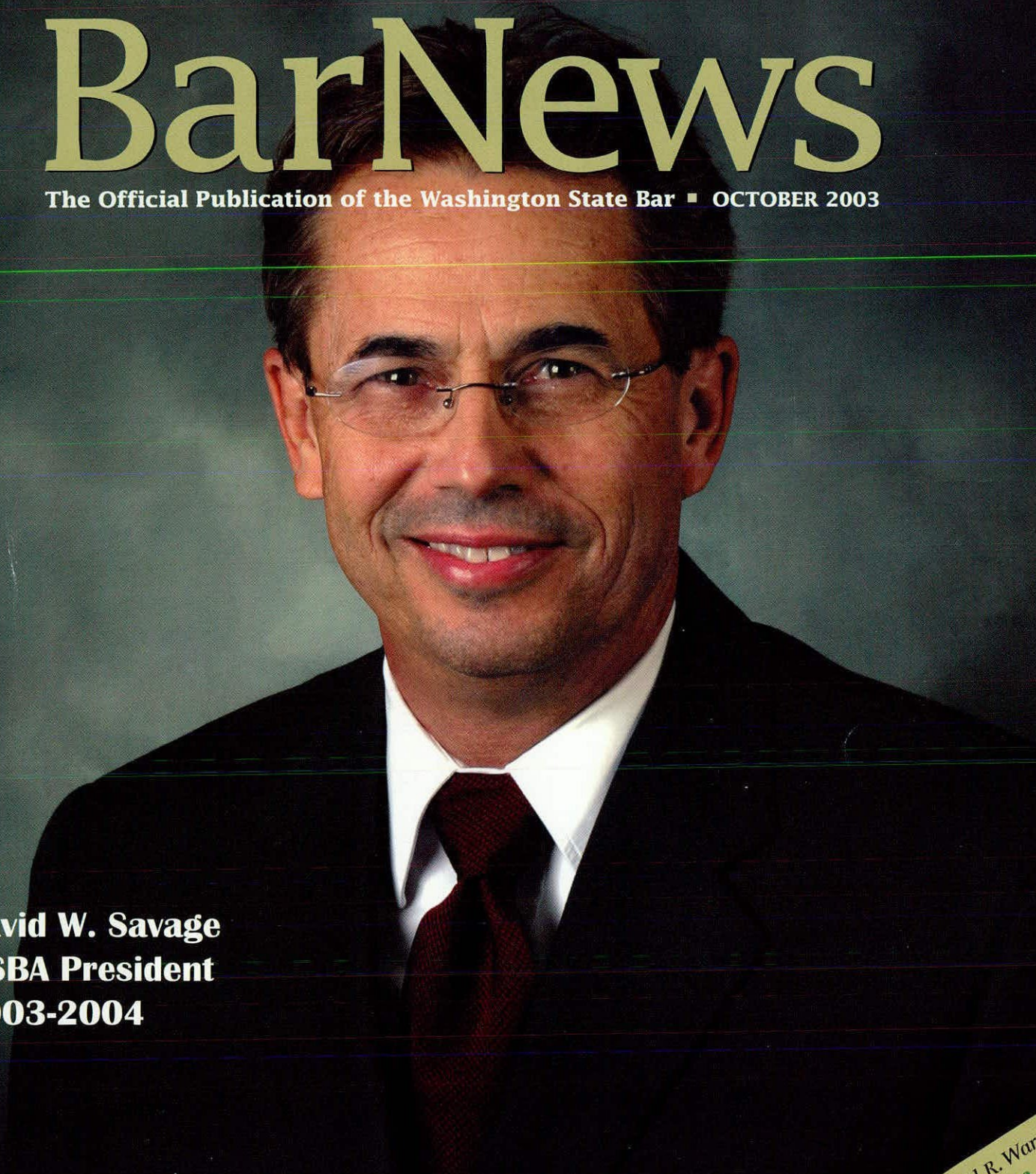


# BarNews

The Official Publication of the Washington State Bar ■ OCTOBER 2003



**David W. Savage**  
**WSBA President**  
**2003-2004**

Welcome to President-elect Ronald R. Ward  
and the New WSBA Governors **p. 22**  
2003 WSBA Award Recipients **p. 52**

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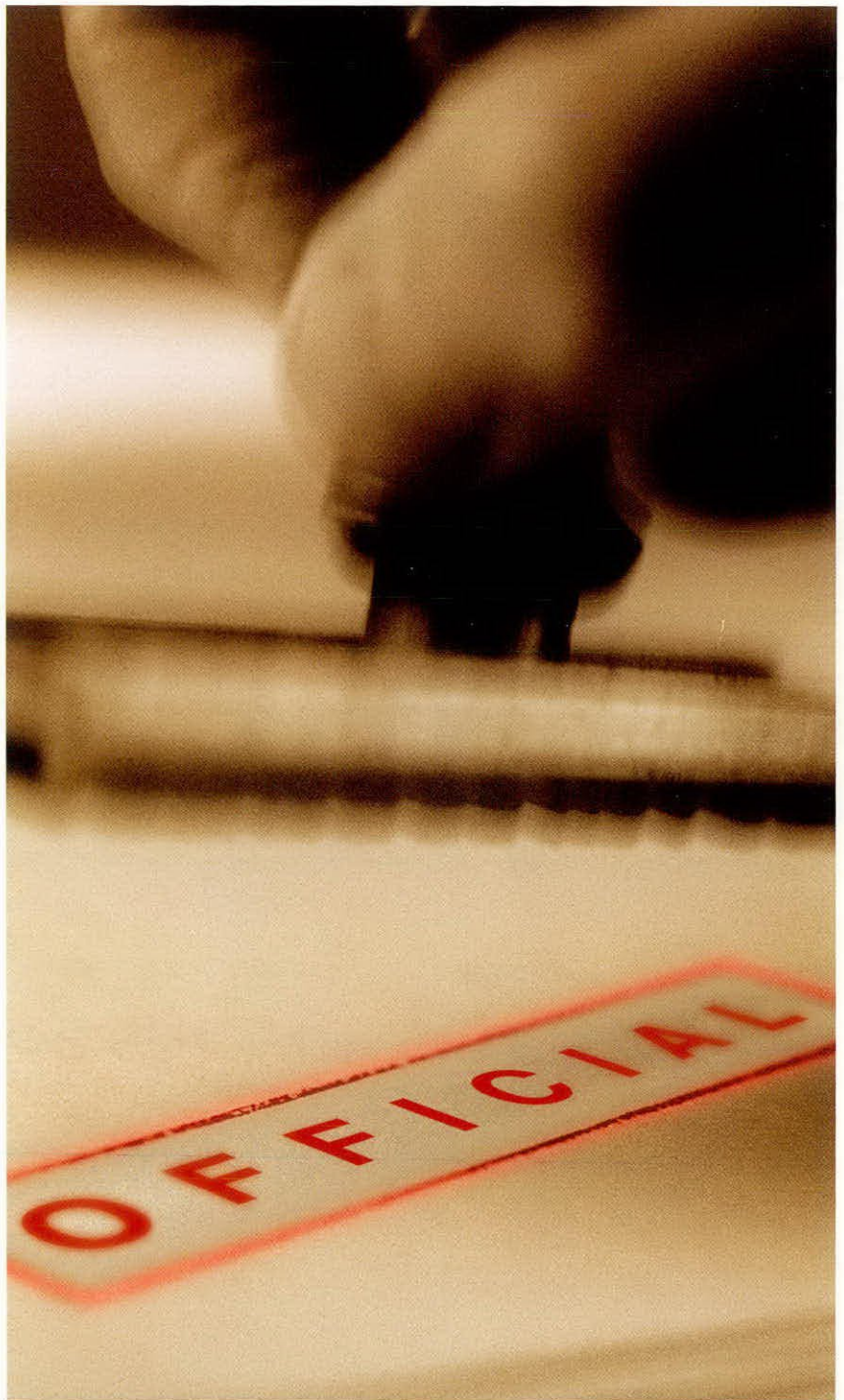
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(not pictured)

## Letters to the Editor

### Public members on the BOG make sense

I read President Dick Manning's article on public members of the Board of Governors (*Bar News*, August) with interest.

I am the current chair of the Oregon Bar's Unlawful Practice of Law Committee, a volunteer committee of 18 with three public members. Committee members investigate each of the approximately 60 UPL complaints filed with the Bar each year. The public members are no exception, as they carry their own load of investigations, and are full voting members of the Committee. All of the lawyer members of the Committee have embraced the non-lawyer members and I doubt if we'd want it any other way.

The public members add exactly the types of things listed in Manning's article—a different viewpoint (ironically, often they take a more pro-lawyer position than do the lawyer members!), offer the perspective of someone not trained in the law, particularly if we are struggling with how the "public" might react to certain advertising or statements made by the accused, and frankly, take away some of the perception that our Committee is simply there as a lawyer turf protection machine.

Manning's article was correct in that we have to be selective about whom we choose, but that has worked very well, in my opinion. For example, we have two members now with a third to be appointed any time. The two on the Committee are a retired labor union representative (hence with some background in doing investigations), and a CPA (who brings obvious skills to the Committee that the lawyer members don't have). The one to be appointed is a business owner, with extensive experience working with lawyers. A great mix.

I encourage bringing public members onto the Board of Governors.

*Terry Wright  
Portland*

### The market value of ideas

The new intellectual property system proposed in your August letters could use a little refinement. Assuming that the system would be capable of distinguishing the relatively small proportion of intellectual property that would be commercially

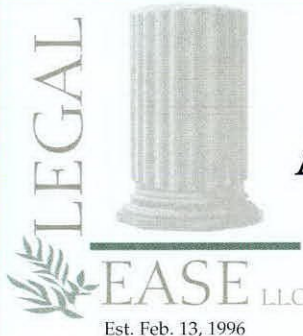
successful from all that turns out to be worthless, think of the trouble it would save. An innovator could develop an electric lamp, for example, cash out, and be spared of all the bother of developing manufacturing methods, inventing an electrical distribution system, marketing, etc. Everyone, including the "poorer Americans" identified, could then just build their own light bulbs based on the published patent. In addition to funding the present system with taxes, perhaps the authors of less-than-fruitful intellectual property could be "rewarded" accordingly. It follows

that there could be no payment for ideas that would go nowhere, and an appropriate fine for proposed "innovations" that would actually produce a net loss. Maybe the readers of an original expression of a really dumb idea could bring a class action for punitive damages?

*Michael T. Konczal  
Plano, Texas*

### Traffic court tyranny

I am writing in response to Richard Meigs's letter entitled "Get a ticket? Pay it." (*Bar News*, July 2003.)



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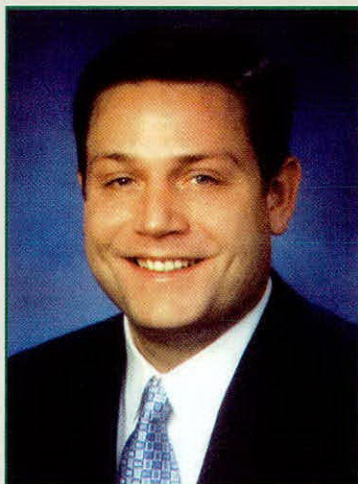
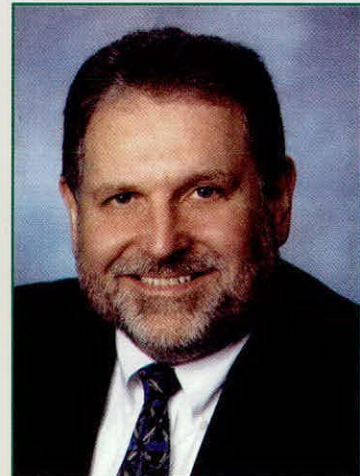
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Mr. Meigs criticizes James Goche for the "needless, egotistical, endless litigation" inflicted by Mr. Goche on the "overburdened" court system in fighting parking tickets incurred when Mr. Goche loaned his vehicle to a friend.

Excuse me for assisting a friend in fighting (and beating) a recent parking ticket. Maybe I should have advised my friend in accord with Mr. Meigs that the ticket be paid, but like Mr. Goche, my "ego" got in the way. Or maybe it was my sense of justice.

The ticket was unreadable. It was impossible to discern the street name where the incident occurred or the signature of the citing officer. It was necessary to call the court clerk to find out what the ticket said. How the clerk discerned that information I will never know.

Further, although the city code reference circled on the ticket listed some 294 areas on city streets as "No Parking Areas," the location of the parked car cited on the ticket was not one of them. A certified copy of the city ordinance upon which the code was based was obtained from city hall. Still no mention of the street location listed on the ticket. A "No Parking" sign without an ordinance authorizing it is a bogus sign. But what's a little substantive due process problem to an "overburdened" court system?

My friend put the area under occasional observation and documented these observations with a camera. UPS delivery trucks and Pierce County transit vans routinely parked in the same location listed on the ticket, but these corporate and government entities did not receive parking citations. But what's a little equal protection and discrimination problem to an "overburdened" court system?

James Goche's article (*Bar News*, April 2003) exposes one of the most problematic (problematic if we care about justice) areas of our court system—traffic court. Large numbers of citizens are daily herded through this system to be fleeced at immense profit for various governmental units. It is more accurately a system of taxation without representation than a court system. Since when did the citizens ever get to *vote* on any new or increased traffic fines? I've been waiting to vote against the seatbelt (government strangle

strap) laws for 15 years to no avail. And it should be noted that the recent massive 20 percent across the board increases in traffic fines in July 2003 were imposed without a vote of the people and with very little to no public notice or opportunity to be heard.

Traffic court, the court where the largest number of the public will come into conflict with the government, is *not* a traditional court system with appropriate checks and balances, due process, or impartial fact finders.

Except for the officer's sworn statement

and a witness list, no discovery is required in traffic court. IRLJ 3.1(b). Which means practically that there will be no discovery since government will not comply with discovery unless compelled. Without the discovery mechanisms of request for production of documents, requests for admissions, interrogatories, or depositions it is difficult or impossible in most cases to determine whether traffic signs and speed limits were lawfully erected or posted pursuant to the required traffic engineering studies and Department of Transportation determinations.

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"It feels great to come to the office every day knowing the

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And you cannot just assume that traffic and parking signs are lawful signs. I had, previous to helping my friend, come across *another* parking ticket based on *another* parking sign in *another* city where in the parking sign had been erected without any legal authorization. Once again, there was no ordinance to back up the sign. Bogus parking signs are a clever way to extort money out of people in traffic court.

A friend of mine once observed the parking ticket scam operating in reverse in Auburn District Court. Instead of a sign

and no ordinance, it was an ordinance and no sign. An out-of-state man had come all the way back from Montana and was arguing that there *were not* any "No Parking" signs on the Auburn street where he had parked. And he had the photos to prove it. All to no avail. The only thing that mattered to the judge was the existence of the parking ordinance which, from the uncontradicted testimony of the citizen, the citizen had no way of knowing about. The citizen experienced the raw power of tax collection in traffic court.

In traffic court it is the citizen defendant who must subpoena the other side's witnesses to come to court to testify against the citizen. The citizen is required to subpoena the government's witnesses if he wants to keep the impossible-to-cross-examine government hearsay written in anticipation of litigation (the police report) from being automatically entered by the court into evidence against him. IRLJ 3.3(c).

In other words, the government is required to do nothing to win a traffic case. It either has a hearsay police report automatically coming into evidence to make out a *prima facie* case against the citizen, or else the citizen must bring the government's witnesses to court to testify against the citizen. In no other kind of case is one party required to subpoena the other party's witnesses.

And at least one traffic court, Chelan County District Court, is so brazenly biased against the citizen as to actually threaten court costs against the citizen if he subpoenas the police officer. They send a brochure in the mail to traffic litigants threatening exactly that. Apparently Chelan County only wants the government's written hearsay in court and does not want to trouble the police to come to court to prove anything. Can anyone say, "Banana Republic"?

If the citizen fails to appear in traffic court a judgment is automatically entered against him. IRLJ 3.2. Regardless of whether the police officer signed the ticket, regardless of whether the police report makes out any *prima facie* case, and regardless of whether a statute or ordinance even exists that could have been violated. If the citizen fails to appear—he loses, no questions asked.

But what about when the prosecutor fails to appear, as is often the case? A very different story.

When prosecutors fail to appear in traffic court, which they do most of the time with parking tickets, the judges often take it upon themselves to try the prosecutor's case for him. They read the police report into the record to make out a *prima facie* case for the government, or they put the police officer on the witness stand and then perform direct examination of him to establish the required elements of the

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A man in a dark suit and tie stands in the center of a cave. He is holding a briefcase in his right hand. The cave walls are covered in large, colorful, textured paintings of animal faces, including a large red bear on the left and a large brown bear on the right. A bright light source from above illuminates the man and the cave floor. A small tiger is visible on the ground to the right of the man.

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government's case. The judges then put the judicial hat back on and decide the sufficiency of the evidence that they have just elicited in their other role as black-robed prosecutor for the government.

I observed one judge go so far as to put the police officer on the stand in the absence of the prosecutor over the cogent objection of the citizen. The citizen objected saying, "I subpoenaed the officer to keep out hearsay against me. But the subpoenaed officer is my witness and I am not putting him on the stand, and I object

to you leaving your judicial role to put the officer on the stand to try to make out a case for the government." The traffic judge put the officer on the stand anyway and tried to make out a case for the government.

The majority on the Washington Supreme Court, despite the vigorous dissent of Justices Johnson, Chambers, and Sanders, find nothing wrong with traffic court judges building the government's case and then proceeding to judge the sufficiency of that very case which they just built.

*State v. Moreno*, 147 Wn.2d 500 (2002). *Moreno* is the *Dred Scott* decision of traffic cases.

If there were one shred of fairness in traffic court, then the judges would try the citizen's case for him when he fails to appear, just as they do for the prosecutors when they fail to appear.

But traffic court is not about fairness. It is about government extracting the most money it can from the people at the least cost to itself.

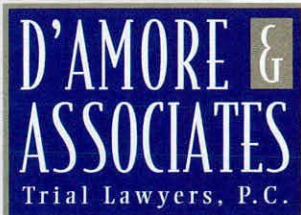
IRLJ 3.1(d) concerning the content of traffic citations appears to be specifically and intentionally written to avoid the essential elements rule expressed in *Auburn v. Brooke*, 119 Wn.2d 623 (1992). *Auburn v. Brooke* requires that charging documents in misdemeanor cases, whether citation or complaint, must contain allegations of specific facts supporting each and every element of the plaintiff's case. But traffic court avoids the essential elements rule with IRLJ 3.1(d), which states: "No notice of infraction shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific infraction. . . ." This means that the unintelligible scribbling of a couple of words on a carbon form ticket by an officer is all that is required to set the citizen on the road to losing his license and insurance and perhaps even eventually going to jail. But we wouldn't want to let a minor technicality like due process slow up the tax collecting.

If you follow the progression of changes to the infraction rules over time, you will see that they constantly become ever more biased against the people.

In traffic court we have the spectacle of judges who receive salaries from government money extracted by taxes from the people, and then these same judges decide traffic cases wherein the government is trying to extract even more money from the people. Is it any wonder that the vast majority of traffic cases are decided in favor of the government and against the citizen?

Is anyone else troubled by the fact that there is no citizen participation in the decision-making in traffic court, and that the trier of fact receives a handsome salary from one of the parties and that that party usually wins? Traffic court is an ubiqui-

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tous example of our degeneration from a republic of free people into a police state.

The early Americans understood the inherent conflict of interest of allowing government judges to decide law cases. That is why they guaranteed to every citizen the right to a jury trial in both civil and criminal cases. If we would return to the wisdom of our ancestors and restore jury trials in traffic court we might spark a revolution that could revitalize a vast area of our judicial system. If it is important enough for the officer to write the ticket, it is important enough for a jury trial. If it is not important enough for a jury trial, then it is not important enough for the officer to write the ticket.

When a citizen stands accused of going five miles over the speed limit on a dry, straight rural highway in broad daylight with sparse traffic, and the jury knows that every judge, prosecutor, and police officer in the entire courthouse has done *exactly* the same thing as the citizen defendant—then the jury will make short work of the government's case. Restoring the jury system will transform traffic court from revenue raising back to its proper function, which is public safety.

And this will be especially true if traffic juries are fully informed. That is, if the jury knows about its power to judge both law and fact and to render the verdict according to conscience. Verdicts of conscience are the historical reason for the jury and are the only way that the jury can fulfill its true purpose, which is to be a check and balance against the other branches of government, whether they are executive, legislative, or judicial.

And a citizen check and balance is sorely needed in traffic court.

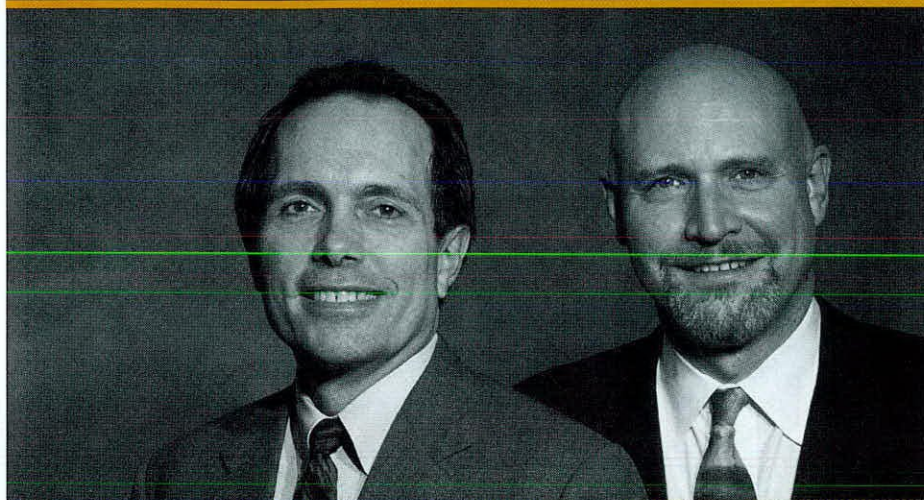
*Tom Stahl  
Ellensburg*

Readers are invited to submit letters of reasonable length to the editor via e-mail ([comm@wsba.org](mailto:comm@wsba.org)), fax (206-727-8319), or mail. Due date is the 10th of the month for the second issue following—e.g., October 10 for publication in the December issue. The editor reserves the right to edit letters as deemed appropriate.

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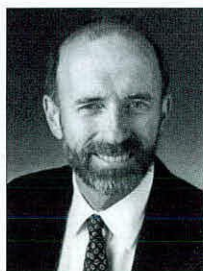
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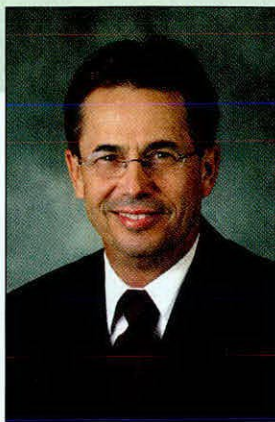


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## Into the 21st Century: Honoring Our Obligation to All Members

by **David Savage**  
WSBA President

I am honored and delighted to serve as the 113th President of the Washington State Bar Association, the first Pullman lawyer to so serve.

Though I have served with a variety of Bar committees and sections, it never occurred to me that I might have the privilege to serve in this office. I now find that I am fortunate enough to help provide leadership to the Bar Association during a time when its governance structure is undergoing dramatic change that is of tremendous significance to our membership. As you may recall, two at-large positions were added to the Board of Governors in 2000 through the adoption of Article III, Section M, of the bylaws. These seats are intended to bring to the board "lawyers whose membership is or may be historically under-represented in governance, or who represent some of the diverse elements of the public of the State of Washington, to the end that the Board of Governors will be a more diverse and representative body than the results of the election of Governors based solely on congressional districts may allow. Underrepresentation and diversity may be based on the discretionary determination of the Board of Governors . . . to include, but not be limited to, age, race, sex, geography, areas and types of practice, and years of membership . . ."

Following addition of the at-large seats, the bylaws were amended to add a seat for the Young Lawyers Division.

The benefit of these changes has been dramatic. While my election to the board marks the first time an eastern Washington lawyer from outside Spokane, Yakima, Chelan, or Benton counties has served, this notable geographic improvement is, in my estimation, eclipsed by the fact that we have now begun to achieve some progress in ethnic and gender diversity.

Elected to the board's at-large seat was **Zulema Hinojos-Fall**. Governor Hinojos-Fall, an administrative law judge with the Equal Opportunity Commission, brings a fresh perspective to the board's work and has crafted much of the board's current initiative to reach out to the minority and specialty bars which so enrich the legal fabric of our state.

Upon my selection as president-elect, the board elected Governor **Fawn R. Sharp** to the vacant seat. Governor Sharp, who now begins her second year on the board, is lead counsel for the Quinault Indian Nation. This bright and high-energy woman found time to interview with the board for the seat in the fall of 2002 while she led the Sovereignty Run to Washington, D.C., on behalf of all Native Americans. Governor Sharp

serves on the board's Long-Range Planning Committee, as well as others.


Departing the Young Lawyers seat on the Board of Governors this fall, Governor **Paul R. Lehto** of Everett has provided a depth of intellectual introspection and visionary thinking that belies his youth. Governor Lehto is followed by Governor **Kathleen M. O'Sullivan**, of the Seattle office of Perkins Coie. Though her term on the board is just beginning, Governor O'Sullivan's accomplishments for the Bar are already substantial. Together with **David J. Burman** and **Nicholas P. Gellert**, her colleagues at Perkins Coie, she successfully defended the Legal Foundation of Washington in the potentially devastating challenge to Washington's IOLTA program, an accomplishment for which they were awarded the WSBA's Award of Merit. **Maureen A. Hart**, senior assistant attorney general, represented the Washington State Supreme Court in this critical lawsuit and also received this same award for her outstanding legal work.

Cognizant of the obvious benefits of these enhancements to its composition, the Board of Governors is considering whether to add a lay member to its group. This task was launched by Past-President **J. Richard Manning**, a lawyer whose many years of service have not dampened his enthusiasm for the future and his conviction that we need to adapt to meet it. This study group is chaired by Governor **Howard L. Graham**, of Tacoma, who devotes much of his practice to the interests of disabled persons. There is much to be considered, and the conclusion is unclear. But, as this project reveals, the Board of Governors has begun to institutionalize the need to constantly re-examine and reconstitute itself in order that it might better serve our members, the judiciary, the other branches of government, and, ultimately, the public.

**Robert M. Boggs**, of Yakima, who represents the Fourth District, devotes much of his practice in the defense of Yakima school districts. It is said on the board that when Governor Boggs speaks, one should listen, since he does so infrequently but with wisdom. He is a senior member of the Budget and Audit Committee.

**Andrea Brenneke**, of Seattle's MacDonald, Hoague and Bayless, begins her second year on the Board of Governors. Governor Brenneke, an employment law attorney, brings energy, vision, and a commitment to diversity to the board. She

*(continued on page 18)*



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## Broadening the Definition of "Us"

by Jan Michels

WSBA Executive Director

In its new Long-Range Strategic Plan, the Board of Governors changed goal number 9 from promoting "diversity and equality in the courts, legal profession, and the bar" to promoting "diversity, equality, and *cultural competence* in the courts, legal profession, and the bar" (emphasis added). The point is that it's not enough not to be prejudiced or to point to numbers of nonmajority persons in law firms, on the board, or on committees to demonstrate diversity and equality. Representation in numbers does not necessarily mean inclusion, respect, or equality.

There is a continuum of cultural competence that begins at one end with outright vile hatred of "other," progresses to neutrality—"I don't care if they are yellow, blue, or polkadotted" (significant is the use of the term "they," still implying separation)—and reaches, at the other end, a definition of "us" that embraces nonmajorities.

Michael Shermer, a classic skeptic and critic of human nature, in a brief article in the September *Scientific American*, "The Domesticated Savage: Science reveals a way to rise above our nature," describes how in 35 generations researchers were able to transform the silver fox from a wild, aggressive creature into a playful, tail-wagging, hand-licking peaceful one. Shermer's analogy is that humans can also become more peaceful by easing intergroup aggression. Clinically, as humans have become more sedentary and populations more dense, natural pressures acted to promote within-group cooperation and to reduce within-group aggression. Using the silver-fox analogy, where selective breeding and controlled environmental conditions caused the evolutionary silver fox to consider humans their in-group, Shermer argues that if we continue to expand the circle of those we consider members of our in-group, intergroup conflicts will dissipate.

Being culturally competent enables us to include others in our in-group. It calls on us to understand and become familiar with the path someone else has walked, opening our personal experience to it. It means proactively broadening our definition of "us" to include persons whose paths have been economically repressed, racially ridiculed, ethnically tar-

geted or taunted, and are physically less like "us." Artificial barriers between groups can be an effort to retain a sense of superiority (an insidious, hurtful bias) but can also be based simply on unfamiliarity.

Forty years ago, on August 28, 1963, Martin Luther King delivered his famous "I have a dream" speech, where he envisioned equal rights and equal opportunities for African-

Americans. His words are true for all oppressed peoples of the world. We will never achieve peace, security, or equal rights and opportunities by defining a group of people as "other" or "them." The dichotomy serves only to establish privilege for one group and oppression for the

**We will never achieve peace, security, or equal rights and opportunities by defining a group of people as "other" or "them."**

other. Cultural competence means rising above the need to draw artificial lines between self and others, and broadening the definition of "us." Broadening this definition is different from the old "melting pot"—requiring "others" to be like "us"—rather, it embraces and becomes familiar with the richness of differences.

True cultural competence entails finding familiarity and comfort with otherwise out-group persons and categories of persons. Gandhi, Nelson Mandela, and Mother Teresa achieved cultural competence by immersing themselves in other cultures. But here in Washington, in everyday encounters, and especially in the law, where lawyers' representation of clients and causes multiplies their exposure to "other," we can move ourselves beyond "not prejudiced" to true cultural competence. Some ways of building cultural competence are:

- Take a moment to ask a Native American about her ancestors or tribal membership.
- Learn by asking how to pronounce a name that's new to your ear or tongue.
- Tell someone that it offends to hear a strong, competent woman referred to as a "chick" or a "girl."
- Watch the language for dividing words like "them," "those persons," and other cliché-slurs.

- Listen to a nonmajority's description of life without interjecting self-values or judgments.

Those who are culturally competent are able to function comfortably with other cultures. Hallmarks of an organization's (such as the WSBA) cultural competence are that its members value diversity, can self-assess their cultural awareness, are sensitive to other cultures' dynamics, have institutionalized cultural dynamics, and have adapted their own culture to broader cultural diversity. These new values should be evident in our attitudes, structures, language, policies, and services. Genuinely wanting to understand less-familiar lives and lifestyles will build cultural competence. Incorporating the life experience—ethnicity, religion, sexual orientation, and physical characteristics—of other nonmajorities into "us" is cultural competence—the broadening of "us."

To learn more about cultural competence, consider visiting [http://cecp.air.org/cultural/q\\_integrated.htm](http://cecp.air.org/cultural/q_integrated.htm). ☞

*(continued from page 15)*

played a central role last year in developing working guidelines for the Judicial Recommendation Committee.

Governor **Carl J. Carlson**, beginning his third year on the board, is a successful Seattle small-firm practitioner who practices in securities, and trust and estates litigation. Governor Carlson is respected and valued by the board for his thorough issue

analysis and unflagging commitment. This year he leads the board's important Long-Range Planning Committee.

**Bryce H. Dille**, a Puyallup lawyer in his third year as a governor, will serve as the Bar's treasurer this year. Governor Dille brings to the treasurer's position two years of diligent service on the board's important Budget and Audit Committee. The board values his service as an open-minded watchdog of our members' resources.

**Joni R. Kerr**, of Vancouver, governor for the Third District, is a solo practitioner who, like Governor Boggs, principally devotes her professional energies to representing public-school districts. Kerr, president of the Washington Women Lawyers from 1998 to 1999 and formerly a liaison to the board for that group, begins her second year this fall and will serve as a member of the Budget and Audit Committee, among other important assignments.

**Jon E. Ostlund**, the Whatcom County public defender, serving his third year on the board, is a passionate, accomplished, and vigilant advocate for the rights of the accused and the disenfranchised. Among his many tasks this year will be his service as board liaison to the blue-ribbon Panel on Criminal Defense, co-chaired by retired Justice Robert F. Utter and Marc A. Boman of Perkins Coie, Seattle.

New to the board this year is **Mark A. Johnson**, who serves as governor for the Seventh-West District. Governor Johnson, of Seattle, who focuses on medical and legal malpractice litigation, has already con-

tributed much to the work of the Bar in his many years of service on the Character and Fitness Committee. Governor Johnson is the driving force behind the initiative to develop and codify as court rules standards to guide the work of this important committee.

Beginning her first year, **Kristin G. Olson** succeeds to the First District seat. A capable civil litigator, Governor Olson is no stranger to the Board of Governors, having previously served as a liaison from the King County Bar Association, of which she served as president in 1999. She also served as a trustee for the King County Bar Association from 2000 to 2002. She will serve as trustee on the Washington State Bar Foundation Board until 2005, and on the WSBA Long-Range Planning Committee, among other assignments.

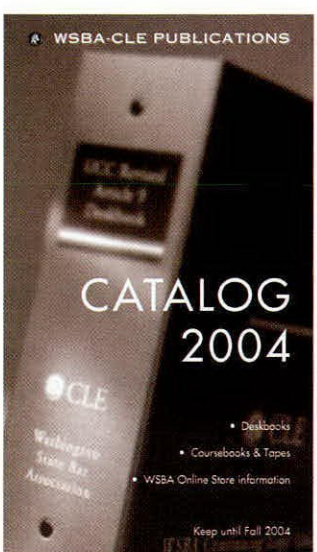
I am joined this year by my longtime eastern Washington colleague **Michael J. Pontarolo**, who begins his first year as governor from the Fifth District. Practicing workers' compensation litigation, Mike is a member of the Delay, Curran, Thompson, Pontarolo & Walker firm of Spokane, which has a long and distinguished record of contribution to the work of the Bar. Among his tasks, he will serve on the board's Discipline Committee.

Governor **Randolph I. Gordon**, a longtime WSTLA liaison to the board, will represent the members of the Eighth District. Governor Gordon, who also serves on the adjunct faculty of Seattle University School of Law, has a special interest and expertise in assuring the Bar's continued good relationship with the law schools within the state.

President-elect **Ronald R. Ward**, a successful personal-injury practitioner and former assistant attorney general, joins me in serving you. With Ron's election, the Bar will be led for the first time by a person of color. Together, Ron and I will work in partnership with the board to do our best to serve you well.

As we move into the 21st century, this association must become more diverse and inclusive if it is to have meaning or consequence to its members. Pursuing and enhancing the Bar's commitment and obligation to reach out to all of its members will be the centerpiece of my short one-year term as your president. ☞

*Dave Savage may be reached at [savage@imsblaw.com](mailto:savage@imsblaw.com) or 509-332-3502.*



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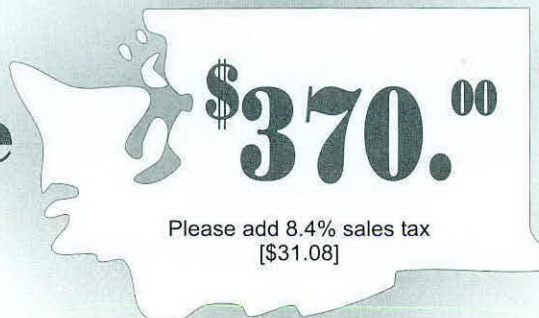
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# One of Eastern Washington's Own Is the WSBA's New President

by Lindsay Thompson

Sometimes, Pullman lawyer and new WSBA President Dave Savage says, you look up and things just fall into place.

Long active in local and state Bar volunteer work, the Pullman attorney thought his involvement was topping out by chairing several WSBA committees and sections. "I looked at running for the Board of Governors," he recalls, "but it's almost impossible to overcome the votes a Spokane lawyer can draw on compared to Pullman." The last seven governors, for example, have all been from the Inland Empire's largest city.

So when the Board of Governors created two at-large seats in 2001, Savage, then outgoing chair of the WSBA Court Rules Committee, threw his hat into the

ring. One of the purposes of the at-large seats is to give Washington lawyers who don't live in the one or two population centers in each congressional district a better shot at the board, and Savage persuaded the board his would be a useful perspective.

Then, when the WSBA presidency rotated through eastern Washington (it triangulates among eastern and western Washington and King County), Savage saw another opportunity. After a year on the board and entreaties from colleagues, he again threw his hat into the ring, and was named president-elect last year. At this year's annual meeting in September, Savage received the gavel from outgoing President Dick Manning.

Sixty next month, the Seattle-born Savage has been a lawyer for 30 years, all in Pullman. He's a shareholder and president of Irwin, Myklebust, Savage & Brown, PS ([www.imsblaw.com](http://www.imsblaw.com)), a seven-lawyer firm practicing business and agricultural law, civil and criminal litigation, domestic relations, estate planning and probate, mediation and arbitration, real estate, retirement plans, and employee benefits and taxation.

Pullman is one of Washington's many border towns. Savage is admitted to practice in Washington, Idaho, and Montana, and his civil-litigation practice has him appearing frequently in the courts of all three. He has a cross-border education as well, with a B.A. from Washington State and a law degree from the University of Idaho.

So, now you've got the job, what do you want to do this coming year, we asked. Savage was ready with a list. A high priority, and one echoing Tri-Cities lawyer Ed

Hiskes's longtime efforts, is to get a low-cost electronic legal-research system in place that all WSBA members can use. "Casemaker is one example," he said, noting it has been adopted by a number of other state bars around the country as a member benefit, "but we are looking at several." He's appointed a group, chaired by former Court of Appeals Judge Charles K. Wiggins, to compare the options and make a recommendation.

Internally, Savage wants to start "a wholesale review" of the Association's standing-committee structure and how members get appointed to those committees. "Making appointments is a huge, complicated task for governors. Because they don't communicate much among one another about whom they are appointing, the best we get is rough geographic diversity among committee members. But we also end up with a lot of disappointed members who want to be involved but come away feeling it's all a rigged game. Then those people go away and we don't hear from them again, much less get a chance to put their talents and energies to work." Savage also told *Bar News* there appear to be committees in search of a mission, while areas that committees could usefully address go unaddressed.

The new president says he has also heard the rising chorus of complaint about how WSBA governors and presidents are elected, and wants to look at making those processes more transparent. "Too many members say they can't figure out how you get elected, and so don't try themselves," he told us. Overlay the population-centers problem, which results in one city's hav-

❖  
**The new president says he has also heard the rising chorus of complaint about how WSBA governors and presidents are elected, and wants to look at making those processes more transparent.**  
❖

ing a disproportionate effect on Board of Governors elections, on the obscurity of the process, and you get a membership that may rightly feel a bit disenfranchised, he concluded.

A lot of the president's duties involve moving forward projects underway within the WSBA long-range plan, and Savage expects a good bit of his time will be taken up with that work. There's an ongoing study of the student-debt crisis and what to do about it, recommendations for improving professional development of new lawyers to be implemented, and a wide array of other initiatives already in motion. One he lays particular emphasis on, however, is addressing the disconnect between the increasing diversity of Washington's population and the lack of diversity at the upper levels of law firms, the Bar Association, and the judiciary. There, too, he feels, increasing numbers of members feel the WSBA doesn't say much to, or for, them, and he wants to start changing that. It'll be a long-term task, "but we have to start, be serious and focused, and keep at it." A key component in the short run will be meetings between minority and specialty bar associations, and bar leadership, to listen to their ideas on making the WSBA useful and relevant to the practice of law in a new century.

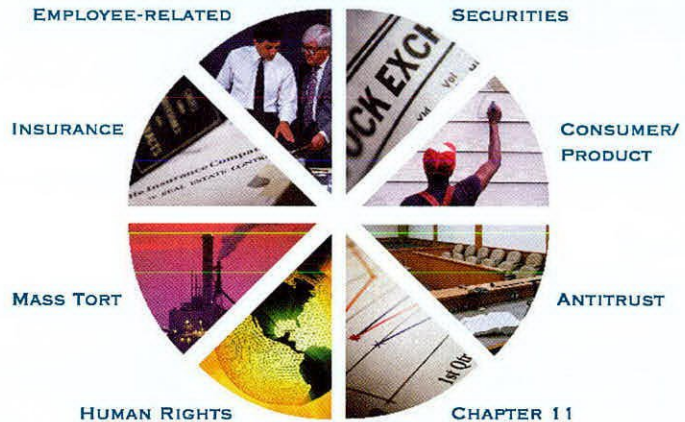
With few lawyers in the state Legislature, and legislation that affects—sometimes targets—the legal profession arising in nearly every session, Savage has called for a tuneup of the WSBA's legislative program, including, especially, improving how the Bar deals with fast-breaking events during sessions, and developing more educational relationships with legislators to help them be more effective.

After a year as president-elect, David Savage has gotten accustomed to shuttling between Pullman and Seattle, with trips practically everywhere else in between, and the challenge of keeping his practice going. He says he is looking forward to his year as president, and occasionally working in a visit with his wife, lawyer and WSU Vice-President Sally Savage, and their three children, Jesse, Erin, and Kathryn. "It'll be fun," he predicts. "We'll get things done." ☞

Bar News editor Lindsay Thompson practices in Seattle and has worked with 18 WSBA presidents in a row.



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# Welcome to President-elect Ronald R. Ward and the New WSBA Governors

## President-elect

**R**onald R. Ward served as 8th District governor from 2002-2003. Since 1982 he has been a shareholder in the Seattle law firm Levinson Friedman. A former assistant attorney general, he was vice president and seven-term member of the Board of Governors of the Washington State Trial Lawyers Association (WSTLA), and co-chair of WSTLA's Seattle Downtown Roundtable. In 1994, Ward received the Distinguished Service Award, and in 1995, the WSTLA Special President's Recognition Award. *Washington Law & Politics* magazine selected him a "Super Lawyer" for 2003.

## Governors

**Randolph I. Gordon** (8th District) is a principal in the Bellevue law firm Gordon Edmunds Elder PLLC. Known for his dedication and enthusiasm in promoting public service within the profession, Gordon has been a volunteer for the Eastside Legal Assistance Program since its inception, and over the years has worked tirelessly to ensure access to justice. He is an adjunct professor of law at Seattle University School of Law. He received the WSBA's 2001 President's Award, and WSTLA's 1998 Public Justice Award and 2001 Professionalism Award.

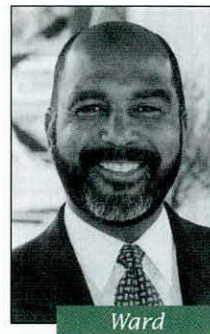
**Mark A. Johnson** (7th-West District) is a member of Johnson Flora PLLC. Chair of the WSBA Character and Fitness Committee and a member of the Professional Development Committee, he is also a member of WSTLA, past chair of WSTLA's Professional Liability Section, member of the Association of Trial Lawyers of America, and co-chair of the WSBA's first annual Conference on the Law of Lawyering, to

be held in December. He is a prolific author and frequent lecturer on professional liability and medical-malpractice issues.

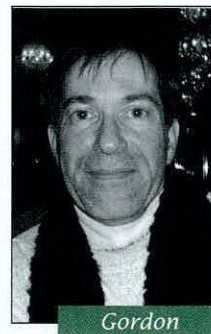
**Kristin G. Olson** (1st District) is a shareholder in the Bellevue law firm O'Shea Barnard Martin, PS. She served as a trustee of the East King County Bar Association for several years, becoming president in 1999. While on the board of trustees of the King County Bar Association, she was a liaison to the WSBA. Olson volunteers for the Eastside Legal Assistance Program and is a trustee of ACT Theatre.

**Kathleen M. O'Sullivan** (at large representing WYLD) is an associate in the Seattle office of Perkins Coie LLP. She was formerly a law clerk to the Honorable Harold H. Green, and a law clerk to the Honorable M. Margaret McKeown. O'Sullivan was also a history teacher and girls' ice-hockey coach at Phillips Exeter Academy in New Hampshire. She is a member of the ABA Litigation Section and a Passages Northwest board member. O'Sullivan was a co-recipient of the WSBA 2003 Award of Merit.

**Michael J. Pontarolo** (5th District) is a principal in the Spokane and Seattle law firm Delay, Curran, Thompson, Pontarolo & Walker, PS, and an adjunct professor of law at Gonzaga University School of Law. In 1989, he was elected president of the Spokane County Bar Association, and he has served on numerous local and state bar committees. Named by *Washington Law & Politics* as a "Super Lawyer" for 2001, 2002, and 2003, Pontarolo holds the highest rating from Martindale-Hubbell, and was named one of the "Best Lawyers in America," 2003-2004.



Ward



Gordon



Johnson



Olson



O'Sullivan



Pontarolo

# Leadership in the Profession of Law

by Dan Leahy

*To lead is to live dangerously because when leadership counts, when you lead people through difficult change, you challenge what people hold dear—their daily habits, tools, loyalties, and ways of thinking—with nothing more to offer perhaps than a possibility. Moreover, leadership often means exceeding the authority you are given to tackle the challenge at hand.*

—Ronald A. Heifetz and Marty Linsky, *Leadership on the Line: Staying Alive Through the Dangers of Leading* (Harvard Business School Press, 2002)



**W**e live in challenging, some would even say dangerous, times. Arguably, some of our most respected professions are in crisis. Healthcare, education, accounting, and corporate management have all come under scrutiny for their apparent inability to provide the service expected, or to do so in an ethical manner. These professions are the mortar that makes community, the social contract itself, viable. Certainly, the law is fundamental to civilized order and behavior. But, in the current climate of crisis, the legal profession has also come under scrutiny. Areas of concern include:

- A decline in professionalism exemplified by how lawyers interact with each other and how they interact with judges.
- A low public opinion of lawyers and the legal profession.
- High levels of lawyer dissatisfaction as evidenced by alcoholism, drug use, and psychological issues.

Stress, disillusionment, anxiety, decline in ethical and professional standards—all currently threaten not only the profession of law, but numerous other professions. When the prevailing moral/ethical currents seem bent on eroding professional bedrock, we look to a different kind of lead-

ership to reshape and rebuild. These are leaders who are capable of living dangerously in the face of difficult change, the kind reflected in the statement by Heifetz and Linsky that prefaces this article.

As the president of LIOS (Leadership Institute of Seattle), I have come to grasp—personally and theoretically—the powerful truth of Heifetz’s concept of “dangerous” leadership. Out of that truth I have developed a repertoire of useful “tools” I can rely on to help me find my way as a leader in these complex times.

The first of these is a personal “compass” whose purpose is to orient me to my “true North” in those times where I am lost or bewildered within my surroundings. The name of this compass is *integ-*

*riety*. It requires that I get clear about my “purpose on this planet,” my sense of purpose or calling, and how well that purpose aligns with the purposes of those I serve. The degree to which those points of purpose line up is the degree to which I will be “on course” and in right relationships with my colleagues, my clients, and myself.

**N**ext is my mental “map,” a way both to make meaning out of my surroundings and to plot a course through to the desired destination. I have found the Ron Heifetz (faculty at Harvard’s Kennedy School of Government) and Marty Linsky (founding director of Harvard’s Center for Public Leadership)

Area of Focus	Technical	Adaptive
Direction	Provides problem definition and solution	Identify the adaptive challenge; frame key questions and issues
Protection	Protect from external threats	Disclose external threats
<b>Order:</b>		
Orientation	Orients people to current roles	Disorients current roles; resists orienting people to new roles too quickly
Conflict Norms	Restores order Maintains norms	Exposes conflict or lets it emerge Challenges norms or lets them be challenged

model particularly useful in this area. As outlined in *Leadership on the Line*, they make an important distinction between leadership as a role and leadership as an activity. They point out that the role focuses on the individual that we authorize to fulfill certain functions, primarily to provide us, the followers, with *direction*, *protection*, and *order*. The activity of leadership focuses more on the process of mobilizing one's followers to face, rather than avoid, the difficult dilemmas they live with, an activity that often entails surfacing and re-evaluating the organizing values that guide our actions.

Heifetz and Linsky also distinguish be-

tween what they call "technical" and "adaptive" leadership work. Technical work refers to the application of existing tools or technologies to familiar problems. Adaptive work requires creative learning that allows the leader "to address conflicts in the values people hold, or to diminish the gap between the values people stand for and the reality they face. . . . Getting people to clarify what matters most, in what balance, with what trade-offs, becomes a central task."<sup>1</sup>

The application of this map in the field of practice is a constant process of assessing what function is called for, and whether it represents technical or adaptive work.

If the situation involves a sense of confusion (Where are we? What's our position on this? Where are we going?), what's needed is *direction*. In the case of a technical challenge, the approach that constitutes the most effective leadership action is providing a clear and cogent definition of the problem complete with an accompanying solution. If, however, an adaptive issue arises, then the action of choice will be a matter of identifying the adaptive challenge by framing key questions and

**The activity of leadership focuses more on the process of mobilizing one's followers to face, rather than avoid, the difficult dilemmas they live with . . . .**

issues rather than defining the problem and giving the solution. If the situation relates to a perceived *threat*, the technical leadership activity will be to protect one's followers from the external threat. If the work is adaptive, disclosing the external threats allows the system to begin developing new capacities that will allow it to adapt to the threat.

Then there are those situations that call for *order*. Heifetz and Linsky describe the following three aspects of order: (1) orientation, (2) conflict, and (3) norms. In attending to *orientation* (What is my role in this system?), the technical response is to orient people to the current role responsibilities and expectations. The adaptive work calls for actions that disorient people to existing roles or resist orienting them to new roles too quickly. The second type of order focuses on *conflict*. The technical problem calls for the leader to restore order through effectively managing or resolving conflicts that arise. The adaptive challenge calls for the leader to expose the conflicts or allow them to emerge so that they can be fully explored and learned from. *Norms*, the third form of order, are the conscious and unconscious working agreements we establish with each other. Technical work calls for the leader to support the maintenance of existing norms, while adaptive challenges require the leader to challenge norms that are holding the system in its current configuration and impeding the adaptation needed.

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On page 23 is a graphic of the “tool chest” of leadership roles and activities analyzed in the preceding paragraphs.

One of the best ways I have found to distinguish between a technical and an adaptive challenge is to try the technical approach first. If it does not work after repeated attempts, there is a good chance you are facing an adaptive challenge. The legal profession, by identifying the elements of the challenges it faces today, has taken the leadership action best suited for adaptive work. It has raised some key issues needing to be engaged by the profession, and is inviting its members to engage them directly, rather than providing the solutions for them. This may be all the invitation you need to lean into leadership. Should you accept the invitation, I hope you find this “compass” and “map” useful as you face your leadership choices.

As a consumer of your services from time to time, and a member of the society you serve, I leave you with a final thought. I believe your profession plays an essential role in the adaptive work facing our society as a whole. We live in polarized times. Our approach to diversity, an indispensable element of sustainable living systems, is driving us to destruction. Finding justice in the face of increasingly complex and apparently competing demands seems beyond us. Our approach to conflict seems to have become increasingly dependent on the art of war.

Historically we have looked to the law to provide society with civil and just methods of holding our differences in productive, rather than destructive, ways. Lady Justice upholds the societal standards against which our behaviors are measured and to which we are held accountable. As a profession, the law plays a significant role in weaving the social infrastructure of our society together and creating a durable pattern of conscience and acceptable behaviors.

Diversity is challenging. Its existence causes stress on the system. This tension can pull the system forward in its development—or it can literally tear it apart. Nature has developed ways to respond to this pressure through creative collaboration. Human nature has not. I think this is one of the fundamental adaptive challenges we face. And I think it is the chal-

lenge where the leadership of the law is most appropriate and needed. We have not yet developed the art of evolutionary conflict, that which allows us to engage our differences in service of the vitality and sustainability of our systems. Yet our survival depends upon our doing so. Perhaps, with your leadership, we will find ways to successfully face this adaptive challenge.

“Generally, people will not authorize someone to make them face what they do not want to face. Instead, people hire someone to provide protection and ensure stability, someone with solutions that require a minimum of disruption. But adaptive

work creates risk, conflict, and instability because addressing the issues underlying adaptive problems may involve upending deep and entrenched norms. Thus, leadership requires us to disturb people—but at a rate they can absorb.”<sup>2</sup> ☞



*Dan Leahy, MA/ABS, is the president of the Leadership Institute of Seattle (LIOS).*

#### NOTES

1. R.A. Heifetz, *Leadership Without Easy Answers* (Cambridge: The Belknap Press, 1994).
2. Heifetz and Linsky, *Leadership on the Line: Staying Alive Through the Dangers of Leading* (Harvard Business School Press, 2002).

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# Lawyers: Leading with Integrity

by Stella Rabaut

Gregory Peck died recently. He came to mind as I started writing about “leading with integrity.” Long ago, I decided he was a man of integrity. I made this assumption based on his Atticus Finch portrayal in the film “To Kill a Mockingbird.” In those days I did not struggle as much with distinguishing fact from fiction.

In the same month Gregory Peck died, the American Film Institute named Atticus Finch the top screen hero in film in the last 100 years. Being a lawyer, I liked that tip of the hat to a lawyer who influenced the jury toward the good and a better tomorrow. I especially liked the image of a lawyer exercising considerable healing influence in a community of prejudice. And it raised a question for me.

I have been in a sustained conversation with colleagues over these last months, exploring whether we as lawyers are in fact leaders, by the very nature of the role we have in society. Or is leadership a position intentionally taken? I view “leader” in a broad sense—as one who takes initiative and exercises influence, and uses it effectively to contribute to the common good. In this ongoing conversation with colleagues, I have come to a fuller understanding of my own view. Increasingly, I view lawyers as having significant opportunities to exercise leadership:

- Leadership in the way we are present and hold ourselves and define our profession.
- Leadership in the way we form a relationship with each client.
- Leadership in the way we approach other parties in the conflict.
- This leadership calls for both attention and intention.

The challenge before us is this: How

can lawyer leadership behavior be encouraged?

Can we individually develop ourselves as leaders? What prevents lawyers from being leaders? What has worked in the past?

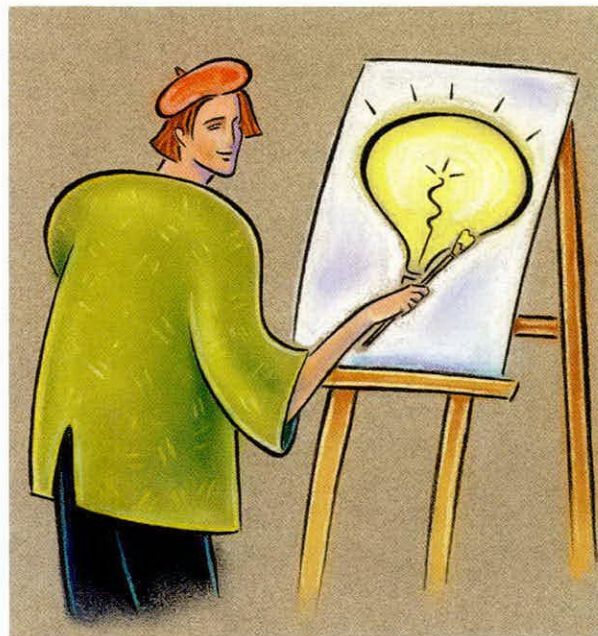
Can we, as a profession, intentionally nurture and encourage leadership that will influence society for the good and grow the Atticus Finches of the future?

Above all, what, if anything, does integrity have to do with it? What does “leading with integrity” mean?

The fact that I am raising the question gives you a clue. I do believe we can encourage, nurture, and develop lawyer leadership. And it begins with inner personal work, although usually in a relational context. I believe leadership development comes from within—not just from the head, but from the heart and soul.

In January, I spent some days with Parker Palmer. Parker has written about and led retreats on the leader’s inner life. Indeed, he focuses on *leading from within*, emphasizing the co-creation that goes on between our inner and our outer life, between spirit and matter. We are not involuntary victims of our profession. Nor are we helpless. We are co-creators. We can expend energy complaining about our profession or use energy to transform it.

Knowing this can be a source of profound hope for change as well as a source of awesome responsibility. We do have a choice in what we project about our legal work—a spirit of hope or a spirit of despair. In that choice, I create what is—that is, I create the world I live in. Circumstances will influence the possibilities, but



actively or passively the final choice is mine. Parker quotes Vaclav Havel, a leader of considerable integrity. Upon becoming president of Czechoslovakia, Havel noted: “Consciousness precedes being.” Through self-awareness we can double back on our experience and consider what we now might become, and where and how we might have influence. The core of our challenge as lawyer leaders is to realize that the current narrative (the way things are) is not as powerful as reflective self-awareness (the vision of what can be).

Speaking of vision, my belief is that we are in the midst of an evolution of a more conscious (self-aware), creative, and collaborative legal profession.

**Consciousness:** Consciousness, meaning self-awareness, is at the heart of emotional intelligence in Daniel Goleman’s definition of it. I like the fact that my former law school teacher, Len Riskin, recently published a commentary in the *Harvard Negotiation Law Review* about the

use of mindfulness in the practice of law. Although my own meditation experience supplies sufficient data for me, perhaps this publication gives greater legitimacy to meditation and mindfulness in legal communities. Len Riskin provides data to support his conclusion that mindfulness can help lawyers feel and perform better, derive and deliver more satisfaction in their work, and relieve suffering in themselves and others.

**Creativity:** I followed with pleasure the writings of Cheryl Niro about law as a healing profession, during her Illinois Bar presidency. The identity shift of lawyers from primarily adversaries to healers, from provocateurs to peacemakers, from entrepreneurs to service providers, is a creative stretch and one that is finding a wider audience. In Michigan, former Notre Dame Dean David Link heads up an institute with the imaginative name International Centre for Healing and the Law.

**Collaboration:** I have noticed that the conversation started by trial lawyer Stu Webb in Minnesota some years ago about collaborative lawyering is growing into a national movement. More lawyers are crossing the bridge from an adversarial, competitive presence to a more collaborative, problem-solving stance with the other parties in a conflict. Note the text recently written by Pauline Tessier, published by the ABA, titled "Collaborative Law: Achieving Effective Resolution in Divorce without Litigation." Each of these lawyers, Len, Cheryl, and Stu, has raised new possibilities, expanding on the usual way of doing business and leading our profession to consider both additional and alternative relationship-based ways of delivering our services.

Until now, little emphasis has been placed on the inner life of lawyer leaders. Most of the leadership training that I have participated in has focused on skills—communication, conflict resolution, listening—some of the important "stuff" of everyday practice. These worthy skills are essential, and help to manage the external world. But they alone aren't enough. Managing the external world well presupposes managing the self well.

What, then, of the inner journey? The demands and rigors of lawyer leadership roles often work against inner awareness.

The natural tendency of people in leadership is toward extroversion, and the external world for leadership is by definition extroverted and outer focused. This can block out the inner consciousness and disregard or discount the inner life. This is not "leading with integrity," for that means, ultimately, leading with the self. Better not to partner with a stranger!

Legal training routinely emphasizes rationality as dominant, and by implication encourages emotional dissociation. Exactness is of the essence in applying the law,

**I believe leadership  
development comes from  
within—not just from the  
head, but from the heart  
and soul.**

mostly in the service of "winning." Time and client demands, and the constant pressure of billable hours, do little to support reflection, mindfulness, or a meditative practice. Presently, legal training and the culture of subsequent legal practice do not provide fertile soil for the growing and encouragement of reflective, visionary, and conscious leaders. Because of this, the growing of leaders who have clarity of values is not often a natural byproduct in the contemporary legal community. But attempts are being made to recapture the lost art of mentoring.

Ron Heifetz, a Harvard professor and leadership consultant, speaks of the need for leaders to "find a sanctuary," to have a place to hear themselves think, to restore their sense of purpose, and regain courage and heart. This is the route to integrity. And so the title of this article is "Lawyers: Leading with Integrity."

Integrity comes from *integer*, a Latin word meaning "wholeness." When I speak of leading with integrity or being a person of integrity, I mean being a whole person, a complete person, a person not split and divided by contradiction, ambiguity, and compromise. As humans we are body, mind, and spirit. Regrettably, since Descartes, our tradition of dualism and reductionism in Western thinking underestimates the relationship of each to the other. Integrity requires a consistency of moral values both in the practice of law and in the life outside the practice.

Lawyers will certainly continue to hold

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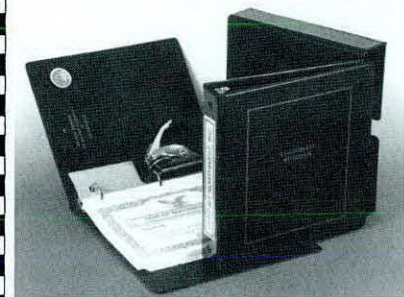
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and demonstrate the superb rational and logical skills of the head. But they can also, at the same time, demonstrate the reflective, imaginative, and relational skills of the heart that are crucial to effective leadership in these times of unparalleled and frightening speed of change and uncertainty about the future.

But integrating these two—the skills of rational analysis on the one hand and intuition or “feeling understanding,” which assumes an intimate and open relationship with the self on the other hand—is an extraordinary challenge. We are educated for the former but not for the latter, that which I am referring to here as the “inner life.”

Integrating the head and the heart, the rational and the intuitive, and therefore integrating the shadow side of self, is the core of integrity. This then is what I mean by “leading with integrity.” Leadership and leadership education both require but are about much more than simply the acquisition of knowledge and technical skills. They are also about the development of character. Ultimately this makes it a matter of the spirit and the heart. That awareness may be uncomfortable for some, but that is where we live—and die.

Perhaps some new behaviors are called for: establishing times for reflection, pursuing clarity about underlying values, con-

stantly reassessing one’s actions and one’s deeper purpose, taking greater risks and making greater sacrifices, collaborating and connecting more, and being less isolated.

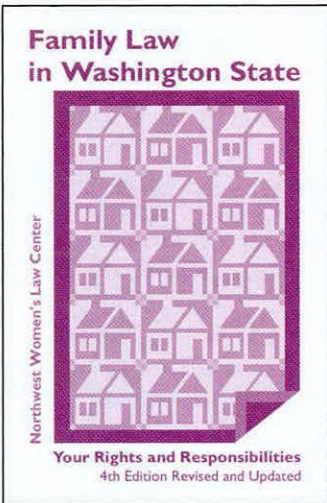
When both the children I helped raise selected law as their life’s work, I was pleased. Tracy, my stepdaughter, attended Northeastern Law School, magnetized by her commitment to public-policy law; and I became acquainted with Dean David Hall. His recent comments at a conference in Portland resonate for me. He said, “If in years to come you see lawyers meditating . . . don’t

**Leadership and leadership education both require but are about much more than simply the acquisition of knowledge and technical skills.**

be alarmed. If you see them performing miracles in the courtroom with their heads and with their hearts, don’t object. If you see them mounting up on the wings to transform communities as they serve their clients, know that they are not leaning on their legal expertise alone. Know that they are resting on the majestic and divine wings of justice; being propelled by the power of partnerships, and the winds of a loving, healed and whole client community. And the only question they will ask of you is, do you want to come along for the ride? Please join them for it is a beautiful ride and a powerful partnership for justice.” (Hall, April 2003.)

At a WSBA conference in November, this conversation will continue as we further explore the complexities of lawyer leadership. If this idea sparks your interest—and perhaps you’d like to earn some CLE credits—come join us. Read this both as an invitation and as an opportunity. ♣

*Stella Rabaut has practiced law for over 20 years in private and corporate settings. She currently is designing retreats for lawyers, and teaches at the Leadership Institute of Seattle. Her particular interest is sustaining the human spirit and well being in the context of the legal profession. She can be contacted at stellarabaut@aol.com.*



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# Mutant Lawyers

by Terrence A. Leahy

*This article first appeared in the newsletter of the Washington State Chapter of the Community Association Institute, an organization providing education for those involved in homeowners' associations and condominium associations.*

A computer-literate farmer who left farming to manage federal land attended a leadership retreat. But he was nagged throughout by a land-management problem sitting back on his desk at the office. How should it be resolved? The struggle to decide consumed him. The farmer in him saw how it should be resolved, but the professional in him knew that the "right" solution would be suicidal to his career.

He finally decided to do what the farmer in him knew was right. When others at the retreat asked how he'd handle his boss's strong opposition to this, he said, "I don't report to my boss. I answer to the land."

But what does the "Farmer with the Dell" have to do with you, the community association professional? Absolutely everything. Because that farmer is you.

You and I are that farmer in the sense that each of us is daily confronted with tough decisions that have no easy answers, just as the farmer was. And how he came to his decision—by answering the question "Whom do I answer to?"—is instructive to us.

So—whom do *you* answer to?

Finding the answer lies at the heart of everything you do. That is what the new messiahs of "leadership" all preach.

The only constant in our world of today is change, change that occurs constantly, at an ever-increasing pace. Most Americans both struggle to keep up, and fear being left behind.

Look at any bestsellers list and you'll



see what I mean. Book sales are a pretty good measure of what is on our collective minds. Five years ago, nonfiction titles with "heart" and "soul" in them sold like hotcakes. Three years ago, the key to selling a book was to stick the word "community" in the title. And now, the million-dollar word is "leadership." Or, rather, "new leadership," in its various incantations, such as "Level 5 Leadership" and "Quiet Leadership" and "Primal (i.e., emotionally intelligent) Leadership" and "Moral Leadership" and "Integral Leadership."

"New Leadership" is all the rage because, quite frankly, old leadership isn't a good fit for the task of leading in today's changed world.

The world has changed—and is changing—in many fundamental ways. According to Mark Gerzon, author of *Leaders*

*Without Borders*, the norms of tradition, nation-states, homogeneity, rugged individualism, and a preoccupation with one's image are giving way to the new norms of constant change, a global economy, diversity, an emphasis on teams, and a preoccupation with one's integrity and authenticity. (I know—*jargon*—but the truth behind the jargon is nonetheless real.)

The "New Leadership" is all about adapting the art of leading to this new context in which leadership must occur. The emerging "core leadership values" for this new environment, according to Gerzon, are such things as *learning, inclusion, respect for others, collaboration, and integrity.*

And common to most discussions of the "New Leadership" is some form of the

question the farmer faced: "Whom do I answer to?"

The new messiahs of leadership preach varying versions of the same answer to that question: "I answer to something larger than myself or my own petty interests; I answer to the *whole*."

Jim Collins, author of the popular book *Good to Great*, says that a key attribute of a "level 5 leader" is that these leaders' ambition is not for themselves but for the

**"New Leadership" is all the rage because, quite frankly, old leadership isn't a good fit for the task of leading in today's changed world.**

thing entrusted to their stewardship, be it a company or, as in Abe Lincoln's case, an entire nation.

Father Stephen Sundborg, S.J., Seattle University's president, recently gave a talk to the Seattle Rotary about moral leadership, and he made much the same point. He said that one quality of a moral leader is "an explicit and deep religious faith or a perception of human reality and destiny as sacred, holy, beyond simply human accomplishment. Moral leaders are free enough within themselves to pivot as a moral compass towards what is right . . . because they are free, not locked into a position, not leading from an ideology, but from the fulcrum of their humanity, [and] hence [are] free to swing to what is right, to pivot to the truth as they see it." In other words, the moral leader answers to the whole of humanity.

But how does a lawyer—duty bound to "answer to" her client—answer to more than her client? Community association lawyer Marion Morgenstern, for one, does so through acts of "quiet leadership." "Quiet leadership" is not an oxymoron. It is the concept explored in a popular management tome: *Leading Quietly: An Unorthodox Guide to Doing the Right Thing* by Joseph L. Badaracco Jr. And it is how Marion Morgenstern and others like her are striving to heal an ailing housing stock: condominiums.

"Quiet leadership" is one of those "I can't define it but I know it when I see it"-type concepts. And it is a concept that is burrowing deep roots these days within

the legal profession. But before we get to Marion, a little background is in order.

Some years back I was privileged to serve with the now-Honorable Justice, the then-Washington State Bar Association President Mary Fairhurst and others in designing and presenting a workshop that encouraged lawyers to take personal responsibility for the health of our legal system. Mary had made "Stewards of Justice" the theme of her Bar presidency.

Remember the importance of deciding whom you answer to? Mary decided that she answered to, and was a steward for, "the justice system." Her reasoning was

simple. For centuries "the law" has evolved to meet the needs of the society it holds together. "The law," she believed, is entrusted to us, the lawyers who embody it in the work we do each day. It is through how we choose to *do* that work that "the law" changes. The hope is that "the law" we hand off to future lawyers is better than "the law" that got handed to us.

Was Mary naive in believing that individual actions can actually change "the law?" No. Case in point—mediation. Twenty-plus years ago, my law school was one of but a handful of schools offering a class called "negotiation and mediation" (or

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“hot tubs,” as we called it). The very idea of mediation, back then, was a joke.

Fast-forward to now. Mediation is the main process through which civil disputes are resolved. How did it go from being the butt of our jokes to becoming the main method for resolving civil disputes in just 20 years? It happened one lawyer at a time. It happened because individual lawyers, scattered here and there, had the courage, in service to their clients, to risk trying something new. Thus, “the law” mutates through the acts of mutant lawyers.

Travel back from the future to now. Collaboration, which, in the future, will

be the main process through which civil disputes are resolved, is the “hot tubs” of today’s lawyers. But that is changing before our very eyes. It is changing because of Marion’s quiet leadership, and that of other community association lawyers like her.

Right now, condominiums are an endangered species of housing. Many are beset by the need to perform massive repairs at break-the-bank prices. How to fund and effect these repairs, and how to prevent, in condos yet to be built, the conditions that created this kind of damage, are issues in critical need of solutions.

One time-honored way of “solving” such widespread problems is to hire lawyers to duke it out in court, case after case, until the courts eventually fashion rules to “fairly” allocate blame. An alternative time-honored way is to hire lobbyists to duke it out in the Legislature, bill after bill, until the Legislature eventually fashions a law to “fairly” allocate protection.

But Marion Morgenstern, Vince DePillis, Pete Middlebrooks, David Rockwell, and Dave Merchant—all lawyers—have each made it known to those in power this legislative session that the time-honored ways of “solving” this problem won’t get the job done here. Each of these lawyers independently arrived at the same conclusion: that to truly heal all that ails the condominium segment of the regional housing stock, the crisis—in all its complexities—needs to be entrusted to a task force of collaborative-minded lawyers (and other stakeholders) who are genuinely committed to creating effective solutions to a very complicated set of problems.

Mind you, I’m not talking about the time-honored legislative copout of tossing some politically hot potato to a “blue ribbon” commission with instructions to report back in a decade or two. I’m talking about doing here what is happening elsewhere across the nation and beyond—assembling “the best and the brightest” to work collaboratively on crafting well-conceived solutions that really get at the root causes of the problems.

And by “quiet leadership” on this issue, I’m not talking about just e-mailing a state senator to let their voices be heard. No, these lawyers I’ve named have put their money where their mouths are. You see, to a lawyer, time is money, and time devoted to this crusade for a collaborative solution sucks the lifeblood out of the lawyer’s own livelihood.

And yet these lawyers—and, in particular, Marion Morgenstern—quietly sacrifice countless hours pursuing a comprehensive and permanent solution to the crisis.

Why do they? I think it’s because they “answer to” the region’s condominium housing stock itself. And they are deeply committed to restoring it to good health. *That’s* what drives them. *That’s* what gives them the courage to embrace collaboration as the means by which these problems can, and should, be resolved.

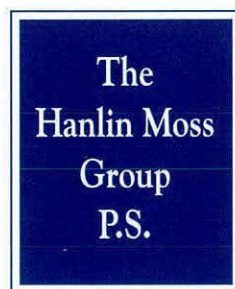
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The kind of quiet leadership we are witnessing in the actions of these lawyers on the legislative front is also showing up in the actions of others of us in our representation of associations and owners confronted with the need to tackle massive repairs. Time and again, owners faced with back-breaking repair assessments splinter apart, with each "camp" searching out a "hired gun" to impose its will on its opponents. But, more often than not these days, the opposing counsel I encounter seeks to

**Collaboration, which, in the future, will be the main process through which civil disputes are resolved, is the "hot tubs" of today's lawyers.**

collaborate with me to create a repair/assessment solution that still gets things fixed, but in a more palatable way.

I believe that what "quiet leadership" boils down to for those of us who represent community associations is "answering to" that which is temporarily entrusted to our care—the building, the land, and the statutorily created (and sometimes dysfunctional) "family" that common ownership unnaturally creates. And our call, in leading quietly, is to rise above the fractional in fighting and hair-splitting and to do, instead, that which best serves the building, the land, and its *entire* "family."

**Author's Postscript**

And that gets us back to "The Law." And to you, its living, breathing embodiment.

Have you decided whom you answer to? Do you hear "The Law" calling you, as it did Mary and Marion, to answer to it? Do you hear "The Law" calling you to rise above mere work-a-day worries and to do your bit in shaping what "The Law" will become (and is already becoming)?

And will you, in answering that call, do so in a way that weakens "The Law"? Or will you act, instead, in a way that strengthens it, for the good of the whole of humanity? Because its future truly depends on your choice. ♪

*Terrence A. Leahy is a community association lawyer in Bellevue.*

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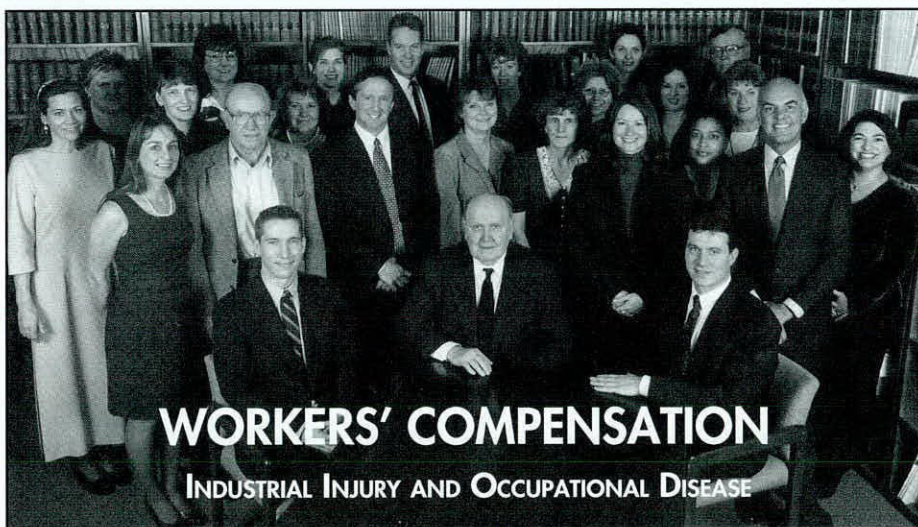
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# The Board's Work

by Lindsay Thompson

Seattle, September 11-12, 2003

Two years ago the Board of Governors met two days after 9/11, numbed by the impossibility of it all, not to mention Revs. Jerry Falwell and Pat Robertson's announcement that they had already figured out who was responsible.

This year the board's meeting fell on the anniversary itself, and was begun with a minute of silence. The September meeting is the one at which one president hands off to the next, and the third-year governors are replaced by a set of first-years.

A remarkable unanimity prevailed. The minutes were approved 11-0. The consent calendar, from which members always pull seemingly routine items for discussion, won unanimous approval as well. As a result, 2003-04 WSBA committee members and chairs were approved; technical amendments to APR 14 (foreign law consultants), APR 8(g) (exceptions to practice requirements for military lawyers), and ELC 3.4 (release of confidential information by the Practice of Law Board) won the BOG's OK; Informal Ethics Opinion 102, dealing with electioneering by deputy prosecutors, was withdrawn, having been done in by RCW 42.17.130; and the 2004 Keller deduction members can seek for political activity by the WSBA was determined and approved.

**Wayne Blair**, who chairs the Court Funding Task Force, gave the board a report on the early stages of the group's work. They are trying to figure out a way to fund the court system better, given that Washington state now spends less money than any other on its courts—14.5 percent. The rest comes from a patchwork of local sources. President-elect **Ron Ward** and Executive Director **Jan Michels** also weighed in on the scope of the problem and its impact on district courts.

After lunch the board unanimously approved a charter for its Professional Development Task Force, which is trying to come up with a program for giving new lawyers more practical experience at the front end of their careers. Governor **Fawn Sharp** reported on the six-week seminar she attended at Oxford University in the summer. It dealt with indigenous peoples

and human rights, and by her account was a remarkable experience featuring students from 38 nations.

Two ex-governors, **Steve Henderson** of Olympia and **Y'r Ob'd't Svt**, reported on our work as the board's liaisons to the board of the District and Municipal, and Superior Court, Judges' Associations' trustees. Henderson moves to my spot with the superior court judges' board, while I make way to free up time for editing *Bar News*. On a unanimous recommendation from the Editorial Advisory Board, the Board of Governors unanimously confirmed me as editor, removing the "interim" from the title and tossing in a nice boost in the previously rather mean compensation while they were at it.

Boyvie **Bill Neukom**, who chairs Washington's delegation to the American Bar Association House of Delegates, updated the BOG on ABA news. He will chair the ABA's decennial governance review, which will result in either his bodily dismemberment by contending power groups, or higher office.

Then the BOG turned to naming two new members of the state's delegation (there are more ways to get into the House of Delegates than there were to get a rotten borough seat in Parliament two centuries ago; these are two in the gift of the Board of Governors). It's always a fascinating look at how the BOG's concern with diversity representation intertwines with good old-fashioned politics. Such things tend, on recounting, to be unedifying, and likely to demoralize children. Suffice it that **Paula Boggs** of Seattle and **Sonia Rodriguez** of Yakima were elected.

**Nancy Talner** then won appointment to the Judicial Information Systems Board, a state courts geek group. **Lisa Schuchman**, who chairs WSBA's ADR Committee, offered proposals to change the fees and thresholds between one arbitrator and three, in lawyer-fee disputes. That passed unanimously too.

The board recessed at 3 p.m. for a break before the 6 p.m. WSBA Annual Meeting. This year the Annual Meeting was combined with dinner, which meant you got the Chief Justice's state of the judiciary speech with the salad; and awards with dinner, dessert, coffee, and then some.

For the first time in a decade there was

a member resolution. Offered by **Marilyn S. Smith** and **Lem Howell**, it sought to condemn U.S. government classification of citizens as enemy combatants, depriving them of access to counsel. The Resolutions Committee held a hearing and substituted a four-paragraph ABA resolution for the one-paragraph original. Smith and Howell moved to substitute the original for the substitute. Then Governor **Jon Ostlund** moved to combine the two so that there was an overall condemnation followed by four paragraphs of knitted brows and deep concern.

The whole business had a jokey, going-through-the-motions air about it. There was no opposition, either in the committee or in the annual meeting. Smith made the main, concise argument; Howell's seconding speech was a mix of partisan jabs and self-referential digressions. The resolution passed on a voice vote. (Read the resolution at [www.wsba.org/resolution.doc](http://www.wsba.org/resolution.doc).)

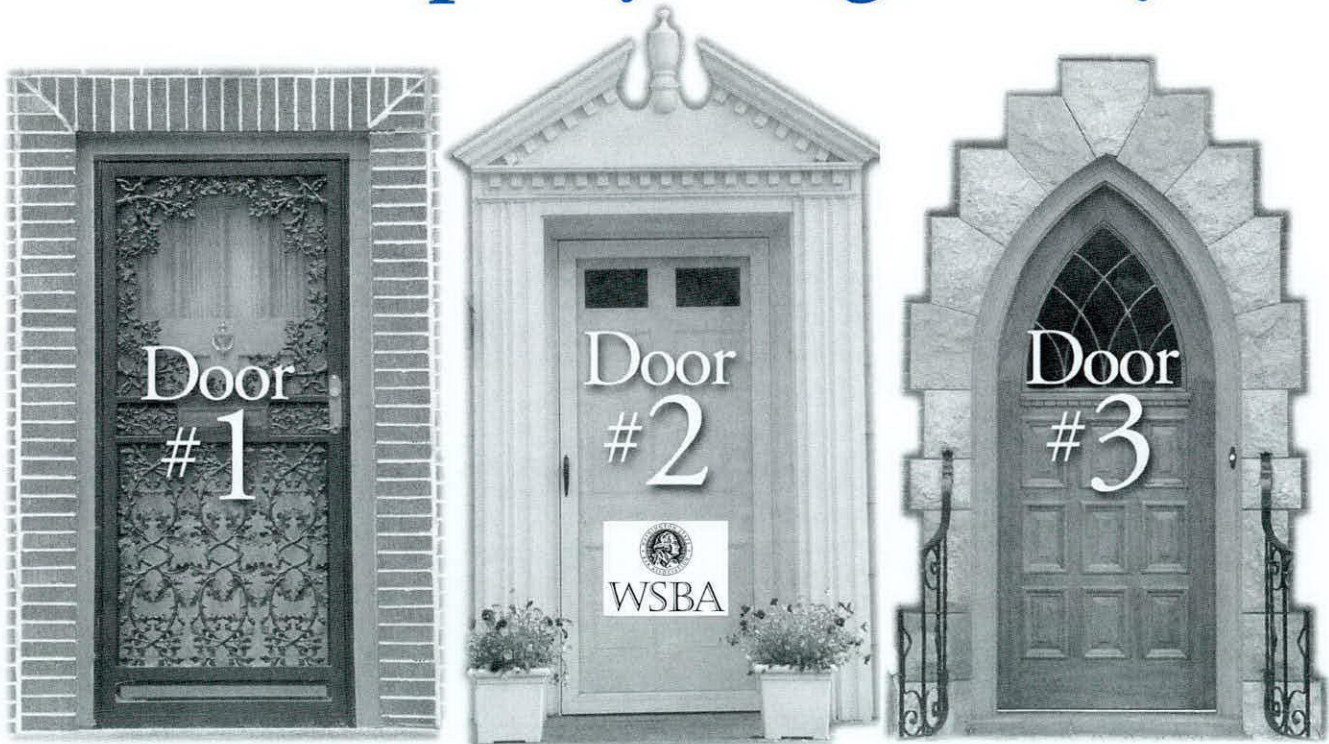
WSBA awards presentations always end up a poor man's Oscar telecast. Repeated invocations of an egg timer intended to keep remarks short had the opposite effect. Presiders not only introduced introducers, but also then told us what the introducers would say. Which they then did. Recipients, with a few laudable exceptions, went on and on, and in true Oscar fashion, if there were multiple representatives of a recipient, they all weighed in. Some presenters even read us what the plaque said. *Friends: it is possible to be witty, eloquent, and brief. Leave the audience wanting more, not ground down by having gotten it all.*

A list of the recipients appears elsewhere in this issue.

Friday the board took up reports from the Lawyers' Fund for Client Protection and the Legal Foundation of Washington. Then some sand got in the gears when \$40,000 of unallocated money turned up.

Our tale begins with the General Practice Section. Formed in the 90s, GPS grew drowsy and slipped into a coma two years ago. WSBA staff proposed shutting it down and applying its \$40,000 in accumulated funds to the cost of a free year's membership in the Law Practice Management & Technology Section to GPS members, offering CLE coupons/discounts, and devel-

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After a slight pause, governors started offering up different ways to slice the hog. One moved to spend some of the money on professional development for young lawyers. A liaison wanted to let section members choose which section they migrated to in the free year, reasoning that all GPs are family lawyers at heart. Another governor moved to refund last year's dues to those who had paid them. Yet another wanted to combine the free section trans-

fer with the last year's refund. Then another allowed as how maybe the section had flatlined not because it had run out of reasons to be, but because the WSBA hadn't nurtured it enough. Maybe, the reasoning went, if we give them six months, section members can resuscitate it.

Oh come on, said others present. Dead is dead. There's no rolling away the stone on this stiff. If members want a revived section it takes only 50 of them to do it in the same six months. The board voted to send the General Practice Section to

WSBA's Sunny von Bulow Wing and see how things look in six months.

Toward the meeting's end, the board took up a report from a committee chaired by Governor **Howard Graham** on adding public members to the board. Graham was away tending to a family emergency, so outgoing President **Dick Manning** decided to postpone a full discussion, but let the four outgoing governors share their wisdom on the subject as they prepared to exit, stage ex.

Governors **Davidson**, **Hyslop**, **Isaki**, and **Lehto** then spent half an hour filibustering against the idea. They were Old Europe in full cry, the Polonius Quartet, repeating each other endlessly while complaining that expanding the BOG makes it harder to get things done because there are three extras wanting to talk. With no sense of irony they heaped scorn on the idea and then concluded that members should keep an open mind. (A full disclosure footnote: I support adding a public member. I proposed it in a 2001 motion that was amended to create this study.)

Governor Davidson, who was also outgoing WSBA treasurer, gave a précis of financial issues (overall, the WSBA is in fine financial fettle).

Then the meeting ended. The next gathering will be held in Portland October 17-18 and will be reported in the December *Bar News*. You can see the dates and locations for future meetings on the WSBA website; all meetings are open to members. And, as always, this report is not the Official Version. ☞

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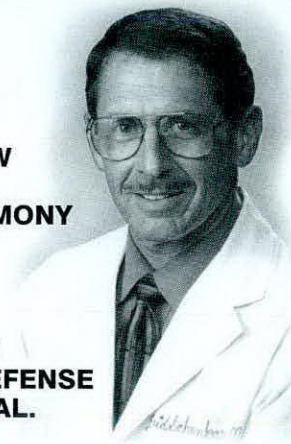
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# Ethics Rule Change Encourages Pro Bono Work on Behalf of Indigents

by Gail Smith and Andrew A. Guy

### Introduction

The Washington Supreme Court's recent amendment of RPC 6.1, *Pro Bono Publico Service*, became effective on September 1, 2003. The changes to the rule are designed:

- to encourage lawyers to perform *pro bono* legal services on behalf of persons of limited means;
- to describe more fully what constitutes *pro bono* services;
- to establish an aspirational goal in terms of hours of service; and
- to provide recognition for those who do substantially more than the minimum goal.

This is the first of two articles regarding *pro bono* service in Washington following the amendment. This one explains changes from the prior rule and describes some types of activities that are within the scope and meaning of *pro bono* services as meant by the rule. The second article will identify sources of *pro bono* case referrals and various programs designed to assist lawyers meet their *pro bono* responsibilities as set forth in the amended rule.

### Changes Effected by the Amendment

The amended rule emphasizes the provision of legal services to persons of limited means. It replaces the prior rule's somewhat vague first sentence ("A lawyer should render public interest legal service") with a statement emphasizing the importance of providing access to the justice system for the poor. The new first sentence states affirmatively: "Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay."

The amended rule next sets an aspirational goal for lawyers to perform at least 30 hours of *pro bono* service annually. It provides for voluntary reporting of *pro*

*bono* hours to the WSBA on the WSBA's annual fee statement, thus minimizing paperwork and avoiding multiple mailings.

The new RPC 6.1 is modeled after the ABA model rule. The comments to the model rule recognize that in some years a lawyer may render greater or fewer hours than the annual aspirational goal, but during the course of his or her legal career, each lawyer should render on average, per year, the number of hours set forth in the rule. Attorneys may also meet their *pro bono* obligation through a higher or lower number of hours of annual *pro bono* service based upon the percentage of the lawyer's actual time dedicated to the practice of law (a concept that may be particularly important to lawyers practicing law part-time).

The amended rule also provides for lawyers reporting 50 or more *pro bono* service hours in any given year to receive a recognition award from the WSBA. The award is designed both to motivate lawyers to perform a substantial amount of *pro bono* work and to reward those who do.

The amended rule lists ways of fulfilling the *pro bono* responsibility. It combines some of the prior rule's language with updated language that incorporates the now commonly used ABA definition of *pro bono* service. The various categories of *pro bono* service listed by the rule include:

1. *Providing free legal services to persons of limited means or specified types of organizations in matters designed primarily to address the needs of persons of limited means.* The types of organizations listed in the amended rule are charitable, religious, civil, community, governmental, and educational. Services performed for clients who simply do not pay for work that was supposed to be billable does not qualify. Neither does performance of normal job functions while in the employment of any

of these types of organizations qualify. (The rule specifies that the legal services are to be provided "without fee or expectation of fee.")

This part of the rule covers the direct representation of indigent clients in court or in out-of-court legal matters (contracts, wills, negotiations with creditors, etc.). It also includes legal services that directly benefit the poor, but are performed free for organizations, such as reviewing a lease for a new homeless shelter being established by a local church or community organization.

2. *Providing legal services at no fee or substantially reduced fee to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights.* The amended rule's first sentence recognizes the critical need for legal services that exists among persons of limited means. However, representation of individuals of limited means is not the only activity that qualifies under the rule. The legal services contemplated by the amendment consist of a full range of activities, including individual and class representation, providing legal advice, legislative lobbying, administrative rulemaking, and providing free training or mentoring to those who represent persons of limited means. The variety of possible activities should facilitate participation by all segments of the Bar, including government attorneys, even when restrictions may exist on their engaging in the practice of law outside of their employment.

Although this part of the amendment would include such matters as *habeas corpus* petitions on behalf of convicted criminals, the scope of public benefits encompassed here is quite broad, and could easily include legal work for organizations on both sides of many social issues. However, sitting on a board or performing other ser-

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vices that do not include legal services would not qualify as *pro bono* work under the amended rule.

The amended rule also requires the services to be provided at no fee or a "substantially" reduced fee. The insertion of the word "substantially" is a change from the prior rule, suggesting that a nominal discount is not sufficient to meet the standard contemplated by the amendment.

3. *Providing legal services at no fee or substantially reduced fee to specified types of organizations in furtherance of their organizational purposes, where payment would significantly deplete the organization's economic resources or would otherwise be inappropriate.* An attorney also has the opportunity to perform *pro bono* services through activities that do not necessarily focus upon providing legal services to persons of limited means. The types of organizations listed are, as before, charitable, religious, civil, community, governmental, and educational. Although the focus of this provision may not be on serving persons of limited means, many of the organizations benefit the poor, either directly or indirectly. And, once again, the rendering of legal services is a threshold criterion for *pro bono* services as meant by the amended rule. Thus, serving as a member of a board of directors of a charitable organization, as a city council member, or as a church official does not qualify, nor does regular employment with any of the listed organizations.

The types of legal work that should qualify under this part of the amended rule are quite broad. For example, the amended rule would include such services as helping a charitable organization become incorporated as a nonprofit entity; negotiating an employment agreement with its executive director; and reviewing its office lease, assuming that payment for the services would "significantly deplete" the entity's resources or, if charging standard fees, otherwise would be "inappropriate." (Note that the review of a lease for the site of a homeless shelter would be covered under the portion of the amended rule described in section 1 above.)

The reference to situations where it is "inappropriate" to bill the entity for legal services is presumably intended to provide

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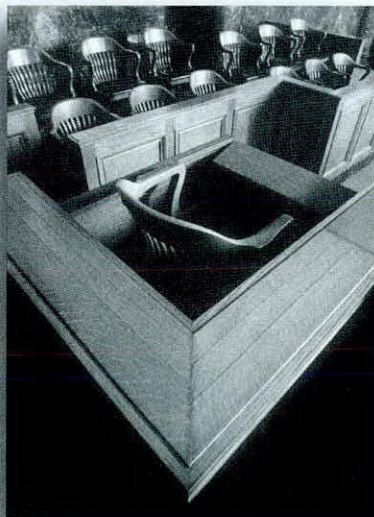
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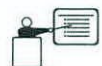
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for flexibility. One example might be where sums spent on legal fees would divert funds that otherwise would be spent on the organization's mission, even if the organization's resources would not be "substantially depleted" by paying legal fees. Also, as noted above, to be considered *pro bono* services under the amended rule, if fees are to be charged at all, they should be at a "substantially" reduced fee, rather than merely a nominally reduced fee.

4. *Providing legal services at a substantially reduced fee to persons of limited means.* This portion of the amended rule makes clear that *pro bono* work for poor individuals doesn't have to be completely free. (The provision of "no fee or expectation of fee" to individuals is included earlier in the amendment, as referenced in section 1 above.) However, the fee apparently should be relatively low, because, as noted above with respect to organizations, the adverb "substantially" is new.

As a practical matter, for services rendered to individuals who are living on incomes below or just above federal poverty guidelines, if any fees are charged at all, they presumably will have to be merely token in nature if the fee agreement is to be realistic. In any case, underpayment by a client in a billable matter should not be characterized or reported as "reduced fee" *pro bono* services. This section also encourages acceptance of court appointments in which the fee is substantially below a lawyer's usual rate.

5. *Participation in activities for improving the law, the legal system, or the legal profession.* This is a continuation of language in the prior rule. It is the one component of *pro bono* services under the amended rule that does not require legal work to be performed. It also does not focus on rendering of services to or for the benefit of the poor.

This category includes volunteer work on a variety of legal topics. Certainly, work on committees seeking to update court rules or promote adoption of uniform laws should be covered. The language also is broad enough to include almost all volunteer work on state or local bar committees, unpaid legislative lobbying activities, and even editorial writing on legal issues. Such

a broad provision may seem out of place with the other parts of the amendment, but provides an alternative means of providing *pro bono* service that is in keeping with the traditional scope of the rule.

The amendment also removes prior wording that may have been read to allow lawyers to fulfill their *pro bono* responsibilities entirely or in part by contributing money to organizations that provide legal services to persons of limited means. That portion of the prior rule has simply been deleted. The deletion should not discourage or deter attorneys from making financial contributions to worthy legal-services programs. Instead, the deletion underscores that the amendment's real focus is personal participation by lawyers in performing *pro bono* legal services.

The efforts of individual lawyers will not be enough to meet the need for free legal services that exists among persons of limited means. The government, the WSBA, local bar associations, and other local organizations have instituted additional programs to provide these services. Lawyers' *pro bono* services supplement these efforts, and are not intended to replace existing legal-services programs.

#### Conclusion

The amendment to RPC 6.1 should have the salutary effect of providing additional professional incentives to perform *pro bono* work on a regular basis. Next month's article will address approaches to fulfilling the amendment's aspirational goal by identifying sources of *pro bono* work that provides meaningful help to *pro bono* clients, is fulfilling to the lawyer, and is within the lawyer's areas of expertise. It will also discuss means of overcoming perceived obstacles to performing *pro bono* work in various practice contexts, including private firms, in-house corporate law departments, and government agencies, and in various practice areas, including business lawyers who do not feel comfortable taking on matters involving court hearings. ☞

*Gail Smith practices with Jones & Smith in Mount Vernon, and chaired the WSBA's Pro Bono and Legal Aid Committee (PBLAC) in 2002-03. Andrew Guy practices with Stoel Rives in Seattle and chairs the PBLAC for 2003-04.*

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## Reading Around

### U.S. Supreme Court laterals into the Internet age

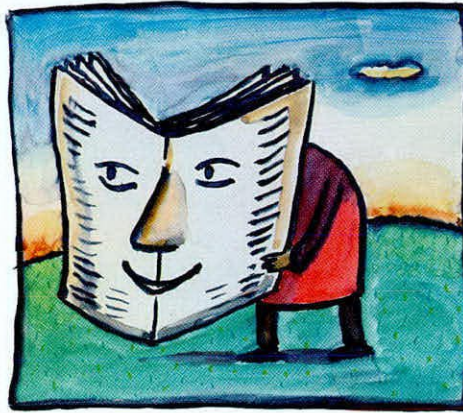
Though declining repeated calls for televising their proceedings, the justices of the U.S. Supreme Court nevertheless tape-record oral arguments each term. The tapes, deposited with the National Archives, have been available to anyone who could go there to hear them. A few major arguments have been available to the larger public since the publication of Peter Irons's and Stephanie Guitton's tape-and-book combination, *May It Please the Court: Transcripts of 23 Live Recordings of Landmark Cases Argued Before the Supreme Court* (The New Press, 1993).

According to an August report in *The New York Times*, Northwestern University political science professor Jerry Goldman has gone a giant step further. In June he started releasing oral arguments on the Internet, having converted them to MP3 format. About 6,000 hours of arguments have been recorded since 1955; Goldman is releasing recordings of major cases on his website, [www.oyez.org](http://www.oyez.org), and compiling others for sale in CD form. The Oyez project hopes to have a full catalogue completed by 2007. Oyez.org is a website devoted to information about the court, its members, its history, and its decisions.

### Bobblemania hits the Supremes

An online law magazine has teamed up with a Seattle company to produce the first U.S. Supreme Court bobblehead doll, of Chief Justice William Rehnquist. George Mason University law professor Ross Davies, who revived the long-defunct law-humor magazine *The Green Bag* in 1997, says he and his colleagues on the magazine always dreamed of creating a Rehnquist bobblehead, and earlier this year they sprang for it, producing an edition of 1,000 for subscribers and friends.

To produce the 7.5-inch, one-pound dolls, Davies turned to Seattle's Alexander Global Promotions, which has turned out more than 4,000 different bobbleheads over the last four years, including the famed Seattle Mariners Ichiro model. Working from photos and consulting with Davies about things like the right color for the U.S. Reports volume Rehnquist holds, Alexander produced the run for about \$10,000.



**An online law magazine has teamed up with a Seattle company to produce the first U.S. Supreme Court bobblehead doll, of Chief Justice William Rehnquist.**

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Davies told Findlaw.com he managed to get the first doll to Chief Justice Rehnquist through an unnamed intermediary. The chief justice's reaction? "He laughed a lot."

### The long arm of the law

Don't mess with Western District U.S. Attorney John McKay. In August, McKay's office, working with the FBI and personnel at Microsoft Corporation, traced a second-wave version of the Blaster computer worm to an 18-year-old in Hopkins, Minnesota, and filed criminal charges against him in federal court in Seattle.

Jeffrey Parsons was accused of intentionally causing, and trying to cause, damage to a protected computer in violation of Title 18, U.S. Code, Sections 1030(a)(5)(A)(i), 1030(a)(5)(B)(i), 1030(b), and 1030(c)(4)(A), and Section 2. This variant infected at least 7,000 individual Internet users' computers, turned those computers into drones that attacked or attempted to attack Microsoft and, in particular, its website [www.windowsupdate.com](http://www.windowsupdate.com). Parsons could face 10 years in prison and a

quarter-million-dollar fine. A Minnesota federal judge barred Parsons from Internet access and confined him under house arrest.

The case was investigated by the Washington Cyber Task Force, which includes local law enforcement in the Western District of Washington, the Seattle Division of the Federal Bureau of Investigation, and the Seattle Division of the U.S. Secret Service.

Parsons was scheduled to make his first court appearance in Seattle September 17.

### Court upholds reorganization of public-defender agency

Division I of the Court of Appeals upheld a King County Superior Court order allowing a receiver to remove and replace the board and management of a Seattle public-defender agency in a decision filed August 25.

A 2002 King County contract compliance audit found that Northwest Defenders Association (NDA), based in Seattle, hadn't had an active board of directors since 1995. The last set resigned one by one and was never replaced. A new board was quickly appointed, but the county found NDA had established a for-profit law firm and leased more-expensive office space without prior approval, and filed suit seeking either a writ of *quo warranto* or a receivership to put a new board in place. The complaint also alleged breach of contract and violations of the Nonprofit Corporations Act (Ch.24.03 RCW), and asked for a declaratory judgment on whether the corporation's new board could enter into contracts.

The trial court granted the receivership; NDA argued unsuccessfully that the receivership laws didn't empower a receiver to replace management. The Court of Appeals found that "where a corporation serving a vital public interest has allowed its board of directors to become defunct, empowering a receiver to reconstitute the leadership of the corporation was within the scope of the receiver's statutory powers," noting that NDA's assets needed preserving to ensure they were devoted to the service of the public. *King County Dept. of Community & Human Servs. v. N.W. Defenders*, No. 51159-9-1 (Becker, Cox and Baker, jj.). ☞

# Around the State

## Bankruptcy Bar

**Denice L. Patrick** has been appointed Washington state chair of the National Association of Consumer Bankruptcy Attorneys. NACBA is a national organization of consumer bankruptcy attorneys dedicated to protecting the rights of consumer debtors in need of bankruptcy relief. NACBA helps consumer bankruptcy attorneys to more effectively represent their clients, files *amicus* briefs in selected appellate and Supreme Court cases that could significantly impact consumer bankruptcy rights, and lobbies against anti-debtor legislation in Washington, D.C.

## Cowlitz County Report

by Our Local Correspondent

**Jim Morgan** recently completed a triathlon (swimming two miles, riding a bike 112 miles, running a marathon), and in 14 hours, no less. Next year, he'll compete in the pentathlon, which adds the "suing the pants off someone" and "collecting a healthy fee" events to the race.

**Alfred A. "Art" Bennett** has moved law offices. His new address is 415 E. Mill Plain Blvd., Vancouver, WA 98666. Art says that after eight years in one office, moving to a new office is an interesting experience. Although all went smoothly at first, things quickly went awry. Even though his phone numbers remained the same, a real estate company started receiving Art's office calls. "No, Mr. Bennett is not here today, but we do have a wonderful piece of property available." Likewise, Art had filed his change of address with the Post Office, but most of his mail was marked "Returned to Sender, Address Unknown." Art says he now knows how Elvis felt.

**Dustin Richardson** returned to the prosecutor's office following the July bar exam. With an equally grand entrance, **Wes Johnson** marched in the children's parade that kicked off the Cowlitz County Fair. When he's not marching, Wes also serves on the board of the Ethnic Support Council.

Judge **Steve Warning** held his annual bar party this summer. **Angela Warning** was sorely missed, but was reported to have been enjoying Italy at the time. **Denis Maher** won the raffle for a weekend at **Alex Styve's** beach house in Rockaway Beach, OR. The Cowlitz-Wahkiakum Bar

Association raised over \$500 for the Legal Aid Society.

**Roberto Castro** is relocating out of state. In other moves, **Paul Brachvogel** has replaced **Pat Kubin** as the Kelso municipal court prosecutor at the city attorney's office.

Welcome to the three newest honorary members of the CWBA: Alexander, son of **Gary Bashor** and his wife; Peyton, daughter of **Andra** and **Kevin Blondin**; and Gus, son of **Toby Krauel** and his wife.

Information for the December issue must be received by October 15 at CWBA news@hotmail.com.

## King County Report

by Jim Varnell

### Tee It Up

The Riverbend Golf Course in Kent was the site of the annual **Phil Biege** Open, commonly referred to on the PGA Tour as the "fifth major" tournament of the year. Division winners this year included **John Curry** (attorneys' division) and, in an Annika-like performance, the Honorable **Julie Spector** (judges' division), defeating her fellow superior court peers: **Dick McDermott**, **Brian Gain**, and **Jimmy Cayce**. **Tom McElmeel** was honored on the 25th anniversary of his "drive for show and putt for dough" win at the Enumclaw Golf Links in 1978. It just happens that this correspondent was in the 1978 foursome of "Tiger" McElmeel, and also in the 2003 winning foursome, which included McElmeel, winner Curry, and **Dan "You're the Man" Williams**.

Serious golfers may note that this correspondent's mere presence in a foursome inspires top-flight play and a guaranteed win. Accordingly, this correspondent is making himself available for anyone who might have a slot open while playing at Augusta National, Pebble Beach, the Plantation Course on Maui, or even Newcastle in King County.

### Honors

**Nina Dillon** received the Judge David Soukup Award for Legal Advocacy presented



Dillon

by the King County Dependency CASA Program. **Leslie R. Weatherhead** has become a fellow of the American College of Trial Lawyers. **Lawrence R. Besk** was admitted as a fellow in the American Academy of Matrimonial Lawyers. **Julie A. Gaisford** has been elected to the board of overseers of Whitman College. **Leslie Boyd** was honored by the King County Sexual Assault Resource Center for her work as an outstanding community partner with that organization.



Boyd



Slonim

### Office Moves

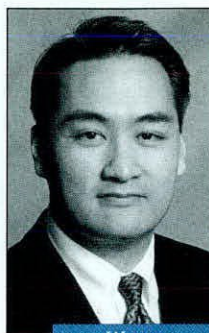
The law firm of Thompson Gipe, home of **Lindsay Thompson**, who was recently described by a reputable legal tome as "razor sharp and technologically savvy" (unusually complimentary words for a boy from North Carolina), recently moved its office to Fisherman's Terminal on Salmon Bay in Seattle. **Richard P. Matthews** was recently named a shareholder in and **Brent L. Nourse** an associate at Carney Badley Spellman. Matthews is a *summa cum laude* and *Phi Beta Kappa* graduate of the University of the South in Sewanee, TN, the *alma mater* of this correspondent. (Would someone please explain to me what *summa cum laude* and *Phi Beta Kappa* mean?)

**Kay S. Slonim**, another razor-sharp and technologically savvy attorney, has joined Lane Powell Spears Lubersky as counsel to the firm in the tax group. Ogden Murphy Wallace announces the elections of **Wayne D. Tanaka** to serve as managing member, and **Karen Sutherland** as assistant managing member. **Vicki E. Orrico** has been elected to the board of directors of Women Business Owners. **Holly B. Benton** and **Nicolette L. Pias** have been named associates at Williams, Kastner & Gibbs. **Jean-David Larson** has joined Hillis Clark Martin & Peterson as an associate.

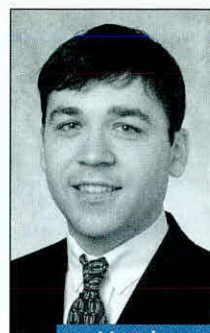
Amy W. Meyer has joined Cowan & Miller as an associate. Jeannette Adams Gorman is now a partner at Betts Patterson & Mines. Nadine R. Weiskopf (a member of the California Bar) and Eugene W. Wong are now with Lasher Holzapfel Sperry & Ebberson. Jeffrey C. Grant is of counsel and Katherine A. Walter is a new associate at Hessel Fetterman. Kevin Montler is now with Holland & Knight. Matthew Le Master has been elected a principal. Richard D. Ross has joined Riddell Williams as an associate.



Weiskopf



Wong



Montler

Gwynne L. Skinner and Nancy S. Chupp have formed The Public Interest Law Group; of counsel to the firm are Elizabeth A. Fiatarone and Karen L. Mitterer. George Ferrell is special counsel to the firm.

#### Volunteer Directors

The Epilepsy Foundation of Washington, a nonprofit organization, is seeking additional board members. Those persons interested should contact Heidi Alessi at Bullivant Houser Bailey.

#### Pierce County Judiciary

Pierce County's superior court judges and commissioners exchanged their robes and gavels for work clothes and paintbrushes this summer, and painted a disabled Tacoma woman's residence.

Headed by Judge Stephanie Arend, the 21 judges and six commissioners held six work parties during June, July, and August at the home of Cloris Floyd. They pressure-washed and scraped the one-and-a-half-story house; then they caulked and glazed; finally, they primed and painted. Along the way they did some pruning, carpentry, sanding, insulating, electrical work, window cleaning, and general cleanup. There was 100 percent participation from all judicial officers of the Pierce County Superior Court bench, either through work at the site or through monetary donations to feed the crew. By the time they finished, they had logged more than 250 hours in volunteer time, with a total of 42 people contributing to the success of the project.

"They did a beautiful job on my property," said Mrs. Floyd, 64, who suffers from lung fibrosis and lives alone. "They are wonderful people, and I am so thankful for their help."

Mrs. Floyd and her late husband purchased the house in 1964 and reared their three children there. Her illness forced her to retire from Weyerhaeuser Co., where she was a sales assistant in the Northwest hardwoods export division. "It just broke my heart to leave," she said.

### The Team at The Cowan ♦ Smith Law Firm



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The judges were assigned the Floyd home after responding to Paint Tacoma-Pierce Beautiful's annual call for volunteers to paint homes of low-income senior and disabled citizens. Sallie Shawl, the project's coordinator, said more than 100 homes are being painted this year by crews from churches, service clubs, unions, businesses, local government and military agencies, and individuals. By the end of this summer, more than 1,375 homes will have been painted since the program started in 1985.

"We wanted to participate in this project because, as judges and commissioners, most of the public's interaction with us in court is in an unpleasant circumstance, such as a criminal proceeding or a divorce," Arend said. "We want people to know that we are members of the community, that we care about it, and that we want to contribute to its betterment."

Other judges expressed a similar sentiment. "The feeling I get in helping others is a rewarding one. It's win-win, in that you are giving something back to the community, hopefully improving your skills, and creating a closer bond with other volunteers," said Judge Beverly Grant. Commissioner Ed Haarmann agreed. "The project gives us (judges and commissioners) the opportunity to give something back to the community and prove that we are human by getting paint all over ourselves just like everybody else," Haarmann said.

"For me, meeting the homeowner, Cloris Floyd, is what made the entire project worthwhile and meaningful. It personalized it. We weren't just painting, we were helping Mrs. Floyd," expressed Judge Tom Larkin. Judge Kathryn Nelson echoed his sentiments. "I felt I was able to be helpful even though I had never painted a house before. The homeowner was so appreciative. She was thrilled as soon as we got the primer coat painted," Nelson said.

Judge Vicki Hogan assisted Arend with project coordination. "When Judge Arend suggested that the judicial officers join together in this endeavor, it felt like a terrific idea. Meeting with and working on Mrs. Floyd's home confirmed the importance of the program for individual citizens of our community. However, it was due to Judge Arend's organization, dedication to the project, and willingness to

be present at all the work parties that kept us moving forward to complete the house."

### The Judiciary

by Lindsay Thompson

Governor Locke appointed Allen C. Nielson to the superior court for Stevens, Ferry, and Pend Oreille counties, effective October 1, 2003. He succeeds Judge Larry Kristianson, who retired.

King County Superior Court Judge Catherine Shaffer attended a four-week course on "History and Theory of Jurisprudence" in July at the National Judicial Col-

lege in Reno, Nevada. The course focused on historic, philosophic, and sociological perspectives on judicial decision-making. Judge Shaffer, who was accepted last year by the University of Nevada as a candidate for a master's degree in judicial studies, also attended graduate classes at the National Judicial College on "comparative law" and "law and economics" during this period. The Judicial College is located on the University's Reno campus.

Judge Shaffer's attendance was supported by a scholarship awarded by the State Justice Institute, a nonprofit organi-

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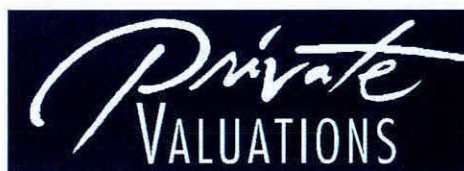
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Chief Justice **Gerry L. Alexander** has been elected to the board of directors of the National Conference of Chief Justices.

The Conference of Chief Justices works to improve the administration of justice in the states, commonwealths, and territories of the United States. Alexander's

two-year term will conclude at the conclusion of the annual meeting in 2005.

Alexander was first elected to a seat on the Supreme Court in 1994. He joined the state's highest bench at that time with over two decades of trial and appellate court experience behind him, having served as a judge of the superior court for Thurston and Mason counties from 1973 through 1984, and as a judge of the Court of Appeals, Division II, from 1985 through 1994.

He expressed intentions to focus on several priorities through the Conference

of Chief Justices: supporting adequate funding and resources for the judiciary, and promoting the vitality, independence, and effectiveness of state judicial systems.

Alexander chairs numerous committees aimed at improving court operations, including the state's Board for Judicial Administration and the Bench-Bar-Press Committee of Washington.

#### Northwest Indian Bar Association

The Northwest Indian Bar Association gathered August 28 at the Tulalip Tribes' Quil Ceda Village Conference Center for a meeting and celebration of NIBA's resurgence. During the past 15 months, the 12-year-old organization has seen unprecedented growth, and credits its leadership in legal education, advocacy, mentorship, and *pro bono* legal work with the increase. NIBA's resurgence comes in large part from the support of Washington tribes like the Tulalip, who are renowned for employing and nourishing Indian attorneys.

The rise in the number of Native American attorneys in the Northwest signals a nationally recognized trend toward greater involvement in the legal profession and more informed decision-making by Indian people. "We provide our people with a voice on the legal issues and decisions that affect the very essence of life in Indian country," said two-term NIBA President **Gabriel Galanda**. "I believe it is that voice that has begun attracting so many Indian people to the legal profession in Washington state and beyond."

"When NIBA was created there were only a handful of Native attorneys practicing in the Northwest, and virtually no Indian attorneys working in corporate law firms," said past-NIBA President **Rion Ramirez**. However, during the past 15 months, NIBA has grown its membership to more than 150 attorneys; expanded its membership to Oregon, Idaho, and Alaska; and incorporated as a 501(c)(3) and (6) nonprofit organization. NIBA members now practice for high-powered national and regional law firms, state and federal governments, and on all 42 Northwest Indian reservations. Six NIBA members, four of whom are Native, practice on the Tulalip Reservation.

Additionally, NIBA raised nearly \$20,000 to fund scholarships for North-



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west Native law students in Washington state. The Tulalip and Muckleshoot tribes each donated \$5,000 to NIBA's scholarship program to enable more Indian students to enter law school and the legal profession. NIBA has now turned its attention toward adding a requirement to the Washington bar exam regarding testing on Indian law. Currently, New Mexico is the only state to require testing on Indian law in its bar exam.

NIBA's recent achievements are of particular importance when considered against statewide and national research findings. According to Galanda, Indians are the most underrepresented ethnic demographic in the legal profession. Indian attorneys constitute just 0.7 percent of the Washington Bar. Nationally, 4.1 million people identify themselves as Native American but there are only 3,000 Native practitioners (Census 2000).

"We recognize that the rise in Native American attorneys in the Northwest is only just beginning," said Galanda. "But we are proud to be leading the charge."

Founded in 1991, NIBA is a nonprofit organization of Native and non-Native Indian law attorneys, judges, spokespersons, and students in Washington, Oregon, Idaho, Alaska, British Columbia, and the Yukon Territory. NIBA works to increase the number of Native attorneys in the Pacific Northwest through legal education and advocacy. See [www.nwiba.org](http://www.nwiba.org).

### Spokane County

**Dennis Cronin** has opened the Law Offices of D.C. Cronin in Spokane. **Steven Bertone** has joined Paine Hamblen Coffin Brooke & Miller as an associate in patent and trademark law. He was previously general counsel for Seattle Scientific Corporation.

Governor Locke awarded **Tom Foley** the state of Washington's Medal of Merit in July. The state's highest civilian honor recognized Foley's decades of service to his state and nation. A Spokane native, Foley served in Congress from 1965 to 1995 as chair of the House Agriculture Committee, majority whip, majority leader, and speaker of the House of Representatives. He was ambassador to Japan from 1997 to 2001, and now practices law in Washington, D.C.

### Thurston County

**Celia M. Rivera** has joined the Law Offices of Terry W. Church in Olympia, concentrating on plaintiffs' personal-injury law. A fluent speaker of Spanish, Rivera sits on the board of the Washington State Hispanic Bar Association.

**Stephen Henderson** has been named liaison of the WSBA Board of Governors to the trustees of the Superior Court Judges' Association by President **David Savage**.

### Whatcom County Report

by **Mick Moynihan**

Twice a year we set aside a time and have a very nice ceremony in which we swear in the new attorneys. This also is a time when these captive attorneys get to hear the lecture from Judge **Steve Mura** about practice in Whatcom County. This year there were 10 who were sworn in and (I am sure) took Judge Mura's words to heart. Of the 10, seven are expected to practice here in Whatcom County. These are **Edward S. Alexander**, **Mark E. Bratlien**, **Gae**

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MacKenzie, Eugene Keay, Judy Leaming, Amy Robinson, and Jesse M. Salomon.

We have a fair number of bikers here in Whatcom County, even some who will pedal around without any motors on their two-wheel conveyances: Jim Doran, Greg Greenan, Doug Hyldahl, Eric Richey, Eric Weight, and Travis Stearns, and Judge Matt Elich, who recently spent a few days in the hospital in Spokane as a result of not keeping his bike on the roadway. Judge George Bowden (another avid bicyclist) from Snohomish County was here re-

cently as the result of a judge trade. Like Judge Elich, he could use a lesson or two on keeping his bike on the road.

As for the motorized brigade, Judge Dave Nichols, Judge Steve Mura, Dave Anderson, Ron Morgan, and Dave McEachran are thoroughly enjoying the recent batch of great weather. Ron Hardesty's wife recently suggested that they needed a bigger bike, and Pete Dworkin is planning a cross-country trip to Sturgis, wherever that is.

A new attorney has arrived in Belling-

ham, yet he does not have to worry about hourly billings, angry clients, or advertising. Father Dave Mulholland is the new pastor at Sacred Heart. He graduated from UPS law school in 1988, and practiced for 10 years in Tacoma and Alaska before entering the seminary and being ordained two years ago. I guess that raises client confidentiality to a new level.

#### Yakima County

Lyon, Weigand & Gustafson PS welcomes Marcus J. Fry, who was sworn in as a Washington attorney June 6, 2003. A Pullman native, Fry graduated from Washington State University. He served in the NCAA Compliance Office at Washington State University while attending law school at the University of Idaho College of Law. He will practice estate planning and litigation for the Yakima firm.

#### In Memoriam

*Remembering our colleagues and friends*

#### R. Wayne Cyphers

*Seattle attorney for over four decades*

Wayne Cyphers came to Seattle in 1939 to attend the University of Washington in pre-law. Following service in the Army in World War II, Cyphers worked swing shift at Boeing while clerking under the Law Clerk Program during the day, and was admitted to the Bar in 1952. He was in private practice in the Central Building in downtown Seattle until 1975, and then practiced in North Seattle until his retirement to Florida in 1996.

Survivors include his wife, Claire; three daughters, including Seattle attorney Jeannette (Jackie) Cyphers; three sons; five stepchildren; and many grandchildren.

Ronald Wayne Cyphers was born in Missler, Kansas, on July 25, 1915, and died on July 19, 2003, in East Point, Georgia, aged 87.

#### Judge Bertil E. Johnson

*Tacoma native was Bar member for three quarters of a century*

"I've had a very interesting life," Judge Bertil Johnson told an interviewer at age 80. His mother would have liked him to go into the ministry, but he believed that only those who felt a special calling should do so. He didn't have that. He started out

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studying business administration, but decided to go into law his junior year. One of four children of Swedish immigrants, Bertil Johnson grew up in Tacoma. While attending Stadium High School, Bertil worked for the Tacoma Butter Store; he worked for one year after graduating in 1919, in order to save money for college. Johnson was admitted to practice January 1, 1925.

Johnson's career got off to a fast start. He was appointed assistant U.S. attorney in Tacoma in 1926. After 13 months, Johnson was appointed prosecuting attorney for Pierce County and served until 1935. From 1935 until 1951, he was in private practice in Tacoma, drawing a Scandinavian clientele attracted by his ability to speak Swedish. He was active in the Swedish Order of Valhalla and the Scandinavian Fraternity, and at one time participated in the Swedish Order of Vasa and the Scandinavian Old-Timers. Over the course of his career he was also active in the Elks, Tacoma Lions Club, Tacoma Boys Club, United Good Neighbor Fund, the Salvation Army, and the Allenmore Medical Foundation. Johnson and his wife, Pearl Tate, had three children, eight grandchildren, and nine great-grandchildren.

Johnson moved to the Pierce County Superior Court bench in 1951 and served into the 1970s.

"Compassionate honesty, profound integrity, and practical good judgment with a sense of humor is a shorthand description of my Dad in his profession and in his life," recalled his son, Tacoma attorney Bertil F. Johnson. "A very decent man and a good guy to boot."

Bertil Edward Johnson was born on May 7, 1901, in Tacoma, Washington, and died January 27, 2003, aged 102.

#### Thomas F. Kingen

*Longtime Spokane and Pullman lawyer*  
Tom Kingen graduated from Gonzaga University School of Law and was Pullman's city attorney until his death. He was also a trial lawyer for the city of Spokane and, over the years, worked on most of its major litigation. Kingen died suddenly on a bicycle trip in Canada, July 16, 2003. Survivors include his wife, attorney Cheryl Demers Kingen, and three children.

#### R.E. Mansfield

*Okanogan native was fixture in civic life*  
A lifetime resident of Okanogan County, "Reese" Mansfield was born in Pateros on August 28, 1912. He entered the University of Washington and graduated from UW School of Law in 1935. After he married Patti Woolery in Seattle in 1935, they moved to Pateros in 1936, where he took over the law practice of the late Charles T. Borg. In 1944, Mansfield joined an Okanogan firm and practiced law there until the 1980s.

R.E. Mansfield was a longtime lay reader and member of the vestry of the former St. John's Episcopal Church in Okanogan. Active in his community, he was a lifelong Democrat, a Mason, and member of the Okanogan County Bar Association, the Okanogan Kiwanis Club, the Okanogan County Historical Society, and the Lewis & Clark Heritage Foundation.

Survivors include his brother, two daughters, five grandchildren, and six great-grandchildren.

Rhesa Everett Mansfield was born in

  
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## Disciplinary Notices

Pateros August 28, 1912, and died in Okanogan June 25, 2003, aged 90.

### George Newsham

*Former Seattle attorney spent a decade in Alaska*

George Newsham graduated from the University of Nebraska in 1976 with a B.A., and from the University of Washington in 1978 with a J.D. He was a partner at Prince, Kelley, Newsham & Marshall in Seattle until his move to Alaska in 1992.

Newsham was a former member of the Washington, Alaska, and Ohio bar associations.

Survivors include his wife of 27 years, Cathi Newsham, and two children.

George M. Newsham was born in Nebraska, November 3, 1953, and died July 20, 2003, in an auto accident in Wasilla, Alaska, aged 49.

### Gerald A. Palm

*Mercer Island attorney tried over 130 cases in 36-year career*

His friends said Jerry Palm never knew a stranger. He played tennis and basketball, ran, water-skied, snow-skied, scuba-dived, hiked, fished, and boated. He was a deacon in his church and led a Bible study group, served on boards and committees, and loved travel.

A graduate of Dartmouth College and Harvard Law School, Palm was admitted in Washington in 1967 and spent his career as a defense trial lawyer in Seattle. Survivors include three siblings, his wife, two children, and an extended family.

Gerald Albert Palm was born in Seattle November 4, 1942, and died on Mercer Island June 22, 2003, aged 60.

*Bar News* has been advised of the deaths of these WSBA members:

**Catherine M. Anderson**, July 13, 2003

**Judge Daniel Kershner**, July 20, 2002

*Obituaries and remembrances of WSBA members are welcome. Please forward to the editor at the WSBA office or by e-mail to [tradelaw@thompson-law.com](mailto:tradelaw@thompson-law.com)*

*These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors.*

*For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name, and your name and address.*

### Disbarred

**Brian W. Chance** (WSBA No. 11649, admitted 1981), of Lowell, MA, was disbarred effective May 8, 2002, following disbarment in Massachusetts. This discipline was based on his misuse of estate assets in 2000.

**Matter 1:** In 1999, Mr. Chance drafted estate-planning documents for an elderly client. In January 2000, the client died, leaving all of her assets in trust for the care of her disabled son. An employee in Mr. Chance's office was appointed trustee and executor of the client's estate. The employee gave Mr. Chance a \$204,585.19 check to deposit into his IOLTA account until an estate account could be established. Between July 2000 and February 2001, Mr. Chance disbursed \$120,000 of the estate funds for unrelated matters. When Mr. Chance failed to provide an accounting, the employee filed a civil suit seeking return of the funds.

**Matter 2:** In 1998, Mr. Chance agreed to represent a trustee in funding and managing a trust. In September 1998, Mr. Chance paid himself \$8,900 from these trust funds without authorization. Between August 1998 and November 2000, Mr. Chance disbursed another \$67,000 in trust funds to himself without the trustee's authorization. In July 2000, the trustee discharged Mr. Chance. After his discharge, Mr. Chance disbursed \$20,000 to the trustee, using funds belonging to the estate discussed in matter 1.

Mr. Chance's conduct violated Massachusetts RPCs 1.15(a), (b), (d), and (e), requiring lawyers to withdraw when asked by the client and to protect the client's interests upon withdrawal; 8.4(c), prohibiting dishonesty, fraud, deceit, or misrepresentation; 1.1, requiring lawyers to provide competent representation; 1.2(a), requir-

ing lawyers to abide by their clients' decisions concerning the objectives of the representation; 1.3, requiring lawyers to diligently represent their clients; and 1.4(a), requiring lawyers to keep their clients reasonably informed about the status of their matters.

Felice Congalton represented the Bar Association. Mr. Chance represented himself.

### Disbarred

**Reginald Johnson** (WSBA No. 26726, admitted 1997), of Tacoma, was disbarred effective March 27, 2003, following a hearing. This discipline was based on 44 acts of misconduct involving 14 clients and the Bar Association from 1999 through 2002.

In late 1999 or early 2000, Mr. Johnson began working on a contract basis for a landlord-services company. The company provided eviction and collection services for landlord clients. Mr. Johnson signed pleadings that were prepared and selected by company staff, and appeared in court. Mr. Johnson usually did not meet with the clients or review the files prior to signing the pleadings.

In 2001 and 2002, Mr. Johnson authorized company staff to sign his name on pleadings he had not reviewed. Mr. Johnson assisted the company's unauthorized practice of law. The company paid Mr. Johnson a fee for each order entered and paid him a flat fee for time spent in the company offices.

During 2000 and 2001, while working for landlord clients, Mr. Johnson failed to notify clients of hearings; failed to attend hearings; failed to respond to motions, resulting in sanctions and attorney's fees imposed against himself and his clients; obtained default orders against tenants although they had served answers; filed motions in previously dismissed actions; signed pleadings without investigating any of the information or contacting the clients; pursued eviction actions knowing the tenants had filed bankruptcy petitions; purported to represent clients without authorization; filed eviction proceedings knowing that the tenant had insufficient notice; and provided false information to the court and to the Bar Association.

Mr. Johnson's conduct violated RPCs 1.1, requiring lawyers to provide compe-

tent representation; 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters; 1.8(f), prohibiting lawyers from accepting compensation from a person other than the client, unless the client consents and there is no interference with the lawyer-client relationship or the lawyer's professional judgment; 3.1, prohibiting bringing or defending frivolous claims; 3.3(f), requiring lawyers, in *ex parte* proceedings, to inform the tribunal of all relevant facts, whether or not they are adverse; 3.5(b), prohibiting *ex parte* communication with the tribunal; 5.4(c), prohibiting allowing the lawyer's employer to direct the lawyer's professional judgment; 5.5(b), prohibiting assisting nonlawyers with the unauthorized practice of law; 5.5(c), prohibiting the lawyer from allowing his name to be used by a nonlawyer in the unauthorized practice of law; 8.4(b), prohibiting committing a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; and 8.4(d), prohibiting conduct prejudicial to the administration of justice; and RLDs 1.1(d), prohibiting acting as a person's lawyer without authority; and 1.1(p), prohibiting conduct demonstrating unfitness to practice law.

Jonathan Burke represented the Bar Association. Mr. Johnson represented himself. The hearing officer was Steven W. Hale.

### Disbarred

**Kirk W. Jones** (WSBA No. 7089, admitted 1976), of Bridgeport, CT, was disbarred effective July 18, 2002, based on a disbarment order from the Supreme Judicial Court of the Commonwealth of Massachusetts. This discipline was based on his criminal conduct involving creating false evidence in 1994.

**Matter 1:** In January 1994, Mr. Jones filed a lawsuit on his client's behalf in Massachusetts Superior Court. In February 1994, Mr. Jones learned that the defendant had filed a bankruptcy petition. Mr. Jones's client asserted that his claim was nondischargeable due to fraud, but Mr. Jones failed to file the required nondischarge-

ability complaint prior to the deadline. In June 1994, Mr. Jones filed a motion to extend the time to file the nondischargeability complaint. In July, Mr. Jones's client died. In August, Mr. Jones drafted his client's affidavit and signed the client's name. Mr. Jones filed the affidavit in court in support of his motion for additional time. The court denied the motion. In March 2000, Mr. Jones pleaded guilty to two counts of mail fraud.

Mr. Jones's conduct violated Massachusetts Disciplinary Rules 102(A)(4) and (6), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; 1-1-2(A)(5), prohibiting knowingly using perjured testimony and false evidence; 7-102(A)(5), prohibiting knowingly making a false statement of law or fact; and 7-102(A)(6), prohibiting creating and using false evidence.

Douglas Ende represented the Bar Association. Mr. Jones represented himself.

### Disbarred

**Chul Shirts** (WSBA No. 24993, admitted 1995), of Vancouver, was disbarred effective October 8, 2002, following a hearing. This discipline was based on his criminal conduct, failure to diligently represent clients, and charging unreasonable fees in 1999 and 2000.

During 1999 and 2000, Mr. Shirts agreed to represent seven clients in parenting-plan modifications or marriage dissolutions. In each case, the clients paid Mr. Shirts advance fee deposits. Mr. Shirts took some actions, but did not complete any of these cases. In one case, Mr. Shirts failed to file proof of service, so the client was not able to complete the case. Mr. Shirts did not return his clients' phone calls. In some cases, Mr. Shirts did not account for or return unearned fees, and did not return clients' original documents.

Mr. Shirts's conduct violated RPCs 8.4(b), prohibiting committing criminal acts that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; 1.4, requiring lawyers to keep lawyers reasonably informed about the status of their matters; 1.3, requiring lawyers to diligently represent their clients; 1.15(d), requiring lawyers to refund unearned fees upon termination of representation; and 1.5(a), requiring

lawyers' fees to be reasonable.

Linda Eide represented the Bar Association. Mr. Shirts represented himself. The hearing officer was David A. Thorner.

### Suspended

**Hollis Wayne Duncan** (WSBA No. 27937, admitted 1998), of Edmonds, was suspended for 12 months, effective October 11, 2002, by order of the Supreme Court, following a hearing. This discipline is based on his failure to avoid conflicts of interest from 1999 through 2000, and charging an unreasonable fee.

In October 1998, Mr. Duncan began representing Mr. P and Mr. K. Mr. P supervised Mr. K in a city shop. In early 1999, Mr. Duncan also began representing Mr. S, another shop employee supervised by Mr. P. In May 1999, Mr. Duncan agreed to assist Mr. S with job-related issues involving his supervisor, Mr. P. Although the parties appear to have known about the conflict of interest, Mr. Duncan did not discuss the matter or obtain a written conflict waiver. Mr. S sent a letter to the city mayor complaining about Mr. P. Mr. Duncan helped Mr. S draft this letter. In June 1999, Mr. S paid his bill in full.

In June 1999, the city notified Mr. P that he was subject to disciplinary action, and Mr. Duncan represented him in this proceeding. Mr. S was interviewed as a witness in the disciplinary action. In July 1999, the city terminated Mr. P's employment, and Mr. Duncan filed a whistleblower action on Mr. P's behalf. During discovery in this action, Mr. Duncan requested Mr. S's employment records. A city attorney wrote Mr. Duncan about the conflict between Mr. S and Mr. P, but Mr. Duncan ignored the letter.

In January 2000, a judge disqualified Mr. Duncan from further representation in the whistleblower case. After this decision, Mr. Duncan sent Mr. S a letter demanding a \$3,990 retainer in retaliation for the disqualification. In February, Mr. Duncan assisted Mr. K in filing a union complaint against Mr. S. Mr. Duncan participated in this complaint to further retaliate against Mr. S. In April and May 2000, Mr. Duncan made reports to animal control about Mr. S.

Mr. Duncan's conduct violated RPCs 1.7(a), prohibiting lawyers from represent-

ing clients whose interests are directly adverse, unless the clients consent in writing after full disclosure and the lawyer reasonably believes that the representation will not adversely affect the other client; 1.9, prohibiting a lawyer from representing a client in the same or a substantially related matter whose interests are materially adverse to a former client's interests, unless the former client consents in writing after a full disclosure; and 1.5, requiring lawyers' fees to be reasonable.

Michael Patterson and Christine Gray represented the Bar Association. Mr. Duncan represented himself. The hearing officer was Paul M. Larson.

### Suspended

**Michael J. Harris** (WSBA No. 18240, admitted 1988), of Finleyville, PA, was suspended for 90 days effective February 25, 2003, following a hearing. This discipline is based on his failure to diligently represent and reasonably communicate with a client, and conduct involving misrepresentation from 1996 to 1998. (*Mr. Harris is to be distinguished from Michael E. Harris and Michael P. Harris, both of Seattle.*)

In 1996, Mr. Harris represented the mother in a child-custody trial and appeal. The client's mother paid Mr. Harris \$7,500 for the appeal and transcripts. Mr. Harris told the mother that none of the \$7,500 would be applied to outstanding attorney's fees from the trial. Mr. Harris timely filed the notice of appeal, but without proof of service. The court sanctioned Mr. Harris three times for late filings between January and May 1997. In June, the court moved to conditionally dismiss the appeal and again sanctioned Mr. Harris for failing to file his client's brief. Following an additional sanction in August, the court dismissed the client's appeal.

During 1997 and 1998, Mr. Harris told the client that he was waiting for the opposing party's brief. The client learned of the dismissal in 1998 and discussed this with Mr. Harris. Mr. Harris told the client he did not know about the dismissal and that the court had made a mistake. Mr. Harris told the client he had applied the mother's money to the trial bill, including an additional amount she paid for transcripts, an item already included in the original payment.

Mr. Harris's conduct violated RPCs 1.3, requiring lawyers to act with reasonable diligence and promptness; 1.4, requiring lawyers to reasonably communicate with clients about the status of their matters; 3.2, requiring lawyers to expedite clients' litigation; and 8.4(c), prohibiting lawyers from engaging in conduct involving fraud, deceit, and misrepresentation.

Anthony Butler and Randy Beitel represented the Bar Association. Mr. Harris represented himself. The hearing officer was Teena M. Killian.

### Suspended

**Hugh J. Kelly** (WSBA No. 14616, admitted 1984), of Spokane, was suspended for two years effective May 14, 2003, following a hearing. Mr. Kelly's reinstatement following the suspension is conditioned on his showing his fitness to practice. This discipline is based on his practicing law while his license was suspended, failing to refund an unearned fee deposit, and failing to properly document and account for client funds in 2000.

In October 1999, Mr. Kelly agreed to represent relatives of an Alzheimer's dementia patient. The clients wanted advice about financial and care decisions, and in particular how to qualify the patient for Medicaid long-term care. In December 1999, Mr. Kelly drafted two Medicaid gift-distribution documents and disbursement checks for the daughter's signature. Mr. Kelly deposited one of these checks into his trust account as an advance fee deposit.

By May 2000, Mr. Kelly had paid himself \$5,000 in fees. Mr. Kelly's license to practice law was suspended in May, but he continued to practice. In June, Mr. Kelly told the clients he could no longer represent them, but did not disclose his interim suspension. In July 2000, Mr. Kelly submitted an outdated Medicaid form. The clients completed the corrected form and obtained Medicaid coverage for the patient without Mr. Kelly's assistance. The clients asked Mr. Kelly for an accounting of the \$5,000. He did not provide an accounting or any billing statements to the clients. Mr. Kelly failed to respond to the Bar Association during the investigation of this matter. The sanction in this matter was affected by mitigating factors.

Mr. Kelly's conduct violated RPCs

8.4(b), prohibiting criminal acts that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; 8.4(c), prohibiting conduct involving dishonesty, deceit, fraud, or misrepresentation; 1.5(a), requiring lawyers to refund unearned fee deposits; 1.14(b)(3), requiring lawyers to maintain records and provide accountings of client funds; and RLD 2.8, requiring lawyers to cooperate with the disciplinary process.

Randy Beitel represented the Bar Association. Mr. Kelly represented himself. The hearing officer was Vicki Lee Anne Parker.

### Suspended

**Sidney S. Rodabough** (WSBA No. 4819, admitted 1972), of Kent, was suspended for two years effective October 1, 2002, by order of the Supreme Court, following a hearing on the facts and a stipulation to the sanction. This discipline is based on his failure to avoid conflict of interest; dishonest conduct; and failure to cooperate with the disciplinary investigation between 1992 and 1998.

In 1992, Mr. Rodabough agreed to represent a client in a mortgage-foreclosure action. The client sold his condominium to a purchaser who assumed the underlying mortgage, with no novation of the deed of trust. When the purchaser defaulted, the client continued to make the mortgage payments and wanted to make sure that his payments did not benefit the defaulting purchaser.

Mr. Rodabough and the client agreed that the client would pay off the outstanding balance on the deed of trust through a "straw man," to prevent the purchaser from benefiting from the payments. In addition, they agreed that Mr. Rodabough and the straw man would own the condominium if Mr. Rodabough paid the client the amount due on the deed of trust, plus nine percent interest, 11 months after the recording of the assignment of the deed of trust. Additionally, Mr. Rodabough agreed to rent the condominium and use the proceeds to pay for interest, real estate taxes, and condominium fees. Mr. Rodabough did not explain the conflict of interest to his client, obtain a written waiver of the conflict, or advise his client to seek independent advice.

In December 1992, the client paid the balance owing on the first deed of trust and Mr. Rodabough assigned the deed to his legal assistant, the "straw man." Mr. Rodabough promised the legal assistant a 50 percent share in any profits from the condominium sale.

On August 10, 1995, Mr. Rodabough paid the client the accumulated interest from December 1992 through the end of August 1995. Mr. Rodabough made no other payments to the client. The client requested that his name be placed back on the title. Mr. Rodabough stopped communicating with the client and did not change the title. During 1994 and 1995, Mr. Rodabough listed the condominium as his property on his income taxes, declared rental income, and took depreciation deductions.

In 1998, the client filed a civil lawsuit against Mr. Rodabough. Mr. Rodabough did not answer, and the client received a \$48,332.66 judgment against him. On October 8, 1998, Mr. Rodabough filed a Chapter 13 bankruptcy petition. He did not list the condominium as an asset and told the court that it was owned by a friend. Mr. Rodabough listed a substantially smaller gross income than he had reported on his income-tax returns. Mr. Rodabough failed to cooperate with the disciplinary investigation of this matter.

Mr. Rodabough's conduct violated RPCs 1.7(b), prohibiting lawyers from representing clients in matters in which the lawyer's representation may be materially limited by the lawyer's own interest; 1.8(a), prohibiting acquiring a business interest adverse to the client, unless the terms are fair and reasonable, and disclosed in writing to the client, and the client has a reasonable opportunity to seek independent legal advice in the transaction; and 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; and RLD 2.8, requiring lawyers to promptly cooperate with disciplinary investigations.

E.H. Knapp Jr. and Linda Eide represented the Bar Association. Kurt Bulmer represented Mr. Rodabough. The hearing officer was Patricia H. Wagner.

#### **Suspended**

Steven J. Rucker (WSBA No. 20407, ad-

mitted 1991), of Portland, OR, was suspended for one year effective October 3, 2001, by order of the Supreme Court approving a stipulation. This discipline is based on a driving-and-alcohol-related offense in 2000.

In November 2000, a police officer observed Mr. Rucker driving without headlights and crossing the centerline. When the police officer attempted to stop Mr. Rucker, he drove away at a high rate of speed. After a 21.6-mile chase at speeds between 85 and 120 miles per hour, Mr. Rucker stopped after running over a spike strip placed in the road. During this chase, Mr. Rucker crossed the state line from Washington into Oregon. Mr. Rucker pleaded guilty to attempt to elude and DUII in Oregon, and attempt to elude in Washington. He requested, and was sentenced, to 90 days of electronic monitoring and participation in a secure residential alcohol-treatment program in Oregon, and eight months' confinement in Washington. Mr. Rucker had prior driving-and-alcohol-related convictions from the late 1980s through 1999.

Mr. Rucker's conduct violated RPC 8.4(i), prohibiting acts reflecting disregard for the rule of law.

Sachia Stonefeld Powell represented the Bar Association. Mr. Rucker represented himself.

#### **Reprimanded**

Leta J. Schattauer (WSBA No. 19499, admitted 1990), of Seattle, received a reprimand on July 26, 2002, following a hearing. This discipline was based on her failing to disclose material facts to the tribunal.

In 1990, a firm assisting indigent inmates with post-conviction matters employed Ms. Schattauer. The firm assigned Ms. Schattauer to represent Mr. A in a personal-restraint petition. In 1993, Ms. Schattauer opened her own law practice and continued to represent Mr. A. In May 1993, Ms. Schattauer filed a motion to renew the client's appeal and to renew the order establishing indigency. The motion was supported by the client's certified statement advising the court that his marital status had changed. The client and Ms. Schattauer were married in April 1993. The motion did not disclose community

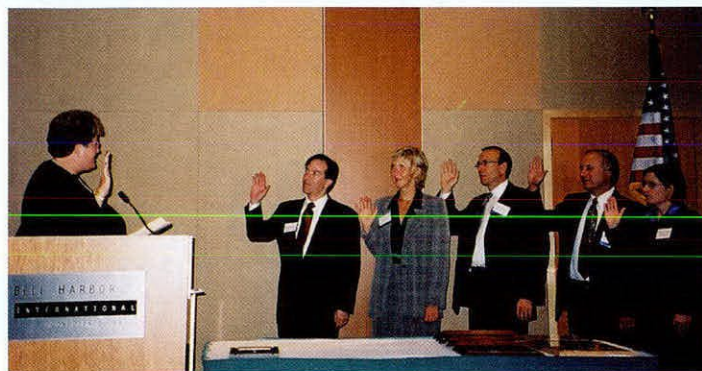
assets, including Ms. Schattauer's home and a mutual fund.

In 1996, Ms. Schattauer filed a personal-restraint petition for the client. This petition requested waiver of the appellate filing fee and contained a statement of finances. Neither the petition nor the client's affidavit disclosed the client's marital status. The court waived the filing fee. At this same time, the undisclosed community mutual fund contained sufficient funds to pay the filing fee.

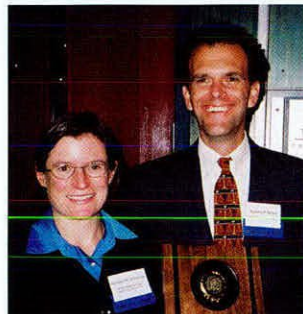
Ms. Schattauer's conduct violated RPCs 3.3(a)(1), prohibiting making a false statement of material fact to the tribunal; and 8.4(d), prohibiting conduct prejudicial to the administration of justice.

Leslie Allen represented the Bar Association. Kurt Bulmer represented Ms. Schattauer. The hearing officer was Vicki Lee Anne Parker.

# 2003 WSBA Award Recipients



New WSBA Governors Randolph I. Gordon, Kristin G. Olson, Mark A. Johnson, Michael J. Pontarolo, and Kathleen M. O'Sullivan are sworn in by Justice Mary E. Fairhurst.



Katie O'Sullivan and Nicholas Gellert



Maureen Hart

Congratulations to this year's Annual Awards recipients! The awards, with the exception of the *Pro Bono* Award and the President's Award, were presented at the Annual Awards Dinner in Seattle on September 11, 2003.

## **Pro Bono Award**

Presented to the Spokane County Bar Association Volunteer Lawyers Program and the Tacoma-Pierce County Bar Association Volunteer Legal Services Program June 7 at the Access to Justice Conference.

## **Award of Merit**

Presented to David Burman, Nicholas Gellert, and Katie O'Sullivan of Perkins Coie, and Maureen Hart of the Attorney General's office.

## **Professionalism Award**

Presented to the Honorable Harry McCarthy.

## **Angelo Petrus Award for Lawyers in Public Service**

Presented to Rochelle Kleinberg-Goffe.

## **Outstanding Judge Award**

Presented to the Honorable Stephen Dwyer.

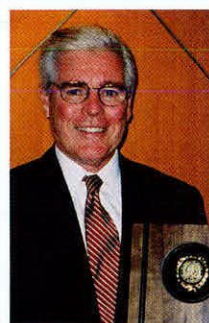
## **Excellence in Diversity Award**

Presented to the Glass Ceiling Task Force and Perkins Coie LLP.

## **President's Award**

Presented to Gregory Dallaire September 10 at the President's Dinner.

We regret that photos of the following award recipients were not available: David Burman, Gregory Dallaire, Holland McBurns (Spokane County Bar Association Volunteer Lawyers Program), and Terry McCarthy (Tacoma-Pierce County Bar Association Volunteer Legal Services Program).



Judge Harry McCarthy



Rochelle Kleinberg-Goffe



Judge Stephen Dwyer



Steve Koh, accepting for Perkins Coie



Eileen Concannon and Judith Ramseyer, of the Glass Ceiling Task Force, accepting the award from Governor Fawn Sharp

### Judicial Recommendation Committee

**Application deadline:** October 15, 2003

The WSBA Judicial Recommendation Committee is accepting applications from attorneys and judges seeking consideration for appointment to fill potential appellate-court vacancies. Interested candidates will be interviewed by the committee at its December 5, 2003, meeting.

When appointments are made to fill vacancies on the Washington Court of Appeals and Supreme Court, the committee's recommendations are reviewed by the WSBA Board of Governors and then referred to the governor of Washington for review.

If you are interested in scheduling an interview, please contact the WSBA at 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; phone 206-727-8239; or e-mail [barleaders@wsba.org](mailto:barleaders@wsba.org) to obtain a questionnaire. Please specify whether you need the questionnaire designed for a judge or an attorney.

### Legal Foundation of Washington Board of Trustees

**Application deadline:** November 7, 2003

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a two-year term on the Legal Foundation of Washington board of trustees (two positions). Incumbents are eligible for reappointment (up to two consecutive terms) and must also submit letters of interest and résumés.

The Legal Foundation of Washington is a private, not-for-profit organization that promotes equal justice for low-income people through the administration of IOLTA and other funds. Trustees should have a demonstrated commitment to and knowledge of the need for legal services and how these services are provided in Washington. Further information about trustee responsibilities is available upon request by e-mailing [bcclark@legalfoundation.org](mailto:bcclark@legalfoundation.org).

### Paula Littlewood Joins the WSBA as Deputy Director

Paula Littlewood joined the WSBA September 2 as deputy director. A Pullman native, she earned her bachelor's degree in political science and history in 1988 from Claremont McKenna College, and her J.D. and Masters in International Studies in 1997 from the University of Washington. Between degrees, she traveled and worked in Asia for three years, then returned to the Northwest to fundraise for local and statewide political campaigns and initiatives. Following law school, she became an assistant dean at the University of Washington Law School under Dean Hjorth, where she managed various departments, including development and public relations, budget/administration, computing services, and CLE. Since 1998 she has been an active member of the WSBA, where she has sat on many committees, including chairing the Editorial Advisory Board and serving on the Legislative Committee.

Please submit letters of interest and résumés to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail [barleaders@wsba.org](mailto:barleaders@wsba.org).

### Limited Practice Officer Board

**Application deadline:** November 15, 2003

The WSBA Board of Governors will be nominating one member who is appointed by the Supreme Court to serve a four-year term commencing January 1, 2004 on the Limited Practice Officer Board. Incumbents are eligible for reappointment (up to two consecutive terms) and must also submit letters of interest and résumés. The board oversees administration of and compliance with the Limited Practice Officer Rule (APR 12), and meets every other month.

Please submit letters of interest and résumés to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail [barleaders@wsba.org](mailto:barleaders@wsba.org).

### Practice of Law Board Nonlawyer Member Applications Sought

**Application deadline:** October 31, 2003

A vacancy has occurred on the Practice of Law Board requiring the appointment of a nonlawyer to fill the unexpired term, which runs to September 2005. Persons interested in seeking nomination for appointment to the POL Board should submit letters of application describing their background and qualifications for board membership to the address shown below. Applicants should have a demonstrated commitment to the POL Board's purposes as set out in GR 25. Members of the board are not compensated for their services, but are reimbursed for necessary expenses. The board meets monthly, on the second Friday of each month, in Seattle. The Practice of Law Board will consider applicants at their November meeting. The board may request that applicants make themselves available for interview at that meeting or later. Please submit letters seeking nomination to the POL Board not later than October 31, 2003, to Practice of Law Board, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330. Further information about the Practice of Law Board is available at [www.wsba.org/lawyers/groups/practiceoflaw](http://www.wsba.org/lawyers/groups/practiceoflaw), or by contacting Board Chair Steve Crossland at [steve@crosslandlaw.net](mailto:steve@crosslandlaw.net), or Board Administrator Bob Welden at [bobw@wsba.org](mailto:bobw@wsba.org) or 206-727-8232.

### Washington Defender Association

**Application deadline:** November 7, 2003

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a three-year term on the Washington Defender Association board of directors. A written expression of interest and a résumé are also required in the event that the incumbent seeks reappointment. The three-year term will commence January 1, 2004.

The board generally meets 10 times per year. Individual members, particularly the president, assist in meetings with government officials and in advising management of the Washington Defender Association on a wide range of issues.

The board has hiring and firing authority over the director; and approves the annual budget, contracts with King County, and bargaining agreements with the union. It also has a mediation and review role in disputes with union members.

Please submit letters of interest and résumés to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail [barleaders@wsba.org](mailto:barleaders@wsba.org).

#### Now Available: 2004 Annual Publications Catalog

The 2004 edition of the publications catalog from WSBA-CLE Publications will soon be mailed to WSBA members. Look for your convenient guide to WSBA-CLE's outstanding products and services in your mailbox this month. Save your catalog for the coming year, to order our premier deskbooks, audiotapes, coursebooks, and more—whether online, or by phone, fax, or mail.

#### Nominations Sought for Public Legal Education Award

The Council on Public Legal Education is accepting nominations for the 2003 Flame of Democracy Award, given annually to an individual, organization, or program in Washington state that has made a significant contribution to increasing the public's understanding of law, the justice system, or government.

First presented in 2002 to the late journalist Richard Larsen, the award was established to highlight the important educational work being done by teachers, lawyers, the media, and a variety of advocacy and community organizations. Notable efforts range from school-based programs for youth, to cable-television shows for seniors, to workshops for the general public.

Nominations, which are due by November 1, 2003, should be made in the form of a letter describing the nominee's contribution to public legal education in Washington. Self-nominations are encouraged. Letters should be addressed to Pam Inglesby, PLE Award Nominations Committee, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330. E-mail submissions are acceptable, and may be sent to [pami@wsba.org](mailto:pami@wsba.org). Further information about the council may be found at [www.plecouncil.org](http://www.plecouncil.org).

#### Ethics 2003 Committee Meetings

The WSBA Committee for the Evaluation of the Rules of Professional Conduct (Ethics 2003 Committee) was convened to review the revised ABA Model Rules of Professional Conduct; undertake a comprehensive study and evaluation of the ABA "Ethics 2000" revisions; consider the suitability of adopting the ABA revisions and commentary in Washington; and consider other appropriate changes to Washington's Rules of Professional Conduct. Ethics 2003 Committee meetings are open to the public, and interested WSBA members are encouraged to attend and/or provide input about the committee's work. Information about the committee is on the WSBA website at [www.wsba.org/lawyers/groups/ethics2003](http://www.wsba.org/lawyers/groups/ethics2003). Please direct questions or comments to Committee Reporter Douglas Ende at 206-733-5917 or [ethics2003committee@wsba.org](mailto:ethics2003committee@wsba.org).

#### Upcoming Ethics 2003 Committee meetings:

October 8—WSBA office

November 12—WSBA office

December 10—WSBA office

#### 2003 WYLD Awards Announced

The Washington Young Lawyers Division takes great pleasure in announcing the recipients of the 2003 WYLD awards, which will be presented at various legal community events that are yet to be determined:

- The WYLD *Outstanding Young Lawyer of the Year Award* will be presented to **Anthony Miles** of Preston Gates & Ellis LLP for his exceptional contributions to community and professional organizations. The nominating materials state, "The quality of his work product shines brightly as an example of what can take place when intelligence, passion, and perseverance merge in a young lawyer."
- The WYLD *Outstanding Affiliate Organization Award* will be presented to the **King County Housing Justice Project** because it "facilitates the provision of critical legal services to low-income clients in our community . . . and makes significant contributions to our professional community by training and developing young lawyers."
- The WYLD *Thomas Neville Pro Bono Award* will be presented to **Jennie Laird** of Columbia Legal Services. The nominating materials state that Ms. Laird has "dedicated her career to the provision of legal services to low-income people, particularly domestic victims. In addition to her paid legal positions, she consistently volunteers with legal and community organizations and shares her knowledge and expertise generously with colleagues, clients, and allies in the civil legal services and social-services communities."
- The WYLD *Professionalism Award* will be presented to **Mari Horita** of Preston Gates & Ellis LLP for her "passion and commitment to community service," her strong support of the arts, and her active advocacy in the Asian-American community. The WYLD board of trustees agrees with her nominator, Thomas Eli Backer, when he states that the depth of her accomplishments is remarkable.

#### Welcome to the WYLD's Newest Officers

The new Washington Young Lawyers Division (WYLD) officers will officially take their seats at the WYLD board of trustees meeting in Seattle on October 4, 2003.

- **J.D. Smith**, of the Seattle office of Gordon Thomas Honeywell, was unanimously voted by the board of trustees to serve as the 2003-2004 WYLD president.
- **Steven W. Marsalis**, of the Spokane County Public Defender's Office, was unanimously voted by the board of trustees to serve as the 2003-2004 WYLD president-elect.
- **Julia Bahner**, of the Seattle office of Lane Powell Spears Lubersky, was elected to represent the King County District.
- **Jennifer Brugger**, of the Kitsap County Prosecuting Attorney's Office, was elected to represent the Peninsula District.
- **Mark O'Halloran**, of Bishop Law Offices in Burien, was elected to represent the King County District.
- **Heather M. Young**, of Davies Pearson in Tacoma, was

unanimously appointed to represent the Pierce County District.

The WYLD thanks Immediate Past-President **Lance Hester** for his dedicated service to the young lawyers and the legal community of Washington.

For a full WYLD board of trustees roster and more information about the WYLD, please visit [www.wsba.org/lawyers/groups/wyld](http://www.wsba.org/lawyers/groups/wyld).

### Washington Attorneys Attend Installation of Dennis Archer, ABA President



ABA Journal photo by David Weintraub

Washington attorneys attending the installation of Dennis Archer as president of the American Bar Association in August were (left to right) Lemhard Howell, founder of the Loren Miller Bar Association and the first African-American to serve on the WSBA Board of Governors; Ronald Ward, WSBA president-elect; Dennis Archer, ABA President; J.D. Smith, president of the WSBA Young Lawyers Division and delegate to the ABA House of Delegates; and Eric Jones, Loren Miller Bar Association president-elect.

### Address Update Reminder

Now is the ideal time to check that the WSBA has your correct contact information in its database for the 2004 license-fee renewal packets scheduled to be mailed in early December. Please update your address no later than November 1 to ensure your licensing packet will be mailed to the correct address. You can check your listing by going to the online lawyer directory at <http://pro.wsba.org>. If any of your contact information (name, address, phone number, fax number, or e-mail address) has changed, please update the information by e-mailing [questions@wsba.org](mailto:questions@wsba.org), faxing the change to 206-727-8319, or calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

### WSBA Court Rules and Procedures Committee to Review Rules

When it reconvenes in fall 2003, the WSBA Court Rules and Procedures Committee is scheduled to review the Civil Rules for Superior Court (CR) and for Courts of Limited Jurisdiction (CRLJ), as well as the Mandatory Arbitration Rules (MAR) and the Special Proceedings Rules (SPR). Please send any suggested rule changes to the Supreme Court of Washington, Temple of Justice, PO Box 40929, Olympia, WA 98504-0929; or e-mail Lisa Bausch at [Lisa.Bausch@courts.wa.gov](mailto:Lisa.Bausch@courts.wa.gov).

### CLE Calendar through December 2003 Now Online

To help you plan your schedule, WSBA-CLE is now listing upcoming seminars through the end of the year at [www.wsba.org/cle/seminars/seminarcalendar.htm](http://www.wsba.org/cle/seminars/seminarcalendar.htm). If the seminar is open for registration, you can register online. For later seminars, you can ask to be notified when registration opens.

### MCLE Credits for Group 3 Due at Year End

Active WSBA members in MCLE Reporting Group 3 will be required to report compliance with MCLE credit requirements for 2001-2003 at the end of this year. Members in Group 3 include those who were admitted to the WSBA in 1984 through 1990, or in 1993, 1996, or 1999. Members admitted in 2002 are also in Group 3 but will not be due to report until 2006.

Group 3 members will need to complete the following by December 31, 2003, to meet the MCLE credit requirements for 2001-2003:

- At least **30 live** credits
- At least **six ethics** credits
- At least **45 credits total**

If Group 3 members do not meet the credit requirements by December 31, 2003, an automatic extension is granted until May 1, 2004; however, a late fee will be imposed. If this is the first period in which a member is late, the late fee is \$150. The late fee increases by \$300 for each consecutive reporting period that the member is late in meeting MCLE requirements.

Members may use the online MCLE system at <http://pro.wsba.org>:

- Review courses taken and credits earned.
- Apply for course approval.
- Apply for writing credit or prep-time credit.
- Search for approved courses being presented in the future.

To use the MCLE system, go to <http://pro.wsba.org>, click the "Member" tab, then select "Member Login." The online instructions lead you through setting up a confidential password and beginning to use the system. If you have questions, contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or [questions@wsba.org](mailto:questions@wsba.org).

### Upcoming Board of Governors Meetings

October 17-18—Portland  
December 5-6—Leavenworth  
January 16-17—Olympia

With the exception of a one-hour executive session the morning of the first day, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Please contact Donna Sato at 206-727-8244 or [donnas@wsba.org](mailto:donnas@wsba.org). The complete Board of Governors meeting schedule is available on the WSBA website at [www.wsba.org/info/bog/schedule.htm](http://www.wsba.org/info/bog/schedule.htm).

## Announcements

The law firm of  
**BENNETT BIGELOW &  
LEEDOM, P.S.**

is pleased to announce our move to a new building, effective September 8, 2003.

Our new address is:  
1700 Seventh Avenue, Suite 1900  
Seattle, Washington 98101

Our phone and fax numbers remain the same.

Telephone: 206-622-5511

Fax: 206-622-8986

www.bbllaw.com

## THE LAW OFFICE OF JOHN COMPATORE

is pleased to announce that

### William C. Houser

has joined the practice as an associate attorney.

Mr. Houser graduated from Willamette University College of Law and has been an active member of the Oregon State Bar since 1983. He has served as an Oregon Circuit Court judge *pro tempore*, juvenile referee, and deputy district attorney in Yamhill County, Oregon. He was a shareholder in the law firm of Lawrence & Houser, PC of McMinnville, Oregon, prior to his move to Washington.

Mr. Houser's practice will concentrate on family law and criminal defense matters.

The firm is also announcing its recent relocation to:

Suite 1901, One Union Square  
Seattle, Washington 98101

The Law Firm of  
**KANJI & KATZEN, PLLC**

is pleased to announce that

### Cory J. Albright

has joined the firm as an associate.

Mr. Albright recently completed a two-year clerkship for the Honorable John Coughenour, chief judge of the U.S. District Court, Western District of Washington.

Mr. Albright attended the University of Washington School of Law, where he was Executive Notes and Comments editor of the *Washington Law Review*. He graduated in 2001 with high honors, Order of the Coif.

Mr. Albright will concentrate his practice on representing tribal governments and their members.

100 S. King Street, Suite 401  
Seattle, Washington 98104  
Telephone: 206-344-8100  
Fax: 1-866-283-0178

### Brad Allen Meryhew

is pleased to announce the opening of his new law practice

## The Law Office of BRAD A. MERYHEW

with an emphasis on criminal defense.

Mr. Meryhew's practice will focus on domestic violence, sexual assault, and mentally ill and chemically dependent offenders.

Mr. Meryhew is a strong advocate for treatment in lieu of incarceration.

Mr. Meryhew graduated *cum laude* from the University of Puget Sound School of Law in 1994.

He has extensive experience with adult misdemeanors and felonies, and is available for referral, consultation, and association on those matters.

### LAW OFFICE OF BRAD A. MERYHEW

1001 Fourth Avenue, Suite 3200  
Seattle, Washington 98154  
Telephone: 206-264-9922  
Fax: 206-264-9924  
E-mail: lawbrad@qwest.net

## Matthew N. Menzer

formerly a partner in McNaul Ebel Nawrot  
Helgren & Vance, PLLC

and

formerly associated with  
Culp Guterson & Grader

is pleased to announce  
the opening of his law firm

## MENZER LAW FIRM, PLLC

810 Third Avenue, Suite 500  
Seattle, Washington 98104  
Telephone: 206-903-1818  
Fax: 206-903-1821  
mnm@menzerlawfirm.com

Emphasizing litigation in personal injury and wrongful  
death, medical malpractice, insurance, business,  
and guardianship and trust matters.

## WECHSLER BECKER, LLP

is pleased to announce that

### Ruth Laura Edlund

has joined the firm as a partner, and

### Barbara H. McInville

has become an associate of the firm.

The firm's practice emphasizes  
complex family law litigation, mediation,  
and arbitration.

WECHSLER BECKER, LLP  
4550 Bank of America Tower  
701 Fifth Avenue  
Seattle, Washington 98104  
Telephone: 206-624-4900  
Fax: 206-386-7896

## Calendar

Please check with providers  
to verify approved CLE credits.  
To announce a seminar, please  
send information to:

WSBA Bar News Calendar  
2101 Fourth Avenue, Suite 400  
Seattle, WA 98121-2330  
Fax: 206-727-8319;  
E-mail: comm@wsba.org

Information must be received by the  
1st day of the month for placement  
in the following month's calendar.

### ADMINISTRATIVE LAW

#### Alternative Dispute Resolution, Administrative Proceedings, and You

October 30—Tacoma. 6 CLE credits pending. By WSBA Administrative Law Section; 360-753-6823.

### ANTITRUST

#### Annual Antitrust, Consumer Protection and Unfair Business Practices Conference

November 7—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### BUSINESS LAW

#### Securities and Investment Law for the Business Lawyer

November 4—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### COMPUTER SKILLS

#### Computer Camp

October 9 & 16—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### CORPORATE LAW

#### Corporate Counsel Institute

October 3—Seattle. 6.75 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### CRIMINAL LAW

#### Ethical Dilemmas

November 5—Mt. Vernon; November 20—Seattle. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

#### White-Collar Crime and Whistleblowing

November 14—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### ELDER LAW

#### Vulnerable Adult Statute

October 15—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### ENVIRONMENTAL AND LAND USE LAW

#### The Future of Land Use and Environmental Regulation

October 23—Seattle. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### ESTATE PLANNING

#### How to Draft Wills and Other Estate-Planning Documents

October 16—Seattle; October 17—Spokane. 5.5 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### How to Probate an Estate and Handle Post-Mortem Matters

October 17—Seattle; October 24—Spokane. 5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### 48th Annual Estate-Planning Seminar

November 17-18—Seattle. 13.5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Advising Estate and Trust Fiduciaries/Beneficiaries

November 13—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## ETHICS

### Ethical Dilemmas

October 15—Kennewick; October 22—Tacoma; October 29—Spokane. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### How to Stay Out of Trouble (Ethics Advice from the Insider's Perspective)

October 21—Seattle. 4.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Ethical Dilemmas

November 5—Mt. Vernon; November 12—Vancouver, WA; November 20—Seattle. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Ethics for the General Practitioner—Tele-CLE

November 13—your office. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Lawyers Are Leaders: Meeting the Challenge

November 21—Bellevue. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## FAMILY LAW

### The Family Law Seminar

October 24—Tacoma. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## GENERAL

### The Ins and Outs of Seattle Courts

October 6-9—Seattle. 6 CLE credits. By NALS of Greater Seattle and King County Bar Association; 206-340-2578.

### Mental-Health Treatment

October 9—your office. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Pacific Northwest Arts Symposium: Legal Rights Supporting the Arts-and-Entertainment Industry

October 9—your office. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### The Mighty Columbia—What's Next?

October 23-24—Seattle. 11.5 CLE credits. By The Seminar Group; 800-574-4852.

### Community Property Deskbook Intro

November 3—Seattle; November 10—Spokane; November 24—Vancouver, WA. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Bar Trek V (with Chief Justice Gerry Alexander)

November 7—Port Angeles. 7 CLE credits, including 1 ethics. By Clallam County Pro Bono Lawyers; 360-452-4566.

## INTELLECTUAL PROPERTY

### Intellectual Property for the Rest of Us

October 15—Seattle. 5.25 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## LABOR AND EMPLOYMENT LAW

### Labor and Employment Law Section Meeting

October 10—Seattle. 5.75 CLE credits, 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## LAW PRACTICE MANAGEMENT AND TECHNOLOGY

### The Essentials of Risk Management and Loss Prevention

October 7—Seattle. 5.25 CLE credits, 1.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Time Mastery for Lawyers

October 15—Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### The Keys to Thriving as a Solo/Small-Firm Practitioner

November 12—Seattle; November 21—Tacoma. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## LITIGATION

### Professional Legal Contracting

October 2—Seattle; October 9—Spokane. 5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Civil Settlement Strategies

October 8—Seattle. 5.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Nurses Law School

October 8—Seattle. 6 CLE credits. By WSTLA; 206-464-1011.

# Professionals

## APPEALS

**Michael T. Schein**  
and

**Douglas W. Ahrens**

are available for referral, consultation or association on all issues relating to appeals and the appellate process.

**REED, LONGYEAR, MALNATI & AHRENS PS**

801 Second Ave., Ste. 1415  
Seattle, WA 98104

**206-624-6271**

E-mail: mschein@reedlongyearlaw.com

## APPEALS

**James E. Lobsenz**

handles both civil and criminal appeals in state and federal courts. He has argued over 25 cases in the Washington State Supreme Court, including *Washington State v. Stein*, 144 Wn.2d 236, 27 P.3d 184 (2001).

**CARNEY BADLEY SPELLMAN PS**

700 Fifth Ave., Ste. 5800  
Seattle, WA 98104

**206-622-8020**

E-mail: lobsenz@carneylaw.com

### Tort Law Update

October 22—Seattle. 5.75 CLE credits, including .5 ethics. By WSTLA; 206-464-1011.

### Federal Practice: Start to Finish

October 29—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Direct- and Cross-Examination

October 30—Spokane; October 31—Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Trials of the Century II (with Todd Winegar)

November 6—Seattle; November 7—Spokane. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Products Liability

November 19—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## REAL ESTATE

### Annual Real Estate Conference

November 14—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**COMPLEX ESCROW  
CLOSINGS**

WASHINGTON LEGAL  
ESCROW, LLC

**Mark K. Plunkett, Attorney at Law**

*Designated Escrow Officer*  
is available for handling  
complex escrow closings  
involving probate, divorce,  
bankruptcy, foreclosure, and  
other appurtenant matters.

2624 Eastlake Ave. E.  
Seattle, WA 98102

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*Ignorance is the parent of fear.*

—Herman Melville, *Moby-Dick* (1851)

*Most, probably, of our decisions to do something positive, the full consequences of which will be drawn out over many days to come, can only be taken as the result of animal spirits—a spontaneous urge to action rather than inaction, and not as the outcome of a weighted average of quantitative benefits multiplied by quantitative probabilities.*

—John Maynard Keynes, *The General Theory* (1936)

**B**orn and raised a Southerner, I have a high tolerance for religious enthusiasms. I've seen snake-handlers, dirt eaters, tent revivalists of all stripes (tents *and* revivalists), even some charismatic Episcopalians who took up in an abandoned gas station to roll in the aisles and speak in tongues. My own history is pedestrian. I was raised a Presbyterian. In the South, I was once told, that's a Baptist who can read.

Southerners take their religion seriously.

I have to admit, though, I've never seen anything quite like Alabama Chief Justice Roy Moore, he of the 5,280-pound monument to the Ten Commandments and other Christian edicts. Installed by him two years ago and more lately removed from Alabama's Judicial Building by some maintenance men and a federal court order, "Roy's Rock" picked up where gay marriage left off as the late-summer cause célèbre.

Chief Justice Moore says God is the fount of American law. He thought the court and public needed a conspicuous reminder of that central fact (in a similar vein, someone in one of my childhood hometowns bought billboard space for the message, "Raeford, don't make me come down there. Signed, God"). When a federal judge told the chief justice he'd strayed a ways across the church-state line, the chief justice rolled out some states'-rights arguments I hadn't heard since the 1960s. After his claiming he was exempt from compliance with federal court orders didn't get much traction, he invoked Martin Luther King Jr. and said he was doing God's work. Big rallies began to occur outside his office, with folks shouting his praises and hurling some pretty un-Christian-sounding epithets at his foes. Rev. Jerry Falwell appeared at one rally and allowed as how if the chief justice was carrying out God's will, that trumps mortal law every time. The overall effect has been a lot like the reaction after the Supreme Court barred prayer in schools in the sixties, when "Impeach Earl Warren" bill-

## Leadership, of a Sort

by Lindsay Thompson

Bar News Editor

boards sprang up like Bermuda grass across the South.

I have no doubt Chief Justice Moore, and his followers who angrily prostrated themselves on the courthouse steps, believe passionately that religion should not be banished from the public square, but I'm not sure it needs to be the hall monitor, safety patrol, and homeroom teacher either. How exactly does one make a theocracy work in a nation at war to topple them abroad?

Moreover, erecting a graven image to a set of rules that says thou shalt not set up graven images seems like something Chief Justice Moore would have thought through. Eight of the Ten Commandments address private conduct; taken as a whole, they aren't much of a structure for a civil legal system.

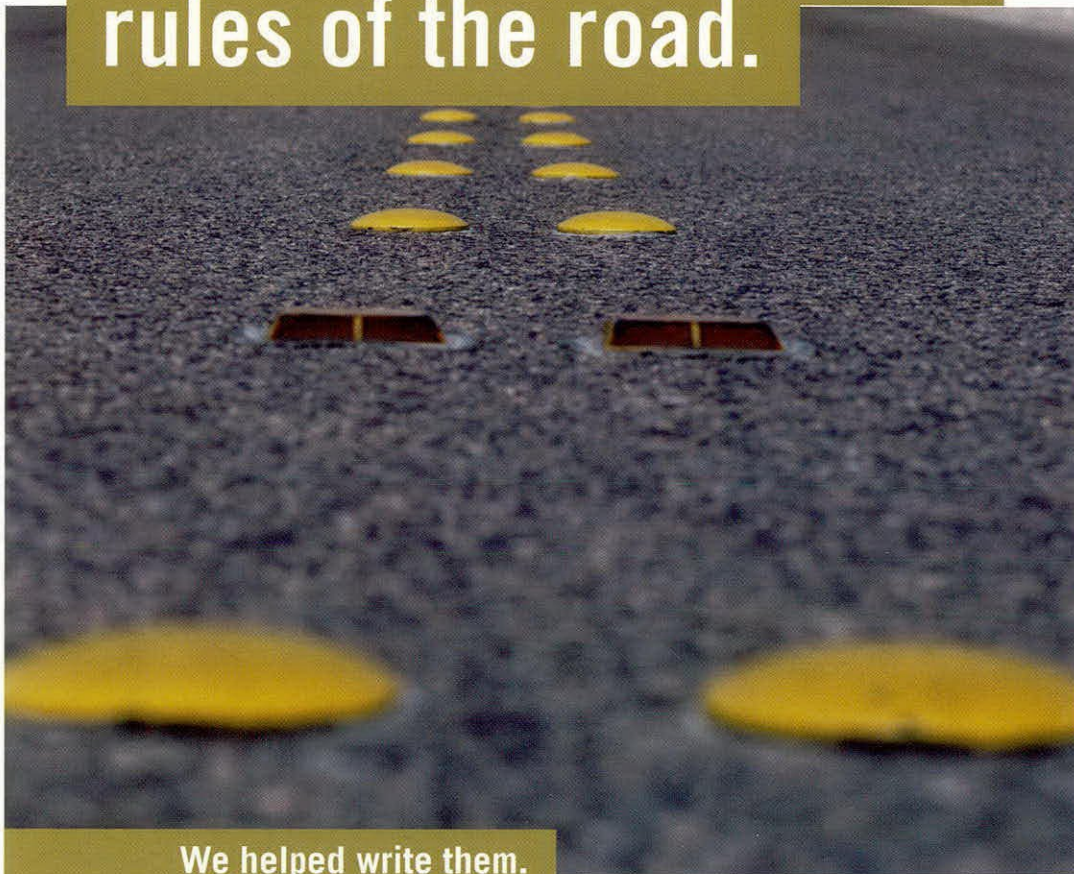
Defiance is a pose Southern politicians strike with authority, if not always with any lasting effect. Chief Justice Moore has struck a chord with the sort of people who see no inconsistency between the Commandments, the death penalty, wartime service (Chief Justice Moore fought in Vietnam), impounding and killing homosexuals (something he suggested in a parenting case a while back), or the occasional coveting of your neighbor's ox and/or wife. He is widely tipped as a standout candidate for governor.

Being a Southerner is a Manichean state of existence. You're always either denying everything or denying nothing. (Law-yring can be like that, too.) Appeals to the animal spirits, in politics or law, can approach the border beyond which irrationality lies. You can't always stop what you set in motion. It will be interesting to see how Chief Justice Moore's long summer of his discontent will turn out.

Whose fault is this mess? A little bit of everyone's. The media elevated the comic side of the story—you never come off badly making fun of the South—to the detriment of any kind of thoughtful discussion of the real issues. The federal courts have contributed to the public confusion in no small measure by developing a test for what's acceptable religious expression in the public square that elevates hairsplitting to an art form. The law in the area has become a lot like the Bible: no matter your point of view, you can find something in it to support your position. And there are private actors in all such controversies, eager to leap into the fray and make headlines for themselves. Ahh, democracy. Nothing quite like it.

What a long, strange trip 2003 is proving to be. ☞

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