorney Gen., Antitrust Div., et al., Individual Accountability for Corporate Wrongdoing (Sept. 9, 2015) www.justice.gov/dag/file/769036/download.
3. Patrick J. Preston, “White Collar Reform: The U.S. Department of Justice’s All-or-Nothing Proposition for Corporations Under Fire,” *NWLawyer* (Apr./May 2016) at 13.
4. Working Paper, Radha Iyengar, “An Analysis of the Performance of Federal Indigent Defense Counsel (2007),” available at http://graphics8.nytimes.com/packages/pdf/national/20070712_indigent_defense.pdf.
5. 176 Wn.2d 872, 297 P.3d 688 (2013).
6. *Id.* at 883 (quoting *Gen. Agents Ins. Co. of Am., Inc. v. Midwest Sporting Goods Co.*, 828 N.E.2d 1092, 1102 (Ill. 2005)) (some alterations in original).
7. No. 1:13-CV-00763, 2014 WL 1655370 (E.D. Va. Apr. 23, 2014), *aff’d* 611 F. App’x 775 (4th Cir. 2015) (per curiam).
8. *Id.* at *5, *8.
9. *Id.* at *9.
10. *Protection Strategies, Inc.*, 611 F. App’x 775.
11. Yates Memo at 3.
12. Memorandum from Larry D. Thompson, Deputy Attorney Gen., U.S. Department of Justice to the Heads of Department Components, U.S. Attorneys, Principals of Federal Prosecution of Business Organizations (Jan. 20, 2003), available at www.americanbar.org/content/dam/aba/migrated/poladv/priorities/privilegewaiver/2003jan20_privwaiv_djthomp.authcheckdam.pdf.
13. *Id.* at 7–8. However, the Thompson Memo did allow that indemnifying employee legal expenses should not count against corporations in states where such indemnification was required. *Id.* at 8 n.4.
14. 541 F.3d 130 (2d Cir. 2008).
15. See Hearing on the Thompson Memorandum’s Effect on the Right to Counsel in

- Corporate Investigations of the S. Comm. on the Judiciary, 109th Cong. 110 (2006), available at www.americanbar.org/content/dam/aba/migrated/poladv/letters/attyclient/060912testimony_hrgsjud.authcheckdam.pdf (including statements of Karen J. Mathis, president of the American Bar Association, and Thomas J. Donahue, President and CEO of the U.S. Chamber of Commerce).
16. 491 U.S. 600, 109 S. Ct. 2657, 105 L.Ed.2d 512 (1989).
 17. *Id.*, 491 U.S. at 614.
 18. 571 U.S. _____, 134 S. Ct. 1090, 188 L.Ed.2d

- 46 (2014).
19. *Id.*, 134 S. Ct. at 1106–07 (Roberts, C.J., dissenting).
20. *Id.* at 1107
21. *Id.*
22. 578 U.S. ____ (2016) (slip op.), available at www.supremecourt.gov/opinions/15pdf/14-419_nmip.pdf.
23. *Id.* (Kagan, J., dissenting).
24. United States’ Attorneys’ Annual Statistical Report, Fiscal Year 2015 Table 16, available at www.justice.gov/usao/file/831856/download (\$4,186,613 combined total for E.D. Wash. and W.D. Wash.).

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TRIALS FOR TEENS BY JURIES OF THEIR PEERS

Youth Courts Provide Peer-Driven Justice

by Michael Cherry

It's six o'clock p.m. on the last Tuesday of the month. A group of teens and a few adults are gathered in the City of Bellevue council chambers, which tonight will be a King County juvenile courtroom. A teen clerk rises and announces: "All rise, the Bellevue Youth Court Division of the King County Juvenile Court is now in session." The attendees rise. The clerk introduces the judge. A teenager wearing a black robe takes her position behind the council's podium. The clerk continues, "The case before the court is the matter of the State of Washington versus John Doe..."¹

The Bellevue Youth Court (BYC) is one of approximately 20 youth courts currently operating in Washington state.² Youth courts are part of a diversionary process where young offenders, typically between the ages of 12 and 17, agree to appear before a court of their peers for misdemeanor offenses, including shoplifting, graffiti, traffic violations, truancy, school rule violations, and other misconduct. Washington state's youth courts were established by Senate Bill No. 5692³ and are governed by the Revised Code of Washington Title 13 Juvenile Courts and Juvenile Offenders.⁴

Youth courts follow one of four models: 1) an adult judge with youth advocates; 2) a youth judge with youth advocates; 3) a youth tribunal; or 4) a youth jury with youth court personnel. The BYC uses the fourth model. The officers of the court, including the judge, jury, clerk, bailiff, and advocates are all teen volunteers. When the court

is called into session, the respondent's fate is in the hands of his or her peers.

Adults are only involved before and after the court session. The BYC runs under the guidance of Helena Stephens, the youth, family and teen services manager for the City of Bellevue Parks & Community Services. Stephens trains the teens for their roles as officers of the court and coordinates the court dates, respondents, court officer, and jury roles for each session.

Volunteer attorneys, one to work with the defense advocate, the respondent, and the respondent's family, and one to work with the prosecution advocate, meet separately prior to a court session to review the facts of the case and prepare the advocate's presentation to the court.

Participants begin their role in the BYC as jurors. Prior to serving in any role, the teens are required to attend two free training sessions each year. The first teaches participants about the program, how it operates, and the purpose of restorative justice. The second focuses on the roles of the jury and the officers of the court.

Although participants often start out volunteering for community service hours as part of school or graduation requirements, many become interested in a career in the justice system through the exposure to the court and the chance to work with attorneys and judges. However, the biggest rewards were not anticipated by the teens: By participating they gain maturity and self-confidence, as well as improved public speaking, communication, advocacy, civility, and collaboration skills.

A teen respondent appearing before the BYC has been arrested for a non-violent misdemeanor such as shoplifting. As part of diversion to the BYC, the respondent has agreed to plead guilty. Although the City of Bellevue does not charge respondents to take part in the diversion program, King County does charge a small fee based on the respondent's ability to pay. (For an illustration of how a case moves through the youth court see "Bellevue Youth Court Respondent Flowchart" on page 46.)

Although the respondent has agreed to plead guilty, the prosecution advocate still plays an important role. She presents the facts of the case, extracted from a redacted police report and witness statements, and provides the jury with the elements of the law, for example, the elements of theft in the third degree. The prosecution advocate also provides a narrative of how the respondent's actions affect the community and she provides the prosecution's recommended restorative justice sentence.

The defense advocate presents the respondent's version of the facts. Although the facts of the case will be similar, he informs the jury of how the respondent has already been punished at home, typically by having to pay for the stolen merchandise and being grounded. Usually, the respondent has also been subject to a significant civil penalty because the respondent was liable for conversion of goods or merchandise from a store or mercantile establishment,⁵ and they are likely subject to criminal trespass charges if they enter either the store for a specified

A Youth Court Participant Profile

period of time. The defense advocate provides the defense's recommended restorative justice sentence.

In BYC the respondent is not required to make a statement to the jury; however observation of several sessions provides anecdotal evidence that such statements weigh heavily on the jury's consideration of the case.

Although teen participants start as jurors, the role of a juror is not easy. First, the jury decision must be unanimous. Second, every juror must be heard. Finally, their decision must meet the goals of restorative justice.

Judge Suzanne Parisien, who provides oversight and guidance on behalf of King County Superior Court,⁶ has said that as a judge she hears that people feel good about fulfilling their civic duty through jury service. Parisien asks, "Why should the experience be limited to adults? With so much debate and discussion happening in our country right now regarding the criminal justice system, it is even more important that young people be thinking about the concept of restorative justice, even on a smaller level."

The teen participants have been taught during their training and reminded by the prosecution and defense advocates that restorative justice has three elements: accountability, competency development, and community protection. Typically, accountability is addressed through restitution. Competency building comes from attending workshops, writing essays about the impact of their actions to the community, and writing apology letters to victims and the respondent's family. The community protection component often involves community service, including having to participate in the youth court as a future member of the jury, or other activities involving the respondent in positive activities that benefit the community and get the respondent involved with a new circle of peers.

While this can lead to a long deliberation, in the end the verdicts are remarkably tailored to fit both the respondent and the crime.

When the City of Bellevue was considering the youth court as a program in 2006, King County Juvenile Court was adjudicating 4,700 youth-related

Kira Bloomenthal is a junior at Lakeside School in Seattle. Bloomenthal began volunteering with the Bellevue Youth Court (BYC) three years ago when in the eighth grade. In total she has served in over 20 cases and has performed in the role of juror, advocate, and judge. In 2015, she became the student vice president of the Washington State Youth Court Association.

Bloomenthal joined the BYC because she has a passion for law and justice and hopes to attend law school in the future. Her participation allows her to improve her analytical and public speaking skills. Also, her work for youth court is recognized as service hours by her school (Lakeside requires 80 hours of community service for graduation).

Bloomenthal knows the importance of every role in the courtroom and has served in all roles, but most enjoys being an advocate, particularly for the defense. She sees the defense advocate's role as telling the respondent's real story. She's learned it's not about winning or beating the other side, it's about doing the right thing for the respondent. She believes it is important, in every role, to have empathy and compassion for the respondent.

As a judge, Bloomenthal says she sees the court differently. She says the role of the judge is not to determine rights or wrongs, but to make sure that court is carried out in an orderly and serious manner. The sense of importance weighs heavier on her because, like all the roles, she will impact another youth's life for the next six months, and she feels she has to show authority and control to manage the process. She endeavors to listen and not show bias, which can be challenging at times. The jury sometimes asks questions, and it is the job of the judge to decide whether or not these questions are relevant and should be answered. Bloomenthal has worked to build many new competencies in her career at BYC, but the hardest task comes as a judge when she has to let the advocates make their statements and the jury reach their verdict without letting any personal opinions affect the proceedings.

She is working with her peers at BYC to develop new sentencing guidelines and training programs in an effort to help the courts avoid simply falling into using formulas for sentences. Bloomenthal along with Stephens and another volunteer have instituted another option for sentencing called "preventative sentencing." Its goal is to help the respondent learn the repercussions of their actions by helping prevent other occurrences of the same offense. This sentencing encourages creativity from the jurors which benefits the respondent and the state, by maximizing restorative justice.

In her role as student vice president, Bloomenthal has the opportunity to see how other youth courts in the state work and help develop youth court programs throughout the state, including helping with the planning for the Washington State Courts Association annual conference.

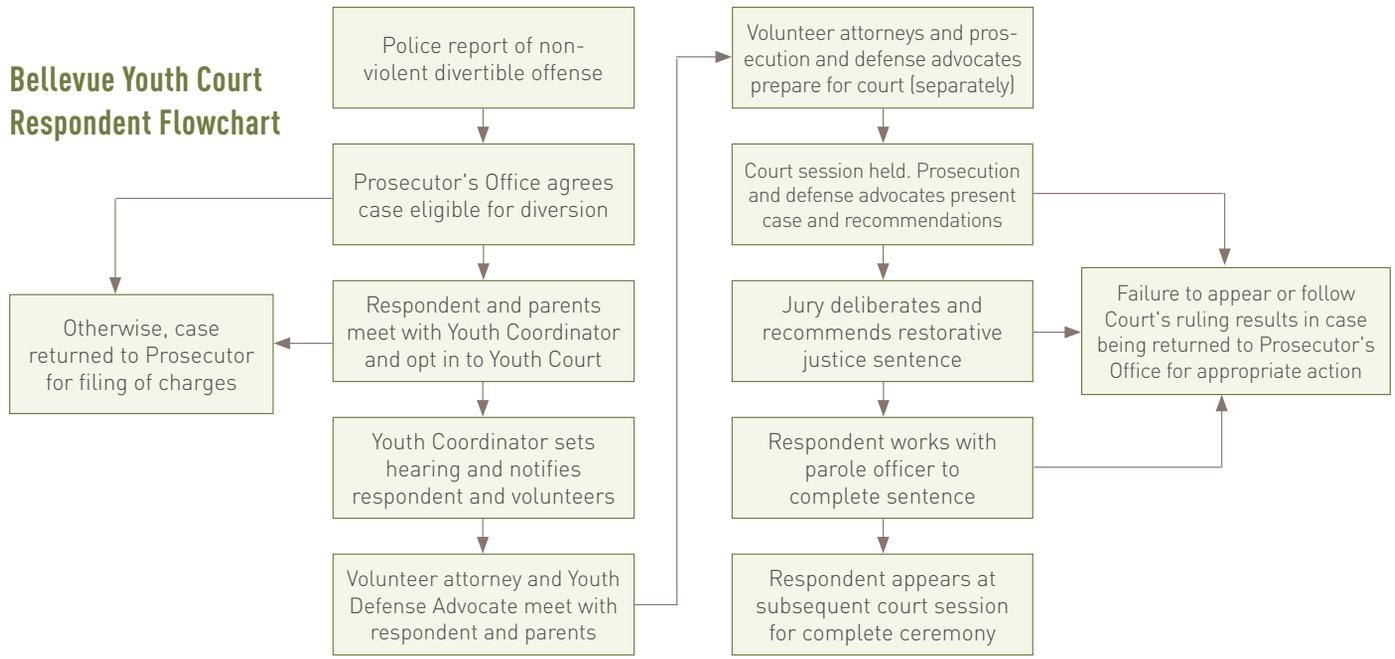
criminal cases per year. At that time, the City of Bellevue and King County agreed that BYC would hear a maximum of two cases per month during the school year.⁷ In 2015, 994 felony charges and 4,099 misdemeanor charges were filed against youth in King County, and in the 2015-16 court year, the 106 participants of the BYC heard nine court cases.⁸

A key goal of youth courts is to reduce recidivism. Despite the fact that

youth courts have been functioning for some time, there are few studies on their impact. A 2002 evaluation of youth courts examined a court in Anchorage, Alaska, which used a similar model to the BYC. In this study, the recidivism rate for teens who participated in the Anchorage Youth Court was 6% versus 23% for teens who were not part of a diversion program.⁹

A recent systematic review of teen courts on outcomes found that of 15

Bellevue Youth Court Respondent Flowchart



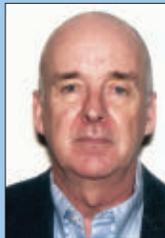
studies that attempted to assess statistical significance of recidivism, four found statistical significance favoring teen courts, one found statistical significance favoring traditional justice, and 10 produced null results, primarily because too many factors differ between various court models and the various study methodologies.¹⁰

Completion hearings finalize a respondent's appearance before the court. Such completion hearings provide a sense of closure to both the respondents and the participants. Roger Ledbetter, a City of Bellevue probation officer who works with the respondents to help fulfill their sentence, often informs the court that the respondent has gained skills and confidence through community service and is continuing to volunteer beyond the initial requirement.

The judge thanks the jurors for their time and valuable service, thanks the advocates for their work, and finally dismisses the court. The bailiff calls, "All rise!" and the judge leaves the bench.

After each session, Stephens walks to the front of the court to address the participants and observers in the council chambers. She thanks the jury and the officers of the court for their hard work and then she leads a question and answer period to debrief the participants on the court case. With all the questions answered, she reminds everyone of their duty of confidentiality,

and tells the participants they can sign up for the role they want in the next month's court session or any other activities or training. **NWL**



MICHAEL CHERRY runs a law firm that advises clients on how changing technologies, evolving business methods, and the law

intersect. As a volunteer attorney, Cherry has had the opportunity to participate in six trials before the BYC, and continues to be impressed by the passion and hard work the teens bring to the court. Cherry was the King County Bar Association Pro Bono attorney of the year in 2016 for his work with the Housing Justice Project in Kent and the BYC. He can be reached at mikech@lexquiro.com.

NOTES

1. The names of respondents have been changed.
2. Washington State Association of Youth Courts (WSAYC), "Washington State Association of Youth Courts – Who We Are," <http://wsayc.blogspot.com/p/who-we-are.html> (last visited Aug. 6, 2016).
3. S.B. ESB 5692, 2002 Leg., 57th Sess. (Wa.

2002), Final Bill Report available at <http://lawfilesexxt.leg.wa.gov/biennium/2001-02/Pdf/Bill%20Reports/Senate/5692.FBR.pdf>.

4. Wash. Rev. Code §§ 13.40.580–460, § 13.40.070, available at <http://app.leg.wa.gov/RCW/default.aspx?cite=13>.
5. Wash. Rev. Code § 4.24.230, available at <http://apps.leg.wa.gov/rcw/default.aspx?cite=4.24.230>.
6. Judge Suzanne Parisien follows retired judges Harry McCarthy and Carol Schapira who served as the King County Superior Court representatives to the Bellevue Youth Court from 2007-15.
7. "Youth Court Proposal," City of Bellevue King County, June 2006, on file with author.
8. Court statistics provided by Helena Stephens, manager, Family Youth & Teen Services Division, City of Bellevue, and are on file with her office.
9. Jeffery A. Butts, Janeen Buck, Mark B. Coggeshall, "The Impact of Teen Court on Young Offenders," Urban Institute, 27 (2002) available at <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/410457-The-Impact-of-Teen-Court-on-Young-Offenders.PDF> (last visited Aug. 6, 2016).
10. Lauren N. Gase, Taylor Schooley, Amelia DeFosset, Michael A. Stoll, and Tony Kuo, *The Impact of Teen Courts on Youth Outcomes: A Systemic Review, Adolescent Research Review*, Volume 1, Number 1, 51-67 (2016), <http://link.springer.com/article/10.1007/s40894-015-0012-x> (last visited August 6, 2016).



WEIGHING THE EVIDENCE AT TRIAL

A New Approach to Eyewitness Identification

by Judge Michael Schwartz

In a 2000 *New York Times* article,¹ rape victim Jennifer Thompson shared her memories from the experience she survived in 1984:

I was a 22-year-old college student in North Carolina, with a grade point average of 4.0, and I really wanted to do something with my life. One night someone broke into my apartment, put a knife to my throat and raped me.

During the ordeal, some of my determination took an urgent new direction. I studied every single detail on the rapist's face. I looked at his hairline; I looked for scars, for tattoos, for anything that would help me identify him. When and if I survived the attack, I was going to make sure that he was put in prison and he was going to rot.

When I went to the police department later that day, I worked on a composite sketch to the very best of my ability. I looked through hundreds of noses and eyes and eyebrows and hairlines and nostrils and lips. Several days later, looking at a series of police photos, I identified my attacker. I knew this was the man. I was completely confident. I was sure.

Based on her testimony, Ronald Junior Cotton was sentenced to life in prison for rape. A fellow inmate, Bobby Poole, claimed to be the attacker, but Thompson told a court in 1987, "I have never seen him [Poole] in my life. I have no idea who he is."

After Cotton had served 11 years in jail, DNA tests proved that he did not rape Thompson, and that it was Poole, who pleaded guilty to rape. Thompson wrote:

The man I was so sure I had never seen in my life was the man who was inches from my throat, who raped me, who hurt me, who took my spirit away, who robbed me of my soul. And the man I had identified so emphatically on so many occasions was absolutely innocent.²

Eyewitness identification in Washington

We now know that eyewitness identifications are sometimes fraught with imprecision. Indeed, the Washington Supreme Court has recognized as much: "*Riofta* and amicus correctly

argue that mistaken eyewitness identification is a leading cause of wrongful conviction." Brandon L. Garrett, "Judging Innocence," 108 Colum. L.Rev. 55, 60 (2008). ("The vast majority of [studied] exonerees (79%) were convicted based on eyewitness testimony; we now know that all of these eyewitnesses were incorrect.") (*State v. Riofta*, 166 Wash.2d 358, 371, 209 P.3d 467 (2009).)

While studies have revealed that there are a number of different reasons for this imprecision, the question remains, have trial courts been part of the problem? In other words, is the bar for the admission of eyewitness identification set too low? The Oregon Supreme Court thinks so and has substantially revised the framework for the admissibility of eyewitness identification.

In *State v. Lawson/James* (352 Or. 724, 291 P.3d 673 (2012)), the Oregon Supreme Court concluded that the then-controlling evidentiary test for the admission of eyewitness identification evidence was an inadequate means of achieving the "goal of ensuring that only sufficiently reliable identifications are admitted into evidence." *Lawson/James* (352 Or. at 746, 291 P.3d 673); *State v. Haugen* (274 Or.App.127,141, 360 P.3d 560 (2015)). Most importantly, the court took judicial notice of two sets of factors that, based on decades of scientific research, have been found to affect the reliability of eyewitness identifications: estimator variables and system variables. (*Lawson/James* at 740; *Haugen* at 141). Estimator variables "generally refer to characteristics of the witness, the alleged perpetrator, and the environmental conditions of the event that cannot be manipulated or adjusted by state actors." (*Haugen* at 141, quoting *Lawson/James* at 740). Estimator variables include 1) the witness's level of stress, 2) the witness's focus and attention, 3) the duration of exposure to an alleged perpetrator, 4) environmental viewing conditions, 5) the witness's physical and mental characteristics and condition, 6) the witness's description of the perpetrator, 7) the perpetrator's characteristics, 8) the speed of the identification, 9) the witness's confidence or certainty (noted as not reliably indicative of accuracy), and 10) memory decay. (*Lawson/James* at 744-46; *Haugen* at 141).

System variables refer to "the circumstances surrounding the identification procedure itself that are generally within the control of those administering the procedure." (*Id.* at 740, 291 P.3d 673). System variables include factors such as

1) whether the identification procedure was conducted by a person who was unaware of the suspect's identity; 2) whether pre-identification instructions were given to reduce the likelihood of misidentification; 3) the manner in which the photographic lineup was constructed and presented to the witness; 4) whether multiple viewings of the suspect could have led to source confusion; 5) whether suggestive wording or leading questions by investigators could have contaminated the witness's memory; and 6) whether confirming feedback could have falsely inflated the witness's confidence in the accuracy of his or her identification. (*Lawson/James* at 741-44; *Haugen* at 141).

In *Lawson/James*, the court determined that estimator variables had undermined the reliability of an eyewitness identification where the witness had suffered a gunshot wound to the chest, was "under tremendous stress and in poor physical and mental condition," and was "unsure whether her husband was alive or dead" when she observed the perpetrator "for only a few seconds at most, and only in profile." (*Lawson/James* at 763; *Haugen* at 142). The encounter was dark, the witness was lying on the floor of a camping trailer, and the perpetrator covered the witness's face with a pillow "for the specific purpose of obscuring [the witness's] view of him." (*Haugen* at 142, quoting *Lawson/James* at 763).

Moreover, the witness's in-court and

out-of-court identifications were made more than two years after her "brief view" of him. (*Lawson/James* at 764). The court noted that "[m]emory decays over time, and the effects of that memory loss are exacerbated when the initial encoding of the memory is impaired by other variables." (*Id.*)

The *Lawson/James* court also concluded that system variables, including overly-suggestive police practices, had undermined the reliability of the witness's identification. Police asked the witness "leading questions that implicitly communicated their belief that defendant was the shooter" while the witness was "heavily medicated" and "could not speak or move her hands." (*Id.*) The court reasoned that because the witness "could respond only by nodding or shaking her head," and given her greatly impaired physical and mental conditions, she "would have been especially susceptible to memory contamination from suggestive questioning." (*Lawson/James* at 763; *Haugen* at 142).

Lawson/James set forth a new framework for addressing challenges to eyewitness identification reliability. Under *Lawson/James*, "when a criminal defendant files a pretrial motion to exclude eyewitness identification evidence, the state — as the proponent of the eyewitness identification — must establish all preliminary facts necessary to establish admissibility." (*Lawson/James* at 761; *Haugen* at 143). Three interrelated evidentiary con-

cepts are implicated in this initial step: 1) relevance under Oregon Evidence Code (OEC) 401, 2) personal knowledge under OEC 602, and 3) lay opinion evidence under OEC 701. (*Lawson/James*, 352 Or. at 752-56; *Haugen* at 143). If the state satisfies those threshold requirements for admissibility, the burden shifts to the defendant to prove that, under OEC 403, the evidence should nonetheless be excluded. (*Haugen* at 143).

First, as to relevance under OEC 401, the Supreme Court observed that "[e]yewitness identification evidence will nearly always meet that basic standard for relevance." (*Haugen* at 143, quoting *Lawson/James*, 352 Or. at 752).

Next, an identification satisfies the personal knowledge requirement under OEC 602 if the State demonstrates "both that the witness had an adequate opportunity to observe or otherwise personally perceive the facts to which the witness will testify and did, in fact, observe or perceive them, thereby gaining personal knowledge of the facts." (*Lawson/James*, 352 Or. at 753; *Haugen* at 143). In other words, estimator variables are relevant to that inquiry. OEC 602 "expressly permits evidence of personal knowledge to consist of the witness's own testimony." (*Lawson/James*, 352 Or. at 753). Because "a witness is presumed to speak the truth," jurors are "the exclusive judges of the credibility of a witness." (*Id.* at 752 n. 8, 291 P.3d 673 (internal quotation marks and citations omitted); *Haugen* at 143).

The third threshold requirement under OEC 701 is "that any identification is both rationally based on the witness's firsthand perceptions and helpful to the trier of fact." (*Lawson/James*, 352 Or. at 762; *Haugen* at 143). That is where system variables come into play. The Supreme Court explained that when a witness's perceptions support an inference of identification, but are "nevertheless met with competing evidence of an impermissible basis for that inference" (such as suggestive police procedures), "an issue of fact arises as to whether the witness's subsequent identification was derived from a permissible or impermissible basis." (*Haugen* at 143-44; quoting *Lawson/James* at 755, 291 P.3d 673.) If the facts indicate that a witness "could have relied on something other than his or her own perceptions," then the state

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must establish, by a preponderance of the evidence, that the witness's identification was grounded in a permissible basis. (*Lawson/James* at 755; *Haugen* at 144). Put another way, the trial court must ascertain whether it was more likely than not that the witness's identification was based on his own perceptions. (*Lawson/James* at 755-56; *Haugen* at 144).

If the state establishes the requisite foundation for the admission of eyewitness identification evidence, the burden shifts to the defendant to prove "under OEC 403 that, although the eyewitness evidence is otherwise admissible, the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay or needless presentation of cumulative evidence." (*Lawson/James* at 762, 291 P.3d 673). As the court cautioned in *Lawson/James*:

"[i]f the State's administration of one or more of the system variables (either alone or combined with estimator variables) results in suggestive police procedures, that fact can, in turn, give rise to an inference of unreliability that is sufficient to undermine the perceived accuracy and truthfulness of an eyewitness identification — only then may a trial court exclude the eyewitness identification under OEC 403." (352 Or. at 763, 291 P.3d 673 (emphasis added).)

The framework set forth in *Lawson/James* applies to both in-court and out-of-court identifications. (*Haugen* at 145). Although *Lawson/James* substantially revised the standard for the admission of eyewitness evidence, the court also observed:

"[T]rial courts will continue to admit most eyewitness identifications because it is doubtful that issues concerning one or more of the estimator variables that we have identified will, without more, be enough to support an inference of unreliability sufficient to justify the exclusion of the eyewitness identification. [D]efendants will likely prefer to probe the issues regarding estimator variables through cross-examination, expert testimony and case-specific jury instructions." (*Lawson/James* at 762, 291 P.3d 673 (emphasis added); *Haugen* at 145).

Finally, the Oregon Supreme Court stated that, in reviewing a trial court's admission of eyewitness identification evidence, it would defer to the court's findings of fact so long as they are supported by any evidence in the record; the Court reviews a trial court's evidentiary ruling for legal error. (*State v. Collins*, 256 Or.App. 332, 334, 334 n. 3, 300 P.3d 238 (2013) (applying *Lawson/James*)). If a defendant moves to exclude iden-

403. Moreover, the use of expert testimony regarding system and estimator variables as applied to the facts of a particular case would likely be helpful to the trial court in determining whether the identification should be admitted.

But it is the trial court that, as gatekeeper, should carefully weigh the probative value of the evidence against its prejudicial effect. Merely stating, "It goes to the weight," does not demonstrate that a court

"Have trial courts been part of the problem? Is the bar for the admission of eyewitness identification set too low?"



tification evidence on the ground that it is unfairly prejudicial, and the trial court rules otherwise, the Oregon appellate courts would review that ruling for abuse of discretion. (*Lawson/James*, 352 Or. at 762; *Haugen* at 145.)

The Washington Supreme Court as recently as 2013 held that safeguards already built into our adversarial system caution juries against placing too much weight on eyewitness testimony of questionable reliability. These safeguards include the right to confront witnesses, the right to counsel, jury instructions, expert testimony, and the government's burden to prove guilt beyond a reasonable doubt. (*State v. Allen*, 176 Wn.2d 611, 622-23, 294 P.3d 679 (2013)). But as we have seen, these oft-cited safeguards still result in wrongful convictions based on faulty eyewitness identification evidence.

While the framework set forth in *Lawson/James* moved the bar for admissibility in Oregon, the rules of evidence in Washington provide for a similar challenge to admissibility of such evidence in our trial courts. Washington Rules of Evidence 401, 403, 602, and 701 are almost identical to the Oregon evidence rules set forth in *Lawson/James*. Washington law already provides that the proponent of any evidence must meet the threshold standards of relevance and personal knowledge. (ER 401 and 602). Similar to the *Lawson/James* framework, the burden would shift to the defendant to demonstrate that the evidence should be excluded under ER

has used its discretion at all. Additionally, trial courts should, like the Oregon Supreme Court did, take judicial notice that estimator variables and system variables affect the reliability of eyewitness identifications. When weighing the evidence under an ER 403 analysis, evidence of the existence of these variables as applied to the facts of a particular case should be analyzed on the record to properly preserve appellate review. Most importantly, Washington's reviewing courts should acknowledge that the built-in safeguards of our adversarial system have fallen woefully short of ensuring only reliable eyewitness evidence is admitted at trial.



JUDGE MICHAEL E. SCHWARTZ is a superior court judge with Pierce County. He was appointed to the bench by Gov. Inslee in

August 2015. Prior to his appointment to the bench, Judge Schwartz practiced in both state and federal court as a criminal defense attorney for 22 years. He can be reached at supcrtdept3@co.pierce.wa.us.

NOTES

1. "I Was Certain, But I Was Wrong." *New York Times*, June 18, 2000.
2. *Id.*

WSBA BOARD OF GOVERNORS MEETING

SEPT. 29-30, 2016, SEATTLE

Summary

The WSBA Board of Governors (Board) met Sept. 29-30 at the WSBA Conference Center in Seattle. On Sept. 29, the Board held an annual meeting of the Washington State Bar Foundation (WSBF) and appointed new members of the WSBF Board of Trustees. It discussed and approved the FY2017 WSBA budget and the 2018-20 lawyer license fees. The Board heard recommendations from the Council on Public Defense (CPD) and it approved a statement regarding legal financial obligations (LFOs). The Board discussed the Lawyers' Fund for Client Protection (LFCP) and voted to raise the gift amount from \$75,000 to \$150,000. The Board approved a resolution regarding its support of the limited license legal technician (LLLT) program. The Board heard results of a survey conducted by the Institute for the Advancement of the American Legal System regarding law school education and foundations for law practice.

On Sept. 30, the Board discussed amendments to GR 12 and voted to approve the suggested amendments with the exception of removing "Association" from "Washington State Bar Association"; the result is to retain the name Washington State Bar Association. It discussed and approved recommendations regarding changes to the Bylaws, including making LLLTs and limited practice officers (LPOs) members of the WSBA; adding two public and one LLLT or LPO seat to the Board; and tabling to the November meeting a discussion of amendments to the Bylaws related to sections, which had been recommended by the Sections Policy Work Group. The Board voted to send suggested amendments to the Admission and Practice Rules (APRs) to the Supreme Court. It



President Bill Hyslop passing the gavel to incoming President Robin Haynes.

decided to delay discussion of the proposed Religious and Spiritual Practices Policy to its November meeting.

The next meeting of the Board will be Nov. 18 in Seattle.

Thursday, Sept. 29

Washington State Bar Foundation

The Board sits as trustees of the WSBF. Foundation President Judy Massong chaired its annual meeting, where the Foundation adopted a slate of new trustees. WSBF Board members approved by the BOG are President Massong; Richard C. Byrd, Jr., as treasurer; Gerald Moberg; Sims Weymuller; and Blake Kremer. WSBA Board members were commended for reaching 100% participation in giving to the WSBF this year.

FY2017 Budget

Treasurer Karen Denise Wilson, Chief Operations Officer Ann Holmes, and Controller Tiffany Lynch presented the FY2017 budget. The budget includes \$18.9 million in expenses, supported by \$16.9 million in revenue and the planned use of \$2 million in reserve funds. The budget was developed following extensive analysis and deliberations this year about historical, current, and projected multi-year revenues, expenses, license fees, and reserves; and measures taken over the past four years to reduce the Bar's footprint while strengthening infrastructure systems (such as disaster prepared-

ness, technology, and a website redesign) and introducing or enhancing free and low-cost programs to support members. It reflects the Board's policy decisions about the programs, services, and operations needed to advance the Bar's mission, as well as a unanimous commitment to remain and support WSBA as an integrated bar. The Board adopted the FY2017 budget as presented. Budget details can be found in public session materials for the meeting, and at www.wsba.org/About-WSBA/Financial-Info.

The Board thanked outgoing controller Tiffany Lynch for her decade of exceptional service to the WSBA.

Lawyer License Fee Increases for 2018-20

Treasurer Karen Denise Wilson, Chief Operations Officer Ann Holmes, and Controller Tiffany Lynch presented lawyer license fees for 2018-20 as recommended by the Budget & Audit Committee. Examination of license fees was an integral part of the extensive work done this year to set the budget. After hearing comments about the recommended fee increases, the Board voted to increase the WSBA lawyer license fees for 2018-20 to the following levels: \$449 in 2018, \$453 in 2019, and \$458 in 2020. Information about lawyer license fees is available in the public session materials; see www.wsba.org/About-WSBA/Financial-Info for additional information about lawyer license fees, the WSBA payment plan and exemptions, and Treasurer Reports that identify work done over the



Above, L to R: Dean Annette Clark of Seattle University School of Law, Dean Kellye Testy of the University of Washington School of Law, and Dean Jane Korn of Gonzaga School of Law; Alli Gerkman from the Institute for the Advancement of the American Legal System; Attorney Alec Stephens, chair of the WSBA Civil Rights Law section.

Below, L to R: Governor Karen Denise Wilson thanks Controller Tiffany Lynch for her service to the WSBA; Executive Director Paula Littlewood and President Bill Hyslop thank Legal Community Outreach Specialist Sue Strachan (center) for her service to the WSBA.

All photos: Terri Sharp



past four years to keep fees as low as possible for as long as possible in the face of continually rising costs of doing business.

Legal Financial Obligations

Governor Phil Brady, Council on Public Defense member Travis Stearns, and WSBA Legislative Affairs Manager Alison Phelan presented a statement approved by the Board of Governors Legislative Committee regarding legal financial obligation (LFO) reform in Washington. The statement may be used by the Council to publicly comment and express support of LFO reform before the Legislature. The Board approved the use of the statement, which can be found in the public session materials.

Lawyers' Fund for Client Protection

Lawyers' Fund for Client Protection (LFCP) Vice Chair Chach Duarte White and WSBA Assistant General Counsel

Kevin Bank presented a recommendation to increase the per claim limit on gifts from the LFCP from \$75,000 to \$150,000. The Board voted to increase the limit and make a recommendation to the Supreme Court that the Fund's procedural rules be amended to state clearly the new limits.

Limited License Legal Technicians Resolution

To affirmatively and publicly demonstrate its support of the work of the LLLT Board and the LLLT license, the Board unanimously adopted a resolution that reinforces the importance of the license and its alignment with the mission of the WSBA.

Institute for Advancement of the American Legal System Survey

The Board identified law school education as a topic of generative discussion

earlier this year. The Board heard a presentation from Alli Gerkman, director of Educating Tomorrow's Lawyers, about the Foundations for Practice Project, a study conducted by the Institute for the Advancement of the American Legal System (IAALS). The study included results from a survey distributed in 37 states, including Washington. Questions focused on identifying the foundations that entry-level lawyers need to launch successful careers, developing measurable models of legal education that support these foundations, and aligning market needs with hiring practices to incentivize positive improvements. Dean Jane Korn of Gonzaga University School of Law, Dean Annette Clark of Seattle University School of Law, and Dean Kellye Testy of the University of Washington School of Law joined in the discussion. Executive Director Paula Littlewood commended the law schools for doing innovative

programming at their 1L orientations, and General Counsel Jean McElroy noted the good relationship that the WSBA has with the three law schools. IAALS presentation materials are available in the public session materials.

Friday, Sept. 30

GR 12 Amendments

Executive Director Paula Littlewood, General Counsel Jean McElroy, and Chief Disciplinary Counsel Doug Ende presented the suggested amendments to GR 12.1 to 12.4. The amendments would rearrange the order of the rules to accommodate a new section on regulatory objectives of the Supreme Court that are based on the ABA Model Regulatory Objectives for the Provision of Legal Services. The Board's GR 12 discussion included the proposed name change to Washington State Bar, and revising language to encompass all of the functions of the WSBA. Presenters and Board members noted that the proposed name change was put forth in part to align with the practice of other integrated state bars which do not call themselves "associations" because of their dual role as regulatory and member services bodies.

The Board discussed the comments it had received, including concerns that the name change represented a transfer of power away from the Board to the Supreme Court. Chief Disciplinary Counsel Ende explained that the Supreme Court is given the exclusive power to regulate the practice of law and WSBA operates under delegated authority of the Supreme Court. The Board also noted that dropping the "association" was not intended to announce an intention by the Board to cease its priorities in providing services to the WSBA's members. Board members discussed member trust and perceptions, confusion about the two separate votes on GR 12 amendments and the Bylaw amendments (see below), improvements that could be made to the way information is disseminated, and requests to extend the time for review of the years of Board materials previously made available.

The Board voted to maintain the name Washington State Bar Association in the suggested GR 12 amendments and the proposed Bylaw amendments (see

below). The Board also voted to suggest amendments to the language in GR 12 and GR 12.2 to read "The Washington Supreme Court has inherent and plenary authority to regulate the practice of law," replacing the word "exclusive" with the word "plenary." The Board approved all other suggested amendments as presented.

Bylaw Amendments

Past-President and Bylaws Work Group Chair Anthony Gipe, and General Counsel Jean McElroy, presented the proposed amendments to the Bylaws. The Board considered a delay of its discussion of Bylaw amendments after requests it had received for additional time for members to review the materials. After discussion, the Board voted to proceed with its review and vote, noting that the concepts and proposed changes, although not the specific language, had been developed over several years, first by a task force that considered input from various boards and members, then reviewed by a Board work group and discussed at multiple Board meetings over the course of a year, and then discussed and developed by a Bylaws Work Group that was charged with putting those concepts into the Bylaws. The Board reviewed and addressed each Bylaw amendment, with substantive votes including adding LLLTs and LPOs as members of the WSBA; making explicit that lawyers who have been inactive (and not practicing law in any U.S. jurisdiction) for 10 years or more will be required to retake the Bar exam, consistent with existing practice and policy; retaining the current language and requirements related to member referenda on license fees and recall of governors; adding three new at-large governors elected by the Board, with two public members and one LLLT or LPO, but limiting officer positions to lawyers; clari-

fying the WSBA's open meeting policy; and tabling a vote on the Sections Policy Work Group recommendations to the November meeting. The approved Bylaws will become effective on January 1, 2017.

Past-President Gipe thanked the Board for the opportunity to serve, noting that this would be his last meeting after 12 continuous years of service to the WSBA.

Admission and Practice Rules

General Counsel Jean McElroy presented suggested amendments to the APRs. The amendments were suggested to align the systems for regulating and licensing lawyers, LPOs, and LLLTs in order to achieve greater efficiency and effectiveness in administering these license types. The Board adopted the proposal recommending that the Washington Supreme Court amend the APRs. The suggested amendments can be found in the public session materials.

Spiritual Practices Policy

General Counsel Jean McElroy and Director of Human Resources Frances Dujon-Reynolds presented an update on the proposed WSBA Religious and Spiritual Practices Policy. There are continuing discussions with the Indian Law Section regarding a revised policy. The Board voted to place the Religious and Spiritual Practices Policy on the agenda for the November meeting.

For more information on any of these topics, email questions@wsba.org. For more on the WSBA Board of Governors and future meeting dates, see wsba.org/about-wsba/governance.

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WASHINGTON STATE
BAR ASSOCIATION

2016 Summer Bar Exam Pass List

Of the 757 candidates who took the July 2016 bar exam, 533 candidates passed the exam. Congratulations! The full pass list is below.

A

Agsen, Sammy Kevin, Seattle
Alagbala, Temitope A., Olympia
Alavi, Sara Soroor, Bellevue
Aliment, Ruby Kathryn, Seattle
Amare, Meron S., Tukwila
An, Yonggang, Seattle
Anderson, Emily Rose, Kirkland
Angelo, Domenic, Seattle
Ansingh, Senator Austin, Auburn
Apostol, Florina Filofteia, Casselberry, FL
Arcuri, Jason David, Seattle

B

Babbitt, Spencer James, Seattle
Baldwin, Samuel, Seattle
Barnhart, Kristen Faye, Seattle
Basauri, Taryn Marie, Boise, ID
Bass, Katie Danielle, Gig Harbor
Bassetti, Joseph Andrew, Mercer Island
Bays, Alexis Ann, Puyallup
Beattie, Anthony Edward, Spokane
Beattie, Lauren A. Maher, Spokane
Benge, James Riley, Seattle
Benson, Allen Roger, Spokane
Bergmann, Erica Lee, Seattle
Biehl, Richard Thomas, Allyn
Black, Hannah Elise, Baytown, TX
Blackadar, Sarah Catherine, Williamsburg, VA
Blair, Jacob A., Seattle
Blankenship, Kristen, Tacoma
Blass, Cleslie Aileene, Seattle
Blood, Shae, Oakland, CA
Bodi, Anna Eglick, Lake Forest Park
Bonnarens, Rebecca, Prospect, KY
Bordeaux, Keegan James, Yakima
Bowman, Leighton Channing, Kent
Boyd, Addrian Elice, Spokane
Boyer, Claire, Seattle
Boyles, Dennis Colton, Moscow, ID
Bradbury, Corey Seann, Vancouver
Brannon, Patrick, Bellevue
Bratt-Leal, Valerie, Redmond
Brennan, Katherine Elizabeth, Seattle
Brinckerhoff, Aaron, Seattle
Brings, Matthew Joseph, Boise, ID
Brisbois, Chelsea Marie, Colbert
Broderick, Rachel Anne, Auburn
Brown, Caitlin Alynn, Seattle

Brown, Ashley, Bellevue
Brumbaugh, John Granville, Seattle
Bryant, Logan Gene Trimble, Olympia
Buchwalter, Axel N., Bellevue
Burke, Madison Marie, Seattle
Burke, Lauren Marks, Reston, VA
Burns, Alexa Lauren, Renton
Burt, Jason Allen, Seattle
Busch, Gregory Joseph, Seattle
Byers, Benjamin Charles, Seattle

C

Caditz, Alison Rosalie, Berkeley, CA
Campbell, Joshua Waldek, Salt Lake City, UT
Carey, Katie, Pasadena, CA
Carter, Patrick Joseph, Seattle
Cassell, Mark Twyford, Denver, CO
Cavazos, Daniel James, Seattle
Chaiet, Lisa Joy, Seattle
Chaplin, Sarah Walker, Seattle
Chase Fazio, Janelle Ellen, Burien
Chen, Changning, Seattle
Chen, Diana Renae, Seattle
Chinkiwsky, Patrick, Seattle
Chou, Timothy, Seattle
Christopher, Yasmin Ayesha, Seattle
Chu, Grace Shing, Seattle
Chung, Jennifer, Seattle
Chung, Katherine Heeyoung, Lake Forest Park
Chung, Christina H, Seattle
Cleveland, Anna Kate, Vancouver
Coleman, Jessica Taleen, Las Vegas, NV
Compain, Stephen Gerald, Houston, TX
Connell, Catherine Nicola Logan, Seattle
Conway, Sydney, Woodinville
Cooper, Bridgette J., Gig Harbor
Cooper, Peter William, Bellingham
Corbeille, Jason, Ludlow, MA
Cordova-Sanchez, Austin Christopher, Seattle
Corsberg, Andrew Roger, Spokane
Cory, Mitchell Chamberlin, Spokane
Critz, Anna Griffin, Mobile, AL
Crowley, Brendan John, Olympia
Crown, Nicholas Steven, Seattle
Cruz, Bernardo Rafael, El Paso, TX
Cuevas, Jaime, Pasco

Cummings, Katherine Aileen, Poulsbo
Curtiss, Justin James, Beaverton, OR

D

Dahl, James Poe, Gig Harbor
Dalley, Jon Brett, Spokane
Dalmendray, Amanda Ladonne, Seattle
Damluji, Nadim Namir, Seattle
Damrow, Peter Melvin, Seattle
Daniel, Katie Lynn, Spokane Valley
Dasse, Elizabeth Anne, Seattle
Davis, Madeline Susanne, Vancouver
Davis, Mark Jeffrey, Spokane
Davison, Joseph Daniel, Richland
De Witt, Michele Alessandra, Spokane
Dennis, Caitlin Elizabeth, Vancouver
Devenport, Richard Perry, Seattle
Dhami, Manmeet Kaur, Kent
Dial, Chantelle D., Battle Ground
Ding, Yayi, Seattle
Dinning, Samuel Bay, Seattle
Dirini, Nidal Ahmed, Monroe
DiSarno, Catherine E, Seattle
Dockins, Brandon James, Post Falls, ID
Donchez, Mercedes Madisen, Edmonds
Douglas, Loretta, Seattle
Dow, William James, Seattle
Dowie, Donald N., Las Vegas, NV
Ducey, Dayna Christine, Seattle
Dunbar, Alison, Missoula, MT
Duran Mena, Jennifer, Lakewood

E

Elekes, Jessica Marguerite, Lynnwood
Elles, Christina Ann, Seattle
Elliott, Brett Ashley, Alexandria, VA
Elsden, Sarah Elizabeth, Spokane
Enciso, Melanie, Walnut Creek, CA
English, Ryan Akio, Seattle
Enns, Wesley Louis, Spokane
Enquist, Oliver Francis, Edmonds
Equihua, Yuridia, Granger
Evans, Erika Joyce, Tacoma
Everette, Wendy Catherine, Washington, DC

Eze, Chibuikue U., Seattle

F

Fayette, Brittany Lauren, Seattle
Feldman, James Curtis, Seattle
Fensterbush, Joshua Andrew, York, PA
Ferguson, Benjamin Reed, Poulsbo
Ferrari, Jacob, Redmond
Ferraz, Mariah Gabrielle, Seattle
Feth, Timothy Stephen, Benton City
Fiala, Michelle Ashley, Edmonds
Fischer, Rebecca Jeanette, Anchorage, AK
Foley, Megan, Seattle
Fong, Bonnie, Seattle
Forero Mejia, Maria Cecilia, Seattle
Forsyth, Elisabeth Anne, Seattle
Fosdal, Vanessa Kate, Seattle
Foster, Marcus Stanley, Wenatchee
Fox, Margeaux Kaitlin, Spokane
Free, Jay C, Seattle
Freedman, Sarah Lutetia, Portland, OR
Frey, Audrey Tower, Seattle
Friedrichs, Michael Christopher, Seattle
Fukano, Harry Osborne, Seattle
Fuller, Andrew Hubbard, Seattle
Fuller, Andrew Seth, Seattle

G

Gaff, Brendan Householder, Seattle
Gall, Spencer Thomas, Seattle
Gella, Evangeline, Bothell
Georgas-Burns, Christena Pauline, Spokane
Gerson, Benjamin Asa, Kirkland
Getman-Gerbec, Michael Sinnott, Tacoma
Gilbert, Carolyn Suzanne, Mount Vernon
Gilmartin, Anastasia Sumers, Seattle
Gilmore, Megan Elaine, Kelso
Gjullin, Wyatt Rawson, Seattle
Glindmeyer, David Daniel, Seattle
Goethe, Anna Rae, Seattle
Gojak, Dino, Vancouver
Gonzalez, Camille Marissa, Orange, CA
Gould, Kevin, Saint Helena, CA
Goytowski, Zachary Joseph, Moscow, ID

Graves, Sage Mychal, Seattle
 Grimm, Andrew Benedict, East Palo Alto, CA
 Grindell, Jonathan David, Eugene, OR
 Groller, Bonnie C., Liberty Lake
 Grotjahn, Jennifer Lynn, Sammamish
 Guerra, Charlotte Thalia, Union Gap
 Guida, Gianluigi, Seattle
 Guilmette, Corey William, Mercer Island
 Gustafson, Andrew Harry, Seattle

H

Hailey, Amanda Jewel, Mercer Island
 Hall, Melissa Carrell, Seattle
 Haller, Madeleine C., Seattle
 Hamilton, Kendall Elizabeth, Anchorage, AK
 Hampton, Samuel Elliot, Seattle
 Hanley, Mariah Catherine, Seattle
 Hanley-Brady, Lauren, La Mesa, CA
 Hansen, William Thomas, Mercer Island
 Hanzeli, Trevor Vincent, College Place
 Harding, KC Lynne, Seattle
 Hardtke, Brian, Centralia
 Harkins, Sean Edward, Spokane
 Harvey, Michael, Seattle
 Harvey, Kathleen Susanne, Wichita, KS
 Hassold, Kellen Clare, Alameda, CA
 Hatch, Jenna McKay, Cheney
 Hatch, Caleb Andrew, Spokane
 Hayward, Daniel Richard, Spokane
 Head, Alycia Ryter, Seattle
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 Hernandez-Valdovinos, Leticia, Seattle
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 Hewitt, Evan Kenneth, Puyallup
 Highberg, Gregger Edward, Federal Way

Hinman, Miriam Reisner, Chicago, IL
 Hitchcock, Matthew Steven, Boise, ID
 Hodjat, Naazaneen, Seattle
 Hoisington, Maria, Seattle
 Holbrooks, Carly, Olympia
 Houck, Peter James, Seattle
 Howie, Alex-Ciana Kate, Spokane
 Humphries, Chelsea Nichole, Lake Tapps
 Hunner, Harley Hoffman, Seattle
 Hurst, Haylee J., Lynden
 Hwang, Dong-Jin, Seattle

I

Ikeda, Ariell Rayko, Seattle

J

Jaena, Justin Louis, Kent
 Jeckering, Theodore H., Spokane
 Jenkins, Krystal, Seattle
 Jennings, Paul Douglas, DuPont
 Jeong, Cecilia Heeyon, Seattle
 Jiang, Hong, Cambridge, MA
 Jimenez, Patricia Idalia, Spokane
 Jimenez, Luis Adan, Moscow, ID
 Johnson, Sarah Jane, Everett
 Johnson, Jamie Nicole, Seattle
 Johnson, Aaron Charles, Seattle
 Johnson, Brennen Jordan, Port Orchard
 Jolstead, Michael Allen, Spokane Valley
 Joshee, Bipasana Sakya, Seattle
 Junejo, Samir Ahmed, Shoreline

K

Kaai, George Kahakuokahale-waikapuokalani, Edmonds
 Kaczynski, Tiffany Lynne, Virginia Beach, VA
 Kaempf, Jessica Andrea Martinez, Seattle
 Kahle, Nicole, Edmonds
 Kaiser, Corinne Campbell, Seattle
 Kaiser, Christian N, Kirkland
 Kasimov, Dennis, Seattle
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 Keeton, Richard Berton, Auburn
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 Kelly, Sean Joseph, Lake Oswego, OR
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 Khilyuk, Mariya, Woodinville

Kiernan, Geoffrey Edward, Bothell
 Kilroy, Ryan Patrick, Sammamish
 Kim, Philip Taesan, Alexandria, VA
 Kim, Sun Taek, Kirkland
 Kimm, Grace Hyewon, Shoreline
 King, Devon Amy, Lake Forest Park
 Kirk, Scott Daniel, Bellingham
 Kirk, Jason Lee, Seattle
 Kirk, James Benjamin, Seattle
 Kitson, Anna Carole, Goshen, IN
 Knecht, Rebecca Marie, Gig Harbor
 Knight, Taylor Susanne, Vancouver
 Knight, George, Mercer Island
 Knox, Lauren, Durham, NC
 Kobayashi, Chiaki, Seattle
 Kong, Alexander Woong, Seattle
 Kover, Justin Reed, Lacey
 Koziol, Peter Woods, Cambridge, MA
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 Kristiansen, Jennifer, Portland, OR
 Kroamer, Jill, Pooler, GA
 Krotoff, Anastasiya E., Spokane
 Kumar, Vijay Sunil, Des Moines
 Kunz, Michael Peter, Seattle
 Kylo, Michael Jeffrey, Sammamish

L

Lang, Megan Kelly, Vancouver
 Larson, Jeffrey Matthew, Spokane
 Latendresse, Deric Scott, Spokane
 Law, Kwan Hoi, Bellevue
 Lee, Inwoo, Everett
 Lee, Samuel Tealim, Seattle
 Lee, Sungyong Cheryl, Shoreline
 Lee, Echan, Richmond, CA
 LeMay, Weston, Seattle
 Lenz, Kelsey Riane, Seattle
 Lewis, Jessica Lynne, Seattle
 Lewis, Andrew Joseph, Seattle
 Li, Yan Yan Isabella, Seattle
 Lichter, Tyler Kendall, Tampa, FL
 Ligon, Toby Jay, Seattle
 Liguori, Keith M., Springfield, IL
 Lindekugel, Elena Marie Trebaol, Seattle
 Lines, Gregory Evan, Tucson, AZ
 Lintermans, Richard Aaron, Olympia
 Littlebird, Sarracina, Stanford, CA
 Liu, Yue-Jia, Burnaby, BC

Liu, Julie Young, Seattle
 Loberstein, Katie, Seattle
 Loewen, Benjamin Jack, Spokane
 Loucks, Talia Grace, Seattle
 Love, Kate Farnham, Woodinville
 Lunde, Elizabeth, Seattle
 Lundquist Segal, Christianna, Seattle
 Lurie, Kaya, Seattle
 Lynch, Christopher Bryce, Shoreline
 Lystad, Schuyler Dale, North Bend

M

Ma, Tiffinie Bie Ha, Seattle
 Mac, Champagne X., Seattle
 Macdonald, Scott Douglas, Seattle
 Madsen, Dierdre Lorraine, Seattle
 Majkut, Audrey Lynn, Seattle
 Major, Lara Analise, San Diego, CA
 Maley, Michelle Leigh, Thornton
 Malouf, Matthew Simon, Fremont, CA
 Manni, John Anthony, Oak Harbor
 Manuchehri, Mina Marie, Bothell
 Marcelo, Christian William, Pullman
 Marchesini, Michael, Helena, MT
 Maria, Crystal Ann, Lacey
 Marr, Taylor, Spokane
 Marshall, Tareva Beth, Seattle
 Martin, William Richard, Minneapolis, MN
 Martino, Amanda, Eugene, OR
 Mathias, Kyara Patricia, Bellevue
 Mathisen-Nelsen, Vanessa Kathleen, Spokane
 Maurmann, Miranda Lauren, Seattle
 McKittrick, Joseph Robert, Great Falls, MT
 McPherson, Jeremiah Garnet, Spokane
 Medrano-Vossler, Yessenia Renee, Seattle
 Melesio, Pedro, Seattle
 Mendez, Nancy Dolores, Oxnard, CA
 Mennemeier, Kelly Ann, Sacramento, CA
 Mering, Elisabeth Drue, Battle Ground
 Mesa, Josephina, Yakima
 Meyers, Ross, Eugene, OR
 Middaugh, Mark Bruns, Seattle

Summer Bar Exam Pass List

Miller, Kendra Suzanne, Seattle
Miller, Benjamin Scott,
Thousand Oaks, CA
Miller, Thomas Mann, Seattle
Millette-Malonson, Shayla
Paige, Medford, OR
Milligan, Julissa, Cambridge, MA
Mills, Thomas E, Burnaby, BC
Mitchell, Jessica Ann, Lake
Forest Park
Mitte, Edward, Edmonds
Moe, Jason Timothy, Lake
Forest Park
Moeller, Travis Cameron, Renton
Moghimian, Mona, Tigard, OR
Moore, Catherine Ann, Seattle
Moran, Caitlin Marcail, Spokane
Morgan, Trent, Seattle
Morgan-Gaide, Mark Oliver,
Seattle
Morrow, Nicole Theresa, Seattle
Mullins, Alinsson A., Seattle
Murphy, Patrick Thomas,
Issaquah
Musick-Slater, Cail Nolan,
Mercer Island
Myers, Michelle Patricia, Spokane

N

Nadler, Brian Christopher,
Spokane
Naff, Aaron James, Seattle
Nagra, Kiranpal Kaur,
Wilmington, NC
Nahum, Nicholas Richard, Fox
Island
Naidu, Srikanth Kommi,
Jonesboro, GA
Nariya, Nisha Vrajlal,
Washington, DC
Nash, Ramon, Eugene, OR
Neacsu, Ioana Ramona, Los
Angeles, CA
Nedelcu, Andrei, Seattle
Neeleman, Benjamin Thomas,
Arlington
Nelson, Benjamin Cade, Seattle
Nelson, James, North Bend
Neumeyer, Daniel J., Seattle
Nguyen, Augustine M., Seattle
Nicholson, Hannah Louise, Seattle
Nivison, Molly Rebecca, Kenmore
Noyes, Guy Emerson, Seattle
Nusser, Eric Riley, Seattle

O

Oakes, Julie Marie, Bellevue
O'Brien, Daniel, Seattle
Odimba, Joel Chima, Seattle
Oglesby, Nicholas Dufour,

Snohomish
Olive, Samuel James, Puyallup
Olson, Justin, Seattle
Omana, Luvimae, Spokane
Ondrak, Kelsey Marie, Seattle
O'Neal, Kelsey Lee, Seattle
Orr, Kelley Ann, Tacoma
Ortiz, Javier, Seattle
Osborne, Karen Louise,
Williamsburg, VA
Osher, Daniel Corey, Franklin, MI
Owens, Harrison Lucas Etoh,
Mercer Island

P

Pallesi, Jordan Anthony, Des
Moines, IA
Park, Christine, Lynnwood
Parsons, Zachary Kevin,
Lynnwood
Passo, William Hamilton,
McMinnville, OR
Pearce, Brett Ballock, Spokane
Peeples, Gregg Andrew,
Cambridge, MA
Penhoet, Braden William,
Seattle
Peters, Craig Stephen, Seattle
Phillips-Spotts, Carson,
Portland, ME
Pierce-Wright, Christopher H.,
Seattle
Portz, Caitlyn, Seattle
Price-Levine, Dorit, Seattle
Ptak, Ruth Esther, Maple Valley

R

Radthorne, Daniel Peter,
Charlottesville, VA
Raleigh, Gillian Renee Schroff,
Vancouver
Rasmussen, Sativa Marie,
Aberdeen
Renz, Daniel Donovan, Spokane
Rho, Heyun Gyu, Seattle
Rhodes, Ashleigh B., Shoreline
Rissi, Alexandra, Seattle
Roberts, Nicole Yvonne, Tukwila
Rogowski, Danielle,
Leonardtown, MD
Rohde, Ashley Nicole, Spokane
Valley
Roinila, Leo V., Portland, OR
Rosenfeld, Tamar Crystal, Seattle
Ross, Henry Graham, Seattle
Rubinstein, Rachel, Seattle
Rullman, Jessica, Seattle

S

Salim, Shina, Bellevue

Sanford, Nikki Laura,
Williamsburg, VA
Savage, Tonilynn, Spokane
Schaeffer, Gabriel Joseph,
Seattle
Schauer, Marguerite, Portland, OR
Schilbach, Aleksander Richard,
Edmonds
Schirm, Don Leroy, Kennewick
Schirr, Courtney Jo, Seattle
Schlight, Alexandra Mae,
Bellevue
Scholl, David Robert, Spokane
Valley
Schrette, Christopher James,
Washington, DC
Schwenker, Allen Louis,
Spokane
Scott, Tyler James, Seattle
Shearer, Shawna Yvonne,
Belfair
Shepherd, Heather Courtney,
Bellingham
Sherman, Paul Simpson, Seattle
Shewbert, Kelsey Lynn, Seattle
Shi, Wei, Redmond
Shine, Patrick Thomas, Seattle
Sholian, Margaret Suzanne,
Seattle
Short, Ashley Elizabeth,
Silverdale
Shortt, Daniel, Seattle
Shyne, Danielle, Spokane
Sidhu, Reshvin P., Seattle
Singh, Avin Sukh, Seattle
Sitcov, Max, Seattle
Sitgreaves, Christina, Seattle
Sliger, Joni Lu, Portland, OR
Sloan, Guin J. Marie, Spokane
Slugic, Darko, Kent
Smick, Bryant Benjamin, Seattle
Smith, Erica Brittany, Seattle
Smith, Amaya Kathleen, Seattle
Sobotka, Ryan Chandler,
Seattle
Somers, Nicholas, Richland
Somers, Brady Hedberg, Seattle
Spann, Steven Joseph, Fox
Island
Sproed, Taylor, Seattle
Stallion, Kristen Lea, Columbia,
MO
Steinnes, John Bennett, Tacoma
Stensel, James David, Renton
Stephenson, Katie Lauren,
Everett
Stevens, Byron Patrick,
Spokane
Stickel, Eric Michael, Spokane
Stokes, Jason, Seattle

Strong, Stafford, Minnetonka,
MN
Sturtevant, Matthew Rory,
Richland
Sullivan, Claire Elizabeth,
Seattle
Surur, Intisar Adam, Seattle
Suszek, Andrew Thomas,
Chicago, IL
Swanson, Hannah Somes,
Seattle
Swedlow, Miriam Ricanne Joy,
Seattle

T

Taboada, Sara Sofia, Seattle
Tatistcheff, Sarah A., Moses
Lake
Taylor, Jesse Lee, Sandpoint, ID
Teeny, Christopher S., Gig
Harbor
Thenell, Erin Maureen, Shoreline
Thomas-Kennedy, Nicole
Suzanne, Seattle
Titalii, Paul Benjamin, Renton
Todd, Lora Marie, Walla Walla
Torimino, Christian Avram,
Eugene, OR
Toth, Sebastian Gellert, Seattle
Tracy, Michael Clinton, Seattle
Treybig, Joshua, Salt Lake City,
UT
Trotta, Eric Daniel, Eugene, OR
Tucker, Katherine Allison, Walla
Walla
Tuininga, Seth Aaron, Yelm
Tyson-Shu, Emily Yi-Tung,
Seattle

U

Ulmer, Andrew Stephen, Seattle
Unis, Alec Shaben, Portland, OR
Uskoski, Alexander Ian,
Vancouver

V

Valore, Ross David Joseph,
Columbia, MO
Vandsburger, Tomer, Vashon
Vill, Milena Marie, Seattle
Vincent, Eleanor Joan, Seattle
Vogel, Gregory, Seattle
von Moritz, David Johannes,
Ruston

W

Waldman, Devon Alan, Seattle
Walker, Jeremy Bryant,
Fayetteville, GA
Wall, Leila, Portland, OR

Wallace, Kenneth Ryan, Camas
Wang, Xi, Bellevue
Ward, Nickolas John, Richland
Ward, Brittany Clare, Seattle
Warr, Kayla, Maple Valley
Watson, Katherine, Portland, OR
Webster, Adam, Spokane
West, Tracy Michelle, Olympia
Weyrich, Richard Haynes, Mount Vernon
Whaley, Amelia W, Tacoma
White, Victoria, London, England
Whitlam, Alysson Alexandra, Olympia
Whitworth, Eliza Lauriena, Seattle
Whyte, Lindsey Elizabeth Roll, Cambridge, MA
Widawski, Taylor Paige, Astoria, OR
Wieman, Christopher Allan, Washington, DC
Wightman, Sarah Jane, Seattle
Wilcox, Bailey James, Mead
Williams, Laura-Lee Shaina, Normandy Park
Williams, Matthew Stephen, Portland, OR
Williams, Deborah Jo, Seattle
Wolfe, Steven Afton, Yakima
Wong, Sara Katherine, Portland, OR
Wood, Jeremy Fischel, Seattle
Wood, Jada Reneé, Fife
Wu, Paulina, Newcastle
Wu, Iris, Seattle
Wyman, Renée Nicole, Lacey

X

Xia, Ya, Bellevue

Y

Yager, Elena Rose, Seattle
Yi, Grace S., Auburn
Yim, Eli K., Bothell
Yu, Chao, Seattle
Yu, Ronald Allen Yuste, Walla Walla
Yue, Kristopher Hon Kit, Washington, DC
Yust, Jacqueline M, Seattle

Z

Zehring, Andrew Bryson, Boise, ID
Zerpa Malca, Ingrid R., Tumwater
Zhu, Shiyong, Carrboro, NC



APPEALS

OVER **450** CASES ARGUED ON THE MERITS

JASON W. ANDERSON | LINDA B. CLAPHAM*

MICHAEL B. KING*^o | JAMES E. LOBSENZ*^o

GEORGE C. MASTRODONATO | GREGORY M. MILLER*

^oFellow, American Academy of Appellate Lawyers

*Founding Members, Washington Appellate Lawyers Association

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News and information of interest to WSBA members

Email nlawyer@wsba.org if you have an item you would like to share.

WSBA News

2017 License Renewal, MCLE, and Sections Information

Start date. License renewal will begin in mid-November and must be completed by Feb. 1, 2017.

Demographic Information. This year you may update your demographic information when filing your annual license renewal. With this information, we can better understand the demographics of our membership. Providing confidential demographic information is optional.

License fee 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 license fees must still be paid in full by Feb. 1, 2017. 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, 2016, through Sept. 30, 2017, we encourage you to join or renew sections now or when licensing opens to receive the full benefit of the membership.

Certify MCLE compliance. If you are in the 2014–16 reporting period, then you are due to report CLE credits and certify MCLE compliance. The deadline for completing credits is Dec. 31, 2016. The certification must be completed online or be post-marked or delivered to the WSBA by Feb. 1, 2017. Visit wsba.org/MCLE to learn more.

Judicial members. Please note that you are required to inform the Bar within 10 days of your retirement or your ineligibility for judicial membership (and you must apply to change to another membership class or to resign). Visit wsba.org/licensing to learn more.

Important dates

- Dec. 1, 2016: Enrollment deadline for optional payment plan
- Dec. 31, 2016: Members in the 2014–16 reporting period must complete required MCLE credits
- Feb. 1, 2017: Request deadline for optional one-time hardship exemption

- Feb. 1, 2017: License renewal, payment and MCLE certification must be completed online, postmarked, or delivered to WSBA

Hon. John F. Kuntz Receives WSBA Administrative Law Section's 2016 Frank Homan Award

The WSBA Administrative Law Section presented Hon. John F. Kuntz, a health law judge with the state Department of Health, with the Frank Homan Award on Sept. 20, 2016.

In 1995, Kuntz joined the Department of Health as a staff attorney, and in 1999 he became a health law judge and has served in that capacity ever since. Judge Kuntz's broad experience in administrative law, commitment to excellence, professional demeanor, and active mentorship personifies the essence of the Homan Award for his lifetime achievement and contributions to the profession. In his capacity as a review judge, Kuntz is responsible for some of the most complex cases that come before the Department of Health. Kuntz also provides judge training classes, including courtroom control and judicial demeanor, as well as ongoing individual and group mentoring.

Established in 2005, the Frank Homan Award is given to people in recognition of noteworthy contributions to the improvement or application of administrative law; for long-term distinguished service; in recognition of a single, extraordinary contribution or project; and/or by significant commitment to administrative law, the justice system, and the public.

WSBA Launches CLE Faculty Database

If you are currently serving as CLE faculty or are interested in working with the WSBA as a future CLE faculty member, we encourage you to register in our CLE faculty database. Serving as a faculty member provides you the opportunity to engage with other attorneys across the state, give back to your profession and expand your professional growth. Whether it's upcoming changes in the law, emerging hot topics, or substantive content, our goal is to ensure we are engaging with the right faculty at the right time, matching practice expertise and knowledge to our educational programming needs. We hope to capture the information of all of those who plan to teach in the future, both current CLE faculty and those interested in future opportunities. Please log on and register in the CLE faculty database today at www.mywsba.org/CleFacultyApplication.aspx.

Join the WSBA New Lawyers List Serve

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

Take the Call to Duty Pledge

The WSBA Call to Duty initiative is designed to inform, inspire, and involve members in meeting the legal needs of veterans and their families. Take the pledge and commit to serving Washington veterans in 2016. As part of the pledge, we will support you by providing both legal and non-legal resources to serve veterans, education and CLEs, and the chance to answer the various calls to duty in serving veterans. You can sign up to take the pledge at www.mywsba.org/CallToDutyPledge.aspx.

ALPS Attorney Match

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

WSBA Board of Governors Meetings

Nov. 18, Seattle; Jan. 26–27, 2017, Spokane
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

Volunteer Custodians Needed

The WSBA is seeking interested lawyers as potential ELC 7.7 volunteer custodians. An appointed custodian is authorized to act as counsel for the limited purpose of protecting a client's interests whenever a lawyer has been transferred to disability inactive

status, suspended, disbarred, dies, or disappears and no person appears to be protecting their clients' interests. The custodian takes possession of necessary files and records and acts 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 Bar 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 call 800-945-9722, ext. 5923.

Ethics

Facing an Ethical Dilemma?

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

Search WSBA Advisory Opinions Online

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

WSBA Lawyers Assistance Program (LAP)

WSBA Connects

WSBA Connects provides free counseling in your community. All WSBA members are eligible for three free sessions on topics as broad as work stress, career challenges, addiction, anxiety, and oth-

er issues. By calling 800-765-0770, a telephone representative will arrange a referral using APS's network of clinicians throughout the state of Washington. We encourage you to make the most of this valuable resource.

Weekly Job Search Group

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

Mindful Lawyers Group

A growing number of legal professionals across the nation are applying mindfulness-based skills and training to lawyering. The Washington Contemplative Lawyers group meets on Mondays on the 6th floor of the WSBA offices in the LAP group room from noon to 12:45 p.m. For more information, contact Greg Wolk at greg@rekhiwolk.com.

The "Unbar" Alcoholics Anonymous Group

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

Career on Track?

Has your career turned out the way you planned? Do you have a clear vision for the next five, 10, or 20 years? If not, what's getting in your way? If you'd like some help developing your career, call the Lawyers Assistance Program at 800-765-0770.

WSBA Law Office Management Assistance Program (LOMAP)

LOMAP Lending Library

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

business management aspects of your law office. How does it work? You can view available titles at www.wsba.org/resources-and-services/lomap/lending-library. Books may be borrowed by any WSBA member for up to two weeks. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. For walk-in members, we recommend calling first to check availability of requested titles. To arrange for a book loan or to check availability, contact lomap@wsba.org or 206-733-5914.

Casemaker Online Research

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

Learn More about Case-Management Software

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

Usury Rate

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



WALLACE, KLOR, MANN, CAPENER & BISHOP, PC

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Wallace, Klor & Mann, PC

is pleased to announce that
effective October 1, 2016
the firm will be officially known as

Wallace, Klor, Mann, Capener & Bishop, P.C.

Over 25 years ago, Schuyler T. Wallace, Jr. founded the firm when he saw a need for Pacific Northwest employers to have a more sophisticated and cost-effective approach to workers' compensation defense. He was joined by John Klor and Lawrence E. Mann as the firm developed a strong reputation as a leading Pacific Northwest workers' compensation defense firm. As the firm grew, it later added shareholders Jeffery H. Capener and Christopher A. Bishop. Jeff and Chris will now be added as named shareholders as the firm moves forward with its team-based approach to handling workers' compensation claims and related employment matters.

Wallace, Klor, Mann, Capener & Bishop, P.C. will continue to be one of the largest Pacific Northwest firms devoted to workers' compensation defense and employment related matters.

For more information about the firm, please visit our new website at www.wkmcblaw.com.

WKMC&B

www.wkmcblaw.com

STACEY L. ROMBERG, ATTORNEY AT LAW

is pleased to announce

Vi Duong

has joined the firm in an Of Counsel capacity. Ms. Duong will be representing clients in the firm's practice areas of business law, estate planning and probate.

Ms. Duong can be reached at 206-784-5305 or via email at vi@staceyromberg.com.

STACEY L. ROMBERG, ATTORNEY AT LAW

10115 Greenwood Ave. N., PMB #275
Seattle, WA 98133

www.staceyromberg.com

LANDERHOLM, P.S.

congratulates

Michael Simon

on his recent retirement
and is pleased to announce

Jeff T. Lindberg

&

Justin J. Curtiss

have joined the firm as Associates.

805 Broadway Street, Suite 1000
Vancouver, WA 98660
Tel 360-696-3312 Fax 360-696-2122

clientservices@landerholm.com

www.landerholm.com

MILLS MEYERS SWARTLING

Is pleased to announce that
Morgan K. Edrington

has joined the firm as an associate attorney.

Morgan earned her bachelor's degree from Gonzaga University in 2009, and her master's degree, in accountancy, also from Gonzaga in 2010.

She graduated *magna cum laude* from Seattle University School of Law in 2013. In her first three years of practice, Morgan worked in a small law firm where she represented individuals and businesses in a variety of civil-litigation matters.

Her practice areas include aviation law, products liability, municipal liability, and trust and estate disputes.

MILLS MEYERS SWARTLING P.S.
1000 Second Avenue, Suite 3000, Seattle, WA 98104

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INVITATION FOR PUBLIC COMMENT FEDERAL PUBLIC DEFENDER Western District of Washington – Mr. Michael Filipovic

The United States Court of Appeals for the Ninth Circuit is conducting an evaluation of the performance of the Federal Public Defender (FPD) for the Western District of Washington, Mr. Michael Filipovic. The Court conducts these evaluations in order to determine if the incumbent FPD should be appointed to an additional four year term without a competitive recruitment. Any persons having knowledge of the performance of Mr. Filipovic and/or his respective staff are invited to submit comments. Anonymous responses will not be accepted. However, the identity of all respondents will be kept confidential except to those with a need to know.

All comments must be received no later than Friday, December 20, 2016, in order to be considered.

Comments may be submitted on-line at
<https://www.surveymonkey.com/r/waw-filipovic2016>

or by email
personnel@ce9.uscourts.gov

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nwsidebar.wsba.org

WSBA

Washington State Bar Association



Discipline and Other Regulatory Notices

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

Disbarred

John Graham Pattullo (WSBA No. 5939, admitted 1974) of Phoenix, Arizona, was disbarred, effective 8/10/2016, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the state of Arizona. Joanne S. Abelson acted as disciplinary counsel. John Graham Pattullo represented himself. The online version of *NWLawyer* contains a link to the following document: [The Washington Supreme Court Order](#).

Resigned in Lieu of Discipline

Richard B. Kayne (WSBA No. 8239, admitted 1978) of Spokane, resigned in lieu of discipline, effective 9/13/2016. 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 Bar. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: [1.3 \(Diligence\)](#), [1.4 \(Communication\)](#), [1.15A \(Safeguarding Property\)](#), [1.15B \(Required Trust Account Records\)](#). Marsha Matsumoto acted as disciplinary counsel. Richard B. Kayne represented himself. The online version of *NWLawyer* contains a link to the following document: [Resignation Form of Richard B. Kayne \(ELC 9.3\(b\)\)](#).

Suspended

Karen L. Killion (WSBA No. 43310, admitted 2010) of Puyallup, was suspended for six months and one day, effective 8/10/2016, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the state of Arizona. Joanne S. Abelson acted as disciplinary counsel. Karen L. Killion represented herself. The online version of *NWLawyer* contains a link to the following document: [The Washington Supreme Court Order](#).

David J. McAuliff (WSBA No. 40687, admitted 2008) of Bellevue, was suspended for

six months, effective 9/01/2016, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: [1.15A \(Safeguarding Property\)](#), [1.15B \(Required Trust Account Records\)](#), [8.4 \(Misconduct\)](#). Marsha Matsumoto acted as disciplinary counsel. David J. McAuliff represented himself. Christopher Strawn 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](#).

Chris Alan Montgomery (WSBA No. 12377, admitted 1982) of Colville, was suspended for six months, effective 8/10/2016, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: [1.7 \(Conflict of Interest: Current Clients\)](#), [1.8 \(Conflict of Interest: Current Clients: Specific Rules\)](#), [1.9 \(Duties to Former Clients\)](#), [4.2 \(Communication With Person Represented by Counsel\)](#), [8.4 \(Misconduct\)](#). Jonathan Burke acted as disciplinary counsel. Leland G. Ripley represented Respondent. Kenneth B. Gorton was the hearing officer. James S. Craven was the settlement hearing officer. The online version of *NWLawyer* contains links to the following documents: [Hearing Officer’s Decision](#); [Disciplinary Board Order Declining Sua Sponte Review](#); and [Washington Supreme Court Order](#).

Richard Charles Sipan (WSBA No. 22351, admitted 1992) of North Las Vegas, Nevada, was suspended for four years, effective 1/06/2015, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the state of Nevada. For more information, see <https://www.nvbar.org/wp-content/uploads/02-19-16-Order-Approv-CGP-Sipan-69439.pdf>. Joanne S. Abelson acted as disciplinary counsel. Richard Charles Sipan represented himself. The online version of *NWLawyer* contains a link to the following document: [The Washington Supreme Court Order](#).

Reprimanded

Shawna M. Mirghanbari (WSBA No. 25059, admitted 1995) of Puyallup, was reprimanded, effective 7/29/2016, by order of the chief hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: [1.7 \(Conflict of Interest: Current Clients\)](#), [1.8 \(Conflict of Interest: Current Clients: Specific Rules\)](#). Craig Bray acted as disciplinary counsel. Sam Breazeale Franklin 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](#).

Brian Douglas Roesch (WSBA No. 12404, admitted 1982) of Seattle, was reprimanded, effective 7/29/2016, by order of the chief hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: [3.4 \(Fairness to Opposing Party and Counsel\)](#), [4.4 \(Respect for Rights of Third Person\)](#), [5.3 \(Responsibilities Regarding Nonlawyer Assistants\)](#). Linda B. Eide acted as disciplinary counsel. Brian Douglas Roesch represented himself. The online version of *NWLawyer* contains links to the following documents: [Order on Stipulation to Reprimand](#); [Stipulation to Reprimand](#); and [Notice of Reprimand](#).

Interim Suspension

Ernest Saadiq Morris (WSBA No. 32201, admitted 2002) of Seattle, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective Sep 9, 2016, by order of the Washington Supreme Court. This is not a disciplinary sanction.



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.

ANTITRUST/CONSUMER PROTECTION

33rd Annual Antitrust and Consumer Protection Seminar

Nov. 2, Seattle and webcast. 6 CLE credits (5.25 Law & Legal Procedure + .75 Ethics). Presented by the WSBA in partnership with the WSBA Antitrust, Consumer Protection and Unfair Business Practices Section; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

APPELLATE

Winning on Appeal: Rules, Strategy, and Advocacy

[Introducing the 2016 4th edition of the Washington Appellate Practice Deskbook]

Nov. 30, Seattle and webcast. 6.5 CLE credits (5.5 Law & Legal Procedure + 1 Ethics). Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

BUSINESS

2016 Meet the Securities Regulators

Nov. 15, Seattle. 2 Law & Legal Procedure CLE credits. Presented by the WSBA in partnership with the WSBA Business Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

Create Your Marketing Plan Workshop

Dec. 13, Seattle and webcast. CLE credits pending. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

CONSTRUCTION LAW

Two States of Construction Law: Working in Both Washington and Oregon

Nov. 4, Vancouver, WA. 6.5 CLE credits (5.5 Law & Legal Procedure + 1 Ethics). Presented by the WSBA Construction Law Section in partnership with the Oregon State Bar Construction Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

CREDITOR/DEBTOR

Liens: How to Create 'Em. How to

Enforce 'Em.

Dec. 9, Seattle and webcast. 6.5 Law & Legal Procedure CLE credits. Presented by the WSBA in partnership with the WSBA Creditor Debtor Rights Section; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

ESTATE PLANNING

Annual Fall Probate and Trust Seminar

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

ETHICS

Ethical Dilemmas for the Practicing Lawyer

Nov. 10, Seattle and webcast. 4 Ethics credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

The 14th Annual Law of Lawyering Conference (Day 1)

Dec. 7, Seattle and webcast. 6 Ethics credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

The 14th Annual Law of Lawyering Conference (Day 2)

Dec. 8, Seattle and webcast. 6 Ethics credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

FAMILY LAW

Family Law Annual Seminar: Plain Talk on Plain Language Issues

Dec. 14, Seattle and webcast. 6 CLE credits (5 Law & Legal Procedure + 1 Ethics). Presented by the WSBA in partnership with the WSBA Family Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

GENERAL PRACTICE

Speaking as a Lawyer: Hone Your Communication Skills

Nov. 15, Seattle and webcast. 6 CLE credits (5 Other + 1 Ethics). Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

Best of CLE (Day 1)

Dec. 28, webcast moderated replay. CLE credits pending. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

Best of CLE (Day 2)

Dec. 29, webcast moderated replay. CLE credits pending. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

LABOR & EMPLOYMENT LAW

16th Annual Labor and Employment Law Conference

Nov. 18, Seattle and webcast. 6.75 CLE credits (5.75 Law & Legal Procedure + 1 Ethics). Presented by the WSBA in partnership with the WSBA Labor and Employment Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

LEGAL LUNCHBOX SERIES

November Legal Lunchbox: Law and Soccer Practice – Strategies to Balance Work and Family Life

Nov. 29, webcast. 1.5 CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbackle.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.wsbackle.org.

MARKETING LAW

Advertising and Marketing Law for the 21st Century

Nov. 3, Seattle and webcast. 5.5 Law & Legal Procedure CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

REAL PROPERTY

Annual Fall Real Property Seminar

Dec. 16, Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Real Property, Probate & Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

TAX LAW

Annual Taxation Section

Dec. 15, Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Taxation Section; 800-945-WSBA or 206-443-WSBA. www.wsbackle.org.

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State v. Hudson,
COA No. 70147-9-I (2014)
(residential burglary, attempting
to elude, and two violations of
no-contact orders)

State v. Gensitskiy,
COA No. 71640-9-I (2014)
(six counts of child molestation,
rape of a child and incest)

State v. Green,
182 Wn. App. 133, 328 P.3d 988
(2014) (manslaughter 1)

State v. Hudson,
COA No. 68807-3-I (2014)
(witness tampering)

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MEDIATION

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Mac has been a trial lawyer in Seattle for over 40 years. He has tried a wide range of cases including maritime, personal injury, construction, products liability, consumer protection, insurance coverage, and antitrust law.

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State v. Letourneau,
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- ▶ **I became a lawyer because** I wanted to help people who were overwhelmed and at a disadvantage in the legal system, specifically low-income women and children.
- ▶ **Before law school, I** went to college at Gonzaga University (Go Zags!) and worked as a waitress.
- ▶ **My greatest talent as a lawyer** is the ability to connect with jurors during *voir dire*.
- ▶ **My greatest accomplishment as a lawyer** is probably when I convinced the prosecutor to dismiss a case where my client was accused of murder.
- ▶ **The best advice I have for new lawyers** is always be professional and courteous to support staff and the members of the clerk's office.
- ▶ **Successful attorneys** don't take the work personally and have a life outside of their career.
- ▶ **During my free time, I** play with my son, attend events with my husband, and volunteer for many different nonprofit organizations.
- ▶ **The most memorable trip I ever took was** when my husband and I went to London and Stratford-upon-Avon for our honeymoon — so much to see and do.
- ▶ **I absolutely can't live without** sleep. I need lots of it.
- ▶ **I create work/life balance by** not taking my work home with me and spending time with my family on the weekends — and by being involved in the community. There is definitely more to life than work.
- ▶ **My favorite place in the Pacific Northwest** is the Oregon Coast (including Lincoln City and Cannon Beach). It's so peaceful and relaxing.
- ▶ **Nobody would ever suspect that I** have dual citizenship (Canada and the U.S.) because my dad is not a U.S. citizen.
- ▶ **Friends would describe me as** full of energy and loyal. There is nothing I wouldn't do for my friends.
- ▶ **I give back to my community by** volunteering with the Yakima Junior League, making meals for homeless youth at Rod's House, buying Christmas gifts for Angel Tree kids and families at the Yakima YWCA, and assisting clients at the local law clinics.
- ▶ **This makes me smile:** My two-year-old son. He is so cute and just really enjoys life. Even though he's young, he has a great sense of humor.
- ▶ **I am thankful that** I have a supportive husband who is my biggest cheerleader and never complains about the time I spend investing in the community.
- ▶ **My favorite band/musical artist** is Kelly Clarkson (I've seen her in concert three times) and Adele.
- ▶ **My first car was** a red 1997 Honda Civic — I loved that car and I named her Eileen, after my grandma.
- ▶ **If I could get free tickets to any event,** I would attend the Super Bowl. It wouldn't even matter to me who was playing in it, although bonus if it was the Seahawks or the Saints.
- ▶ **My all-time favorite movie or TV show** is anything funny and light-hearted — life has too much pain and drama. I love shows like *New Girl*, *The Mindy Project*, *Modern Family*, and *Brooklyn Nine-Nine*.
- ▶ **If I have learned one thing in life, it is** that I'm not in control of what happens, just how I react to it.

My name is **QUINN DALAN**. I worked as a prosecuting attorney for three years, when I met, and ultimately married, a defense attorney. I've done defense work since 2011 in Grant County and Yakima County. I currently work for Yakima County Department of Assigned Counsel handling felony cases. I have a two-year-old son. I love Yakima, and it makes me happy to get involved in making my community a better place to live. My contact information is quinn.dalan@co.yakima.wa.us and 509-574-1160.

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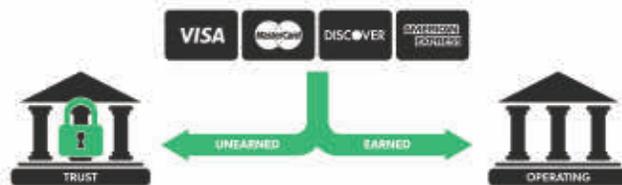


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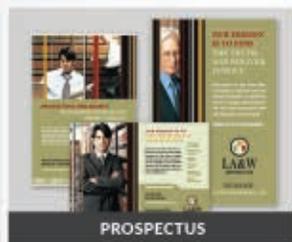
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