

Washington State

BarNews

The Official Publication of the Washington State Bar ■ NOVEMBER 2003



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The Parenting Act and Mediation,
Fifteen Years On
p. 28

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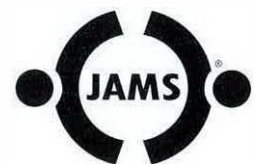
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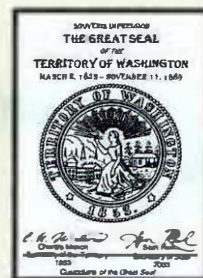
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(not pictured)

Letters to the Editor

Correction

Dear Friends:

In September's *Letters* section, Michael Hanbey was incorrectly identified as president of the Christian Legal Society when in fact he is president of the board of Columbia Legal Services. Although I am still scratching my head trying to figure out how I got it wrong, the responsibility is mine and I apologize to Mr. Hanbey and all others concerned.

Lindsay Thompson, Bar News Editor
Seattle

It all adds up

David Shayne's article on our treatment of Japanese-Americans in World War II ("It Can't Happen Here? A Look Back at a Sad Chapter in the Law," August 2003) raises the question of whether internment camps can happen again in America. The answer of course is yes; it's happening right now.

To be a Muslim or of Arabic ancestry today is to live in constant fear of being labeled an enemy alien. The charity you supported might be construed as giving material aid to a terrorist organization.

Today no one really knows what the parameters of privacy entail or how the broad concept of terrorism and the national interests it threatens may impinge on formerly protected zones. The very separation of powers may be in doubt.

Witness the following: a President whose legitimacy rests on votes that the Supreme Court forbade us to count; suspects held in indefinite detention without publication of their names or normal due process; prisoners of war held in an offshore base that denies them the protection of the Geneva treaty; two wars fought—with many civilian dead—with no capture of Osama bin Laden or Saddam Hussein; use of at-best faulty intelligence to mislead the American public into war in Iraq to prevent potential imminent attacks on the U.S. or Israel; open ended, no-bid contracts to Halliburton, Vice President's Cheney's former employer; huge tax breaks to the wealthy during a recession; underfunded schools, bankrupt states, and spiraling unemployment; the Patriot Act passed unread by many in Congress only to meet opposition by citizens themselves at the local level; an administration that

insults the United Nations and its allies while bribing countries like Poland and India to lend soldiers to the daily slaughter of peacekeeping troops; and a general secrecy of government and contempt for public inquiry.

Amid all of this, where is the dissent? Where are the mass demonstrations? Where are we attorneys when such injustice is the order of the day? With so little opposition, can general internment camps be far behind?

Thomas Mengert
Keyport

Washington's own Supreme Court justice deserves better biography

I looked forward to Professor Bruce Allen Murphy's biography of William O. Douglas (*Wild Bill: The Legend and Life of William O. Douglas*, Random House, 2003) with great anticipation. It has been 23 years since Professor James Simon wrote his balanced work, *Independent Journey: The Life of William O. Douglas*, and Murphy's having devoted 15 years to his project surely would, I thought, produce additional, valuable analyses of the life of Yakima's former "favorite son." Long be-



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Aaron J. Wolff

B.A., Emory University, Atlanta, Georgia; J.D. (cum laude), Seattle University School of Law; Former DUI prosecutor for the cities of Kirkland and Tukwila; Graduate, National College for DUI Defense; NHTSA Qualified Standardized Field Sobriety Test Administrator; Member, Washington Association of Criminal Defense Lawyers.

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fore one finishes the 500-page biography, the suspicion arises that Professor Murphy's story is an odd combination of too little of WOD's contributions to the law and to conservation projects, and too much to the so-called "legends" or exaggerations WOD made about aspects of his life, especially his early years. By the end, the reader has been repeatedly hammered with the themes that WOD exaggerated a childhood illness ("polio"?), overstated his early "poverty" in Yakima, lied about his serving in the U.S. "Army," and elevated his actual class-rank at Columbia Law School. The reader also has been titillated with a good many of the details of WOD's often disastrous personal life, especially his already well-known womanizing and his callous treatment of his court clerks.

But to build an entire biography on such exaggerations and failings, while sandwiching in dense chapters on WOD's legal work, is to leave the reader with a smirk rather than a deeper understanding of a man who was a law professor sought by major universities, a bold chairman of the SEC, a champion of nature-preservation, and a Supreme Court justice whose hundreds of decisions include sometimes controversial and often bold interpretations of the Constitution, especially of the Bill of Rights. His *Griswold* opinion grafted the right of privacy onto the Constitution, with continuing important effects on American society.

Murphy has certainly detailed the human frailties of the often-insecure Douglas. If the author had not obscured the more important facets of WOD's life or, at least, given them the same emphasis as WOD's eccentric failings, this new work would be of more significance. As it is, James Simon's earlier biography, with its better writing and analysis, remains a nice counterbalance to Murphy's, which repeatedly meanders into the unprofitable realm of psycho-history. William ● Douglas was more than a spoiled mamma's-boy who never outgrew his insecurities. He was a figure of some national importance. The reader of this new biography should have had this more clearly presented.

James G. Newbill
History Department
Yakima Valley Community College
Yakima

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Rancho Santa Margarita, CA.— Why do some lawyers get rich while others struggle to pay their bills?

The answer, according to California lawyer David M. Ward, has nothing to do with talent, education, hard work, or even luck.

"The lawyers who make the big money are not necessarily better lawyers," Ward says. "They have simply learned how to market their services."

A successful sole practitioner who once struggled to attract clients, Ward credits his turnaround to a referral

marketing system he developed six years ago.

"I went from dead broke and drowning in debt to earning \$300,000 a year, practically overnight."

Ward says that while most lawyers depend on referrals, not one in 100 has a referral system. "Without a system, referrals are unpredictable. You may get new business this month, you may not," he says.

A referral system, however, can bring in a steady stream of new clients, month after month, year after year, he says.

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

phone will ring and new business will be on the line."

Ward, who has taught his referral system to over 2,500 lawyers worldwide, has written a new report, "How To Get More Clients In A Month Than You Now Get All Year!" The report shows how any lawyer can use this system to get more clients and increase their income.

Washington lawyers can get a FREE copy of this report by calling 1-800-562-4627 (a 24-hour free recorded message), or by visiting Ward's web site at <http://www.davidward.com>

A surreal painting of a man in a suit holding a briefcase, standing in a cave with large animal heads and a tiger.

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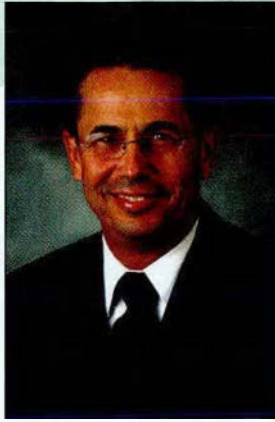
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Listening to Our Membership: *Challenges and Opportunities*

by **David Savage**
WSBA President

In my October column, I introduced the WSBA's 2003-04 Board of Governors (BOG). Now that you know who we are, I want you to know what we are doing. While a full description of the WSBA's work is beyond the scope of this column, the following are important current components which I believe will be of special interest to you. Feel free to further explore these subjects with me or the contact persons identified below.

Member Benefits Task Force

Over 60 percent of Washington attorneys practice in solo or small-firm practices. Your ability to obtain affordable professional liability, health, and long-term-care insurance is crucial. The WSBA has taken a leadership role in making such insurance available at reasonable cost. The Member Benefits Task Force, capably chaired by Joe Nappi of Spokane, is now investigating the WSBA's ability to offer disability, life, and auto insurance, as well as additional personal benefits. Contact Joe Nappi at jnappi@huppinlaw.com. (For information about professional liability, health, or long-term-care insurance, contact Pam Blake at Marsh Affinity Group Services, at 800-552-7200.)

Electronic Legal Research Systems Task Force

Charlie Wiggins, well-known Bainbridge Island appellate lawyer and former Court of Appeals judge, chairs this task force, which is studying available electronic legal-research systems. Its mission is to identify and facilitate the WSBA's ability to offer a capable and inexpensive legal-research service to members. Among others, the task force will review the capabilities of CaseClerk.com, CASEMaker, Loislaw.com, MRSC, VersusLaw, LegalWA.org, and Law.Net. It will make its recommendation to the WSBA early in 2004. Contact Governor Katie O'Sullivan at kosullivan@perkinscoie.com.

Public-Policy Positions and GR 12(c) Revision Task Force

I will charter a task force to study and recommend revisions to General Rule 12(c). GR 12(c) limits the areas within which

the WSBA is permitted to take positions both as an organization and through its sections. GR 12(c) states:

The Washington State Bar Association will not:

- (1) Take positions on issues concerning the politics or social positions of foreign nations;
- (2) Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice;
- (3) Support or oppose, in an election, candidates for public office.

**Over 60 percent of
Washington attorneys practice in
solo or small-firm practices.**

As may be evident, the rule provides more apparent than real guidance. While I believe it is imperative that the WSBA, guided and governed by the BOG, continues to take a leadership role in the state and nation on social and political issues of consequence to the WSBA's ability to serve its members and the public, it is also essential that members regard such positions as fairly within the scope of the WSBA's ability to speak for them. It is the achievement of this objective with which I have charged the task force.

Character & Fitness Board Rules Task Force

The WSBA's Character & Fitness Board is regularly called upon to advise the Supreme Court as to whether to admit applicants who have experienced a unique problem that affects their qualifications to practice. The board also is called upon to make similar recommendations with respect to lawyers who have been disbarred and seek re-admission.

Oddly, the board has discharged this difficult task to date without the benefit of any codified standards. The Supreme Court and the board both recognize the need for such standards. Therefore, I have chartered a task force to draft for Supreme Court approval a comprehensive set of procedural, evidentiary, and substantive rules for the board's operation.

The task force is chaired by Governor Mark Johnson, who previously chaired the Character & Fitness Board. It expects to make its recommendation to the BOG by mid-2004. Con-

tact Governor Johnson at markjohnson@seanet.com.

Professional Development Committee—Implementation

Chaired by Dick Manning, WSBA past president, this committee now undertakes implementation of the recommendations on skills training for new lawyers it made to the BOG in June 2003. The committee is moving forward to establish a pre-licensure four-hour orientation CLE for new admittees, a 15-hour CLE requirement for first-year lawyers (who are presently exempt from first-year CLE), and a client-

centered mentoring program to enhance new lawyers' skills. Aided by the Washington Young Lawyers Division, the committee's goal is to make such changes without adding to the time and financial burdens on new graduates. The committee will also review the APR 9 Legal Intern Program with a view to enhancing it.

Further out on the horizon, the committee will evaluate and may recommend a pre-licensure practicum requirement as well as the inclusion of a "skills component" in the bar exam.

Committee members include, among others, law school deans, jurists, young

lawyers, student bar representatives, a representative of the British Columbia Law Society (which "articles" law graduates as a requisite to admission), a representative of the WSBA Bar Examination Committee, and Gabe Galanda, an expert in Native American law. Contact Governor Andrea Brenneke at andrea@mhbc.com.

Blue Ribbon Panel on Criminal Defense

In recognition of the fact that the WSBA has not had a specific institutional focus on our legal system's obligation to protect the interests of those charged with crimes, and youngsters in the juvenile justice system, a Blue Ribbon Panel on Indigent Criminal Defense was formed this spring. The panel is co chaired by Justice Robert Utter (ret.), and Marc Boman of Perkins Coie. Governor Jon Ostlund, the Whatcom County public defender, serves as BOG liaison.

The panel will examine whether caseload and other criminal-defense standards are being utilized and met in our trial courts, and whether defense counsel are being appointed and compensated as provided under these standards, to the end that indigent defendants receive competent representation. The panel has begun its work by submitting to judges, public defenders, prosecutors, court officials, and county and city administrators a written survey on the status of indigent criminal defense. A preliminary report to the BOG is due in December. Contact Governor Ostlund at jostlund@co.whatcom.wa.us.

Awards Committee—Recipient Search

Each year the Awards Committee of the BOG identifies those within our profession and the public who deserve the WSBA's special recognition and thanks. Many of these prestigious awards are presented at the WSBA's Annual Awards Dinner and Business Meeting in September.

This year the committee, chaired by Governor Zulema Hinojos-Fall, is expected to expand its membership beyond the BOG, in order to better represent the diverse membership of the WSBA. Governor Hinojos-Fall and the committee seek and encourage nominations from every practice segment and group. The committee has a special interest this year in identifying a deserving WSBA member for the

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"Courageous Award," which is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession.

You are encouraged to contact Governor Hinojos Fall for more information at zulema.hinojos@eeoc.gov.

Bar News Review Committee

This committee was initially charged with determining whether the *Bar News* editor should be independent of the BOG and WSBA staff. The committee readily determined that an independent editor best serves the interests of the membership.

The committee readily determined that an independent editor best serves the interests of the membership.

The very able Lindsay Thompson has undertaken this position, and has already dramatically improved *Bar News*.

The committee was also charged with making a wholesale review of the content, character, and manner of publication of *Bar News*. Therefore, the committee has authored a membership survey, which will soon go out for response. A market-research firm will conduct the survey by phone. If you are contacted, we would appreciate your participation, providing this first-ever survey of *Bar News* with your thoughtful response. Contact Governor Joni Kerr at jrkerrschoolaw@uswest.net.

Presidential and Governor Selection Task Force

In an undertaking of special importance to those of us in smaller legal communities, I will charter a task force to review the manner and method by which we select our president and governors. Not surprisingly, it is very difficult for members from small towns in districts dominated by a major city to successfully campaign for a BOG position. In some such districts, there is presently an informal "rotation," so that this domination is avoided. I look forward to institutionalizing such a process.

WSBA Committee System Review Task Force

I intend to initiate a wholesale review of

the WSBA's committee system. At present, the committee-appointment system contains no institutional method to ensure that diverse appointments are made. Further, unsuccessful member applicants are "allowed" to simply retreat back into anonymity. These persons who have expressed interest in the WSBA's work should be utilized. Finally, there are committees that have become moribund and should be eliminated; there may also be committees of which the WSBA is in need. These matters will be the mission of this task force.

Collaborative Law Task Force

A primary mission of the WSBA is, and ought to be, envisioning the future of the practice for its members. Collaborative or restorative law, an approach that emphasizes a client-centered practice in a non-adversarial mode, is very much on the minds of future legal thinkers and our clients. Paul Lehto, the immediate past governor representing the Washington Young Lawyers Division, will lead this task force, which intends to offer a symposium on the subject in March 2004. Justice Bobbe Bridge will be the keynote speaker.

Contact Past Governor Lehto at lehto@pmjustice.com.

In Closing

The work described above is only an account of the "newest" of the BOG's tasks. The BOG has many ongoing enterprises, including, for instance, a study of whether to recommend the addition of a citizen member to its number.

And, as always, the legislative session will bring new challenges and opportunities. The BOG looks forward to developing closer and informative relationships with our senators and representatives.

I have made this attempt to describe our work, precisely because this diverse and talented Board of Governors and I intend to make a conscientious effort to "listen" to our membership in order to better reflect your interests. Clearly, you need to know what we are up to in order to help guide us in the discharge of our duties.


As always, I look forward to your e-mails and calls on these and any other matter of interest. ✉


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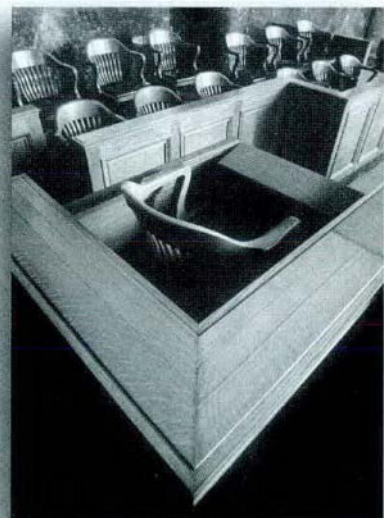
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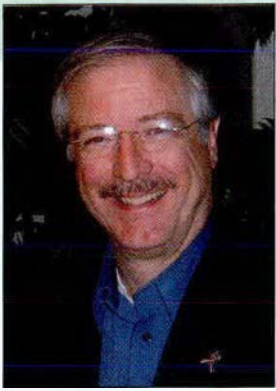
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The Special Committee for the Evaluation of the Rules of Professional Conduct (“Ethics 2003 Committee”)

by J. Scott Miller
Guest Columnist

Washington's RPCs Are Under Review

Washington's Rules of Professional Conduct (RPCs) were adopted effective September 1, 1985, and have been only sporadically amended since that time. Like those of 43 other jurisdictions, Washington's rules are based on the American Bar Association (ABA) Model Rules of Professional Conduct, which were adopted in 1983 and have been amended intermittently since that time.

In 1997, the ABA, concerned with nationwide disparity in state regulation of lawyer conduct, appointed a Commission on Evaluation of the Rules of Professional Conduct (the “Ethics 2000 Commission” or “ABA E2K”). After numerous and exhaustive public hearings and vast public and lawyer input, the Ethics 2000 Commission issued a final report in May 2001. In August 2002, the ABA House of Delegates adopted most of the Ethics 2000 Commission's recommended changes, as well as changes recommended by the ABA Commission on Multi-jurisdictional Practice. Collectively these changes represented a significant revision of the ABA model rules and the official ABA comments to those rules.

In response to the action of the ABA House of Delegates, the WSBA Board of Governors appointed a Special Committee for the Evaluation of the Rules of Professional Conduct (“Ethics 2003 Committee”) to review the model rules and make recommendations for changes to Washington's RPCs. The Ethics 2003 Committee began its work in February of this year.

In August 2003, the ABA House of Delegates further amended model rules 1.6 and 1.13. The changes were made at the recommendation of the ABA Task Force on Corporate Responsibility, which was responding to certain aspects of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”). Additional details on the background and intent of those changes can be found in the final report of the ABA Task Force at www.abanet.org/buslaw/corporateresponsibility/final_report.pdf.

The purpose of the WSBA Ethics 2003 Committee is to review all the revised ABA model rules; to undertake a com-

prehensive study and evaluation of the ABA revisions; to consider the suitability of adopting the ABA revisions and official comments in Washington; to consider other appropriate changes to Washington's RPCs; and to submit its recommendations to the WSBA Board of Governors. A comparison of Washington's RPCs with the ABA model rules,

and the rules that the Ethics 2003 Committee has already approved for recommendation, can be found on the Ethics 2003 Committee's webpage at www.wsba.org/lawyers/groups/ethics2003. The committee expects to issue a final report in spring 2004.

Washington's RPCs, like all other Washington court rules,

are within the sole and exclusive jurisdiction of the Washington State Supreme Court. The Board of Governors will review the Ethics 2003 Committee's final report and will, in turn, forward its own recommendations to the Court. It is anticipated that the board's recommendations for changes will be submitted to the Supreme Court by July 2004.

It was the hope of the ABA Ethics 2000 Commission that, as state supreme courts considered implementation of the revised rules, uniformity would be the “guiding beacon.” Recognizing the importance of uniformity in rules regulating lawyer conduct, the WSBA Ethics 2003 Committee expects in general to recommend adoption of the ABA model rules, together with the associated commentary, unless there is a compelling and articulable reason for deviation.

Some states have completed their review of the ABA model rules, but most are still in the process. The ABA maintains a website that identifies the current status of which jurisdictions have adopted some or all of the new rules, at www.abanet.org/cpr/jclr/jclr_home.html.

Overview of the Committee's Work

There are a number of changes in the newest version of the ABA model rules that differ significantly from the current RPCs in Washington state. The primary purpose and intent of the ABA model rules is to develop consistency and uniformity throughout all jurisdictions in the United States. The

It was the hope of the ABA Ethics 2000 Commission that, as state supreme courts considered implementation of the revised rules, uniformity would be the “guiding beacon.”

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interplay among the various model rules is intended to be quite complex. Clarifying the complexity is achieved primarily through the comments following each rule.

Historically, Washington has not adopted the ABA comments to the model rules, relying primarily on case law to develop (and sometimes expand on) the concepts articulated in the model rules. The Ethics 2003 Committee has decided to adopt the comments, as appropriate, because it appears to the committee that in order to achieve the goal of uniformity and consistency it would be necessary to adopt the rules without amendment, insofar as possible. Wherever possible, existing case law will be reviewed and considered, and in many cases has already been found to be consistent with the amendments to the model rules.

Although the work of the Ethics 2003 Committee is only partially complete, so far the ABA model rules that have been voted on have been adopted largely without change, and with commentary intact. There are a few significant exceptions to this generalization. However, because the interplay among all the rules is delicate

. . . it is important to recognize that, in the past, Washington adopted some but not all of the model rules.

and complex, the Ethics 2003 Committee has agreed that recommendation of the adoption of any rule, amended or not, is temporary, and the committee will go back and look at all the rules as a group after each individual rule has been reviewed in detail.

Finally, it is important to recognize that, in the past, Washington adopted some but not all of the model rules. In so doing, the rules were renumbered. As a result, it has become extraordinarily difficult to cross-reference our rules with the model rules. This in turn made comparing ethics opinions from other jurisdictions very challenging. The Ethics 2003 Committee has determined that it will adopt the numbering of the model rules, and add numbers if necessary in order to include unique

Washington rules. Also, if a rule is not adopted substantially in the form proposed by the ABA, it will be given a number that is different from the model rules in order to minimize confusion.

Some Rules of Particular Interest

It would be virtually impossible to even mention, let alone discuss in detail, each model rule that could have an impact upon the practice of law in this state. There are several, though, that merit particular attention.

Rule 1.6: Confidentiality. In its current

Washington iteration, RPC 1.6 uses the phrase *confidences or secrets* to describe the type of information that a lawyer is prohibited from disclosing, absent informed consent from the client, or one of the listed exceptions. *Confidences or secrets* is a term of art not utilized in any other jurisdiction's ethics rules. Model rule 1.6, as drafted by the ABA, uses the more common phrase *information relating to the representation of a client*.

We start with the general rule that recognizes that the attorney-client relationship is virtually sacrosanct, that confidential information provided by the client to

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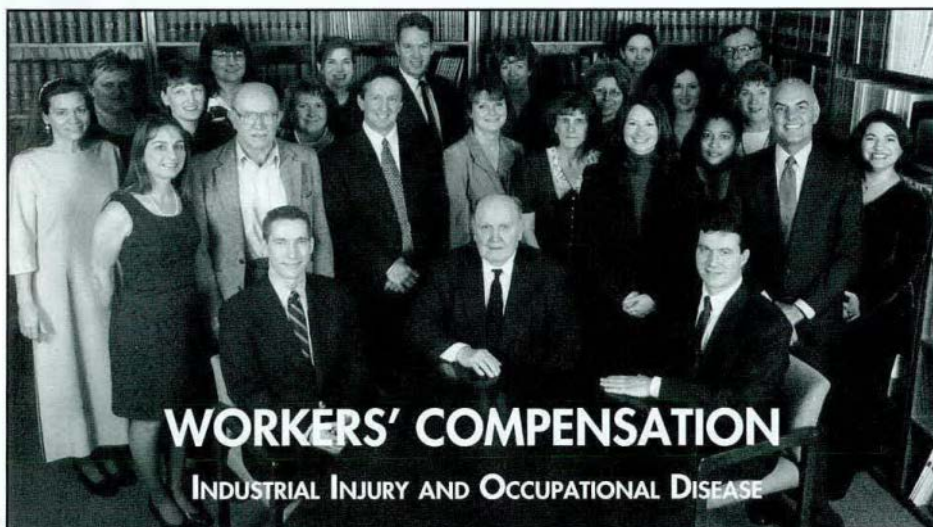
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the attorney is deemed privileged, and that the attorney may not be allowed to disclose it without the knowing consent of the client, unless disclosure is allowed within one of the exceptions listed in RPC 1.6. This rule actually has its genesis in the text of RCW 5.60.060(2):

An attorney or counselor shall not, without the consent of his or her client, he examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

The purpose of the rule, of course, is to encourage free and open attorney-client communication by assuring a client that his communications will be neither directly or indirectly disclosed to others. *Heidebrink v. Moriwaki*, 104 Wn.2d 392 (1985). The provisions of RPC 1.6 cover both "confidences," referred to in the statute, and "secrets," which is deemed to be information gained in the course of a professional relationship with the client that is requested to be held inviolate or the disclosure of which likely would be embarrassing or detrimental to the client. *Seventh Elect Church v. Rogers*, 102 Wn.2d 527 (1984).

RCW 5.60.060(2) has been modified by the Supreme Court with certain exceptions identified in Washington RPC 1.6 (which defines when a lawyer is allowed to reveal *confidences or secrets*). In Washington, one exception is "to prevent the client from committing a crime." In most jurisdictions, this exception allows the attorney to reveal "information relating to the representation of a client . . . to prevent reasonably certain death or substantial bodily harm." This is also the language of the model rules, and the committee has been debating whether to recommend adopting the more commonly accepted language.

While in Washington an attorney is allowed to make disclosures that are otherwise prohibited, in order to prevent a client from committing a crime, this exception is, obviously, far broader than allowing disclosures only if there is "reasonably certain death or substantial bodily harm" threatened, which is the language of model rule 1.6.

The version of model rule 1.6 originally passed by the ABA House of Delegates

received significant modifications and amendments at the ABA Annual Meeting in August 2003. The amendments were, primarily, in response to Sarbanes-Oxley. Although Sarbanes-Oxley was really intended to address issues involving corporate boards of directors, its impact has far greater reach.

The 2003 ABA amendments to model rule 1.6 add two more exceptions: disclosure is allowed to prevent crime or fraud reasonably certain to result in injury to financial interest or property of others, and to mitigate or rectify such injury that occurred in the past, provided (in each case) that the wrongdoing was accomplished through use of the attorney's services. These amendments are being debated by the committee as a part of its review of the model rules.

Conflict-of-Interest Rules. The language of the current Washington RPC 1.7 provides that a conflict does not require disqualification if the lawyer reasonably believes his or her representation would not be adversely affected by the conflict, and the client gives knowledgeable consent after full disclosure.

Although the language of model rule 1.7 is completely different from the current Washington rule, the effect is essentially the same. Therefore, the statutory au-

The committee welcomes input from members of the WSBA and the public, and from all entities and organizations.

thority, such as that found in Chapter 42.23 RCW, and prior case law would probably still apply if the model rules were adopted.

Similarly, RPC 1.8 ("current clients"), RPC 1.9 ("duties to former clients"), RPC 1.10 ("general rule"), and RPC 1.11 ("former government employee") all use language substantially different from the new ABA model rules. However, the underlying intent of both existing Washington rules and ABA model rules appears to be essentially the same. Therefore, it seems likely that there will be little or no substantive change in the way these rules are applied, even though language may be different. To what

extent prior ethics opinions issued by the WSBA would still apply if the model rules were adopted is an open question.

Washington's RPC on screening, however, is more specific than the relevant model rule. At this point, it seems likely that the committee will recommend that Washington's more specific approach be retained.

The Organization as Client Rule. Washington state currently has no ethics rule that even resembles model rule 1.13, "organization as client." The original version of then-model rule 1.13, passed by the ABA House of Delegates last year, was substantially modified (some would say expanded) at the annual meeting in August 2003. The most recent amendments were made in response to Sarbanes-Oxley.

Even though Washington never adopted model rule 1.13, our case law, applicable statutes, and regulations appear to have adopted the core principles of the model rules. The proposed RPC does not attempt to limit application of those statutes or case law.

Please Provide Your Comments

The work of the Ethics 2003 Committee has been ongoing for over six months. In the interest of attempting to provide a uniform set of ethics rules that apply in all jurisdictions, the committee is attempting to adopt the model rules with as few changes as possible. In some instances, we have found that the Washington rules are actually broader than what has been proposed by the ABA. In other instances, the ABA model rules challenge us to expand horizons and make certain adjustments.

The committee welcomes input from members of the WSBA and the public, and from all entities and organizations. Although the committee consists of representatives from extremely varied backgrounds, with many different experiences and perspectives, input from as many special interests within the WSBA, as well as from nonlawyers, will result in adoption of rules that are clear, concise, and robust. Please provide your comments via e-mail to ethics2003committee@wsba.org. ✉

J. Scott Miller is president of Miller Devlin McLean & Weaver PS, and a member of the Ethics 2003 Committee. He can be reached at millers@mdmw-lawyers.com.

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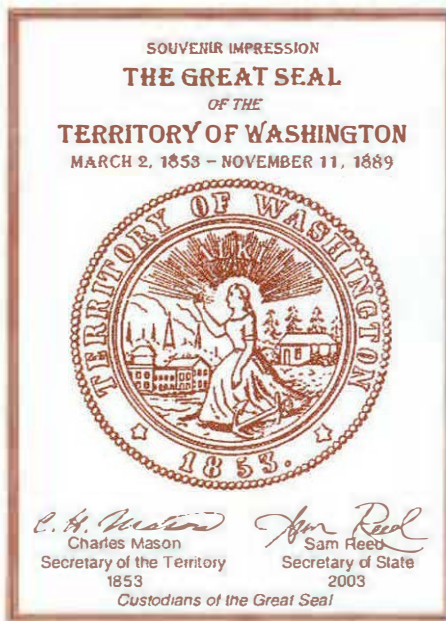
The Courts of the Washington Territory: 1853-1889

by **Gerry L. Alexander** • *Chief Justice of the Washington State Supreme Court*

Before 2003 fades into the past, Washingtonians should take a moment to note that it has been 150 years since the territory of Washington was created by act of Congress. To accord official recognition to this significant anniversary, a Territorial Sesquicentennial Commission was formed under co chairs Secretary of State Sam Reed and First Lady Mona Lee Locke. I have had the honor to serve as the judiciary's representative to that commission. My membership on the commission has led me to reflect on the 36 year period that Washington was a federal territory, and to focus on the court system that was extant then.¹ In doing so, I have concluded that a viable, vigorous, and independent court system existed in the territory. While it differed in some respects from the state system we are familiar with today, it bore many of the same characteristics. I found also that the cases the territorial court system entertained, many of which are detailed in the three volumes of the *Washington Territory Reports*, constitute a great history of life and times in the territory.

A Territory Created

Prior to 1846, our nation's claim to the geographical area that later became the Washington Territory was very much in dispute. The government of Great Britain, then the mightiest power in the world, was of the view that His Majesty's claim extended as far south as the Columbia River. The government of the United States under Presi-



dent James K. Polk disagreed with that notion, contending that our nation's claim extended up to roughly the 54th parallel and included much of present-day British Columbia. This led Polk's presidential campaign to adopt the defiant slogan "Fifty-four-forty or Fight." Happily, the dispute was largely settled in 1846 when the United States and Great Britain agreed to establish the international boundary at the 49th parallel from Point Roberts eastward to the crest of the Rocky Mountains.² A line running along this parallel still marks the greatest portion of the western boundary between the United States and Canada.

In 1848, the Oregon Territory was organized to include land south of the 49th parallel, west of the Rockies, and north of California. This provided additional impetus to American settlers to move north of the Columbia River, and by 1852 there was significant interest among the occupants of this area to separate from Oregon. Consequently, a convention was held at Monticello (near present-day Longview) to prepare a petition to Congress asking that a federal territory north of the Columbia River be established. A memorial requesting creation of a new federal territory was thereafter sent to Congress by the Oregon Territorial Legislature. It noted that settlement was taking place in the Puget Sound country, and stressed the hardships of travel and communication within an area as large as the Oregon Territory. In fact, the population of the area that was the subject of the memorial was not as

great as the memorial implied, the settlers within the proposed territory numbering only about 4,000. Notably, the population of American Indians in the area was believed to be several times that number.

After considering the petition, Congress passed the Organic Act, which became effective on March 2, 1853, and established the government of the territory of Washington. Interestingly, Congress rejected suggestions that the new territory be named "Columbia," believing that it would be confused with the District of Columbia. Apparently no one was over-concerned that this territory might be confused with our nation's capital, Washington, D.C. The territory created by the Organic Act included the area covered by present-day Washington, as well as what we now know as northern Idaho and western Montana. Upon Oregon's 1859 admission to the Union as the 33rd state, the remainder of Idaho and a portion of present day Wyoming were added to the Washington Territory. This large chunk of land did not remain in the territory for long, because in 1863 the Idaho Territory was created by Congress. This resulted in the Washington Territory being reduced to the size and shape of present-day Washington state.

Territorial Judges

Territorial status accorded the citizens of the new territory some advantages of self-government, but with limitations. The act creating the territory provided for an elected legislative assembly, consisting of a council and a House of Representatives, but indicated that any law passed by this assemblage had to be submitted to Congress and, if disapproved, was of no effect. Although the act provided that only white males aged 21 or older could vote at the first election or hold office, it also indicated that the legislative assembly could alter those requirements for future elections. The act also stated that the territory's governor, secretary, and attorney, as well as its chief justice and two associate justices, were to be appointed by and serve at the pleasure of the President of the United States.

Other than what justice was meted out by local justices of the peace and probate judges, also provided for in the Organic Act, the judicial business of the territory resided with the appointed chief justice and associate justices. Each of them was responsible for conducting trials as a dis-

trict judge in one of the territory's three judicial districts, and all were required to reside in the district they served.

In December of each year, this trio of judges met in Olympia, and sat as justices of the supreme court of the territory. In this capacity, they heard any appeals from the decisions they had made as trial judges. This obvious conflict was obviated in 1884 when a fourth judicial district was added. This allowed the court to rotate membership so that a justice would not be called upon to review one of his own decisions.

A total of 28 individuals served on the district/supreme court of the territory from 1853 until 1889, when Washington

was admitted to the union. Despite the unattractiveness of serving in a large jurisdiction with inadequate means of travel, the territorial judges were generally of high caliber. The late Professor Charles H. Sheldon reflected on their collective qualities in his book *A Century of Judging*:

[A]s a group the judges were not all that different from their counterparts on the federal district court benches. The territorial judges, including Washington's, were ambitious, successful, middle-class lawyers who were among the educated elite. Their territorial service was often regarded as the culmination of a

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Criminal Defense	Medical Malpractice	Sexual Assault
Drug Litigation	Product Liability	Social Security

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judicial career rather than merely a stepping stone toward higher political or judicial office.

Professor Sheldon also noted:

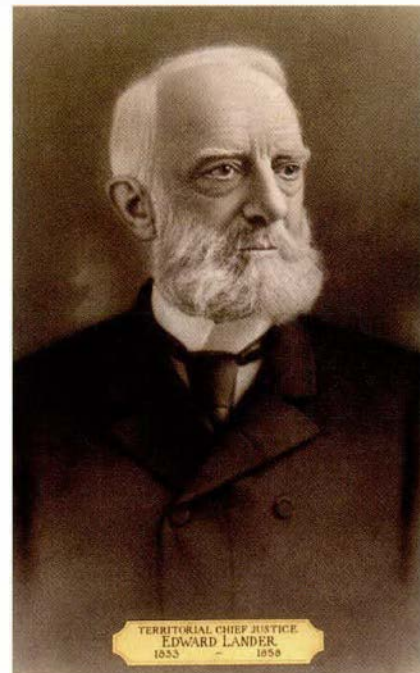
Among the several respected products of the territorial selection process who served on the Washington courts were Judges Edward Lander, John P. Hoyt, W. Lair Hill, Orange Jacobs, and Thomas Burke. Often the appointees were experienced in territorial affairs. Elwood Evans, who had been nominated but not confirmed, had served as secretary of the territory between 1862 and 1867; Orange Jacobs was a delegate to Congress (1875-79); Joseph R. Lewis had served on the Idaho and New Mexico Territorial Supreme Courts (1869-71 and 1871); Samuel C. Wingard had been U.S. Attorney; and John P. Hoyt had served as secretary and governor of the Arizona Territory (1876-79) and was nominated as governor of the Idaho Territory (1878).

Despite the relatively high quality of the appointees, though, the citizens of the territory were never entirely satisfied with

their judicial system, because little deference was given to local feelings on appointments, with more than one-half of the appointees hailing from outside the territory. This may have contributed to the strong support at the Constitutional Convention of 1889 for an elected judiciary. Significantly, the president of that convention was John Hoyt, who had served as a territorial judge from 1879 to 1887.³ Another former territorial judge, George Turner, served as chair of the Constitutional Convention's important Judicial Department Committee.

Battle Between the Territorial Judges and the Governor

Although politics undoubtedly played an important part in the selection of the territorial judges, to their credit, they displayed a willingness to uphold the rule of law even when to do so put them at cross-purposes with the other two branches of the territorial government. Not surprisingly, the first interbranch clash occurred soon after the territory had come into existence. The court's protagonist was none other than the formidable first governor of the Washington Territory, the dynamic and strong-willed Isaac Stevens. The incident, which

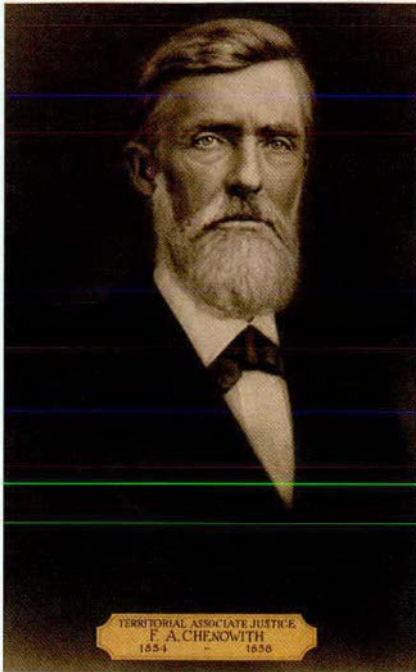


occurred in 1856, can only be described as bizarre.

The conflict began when several homesteaders, whom Governor Stevens deemed disloyal to his efforts to make war on Indians within the territory, were arrested by members of the volunteer militia of the territory and held in confinement in the Pierce County town of Steilacoom. In an effort to prevent the prisoners from being released by any judge, Stevens declared martial law in Pierce County. Territorial Chief Justice Edward Lander, acting at the behest of Associate Justice Francis A. Chenoweth, who was ill at the time, proceeded to Steilacoom to consider a petition for writ of *habeas corpus* that had been filed on behalf of the imprisoned settlers.⁴ A detachment of the volunteers interrupted Lander's efforts to hold court and escorted the chief justice, his clerk, and his recorder to Olympia in Thurston County. Undeterred, Lander reconvened court in the capital city and issued the requested writ. The governor responded by expanding his martial law declaration to Thurston County.

Not one to be easily outflanked, Lander cited Governor Stevens for contempt and sent the court's marshal to the governor's office with a warrant for the governor's arrest. Stevens had the marshal ejected and sent a company of volunteers to take Chief Justice Lander into custody and bring him to the governor. When the governor and judge came face to face, Stevens told Lander that he would set him free if he

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would agree not to hold court again until the governor told him he could. Lander courageously refused this offer and was locked up for his stand. A protest meeting in front of the governor's office ensued, but was countered by an assembly of Stevens's supporters.

All of this caused Justice Chenoweth to arise from his sickbed and travel to Steilacoom, where he proceeded to conduct court, but under the protection of a 50-man sheriff's posse. The presence of the posse deterred the volunteers, who, acting on the sound advice of the commander of the U.S. Army garrison at Steilacoom, withdrew. Stevens then terminated his declaration of martial law. Chenoweth followed with an order that all the governor's prisoners, including the chief justice, be brought into court. Colonel Shaw of the volunteers refused to honor Chenoweth's order, so the judge sent a U.S. marshal to arrest Shaw. The governor then capitulated and sent a letter to Chenoweth asking him to fine Shaw or release him, or both. Justice Chenoweth fined Shaw and sent him on his way, but did not rescind the contempt warrant outstanding against the governor. Chief Justice Lander subsequently found Governor Stevens guilty of contempt and fined him \$50. Stevens did not pay the fine, but his friends paid it for him, thus ending this strange event, which, despite its almost comedic quality, has to be viewed as an early victory for judicial independence and individual rights.

As a postscript, the territorial legisla-

ture passed a resolution censuring the governor for his conduct. This condemnation paled, however, in comparison to the rebuke Stevens received in a letter from the U.S. secretary of state, William F. Marcy. After indicating that martial law could not be justified when it acts against the existing government, Marcy said, "Your conduct in that respect does not therefore meet with favorable regard of the president." Although we do not know what reaction Justices Lander and Chenoweth had to these official condemnations of Governor Stevens, one can only surmise that they felt vindicated and, perhaps, satisfied

at the governor's suffering from his own emotional wounds.

Olympia or Vancouver as Territorial Capital

Approximately five years after the legal battle between Governor Stevens and the territorial judges was resolved, the supreme court of the territory was for the first time faced with what it called the "grave and important question" of whether it should strike down an act of the territorial legislature—an act purporting to move the territorial capital from Olympia to Vancouver.

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By way of background, it should be noted that Olympia has always been Washington's capital. That does not mean, however, that there have not been efforts over the years to wrest the seat of government away from Olympia. One of the most serious attempts took place in 1860, when lawmakers from Vancouver, working with legislators from Jefferson County who wanted a penitentiary for Port Townsend, and others from Seattle who coveted a territorial university for that city, managed to get a bill through the legislative assembly making Vancouver the capital. Inexplicably, another statute was passed that same

session that put the question of the location of the territorial capital to the voters at the next election. The latter bill did not, however, say what effect this election would have, and it made no reference to the act's making Vancouver the capital. Significantly, after the legislative session ended, it was discovered that both statutes were minus an enacting clause and an indication of the date of passage.

The legal effect of these defects was squarely presented to the Territorial Supreme Court, then consisting of Chief Justice Hewitt and Associate Justices Wyche and Oliphant, all appointees of President



Abraham Lincoln. The case, which was captioned *The Seat of Government*, 1 Wash. Terr. 116, came to the court in its December term of 1861, only the 30th case heard by the supreme court of the territory.

The case reached the court in a somewhat unusual manner. It had not been before any of the justices in their capacity as district judges; instead, the question was presented directly to them in their capacity as the Territorial Supreme Court in a pleading entitled "a plea of abatement of a writ of error." In essence, this was a challenge to the court's jurisdiction to hear any of the cases that had been docketed for that term in Olympia, on grounds that Olympia was not then the seat of government due to the action of the legislature. After considering the matter and observing that the legislature was assembled in Olympia in "an unorganized quorum awaiting the action of the supreme court," and that "the controversy had been passed in review before the court, and occupied more than three entire days in the discussion," the court rendered its decision. In a well-crafted two-judge majority opinion, the flaws in the statute that purported to move the capital to Vancouver were discussed, and it was determined that the statute should be struck down because of the absence of an enacting clause and date of passage. In an obvious effort not to appear arbitrary, the majority prefaced its conclusion by saying that "a conflict of opinion between the legislature and judi-

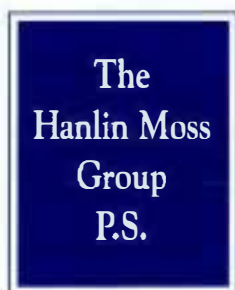
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cial branches is always to be regretted," but that if an act is "wanting in the requisite elements," the court "is bound to declare it void and of no binding effect."

In reaching its decision, the majority relied to some extent on the fact that the act of the legislature, which put the question of the location of the seat of government to a vote of the citizenry, had to be read *in pari materia*, "hand in hand," with the Vancouver act and that both could not survive. That being the case, the majority indicated that it favored a decision consonant with the will of the public. It took note of the fact that Olympia had easily won the vote over Vancouver by a majority of 1,239 to 639. In a final rhetorical flourish, the majority said, as courts are wont to do today when they strike down

In a well-crafted two-judge majority opinion, the flaws in the statute that purported to move the capital to Vancouver were discussed

an act of the Legislature for a technical failing, "if we have erred in refusing to give binding force and effect to this act, consolation remains that it is in the power of Congress, the territorial legislature, or the Supreme Court of the United States to correct the error, and the disappointed are not without remedy."

Territorial Minorities

Needless to say, not every decision the judges of the territory made was as significant as the two I have just discussed. Many of the cases involved the more mundane, albeit important, issues that American courts traditionally confront, such as commercial disputes, garden-variety criminal cases, and dissolutions of marriage ("divorce" as it was then known). Not infrequently, though, the judges of the territory were called upon to consider weightier issues, such as the legal status of the most significant racial minority within the territory, Native Americans, as well as the rights of women. This article would be incomplete if it did not touch at least briefly on the court's record in these areas.

Although I am hesitant to pass judgment on decisions made by judges at a

time in the distant past when customs and practices were far different than they are today, I feel constrained to observe that the record of the territorial courts with respect to rights of women is spotty, at best. To its credit, the court admitted women to the practice of law as early as 1884. Furthermore, in that same year, a majority of the Territorial Supreme Court, over the dissent of Justice Turner, determined that women could serve as grand jurors. *Rosencrantz v. Territory*, 2 Wash. Terr. 267 (1884). Unfortunately, however, the court reversed that decision by another two-to-one vote only three years later in the case of *Harland v. Territory*, 3 Wash. Terr. 131 (1887). Not

surprisingly, the majority opinion in *Harland* was written by Justice Turner, the dissenter in *Rosencrantz*. A year later, in the case of *Bloomer v. Todd*, 3 Wash. Terr. 599 (1888), a unanimous court concluded that an act of the legislative assembly, purportedly conferring upon women the right to vote, was void because it conflicted with the Organic Act. Although, as has been noted above, the Organic Act provided that the qualification of voters at elections after the first election shall be as prescribed by the legislature, the court concluded that voters had to be "citizens of the United States" and that the word "citizen" could be read as "male citizen." Interestingly, al-

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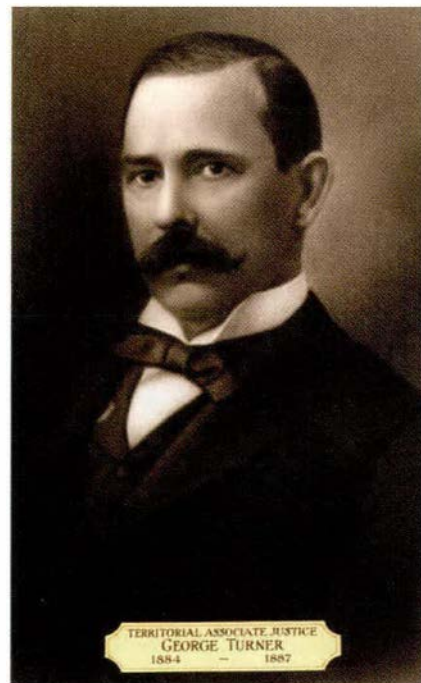
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though Judge Turner was no longer on the court when the *Bloomer* case was heard, he served as co-counsel in that case for the prevailing party.

The record of the Territorial Supreme Court in protecting the rights of Indians within the territory was, in my view, much better. Although its decision upholding the death sentence of the Indian leader Leschi (*Leschi v. Washington Territory*, 1 Wash. Terr. 13 (1857)) is generally considered a low point, the court did hold in *Gho v. Jules*, 1 Wash. Terr. 325 (1887), that Indians were capable of entering into binding contracts. In another decision, *United*

States v. Taylor, 3 Wash. Terr. 88 (1871), which foreshadowed the famous "Boldt decision" of the modern era, it determined that the treaty right of Indians to fish in usual and accustomed waters could not be lawfully obstructed by a non-Indian homesteader who erected a fence that prevented Indians from exercising that right.

The most impressive decision relating to the rights of Native Americans, however, is an early decision of the Territorial Supreme Court in *Elick v. Washington Territory*, 1 Wash. Terr. 137 (1861). This decision, which came down only four years after the *Leschi* decision, contained the



unanimous view of the three justices on the court, the same appointees of Abraham Lincoln who had decided the *Seat of Government* case. The facts there were that Elick, an Indian, had been found guilty by a jury of murder and was sentenced to death. The court, in a decision written on its behalf by Justice James Wyche, reversed the non-English-speaking defendant's conviction on grounds that he had not been afforded an interpreter. The court said:

In any other view of the matter, his personal attendance would be a meaningless ceremony and the prisoner tried in violation of the laws and Constitution of the land. The Constitution of the United States is coextensive with the vast empire that has grown up under it, and its provisions securing certain rights to the accused in criminal cases, are as living and potent on the shores of the Pacific as in the city of its birth. In the matter of these rights it knows no race. It is the rich inheritance of all, and under its provisions in the Courts of the country, on a trial for life, the savage of the forest is the peer of the President.

I have to say that when I first read this passage from *Elick* I was thrilled. One must keep in mind that this opinion was written more than 30 years before the U.S. Supreme Court's infamous decision in *Plessy v. Ferguson*, in which Justice John

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Marshall Harlan wrote, albeit in dissent, that "our constitution is colorblind and neither knows nor tolerates classes among citizens." I wondered to myself, could Harlan have known of Justice Wyche's memorable words, that the Constitution "knows no race," when he penned his famous words? Although we may never know the answer to that question, we can take pride in the fact that a court from which our state's present-day courts have descended recognized the fundamental responsibility that is placed on courts at all levels—to protect the rights of those in society who are least able to protect themselves. In all fairness, one would have to say that as lawyers and judges we have not always lived up to those noble words. But I hope that for the most part we have, and will continue do so in the future. When we do, we should tip our hats to our judicial forebears who had the courage long ago to act in a way that set a shining example for us all to follow. ☞

After serving for 20 years as a trial and appellate court judge, Gerry L. Alexander was elected to the Washington State Supreme Court in 1994. He was re-elected to the Court in 2000. In that same year his colleagues elected him to a four-year term as chief justice. Chief Justice Alexander has always had an abiding interest in history. He is a co-founder and board member of the Washington Courts Historical Society, and in 2000 he was selected as Olympia Historian of the Year.

NOTES

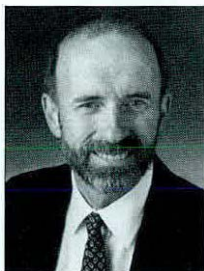
1. Only five of the 19 western territories created after 1850 stayed in territorial status longer than Washington. The average existence for all 19 post-1850 states was 27 years. Robert E. Ficken, *Washington Territory* (WSU Press 2002).
2. Great Britain and the United States did not entirely settle the boundary dispute until much later. The British continued to lay claim to San Juan Island, a position that was vigorously resisted by our nation. The dispute was settled in 1872 when the international arbitrator, Kaiser Wilhelm I of Germany, awarded San Juan Island to the United States. It then became part of the Washington Territory, and the British withdrew a detachment of Royal Marines from the island.
3. Upon Washington's admission to the union, Hoyt was elected to the Supreme Court of the state of Washington. Thus, he had the distinction of being the only person to serve on both the Washington Territorial Supreme Court and the Washington State Supreme Court.
4. Because Judge Lander was an officer in the territorial volunteers, he found it necessary to resign his commission in order to act in the matter.

Child Abuse Cases

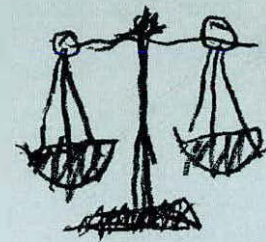
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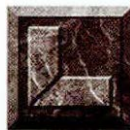
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The Parenting Act and Mediation, Fifteen Years On

by Porter Kelley

This is a story. Human events are usually remembered as a story. I'm going to tell a story of how the 1988 Parenting Act came into being. Most memories are short (mine is); stories have to be retold. This is a story of how a handful of lawyers changed family law in Washington.

An Angry Lawyer

In late November 1982, I was mad. I had just settled a custody case midtrial. Cross-examining the wife, I learned that she was contesting joint custody because, as a teacher, she wanted sole school decision-making authority. When the husband, my client, heard this, he immediately agreed. The case settled. Two days of court time were wasted. The parents racked up thousands in legal fees.

Returning to my office, fuming in frustration, I wondered, "Why can't we get rid of 'custody'? Why not just call it 'parenting' and be done with it?" My law partner, Bob Prince, liked the idea.

Four months later I heard Dr. John Dunne give a talk about the damage that custody fights inflicted on kids. I asked if he would be interested in working on a parenting act. He immediately agreed. Later, I called Vern Rieke, who had long taught divorce law at UW Law School. Vern liked the idea, too. Within a month we had a committee: John, Vern, me, a couple of judges, including Judge Nancy Holman, Bob Prince, and a group of other lawyers.

The Key Concept

Our central idea was to change the focus of the law from "custody" to "parenting." We all sensed that we were onto something new. But we had no idea we would

as primary caregivers, were presumed to get custody of the children, unless it could be proved they were unfit.

All of a sudden, men found the tables turned. They'd gotten used to being universally thought of as the head of the household, the captain of the ship, etc.

Now the king suddenly found himself thrown out of his realm. He was left to roam the countryside, powerless. Into the bargain, he had to pay for it. The no-fault divorce law, passed in 1973, made things even worse for men. Fathers were automatically cast out of their palaces (however humble), and mothers had the full "care, custody, and control" of the children. As might be expected, open warfare ensued.

Seeking to replace "custody" with "parenting," we were delegating the process of how couples separated their households and made arrangements for parenting their children.

set a revolution in motion. We were lawyers, after all. We thought we were working on a new legal way of guiding our clients through the divorce process.

Seeking to replace "custody" with "parenting," we were *delegalizing* the process of how couples separated their households and made arrangements for parenting their children. Thus the actual legal forms (comparable to deeds of title) would be duly prepared and given proper authority. Now, in most cases, parents themselves prepare the parenting plans, except in the more contentious cases. So, whenever lawyers, and even judges, use the term "custody" now, they are using an irrelevant word.

This may give some legal folks heartburn. A brief recount of history may help.

"Custody" has always been, and still is, a legal concept of ownership and control. *Parenting of children is the process that people have been doing for millions of years.* It was only in latter centuries that men owned all property, including women and children. When divorces occurred, the custody of children naturally went to the fathers.

Yet women, throughout human history, have been seen as the primary caregivers of children, particularly in their first years. In the early 20th century, with changing attitudes and increasing divorce, mothers,

Fathers, usually having access to more of the family income and money, fought to regain some of their lost power. It was not uncommon (and still isn't) for fathers to claim that the mother was an unfit parent. Mothers quickly realized that having the inside track as the primary caregiver made such claims by fathers all but impossible to prove. Both sides used these weapons vigorously and abundantly.

By the 1970s and 1980s, lawyers were worn out. Law practice being essentially the art of compromise, "joint custody" became an instrument for settlement. But what is "joint custody"? I never met any one who knew.

In the 1960s, the mental-health community got into the act. Battles raged across the entire spectrum. Mental health professionals of all stripes wrote huge volumes of articles advocating arrangements all the way from joint parenting to eliminating fathers completely from children's lives. Into this countrywide maelstrom I naively walked with the innocent question: "Why not just talk about parenting?"

So in 1983, our committee struggled to get our minds around how to do what we wanted to get done. At length, we came to understand that the key concept was "functionality": that is, we should focus on the practical plans parents would make to care for their children. (I believe my partner

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Bob Prince first used the term, but he does not remember the honor. Perhaps it was Vern's idea.) I believe it was this pragmatic approach that appealed to Marlin Appelwick (now on the Court of Appeals), who was then chair of the House Judiciary Committee.¹

What Is Parenting? Dunne's Debate

Since we were writing a parenting act, we had to define what "parenting" really was. John Dunne convened a group of child psychiatrists and came up with a definition.

A couple of months later, to everyone's

surprise, John reported that the attempt to define "parenting" was causing great contention. At one meeting, two nearly got into a fistfight! Somehow, John counseled the doctors into some semblance of consensus, and a nuanced definition of the "parenting function" was hammered out. The definition is now embodied in RCW 26.09.004 (3)(a) through (f).

The Quiet Revolution

In early 1984, the committee agreed that a policy for the Parenting Act should be stated in the next monthly meeting. I came to the meeting with a draft.

I had an agenda. John's "parenting functions" definition was parent-neutral. I wanted to use this neutrality to equalize fathers' roles in the parenting of children. The key phrase was, "The best interest of the child is ordinarily served when the existing pattern of interaction between the parent and child is altered *only to the extent necessitated by the changed relationship of the parents or is required to protect the child from physical, mental or emotional harm.*" (Emphasis added.) This meant that fathers had equal rights to care for the children in the actual parenting arrangements.

The expected storm never broke. The committee matter-of-factly reviewed my draft. Vern Rieke suggested some stylistic changes. After a few minutes we turned to other matters. My draft, as refined, is now set forth in RCW 26.09.002. It thus became the public policy of Washington state.

Fathers now had equal rights to their children. The presumption that the mother should have custody of the children simply vanished as a legal issue. I was amazed.

A Lousy First Draft

Any new, significant legislation begins with a rough first draft. By June 3, 1985, we had our first draft of the act. We were proud of it at the time. With 18 years' hindsight, though, I think it really was pretty terrible.

We had intentionally left out the "primary caregiver" factor in making a parenting plan. Naively, we thought we could negotiate this issue with women's groups. And, unintentionally, we had neglected a dispute-resolution clause. Perhaps more significantly, only a miniscule provision addressing protection in abuse cases was included.²

With remarkable naiveté, in June 1985, we revealed our draft in a report to the King County Family Law Section. The draft was duly included in the section's minutes, which were sent out to the entire divorce bar. The whole world now saw it.

As we should have expected, all hell broke loose.

Women's Groups Fight Back

The obvious and, then, politically incorrect idea was our committee's attempt to sidestep the primary-caregiver issue. Our lapse mobilized a variety of women's groups. Representative Seth Armstrong, a

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member of our committee, recognized a political disaster when he saw it. He approached Marlin Appelwick to take us under his wing. Even Marlin, I am sure, did not truly appreciate the task he was taking on.³

In 1986-87, women's groups were far stronger politically than men's groups, which surged later.

Our committee faced a conundrum: Without including the primary caregiver standard in determining parenting plans in the act, it was dead. But including the primary caregiver standard reimported custody concepts we were trying to get beyond.

As we toiled through the summer of 1985, there were many dark murmurings about what we were up to.

The Gang of Four

Marlin had a better idea: We had to get our act together. Ada Shen-Jaffe, then head of Evergreen Legal Services, made Kim Prochnau, now a King County Superior Court commissioner, available. John, Kim, Marlin, and I became the Gang of Four. Our committee was closed to outsiders. Marlin stressed that we had to get a coherent and *acceptable* draft before we again showed what we were doing.

We all agreed to this blackout. As we toiled through the summer of 1985, there were many dark murmurings about what we were up to.

Kim reminded us of the interests of women's groups over the primary-caregiver issue, but acknowledged the poison-pill effect. Over Labor Day weekend 1985, Marlin spent an entire night redrafting the act, only to have it vanish in the early morning sunlight into his computer. He had to spend the rest of the weekend recreating his draft. (There is a significant place in heaven reserved for Marlin.) Through the winter of 1985 and on to the following spring, we struggled with the primary-caregiver knot.

Marlin's Artful Placement

Kim kept us focused on the fact that the primary-caregiver problem would not go away. The women's groups insisted that the primary-caregiver factor had to be, well, primary.

In the early spring, as I recall, Marlin came to one of our by-then-biweekly meetings with an owlish look on his face. I scanned his draft of the factors for residential provision. On my first look he had nicely redefined primary caregiver as the "parent who has taken greater responsibility for performing parenting functions." Well done, but the primary caregiver was not given primacy. I said I believed the women's groups would kill us. Then my eye caught the phrase quietly placed underneath all of the 10 factors to be considered in residential placement: "factor (i) shall be given the greatest weight." No heading, no membership. My eyebrows

went up. (I was the nominal representative of the men's groups.)

Kim felt this would satisfy the women's groups. I asked whether this would re-arm the men's groups. The primary caregiver factor was still primary in determining which parent would be given the majority of time. With his marvelous faint smile, Marlin said it might get by the men's groups. It did.

Of course there were many other issues to sort out, such as the 50/50 division of residential time that parents still fall for, despite universal disapproval by the professionals. But the major obstacle to legislative passage was now removed.



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In late spring 1986, Marlin felt confident that our work could be displayed to the outside. A report was sent to the King County Family Law Section, and on to the world.

Huge battles loomed ahead. Bar association groups now swung into action, particularly the King County Bar's Family Law Section. Members of the WSBA's Family Law Section had concerns. In the fall of 1986, and on into the legislative session in February through March 1987, the meetings were long and numerous. Crucial votes of members of the different committees came, were deferred, and were reconsidered. On one evening, Marlin pleaded on the phone with me after the state section meeting: "Please give me some good news." Sadly, I could not. But Marlin persisted. We all persisted. Refinements were made and remade, particularly concerning protection for abuse cases in Section 10, now 19.1.

Of course, the primary-caregiver factor is now widely accepted and followed, and fathers' equal rights for the care of their children in consideration of parenting-plan cases is never questioned. But other factors do come up.

This quiet revolution has remained a very quiet revolution.

The WSBA Family Law Section approved the draft. With Marlin as chair, it cleared the House Judiciary Committee. It was pushed through the House by Marlin, and the Senate agreed. Governor Booth Gardner was pleased to sign the act.

The Lawyers' Winter of Discontent and the Public's Acceptance

The vast majority of lawyers were appalled at the new complexity the act added to their work. In November 1987, a CLE seminar presided over mainly by Marlin, Vern, and me was attended by more than 500 very unhappy campers.

But the public loved it. Mothers as well as fathers, whenever I discussed it, on TV or with individuals or groups, were extremely happy with the new way of doing things.

In 1999, the Supreme Court commissioned Dr. Diane Lye to conduct a major review of the Parenting Act. She held at least 12 focus groups of interested public people, both fathers and mothers. These groups were located not only in western Washington but all over eastern Washington. She found that both fathers and mothers universally accepted the Parenting Act. Their only complaint was that the act wasn't implemented completely.

Dr. Lye interviewed mental-health counselors, from child psychiatrists to family counselors. She also interviewed many lawyers, judges, court commissioners, and other legal professionals. She found that professionals universally accepted the Parenting Act.

In 2001, at a meeting of Supreme Court commissioners, I spoke with Marlin about Dr. Lye's findings. He was as astounded as I was. Everyone accepted the idea that fathers are equally important to children.

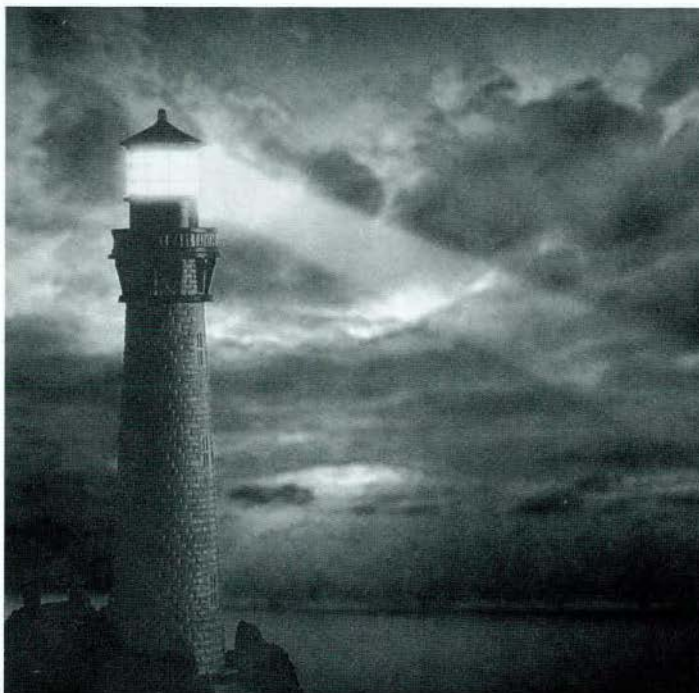
The Quiet Transformation We Lawyers Missed

Lost in this fog of war was the outcome none of us had anticipated. By eliminating "custody," parenting issues in divorce were recognized for what they were: *parenting issues, not legal issues*. Our original concept that *function should drive parenting issues* was now universally accepted.

The Rise of Mediation

With the delegatization of parenting in divorce or in parentage actions, parents can now decide for themselves what they will do and how they will do it.

Parents in divorce cases, like all people, need a sense of control of their lives. The



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Parenting Act gives them this sense of control. What we lawyers did not see coming was that parents would take matters into their own hands. They would do their parenting plans themselves. Thus the *pro se* problem has engulfed the court system. And the court system is withering on the financial vine. As we all now know, this has resulted in major headaches for the courts when people do not fill out the mandatory forms correctly.

In 2000, Kim Prochnau reported that in well over 60 percent of all divorces, at least one of the parties is not represented by a lawyer. She has recently told me that this percentage continues to rise.

John Dunne confirms what we in the Gang of Four feared about increased conflict between parents. Our two year struggle was not hypothetical.

But lawyers are too expensive. Even mental-health investigation reports are beyond the budgets of low-income parents.

Dr. Dunne's advice was that early mediation is the only answer. Mediation *before* filing is in fact the ultimate answer.

That is not the reality today. But a start has been made. Three years ago, with the agreement of the King County Family Law Section, I started an Early Mediation Program with the King County Bar Association. It is offered at a low-income fee of \$100 per hour for the first three hours. It simply needs to be used. Higher-income families can also use the program, but without the \$100 per hour cap.

In 1991, the King County clerk reported that only 1.3 percent of dissolution actions went to trial. For all practical purposes, we can figure a divorce case will settle. So the sooner the settling process begins, the better. The Early Mediation Program was designed to address this issue, since most people do not have \$10,000 or more lying around for parenting battles.

Dr. Dunne remains correct. Mediation must begin *before* the guns go off.

If lawyers and judges will keep reminding themselves that parenting is really a natural function, even in divorce, the legal profession and the public they serve will be the better for it. ❖

J. Porter Kelley, who has been in practice since 1962, originated and led the development of the Child Support Schedule, the 1988 Parenting Act, and the 1999 KCBA Early Mediation Program.

NOTES

1. Fast forward to 2001: Dr. Diane Lye, who conducted a major study of the Parenting Act in 1999-2000, told me the act was "prescient." In one stroke, the whole issue of how arrangements were to be made for care of children when the parents separated became a practical human problem, not a legal issue.

2. John Dunne had expressed concern about abuse cases, but we thought judges would work out the necessary protections in individual cases. In 1985, the nationwide problem of abuse in dysfunctional families was only dimly appreciated outside the mental-health community (and by some lawyers). The seemingly halcyon days, then, were really not so halcyon. The summary treatment of abuse cases in our

then Section 10 has now ballooned into the vast complexity of RCW 26.09.191. (Mary Hammerly, who worked on Section 191, now shakes her head over what she helped create.) The enormity of this national problem is beyond the scope of this article.

3. After the Parenting Act passed in 1987, John Dunne told me that if I ever approached him about any other project, he would run the other way. But John has either forgotten, or forgiven me, for he agreed to write the accompanying article in this issue.

4. But never a word, not a *word*, was spoken about the policy section giving men equal rights, RCW 26.09.05. Oddly, it has been seldom mentioned in the many court decisions and articles regarding the Parenting Act.

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Early Mediation— A Better Mousetrap?

by John E. Dunne, M.D.

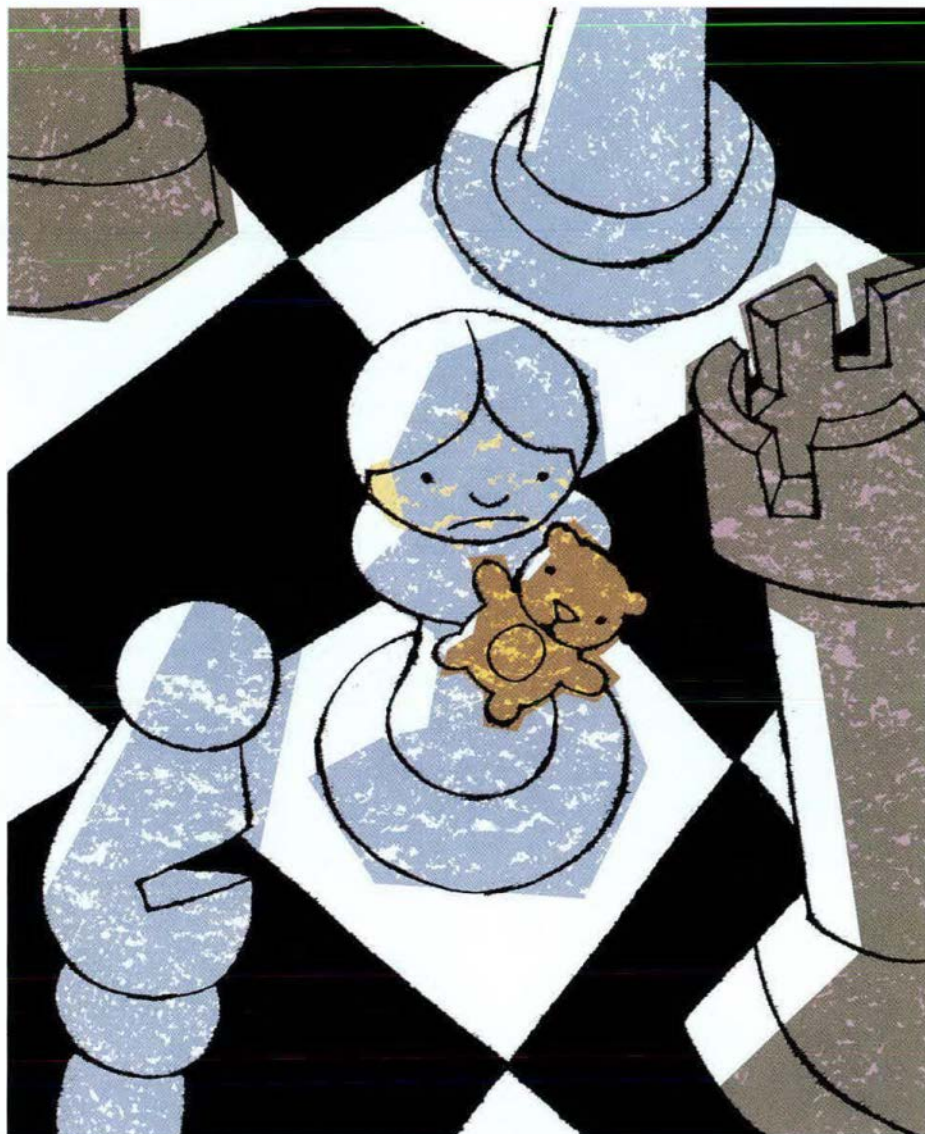
History does have a way of repeating itself. In 1983, attorney Bob Prince approached me—I was an eager young child psychiatrist interested in the difficulties divorce imposes on children—to present a CLE program for the King County Bar Association’s Marriage and Family Law Section on what was known about joint custody. Mandatory joint custody had just (1980) been made law in California, and, nationally, joint custody had become the *solution du jour* among progressive thinkers. The first published reports¹ were encouraging, documenting a significant drop in relitigation rates. Case studies and documentaries showed how harmoniously two divorced parents could raise children, even infants.

However, a review of the psychological research available at the time showed that we really knew very little about the effectiveness of joint custody as a general practice. What studies were available were based on self-selected couples and lacked control groups. In short, there really was no basis for any conclusions, good or bad, about joint custody as a way to adjudicate divorcing couples with children.

Twenty years later, Porter Kelley, a former associate of Bob Prince’s and another original member of the *ad hoc* committee that wrote the Parenting Act, approached me about writing this article on early mediation as a better solution to the process of divorce. Currently, court rules require at least one mediation session, usually occurring late in the process. Is there evidence that early mediation might really be better?

A Brief History of Divorce

Changes in law are usually the products



of sociological and economic changes rather than anything “scientific.” For example, in the agrarian economies that led up to the 20th century, children were considered chattel and owned by the head of the estate. They were a major economic asset in running a farm, and large families were the rule. If the parents did di-

vorce—then a rare occurrence—the wife was evicted with nothing but her clothes, and no rights to see the children. Since women generally had few economic resources and almost no legal rights, when divorce did occur, it was almost always initiated by the husband, usually based on some moral failure of the wife—whether

perceived, fabricated, or actual. Writings from the 19th century suggest strong support for the disgraced mother never being allowed any further contact with the children, to avoid moral contamination.

With the shift to an urban demographic and an industrial economy, children became a liability. No more chickens to feed, eggs to gather, fences to mend, or gardens to tend. It was not a sudden upsurge of sympathy for the plight of women or even the "tender years doctrine" that created the enormous swing in the disposition of children at the beginning of the 20th century. It was the shifting economic meaning of children that created the mother as primary caretaker.

Keeping this concept in mind, we have moved through an extended period of obligatory mother-only custody, followed by various permutations of joint custody, including our own Parenting Act. While there may have been an upsurge in divorce since WWII, this was clearly a better social solution than family abandonment, which had been prevalent prior to WWII.

Research on the Effects of Divorce on Children

Social scientists began to worry about the effects of divorce on children. Early research conceptualized divorce as an event, independent somehow from the family difficulties that led to the decision, as well as from the process within the family that unfolds after the decision to separate. There was no effort to look at families who had similar circumstances but never divorced. When researchers began to factor those considerations into their analyses, the adverse effects of divorce on children nearly, but not completely, disappeared. During the 1970s and 1980s, research focused more on the destructive quality of high versus low levels of expressed conflict within the home.

Another line of research at that time focused on family process—i.e., the change in the ways members of the family relate and interact over time. This became a very useful way of looking at families who divorce, and at the most relevant factors that influence outcomes for children. Of course there are many factors that contribute to adverse outcome: parental psychopathology, including substance abuse; significant changes in standards of living; disruptions in the child's social

During the 1970s and 1980s, research focused more on the destructive quality of high versus low levels of expressed conflict within the home.

milieu, such as friends, school, and activities; and persistent or increased parental conflict. Some factors tend to be protective: a close, supportive relationship with at least one of the parents; the child's temperament; adequate economic resources; stable residence; a prosocial peer group; an available, caring extended family; and low parental conflict.

The Parenting Act

Much of this was known in 1983 when a small group of us, including Porter Kelley and Bob Prince, set out to reinvent the process of divorce. A guiding principle in our discussions was to reduce parental conflict, to push frightened, angry, hurt, hostile, and distrustful people in the direction of cooperating in the continuing responsibilities of parenting their children. In the hope that there would be less fighting over "custody," we changed that legal basis of children from property to social contract, a contract that is only *implied* in the case of never-married parents. We also hoped to create a situation that would encourage more fathers to be financially responsible for the welfare of their children. We constructed a rather intricate plan that required both a temporary parenting plan and a permanent one, once all the details had been worked out. To reduce future involvement of the legal system, we required that each plan include a dispute-resolution process. Our proposal evolved into the Parenting Act of 1987.

A Naturalistic Experiment

When the act was signed into law, I persuaded my colleague Wren Hudgins, Ph.D. and a UW statistician, Julia Babcock, Ph.D., to help design and carry out a study of the effectiveness of this approach in helping not only children, but their parents as well, in surviving the turmoil of divorce. We had just enough time in the closing months of 1987, before the new law went into effect, to set up control group of divorcing couples

in both King and Yakima counties. It was a rare opportunity for a naturalistic experiment to test the hypothesis that our new approach to divorce could actually make a difference in the mental health and welfare of post-divorce families.

The study involved contacting both members of 400 divorcing couples and having them complete a questionnaire about themselves and their children. We had the expected poor rate of return, with only a bit more than 25 percent responding to the first questionnaire and, of those, only half responding when we contacted them two years later for follow-up. Fortunately, we had a large enough sample and a strong enough statistical approach for the results to be considered valid.

Our study was published in 2000.² Some of our findings are relevant to this discussion. As you will recall, we believed that by applying the best available concepts, we could improve the mental health of the children and perhaps of the parents, too. However, there was no change in the emotional or behavioral indices for the children, either during the separation phase or at follow up two years later. This finding seems to support Mavis Heather

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ington's conclusion⁴ that children tend to be resilient. Parents, particularly fathers, fared worse. Fathers had much more difficulty with "internalizing problems" (depression, anxiety, and social withdrawal). There was also a trend for both mothers and fathers to have more "externalizing problems" (irritability, work problems, and parenting problems) with the new law. Significantly, the most powerful correlation with poor outcome related to degree of discomfort with their former spouse and the degree of stress at the time of filing.

The new law, which was considerably more complicated than the no-fault, joint-custody permitted divorce law it replaced,

may have contributed to the degree of stress at the time of filing. Poor payment history contributed to internalizing problems and total problems at follow-up, regardless of which law governed the divorce. When the usefulness of the Parenting Plan (PP) was analyzed separately from the effect of the law, those who indicated that creating a PP was helpful had significantly fewer internalizing and total problems. However, those who were the most uncomfortable with their estranged spouse and/or who were the most stressed at the time of filing may also have been the ones who felt that writing a PP was not helpful.

Unintended Effects

One thing that has really impressed me is that the act essentially required couples to get divorced twice, first in the struggle over agreeing on the temporary PP, then again with the more extended struggle working out the permanent PP. Not only does this extract a price emotionally, but it is terribly expensive, more frequently requiring the assistance of attorneys. Although hardly a very definitive survey, the amount of paper in a typical divorce-evaluation case that crosses my desk has at least quadrupled since the act went into effect. Despite several challenges over the intervening 16 years, a more appealing approach to regulate the process of divorce has not caught the fancy of the Legislature. According to the social research of Diane Lye, Ph.D.,⁵ everyone involved, from judges to divorcing parties, is generally pleased with the act. Is early mediation really a better approach?

Mediation Research

When it comes to understanding the real value of early mediation when applied broadly as a social policy, we are only somewhat better off than we were in 1983 when trying to understand joint custody. Research on the process of mediation and its effectiveness during divorce has been steady, if not very intensive, since at least the late 1970s. In a review of the current literature, Mackay and Brown⁶ described the multiple methodological flaws of the research, especially that the process of the mediation was generally drawn from notes of the mediator rather than a non-participating research associate, leaving the interpretation of results open to substantial bias error.

Despite these methodological problems, it appears that mediation does reduce the number of court hearings, increases the detail in settlement decrees, decreases relitigation, and increases compliance with the agreement.⁶ However, Thoennes and Pearson⁷ concluded that the success of mediation was related to the ability of the mediator more than the nature of the dispute or of the disputants. This seems to contrast with the observation that between 15 and 25 percent of divorcing couples are in high conflict and may not be suitable for mediation. Cohen⁸ stressed that mandatory mediation was not suitable for some divorcing



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couples for a variety of reasons, such as not being motivated by the best interests of the child, but viewing custody and visitation as a bargaining chip to gain a more favorable outcome for themselves. Nonetheless, as many as 75 percent of those divorcing should be able to benefit from mediation, if enough skilled and experienced mediators were available.

Is This Even Possible?

Our research suggests that the initial process of posturing for the temporary parenting plan through declarations and affidavits inflicts emotional wounds that create distrust and animosity that would interfere with the process of mediation. To be most successful, mediation should begin before any documents are filed. Both parties would need to be strongly encouraged to participate in early mediation by their attorneys before firing off opening salvos. Given the limitations I have outlined, early mediation does appear to be a promising approach that may significantly improve outcomes for a large proportion of divorcing couples. However, is our litigious society ready for such a benign solution? *LS*


John E. Dunne, M.D., is a psychiatrist in Renton.

NOTES

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Meeting RPC 6.1's New Goals for Providing *Pro Bono* Services to Low-Income Persons

by Andrew A. Guy

Introduction

As reported in last month's *Bar News*, on September 1 of this year, Washington's *pro bono publico* service ethics rule, RPC 6.1, was amended. Last month's article described the changes in some detail. That information won't be repeated here; however, to place this article in context, it is important to note the following:

- * The clear focus of the amended rule is to encourage lawyers to provide free legal services to indigent clients who otherwise would not have access to a lawyer. Although certain other forms of public-service work are within the scope of the amended rule, its emphasis is established in its first sentence: "Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay."
- * One of the key elements of the amended rule is the creation of an aspirational goal for each WSBA member to perform at least 30 hours of *pro bono* service per year. Lawyers who perform 50 hours or more in any calendar year, and report that fact on their WSBA licensing fee statement for that year, will receive a recognition award from the WSBA.

This article is intended to assist lawyers in all areas of practice in overcoming perceived obstacles to meeting or exceeding the annual 30-hour goal. The primary focus here is on satisfying subsection (a) of the amended rule, which provides that each lawyer should "provide legal services without fee or expectation of fee to: (1) persons of limited means or (2) charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means."¹

The article addresses the following questions:

- * Do lawyers have to establish systems to review prospective clients' finances to ensure that the clients are poor enough to qualify for free legal help?

Lawyers should not assume that because they do not have malpractice policies there is no way to be protected for their work on *pro bono* matters.

- * How can government attorneys and in-house corporate lawyers, who typically don't carry malpractice insurance, perform *pro bono* services to clients without exposing themselves to liability?
- * What kind of *pro bono* work can business lawyers and other nonlitigators perform, without having to re-tool their skills to go into court or administrative hearings?
- * How can lawyers limit or manage the amount of time that providing *pro bono* services will take?
- * How does a lawyer get involved in performing *pro bono* work for the first time, or increase his or her level of *pro bono* work?

Pertinent Information on the Legal Services System in Washington

In answering some of these questions, it helps to know that the legal services system for the poor in Washington comprises a variety of state programs that provide services through staff attorneys and paralegals or through volunteer attorneys, or a combination of staff and volunteers.

The primary system *outside* King

County is the Northwest Justice Project's CLEAR program (an acronym for Coordinated Legal Education, Advice, and Referral), which prospective clients can reach by calling 888-201-1014. In King County, prospective *pro bono* clients may start by going to a King County Bar Association (KCBA) Neighborhood Legal Clinic or by making calls directly to various programs that are designed to provide them with legal services or *pro bono* lawyer referrals.

At the end of this article is a list of organizations in Washington that exist primarily to provide legal services to low-income people.² These organizations have been designated Qualified Legal Services Providers (QLSPs) by the WSBA, for purposes of awarding CLE credits under MCLE Regulation 103(g). This regulation allows CLE credits to be earned for participating in training courses offered by a QLSP and then handling a *pro bono* matter referred by that QLSP, or for mentoring someone who handles such a matter, and for purposes of attorneys performing *pro bono* work as emeritus bar members under APR 8(e) or under the special limited in-house counsel practice rule, APR 8(f).

The QLSPs are always in need of volunteer attorneys to provide legal assistance to persons of limited means. As reflected in the QLSP list that follows, a wide variety of *pro bono* service opportunities exists, involving many different issues and diverse areas of the law, from family law to immigration rights, women's rights, and children's issues, to name a few. Those QLSPs with staff attorneys can sometimes provide mentoring guidance, legal materials, and training to attorneys who accept referrals from them and are not already familiar with the area of law involved in the representation.

Resolving the Screening Issue

Lawyers don't have to worry about screening clients for financial eligibility if they work in conjunction with a QLSP that has screened the client prior to referral. Most of the programs do this, but not all—you have to ask. (Both CLEAR and the KCBA do such screening.)

Resolving the Malpractice-Insurance Issue

Lawyers should not assume that because they do not have malpractice policies there is no way to be protected for their work on *pro bono* matters. Certain QLSPs carry malpractice insurance that covers the activities of lawyers who accept *pro bono* case referrals from their programs. For example, all volunteers who handle matters directly referred by the Northwest Justice Project are covered under that project's malpractice-insurance policy for their work on the referred matters. The policy has no deductible and a \$3 million policy limit per claim. The KCBA has a similar policy in place, with a \$1 million/\$2 million policy limit and no deductible cost to the volunteer for attorneys handling cases referred through its programs. This will not be an issue for lawyers working in firms, but those in government or in-house law departments will likely want to handle matters referred by an organization that offers such coverage.³

Pro Bono Matters for Business Lawyers

Many of the *pro bono* referrals involving direct representation of indigents entail dispute resolution of one sort or another, and often require litigation skills, since some form of representation in court or in an administrative hearing is often the ultimate means of resolving the client's problem. Business lawyers often hesitate to take on litigation matters for a variety of reasons, including a concern about handling matters outside their areas of expertise. However, it is believed that many business lawyers would be inclined to perform *pro bono* work if it related to their knowledge and skills.

Recognizing that charitable and community-based organizations serving persons of limited means face organizational and business-related legal issues similar to

those of commercial enterprises, a new, statewide organization is being formed, dubbed Washington Attorneys Assisting Community Organizations (WAACO). WAACO's mission is to "promote community development and organizational capacity-building in Washington state by providing free legal assistance to eligible nonprofits on business-related legal matters." WAACO will refer charitable and community-based nonprofit organizations, including those that serve indigents, to volunteer business attorneys who can

help with legal issues such as corporate formation and governance, business transactions, taxation, and employment law. Through WAACO, business lawyers indirectly will assist the poor by helping to stabilize the operations and increase the capacities of some of the organizations that serve them.⁴

Addressing Time-Commitment Concerns

Many lawyers have expressed a willingness to perform *pro bono* services on a lim-

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ited basis, but are concerned about accepting a case that ends up taking hundreds of hours. The question becomes: How can a lawyer do a controlled amount of *pro bono* work? There are at least four answers: (1) select the *pro bono* matter carefully at the outset; (2) divide the work with other *pro bono* volunteers, either within the same firm or law department or as co-counsel with one or more volunteers from another firm or law department; (3) limit the amount of work you commit to do to a particular task within a larger matter;

and (4) participate in a program that has a limited, predictable time commitment.

The first two of the foregoing approaches are self-explanatory. The concept in (3) is called "unbundling" of legal services. Recent changes to the Superior Court Civil Rules allow for unbundling by permitting limited appearances for particular parts of a case. See Civil Rules 4.2 and 70.1(b). See also RPC 4.2, 4.3, and 6.5. Civil Rule 11(b) also makes clear that lawyers may ghostwrite pleadings and motions for *pro se* parties. These rule changes

make clear that lawyers do not have to undertake representation for the entire case. They were designed, at least in part, to help *pro bono* clients find representation for specific portions of their cases. (Examples include handling a particular motion in civil litigation, and obtaining an interim parenting plan in a marital-dissolution case.)

With respect to (4), many programs need volunteer attorneys to participate in limited, predictable timeslots. These include answering calls on the CLEAR line for a scheduled two-hour period once or twice a month, or serving at various neighborhood legal clinics (usually a couple of hours an evening, once a month) hosted by local bar associations and, in the Seattle area, by the Seattle University School of Law's Access to Justice Institute.

Some particular programs have limited time commitments, such as the Housing Justice Projects in King, Pierce, Snohomish, and Spokane Counties, in which volunteer attorneys appear at court at prescheduled timeslots of about three hours once a month to assist indigent tenants at unlawful-detainer show-cause hearings. Another example is the Corporate Counsel Partnership for Justice "Long-Distance Telephone Client Counseling Program," in which in-house corporate counsel and government lawyers accept referrals from CLEAR for limited services to indigent clients in rural areas of the state.

How to Get Involved

There are many more avenues to finding meaningful and worthwhile *pro bono* work than can be listed here. However, here is a starting point for those interested in increasing their *pro bono* services:

- * Any attorney who wishes to assist *pro bono* clients outside King County through any of the listed QLSPs may contact Sharlene Steele, the WSBA's Access to Justice Programs liaison, by phone (206-727-8262) or e-mail (sharlene@wsba.org). Also, please let Sharlene know if you believe other QLSPs should be added to the list.
- * In King County, volunteers may contact any of the organizations on the QLSP list at the end of this article.
- * Experienced family-law attorneys located anywhere in the state can now vol-

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unteer to handle incoming calls on the CLEAR line. CLEAR provides training and materials, and new technology will enable volunteer lawyers to take calls from their offices, thus avoiding travel time to the CLEAR office. To sign up, contact Carol Frederick at the Northwest Justice Center by phone (206-464-1519, ext. 287) or e-mail (carolf@nwjustice.org). The Northwest Justice Project has other volunteer opportunities available in its Cross Cultural Family Law Clinic (in Seattle), the Native American *Pro Bono* Panel, and special projects in its branch offices and farm-worker unit. Contact Carol for details.

• Law-firm *pro bono* coordinators in several counties currently receive weekly e-mail referrals that are made by QLSPs and other community organizations (such as Washington Protection and Advocacy System and the Court Appointed Special Advocate Program) through an e-mail listserve organized by the Seattle Area *Pro Bono* Coordinators group. The *pro bono* coordinators are responsible for passing on appropriate referrals to the lawyers in their respective firms. Any solo practitioner, law firm, in-house corporate legal department, or government agency employing lawyers that is interested in receiving such referrals may contact Julie Orr at Davis Wright Tremaine by phone (206-628-7157) or e-mail (julieorr@dwt.com). (Organizations interested in posting referrals on the e-mail referral listserve may also contact Julie.)

• Business lawyers wishing to provide business-related legal services through WAACO to charitable and community-based organizations, including those serving the poor, can contact Katie Ludwig at Perkins Coie by phone (206-359-3789) or e-mail (kludwig@perkinscoie.com).

• Lawyers desiring to sign up for community legal clinics sponsored by the Seattle University School of Law's Access to Justice Institute can contact Huong Lam by phone (206-398-4173) or e-mail (lamh@seattleu.edu).

• In-house corporate counsel or government lawyers interested in participating in the Long-Distance Telephone Client Counseling Project may contact Carol Frederick at the Northwest Justice Center by phone (206-464-1519, ext. 287) or e-mail (carolf@nwjustice.org).

Qualified Legal-Service Providers

(as of August 11, 2003)

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206-624-9365
valc@kcba.org

Eastside Legal Assistance Program

P.O. Box 7165
Bellevue, WA 98008-1165
425-747-7274; 425-747-7504 (fax)
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Kitsap County

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Seattle, WA 98103-1151
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Seattle, WA 98104-2552
206-464-1122; 206-626-5366 (fax)
aurora.martin@columbialegal.org

King County Legal Action Center

Contact: Mark Chattin
100 23rd Ave. S.
Seattle, WA 98144-2302
206-328-5943; 206-324-4835 (fax)
markrc@ccsww.org

Northwest Immigrant Rights Project

Contact: Sharon Lucas
909 8th Ave.
Seattle, WA 98104-1225
206-587-4009; 206-587-4025 (fax)
sharon@nwirp.org
(Also office in Granger)

Northwest Women's Law Center

Contact: Lisa Stone
3161 Elliott Ave., Ste. 101
Seattle, WA 98121-1016
206-682-9552; 206-682-9556 (fax)
lstone@nwwlc.org

Seattle Community Law Center

Contact: M. Tha Win
1820 E. Pine St., Ste. 200
Seattle, WA 98122-7501
206-686-7252; 206-903-0675 (fax)

Unemployment Law Project

Contact: Lynn Greiner
1904 3rd Ave., Ste. 604
Seattle, WA 98101-1160
206-441-9178; 206-727-4819 (fax)
ulp@igc.org

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Andrew Guy practices with Stoel Rives in
Seattle and chairs the WSBA's Pro Bono and
Legal Aid Committee.

NOTES

1. Other means of satisfying the 30-hour goal are referenced in subpart (b) of the amended rule. These include providing free or substantially reduced-fee legal services to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights; or to charitable, religious, civil, community, governmental, and educational organizations in furtherance of their organizational purposes where the payment of standard legal fees would significantly deplete the organization's economic resources or would otherwise be inappropriate; and participating in activities for improving the law, the legal system, or the legal profession.

2. Because all client referrals to the QLSPs lo-

cated outside King County are supposed to go through CLEAR, the QLSPs in those counties do not accept direct calls from prospective clients, or walk-ins. Accordingly, the WSBA has been asked not to publish the addresses and other contact information for those QLSPs. Contact information for the King County QLSPs is included in the appended list.

3. In-house corporate counsel who are bar members in another jurisdiction, and whose practice in Washington is limited by Admission to Practice Rule 8(f) to representation of their employers, may participate in *pro bono* programs referred through QLSPs, pursuant to an amendment to that rule that became effective last year.

4. This type of service actually fits within section (b) of amended RPC 6.1.

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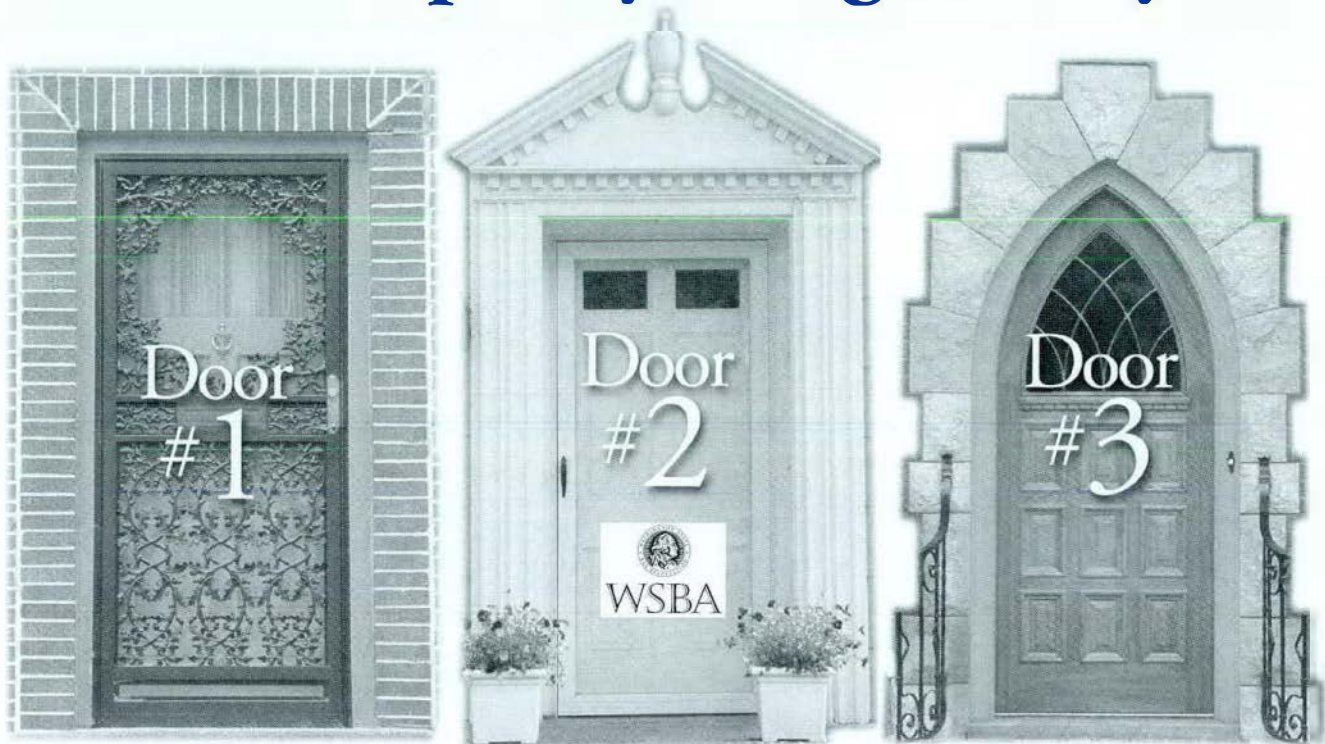
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Recent Committee Actions and 2003 Annual Report

by Robert Welden

August 2003 Committee Meeting

The Lawyers' Fund for Client Protection Committee meets quarterly to review applications for gifts from the fund. The committee is authorized to make gifts of up to \$10,000 to eligible applicants. On applications for more than \$10,000, the committee makes recommendations to the Board of Governors, who are the fund's trustees. The committee met August 22, 2003, reviewing 54 applications concerning 18 lawyers, and approving the following:

Karl W. Ferrier (Bar No. 25217; Ocean Park; suspended): The committee reviewed eight applications concerning Ferrier and approved five of them.

- Applicants hired Ferrier to sue a real estate agent. The written fee agreement provided for fees at \$120 per hour and an advance fee deposit of \$750 to be deposited into Ferrier's trust account. Applicants paid Ferrier \$750 that day. Ferrier did not deposit the \$750 into his trust account, but instead deposited it into a personal account and converted it to his own use. He never filed a lawsuit on behalf of Applicants, and never accounted for or returned any of the \$750 they had paid him. The Disciplinary Board ordered restitution of \$750, and the committee approved a gift from the fund in that amount.

- Applicant hired Ferrier to represent him in a lawsuit with the U. S. Department of the Interior. The written fee agreement provided for fees at \$125 per hour and an advance fee deposit of \$1,000 to be deposited into Ferrier's trust account. Applicant paid Ferrier \$1,000 that day. Ferrier did not deposit the \$1,000 into his trust account, but instead deposited it into a personal account and converted it to his own use. After Ferrier did nothing on Applicant's case, Applicant discharged him and requested a refund of his fees. Ferrier did

not respond, provided no accounting, and returned none of Applicant's fee. The Disciplinary Board ordered restitution of \$2,000, and the committee approved a gift from the fund in that amount.

- Applicant hired Ferrier to file a lawsuit on a promissory note. The fee agreement provided for fees at \$125 per hour and an advance fee deposit of \$1,500 to be deposited into Ferrier's trust account. Applicant paid Ferrier \$1,500 that day. Ferrier did not deposit the \$1,500 into his trust account, but instead deposited it into a personal account and converted it to his own use. Ferrier filed a complaint in the Pacific County Superior Court on May 25, 2001, and had it served on the defendant. However, he did not file the affidavit of service with the court. The defendant did not answer the complaint. In July and August 2001, Applicant spoke with Ferrier by phone, and Ferrier told him that he had not had time to get a default order. After August 2, 2001, Applicant could not reach Ferrier. Ultimately, Applicant had to hire a new lawyer to refile and serve a new complaint. The Disciplinary Board ordered restitution, and the committee approved payment to Applicant of \$1,500.

- Applicants paid Ferrier \$665 on September 6, 2002, to file an adverse-possession action in Pacific County. Applicants called Ferrier's office once a week from October to December 2002 and received no response. Ferrier never filed an adverse possession action, never accounted for Applicants' funds, and never returned any unearned fees. The committee approved payment to Applicants of \$665.

- Applicant hired Ferrier on September 8, 1999, to file a lawsuit against a roofing company. The fee agreement provided for fees at \$100 per hour and an advance fee deposit of \$1,000 to be deposited into Ferrier's trust account. Applicant paid Ferrier \$900 that day. Ferrier did not deposit the \$900 into his trust account, but

instead deposited it into a personal account and converted it to his own use. Ferrier filed a complaint; the defendants appeared, and served interrogatories and requests for production of documents. From that point, Ferrier did nothing further on Applicant's case, and eventually Applicant hired new counsel. Ferrier never accounted for any of the funds paid to him by Applicant. The Disciplinary Board ordered restitution of \$900, and the committee approved payment of that amount to Applicant.

Ricardo Guarnero (Bar No. 18922; Seattle; suspended): Applicant hired Guarnero on November 14, 2000, to represent her in a dispute with her former employer. Their fee agreement provided for an hourly fee of \$125. She gave him a check for \$300 on November 17, 2000. On April 24, 2002, Guarnero billed her for an additional \$345.69, which she paid. In November 2002, Guarnero told Applicant that if he could not resolve the claim, she would have to file a lawsuit in federal court. He told her that she would need to pay him \$1,650 to begin a lawsuit, which she paid on October 2, 2002. In February 2003, Guarnero sent Applicant a copy of a demand letter setting a deadline for response of February 21, 2003, or a lawsuit would be filed. After that, Guarnero did nothing further. Applicant discharged him and requested return of "my filing fees of \$1,650 that I have paid you in full to file in court, which you have not done." She got no response. The committee approved payment to Applicant of \$1,650.

Trenidad Hernandez (Bar No. 25849; Federal Way and Yakima; disbarred):

- Applicant had a friend who was charged with a criminal drug offense in Yakima Superior Court. Hernandez agreed to represent the friend. Applicant paid Hernandez \$2500 on April 26, 2002, for the

representation. The receipt, dated April 26, 2002 (more than a month after Hernandez had been suspended), states "initial interview—nonrefundable." Applicant says that before Hernandez met with the client, he wanted an additional \$500. Applicant called the WSBA, and found out that Hernandez had been suspended March 7, 2002. The committee approved payment of \$250 to Applicant.

* Applicant had two pending criminal charges in Yakima County Superior Court. According to Applicant, in April 2002 Hernandez agreed to represent him for \$300 cash and various items of personal property. Applicant paid \$242 of the agreed \$300 in cash. Applicant became angry, contacted the WSBA, and learned that Hernandez was suspended at the time he agreed to represent Applicant. The committee approved payment of \$242 to Applicant.

* Applicant hired Hernandez to seek an expungement of a criminal conviction record. Hernandez agreed to do it for \$500. Applicant paid \$400. Due to illness, Applicant let time pass. Later, Applicant could not contact Hernandez, so he called the WSBA and learned that Hernandez had been suspended. Hernandez never performed any services for Applicant, and never returned the unearned fee. The committee approved payment of \$400 to Applicant.

* Applicant paid Hernandez \$150 on November 28, 2001, to review documents. After that, Applicant was unable to reach Hernandez. On December 22, 2001, Applicant filed a grievance with the WSBA. On December 24, Hernandez arranged to meet with Applicant. He returned Applicant's documents, but Applicant said that when he asked for return of the \$150, "Mr. Hernandez responded with a laugh and no response to my request was given." The committee approved payment of \$150 to Applicant.

Richard Kyaw (Bar No. 21312; Tacoma; disbarred): The committee reviewed seven applications and approved the following:

* Applicant hired Kyaw to represent him on criminal charges for \$5,000, with an additional \$5,000 if the case went to trial. Kyaw told him he would need an addi-

tional \$2,500 to hire a detective to investigate the possibility of an alibi. Applicant paid Kyaw \$2,500 on January 11, 2002. Applicant and his wife met with the detective for about 15 minutes. Kyaw told Applicant that the detective's fee would not require the full \$2,500, and that Kyaw would use \$750 toward the \$1,500 cost of hiring a psychosexual evaluation. Applicant paid \$750, but Kyaw never paid the other half of the bill. After that, Applicant could not reach Kyaw, and Kyaw failed to appear in court. The committee approved payment of \$750 to Applicant.

* Applicants hired Kyaw to represent them in bankruptcy. On May 10, 2000, Kyaw filed a Chapter 13 petition. On April 15, 2002, he filed a motion to convert the proceeding to Chapter 7, which was granted. On April 17, 2002, an order was entered requiring Applicants to file post-conversion schedules, which were incomplete or missing. When they were not filed, the Chapter 7 petition was dismissed. After the dismissal was entered, Kyaw told Applicants he could have it vacated if they paid him an additional \$200. They mailed him a check in that amount on October 16, 2002, and heard nothing further. The court docket shows that no further action was taken in court after the dismissal. The committee approved payment of \$200 to Applicants.

* Kyaw filed a Chapter 13 bankruptcy proceeding for Applicant in 2001. On January 25, 2003, Applicant paid him an additional \$500 to convert the proceeding to a Chapter 7. The bankruptcy-court docket shows this entry on February 27, 2003: "Amendment to Petition filed by Richard Kyaw . . . NO INDICATION AS TO WHAT IS AMENDED—NUMEROUS ATTEMPTS TO CONTACT ATTORNEY—NO RESPONSE" (emphasis in original). The next entry is a motion to dismiss the Chapter 13 proceeding. At that point, Applicant hired a new lawyer, who filed a motion to convert to Chapter 7. Kyaw never refunded the \$500 or accounted for it. The committee approved payment of \$500 to Applicant.

* On June 20, 2002, Applicant paid Kyaw \$500 as fee and \$200 for advance costs to file bankruptcy. In early November, Kyaw told Applicant he had attempted to file her petition electronically, but that it had not

gone through. He said they would have to refile and that she would have to appear in court. Applicant called Kyaw and left several messages. When she got no response, she went to his office on January 4, 2003. The receptionist told her that Kyaw no longer worked there, but picked up mail occasionally. Applicant left a note asking him to call, and in early February he called and apologized, saying there had been deaths in his family. He told Applicant he would soon file her bankruptcy. That was the last she ever heard from him. Kyaw never returned any of her fees or accounted for her funds. The committee approved payment of \$700 to Applicant.

* Applicant hired Kyaw to represent her on criminal charges in Pierce County Superior Court. Kyaw told her he would charge \$2,500, but if the case went to trial it would be \$5,000 or \$6,000. She paid \$2,500 on October 24, 2002. On November 8, 2002, Kyaw told Applicant he needed \$1,000 to hire an investigator, which she paid. Applicant says that none of the witnesses she had identified were contacted by either Kyaw or an investigator. Applicant obtained a new lawyer. After Applicant's new lawyer took over the case and got Applicant's file from Kyaw, he found no evidence that any investigation had been done or that an investigator had been hired. Trial was set for January 5, 2003, and Applicant paid Kyaw an additional \$3,000. The trial was continued to March 13, 2003, and Kyaw demanded an additional \$4,150, which Applicant paid. Kyaw did not appear on the trial date. Kyaw gave him Applicant's file, but there was nothing in it except notes from Applicant's initial interview with Kyaw and discovery given to Kyaw by the prosecutor after he had filed a notice of appearance, which appeared unopened. There was no evidence that Kyaw did any work on Applicant's case after the January 21 payment of \$4,150. The committee recommended payment to Applicant of \$5,150, which included the funds paid to be used to hire an investigator.

* Applicant hired Kyaw in April 2000 to file a legal-malpractice lawsuit against another lawyer on a one-third contingent-fee basis. He paid Kyaw \$2,000 on April 7, 2000, for advance costs. On January 6, 2001, Kyaw asked Applicant to sign the

complaint. Applicant paid an additional \$1,500 for advance costs at that time. For the next two years, when Applicant called Kyaw, he was told the case was filed and awaiting a court date. On January 20, 2003, Applicant's son-in-law investigated, and found that the complaint had never been filed and that Kyaw had been disbarred. By that time, the statute of limitations had run on the claim for malpractice. The committee approved payment of \$3,500 to Applicant.

Robert C. Lyons (Bar No. 22275; Tacoma; disbarred): Applicant employed Lyons in 1996 for representation in a marriage dissolution. A decree of dissolution was entered August 8, 1997. Among other things, it provided for a division of property between the spouses, and for the husband to pay Applicant's attorney's fees by a joint check payable to Applicant and Lyons. It further provided that if Applicant had paid her fees in full, Lyons was to endorse the check to Applicant. Applicant's husband sent a check for \$2,500, made payable to Lyons only, on April 30, 1999. Lyons cashed the check and paid none of the proceeds to Applicant. Lyons sent Applicant a billing on March 5, 1999, showing a balance due of \$2,950. Applicant paid him \$1,001. Therefore, the committee concluded that when the former husband paid Lyons \$2,500, Lyons was entitled to payment of \$1,949, and should have paid the balance of \$551 to Applicant. The committee approved payment of \$551 to Applicant.

Brenda J. Means (Bar No. 26180; Mill Creek; disbarred): The committee reviewed eight applications and approved the following:

- Applicant hired Means on June 12, 2002, to represent her in a divorce. She paid Means \$2,500. Applicant says weeks went by and she didn't hear from Means. She then contacted the WSBA and learned that Means had been suspended for not paying her annual license fee. Applicant last met with Means on July 17, 2002, two days after she had been suspended, at which time Means told her she had mailed the pleadings to her. Applicant never received anything from Means. On July 26, 2002, Applicant wrote Means requesting

return of papers she had given Means, and a refund of the \$2,500. Means did not respond. The committee approved payment of \$2,500 to Applicant.

- Applicants had legal guardianship of their two grandchildren, and they hired Means to commence an adoption proceeding. Means agreed to take the case for a flat fee of \$1,000, which Applicants paid on May 7, 2002. After that meeting with Means, they heard from her only one time, when she called to tell them they would have to pay an additional \$600 guardian *ad litem* fee, and also that she was having difficulty getting papers from the Department of Social and Health Services. Applicants contacted DSHS, got the papers, and delivered them to Means's office. After that, they heard nothing further from Means and could not reach her. Finally, Applicants contacted the WSBA and learned that Means had been suspended. They then contacted the court clerk and learned that no petition for adoption had been filed. The committee approved payment of \$1,000 to Applicant.

- Applicant paid Means \$2,500 on April 18, 2002, to seek a change of custody of his children from his ex-wife to him. Applicant delivered documents to Means, but he generally could not reach her or get any acknowledgment from her that she had reviewed the documents. He said, "On two occasions when we contacted her she assured us everything was ok; then we wouldn't hear from her for several weeks." Applicant said he contacted Means on July 18, 2002 (she had been suspended July 15), and arranged to meet with her on July 22. He said that just before the appointment, Means cancelled the meeting and said they would have to reschedule. Applicant then contacted the WSBA and learned that Means had been suspended. Applicant asked Means to return his file and refund the fee. She returned the file, but did not refund the fee or provide any accounting. A review of the court docket shows that no petition for modification of custody was ever filed. The committee approved payment of \$2,500 to Applicant.

- On February 24, 2001, Applicant paid Means \$2,500 for a child-custody modification proceeding. On March 13, 2001, Means filed a petition for modification, and motion for show cause. A show-cause

hearing was set for March 27. Applicant and his former wife appeared at the show cause hearing, but Means did not. The hearing was continued, and costs of \$100 were assessed against Applicant. Means called later that day and apologized to Applicant. He told her she was discharged, and he requested a refund. On April 17, Means sent Applicant a check for \$1,520.10. When he tried to cash it, he was told there were insufficient funds. The committee approved payment of \$1,520.10 to Applicant.

Douglas M. O'Coyle Sr. (Bar No. 15689; Spokane; deceased): The committee previously approved five applications concerning O'Coyle. Applicants are owners of two businesses. They hired O'Coyle in February 2001 to represent one of the businesses regarding a dispute with their business partner. They made a payment of \$2,200 on August 1, 2001, to O'Coyle in anticipation of further legal actions regarding the partnership dispute. Applicants' last meeting with O'Coyle was in November 2001, when O'Coyle told them to "put together what we had" and make another appointment. Applicants said that when they next tried to reach O'Coyle in June 2002, his phone was disconnected and they could not reach him. They reached his assistant and learned O'Coyle was ill. They asked O'Coyle to return their funds, but he did not respond. The committee approved payment of \$2,200 to Applicants.

Stephen L. Palmberg (Bar No. 3178; Grand Coulee; disbarred): The committee previously approved five applications concerning Palmberg. Applicant hired Palmberg to file for dissolution of marriage. He paid him \$700 in cash on March 9, 2000. The receipt states: "\$650 retainer, \$50 to be applied to filing fee." Applicant received a phone call from Palmberg's secretary saying that Palmberg needed an additional \$55 for processing fees. Applicant sent him a check for \$55 on August 8, 2000. Palmberg prepared draft pleadings that Applicant edited and returned to Palmberg. Several months had passed when Applicant received a phone call from Palmberg's secretary telling him she was no longer working for Palmberg, because

Around the State

she was tired of his not showing up for work or court. Applicant tried to call Palmberg but could not reach him. Palmberg did not file the dissolution petition or give Applicant copies, and did not return any of the funds paid to him by Applicant. The committee approved payment of \$755 to Applicant.

Glenn E. Reed (Bar No. 5328; Mt. Vernon; disbarred): Applicant hired Reed in 2000 for representation on a claim arising from an auto accident. Reed was to receive \$500 as his fee. He negotiated a settlement for \$3,500 in June 2001. The insurance company sent Reed the settlement agreement and check made payable to Applicant and Reed. Applicant signed the agreement and endorsed the check. Reed was to deposit the check into his IOLTA trust account and pay Applicant's medical bills, with any remaining balance to be paid to Applicant. According to his stipulation to disbarment, Reed deposited the check in his IOLTA account, but he used the money for his own purposes and did not pay Applicant's bills. He was ordered to make restitution to Applicant of \$3,500. The committee approved payment to Applicant of \$3,000, the amount Applicant was entitled to under the fee agreement with Reed.

2003 Annual Report

The Lawyers' Fund for Client Protection Committee met four times this fiscal year—November 22, 2002, and February 21, May 16, and August 22, 2003—to consider 117 applications to the fund involving 42 lawyers. Fifty-one were approved for payment, totaling \$125,913.24. Of the denials, most were deemed to be fee disputes or malpractice claims, or there was no evidence of a dishonest taking of funds. During fiscal year 2002, \$11,299 in restitution was received by the fund. The full report is available online at www.wsba.org/lawyers/groups/lawyersfund, or by contacting the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions @wsba.org. 📧

Robert Welden is WSBA general counsel and staff liaison to the Lawyers' Fund for Client Protection Committee. The committee chair is Pullman attorney Scott J. Bergstedt.

Around the State reports are welcome from county and specialty bar associations. There are no rules for writing them, except to mention lots of your members. We leave it up to each organization to decide who does it, and to the correspondent to decide how often. Many counties are still available. Contact the editor at tradelaw@thompson-law.com for more information.

The Bankruptcy Bar

J. Todd Tracy has been appointed co chair of the Bankruptcy Section of the Federal Bar Association for the Western District of Washington. He practices with Ogden Murphy Wallace in Seattle. The section serves a liaison role between the bankruptcy judges and the lawyers practicing before them.

Cowlitz-Wahkiakum Report

by Our Local Correspondent

Heidi Heywood opened a new practice in Skamokawa in September. According to local historians, it is Skamokawa's first law office and also the first private practice established by a woman in Wahkiakum County. Her office is located in a 19th-century steamboat landing on the Columbia River, looking down toward Astoria.

This from Joe Daggy: A bunch of teed-off lawyers turned out to be a good thing last week as 10 teams took to the tees in the Cowlitz-Wahkiakum County Bar Association 8th Annual Golf Tournament. Forty golfers spent the day trying to keep their heads down on the fairway so they could hold them up later in the clubhouse. Sponsors this year included Noelle McLean and Court Administrator Nancy Williamson, who donated prizes for the event. Golfers also had a chance to win lavish cash awards. But the big winner this year was Cowlitz-Wahkiakum Legal Aid, which gained \$770 from tournament proceeds. A big thanks goes to organizers Lindsey Cotterell, Angie Warning, and Noelle McLean, who did a stellar job on the event—especially the rules part.

Lindsey Cotterell (unless someone else wants the credit for it) created some "special" rules this year, which all the golfers appreciated. One rule allowed golfers to buy mulligan (do over) tickets for \$5 each. For golfers who correctly realized that repeating a costly mistake was not fun, there was also "string" available for an undis-

closed amount. String allowed golfers to sink a putt without actually hitting the ball. This year the foursome of Tom O'Neill, Mark Brumbaugh, Max Anderson, and Alex Styve was the team to beat. And everybody did beat them. They finished last with a one-over par 73, to win a huge chocolate bar, narrowly beating, or losing to (depending on how you feel about chocolate), the team of Dave Nelson, Jim Morgan, Ms. Morgan, and Robert Roden, who gave them a real run for the chocolate, by finishing with an even par.

Judge Steve Warning, Kevin Warning, Dennis Maher, and Laura Maher, accompanied by Angie Warning, earned a respectable 10 under par, crediting their score to judicious use of string, creative mulligan work, and the bringing in of ringers like Kevin and Laura, who led their team to an \$80 third-place victory.

Lindsey Cotterell, Alan Engstrom, Kevin Rahn, and Joe Daggy called their group "String Quartet," an egocentrism not entirely unreasonable, considering the legitimate eagle they earned when Daggy sank an approach shot from 180 yards out on the treacherous 14th dogleg-left water hole. But 13 under par was only good enough to earn second-place money of \$100. Running out of precious string on the back nine, the quartet suffered a disappointing series of pars, remaining two strokes behind tournament leaders Tim Hanigan, Hank Hanigan, Heidi Heywood, and Duncan Cruickshank, who scored a record 15-under-par 57. "We are younger and in better shape than the other golfers," Heywood or somebody said, or might have said if anyone had asked.

Other teams faced difficulty from the beginning. Craig McReary, Jamie Imboden, Tim South, and Kurt Anagnostou first ran into trouble when Anagnostou failed to show up. Then Imboden lost valuable course-management time helping carmate McReary retrieve golf balls that McReary had hit at other foursomes. South, by all accounts (well, at least his own account), played well until McReary—who had inexplicably been allowed to drive the cart—ran over South's clubs. Fortunately, Imboden later ran McReary down with the same cart, possibly adjusting the team's karma.

Judges Alan Hallowell, Milton Cox, and Jim Stonier, and their caddie, Chief

Civil Deputy Prosecuting Attorney Ron Marshall, didn't play up to their normal skill level, in part due to the long robes interfering with the judges' back swings. Also, Marshall was too busy saying things like, "Great shot, Your Honor," and "May I approach the green?" to be able to provide the judges with expected precedent on the use of string and mulligans. Most of the lawyers agreed it was "a darn shame that Marshall held his foursome back."

Another luckless foursome, composed of Gary Bashor, Lori Bashor, ten-month-old Alex Bashor (who incidentally shot a career-best 72 under par), Thad Scudder, Trish Scudder, and Ryan Ralston, actually had six people in their foursome. "It was due to a math error," Bashor later said. Unfortunately, golf—even when played with string and mulligans—involves some basic math skills, like counting. At press time the Bashor "foursome" was still calculating its score. All participants in this year's tournament owe three big cheers to the organizers—except for the Bashor "foursome," which calculates that it owes somewhere between two and seven cheers (they'll get back to us on that).

The Judiciary

by Lindsay Thompson

President Bush has nominated U.S. Magistrate Judge Richard Martinez to a District Court judgeship in Seattle. Martinez was previously a King County prosecutor and a superior court judge.



Jarvis



Goller

Our Far-Flung Members

Peter R. Jarvis, formerly with Stoel Rives in Portland, has joined the National Law of Lawyering Practice Group of Hinshaw & Culbertson, a Chicago firm. He will continue practicing in Portland. Jarvis is a frequent writer and speaker on attorney discipline and ethical issues, as well as business law, in the Northwest.

John G. Goller practices in the areas of insurance coverage, products liability, toxic tort, and environmental law, and has joined von Briesen & Roper, s.c. in Milwaukee, Wisconsin.

Pierce County

Williams Kastner & Gibbs has added Melissa A. MacDougall to the roster in its Tacoma office. She does medical malpractice defense and civil litigation, and used to work for the Seattle city attorney and a Seattle law firm.

Linda I. Thomas, executive director of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP attorneys, has been honored as one of the South Sound's "Women of Influence." The award is co-sponsored by Executive Women International and the *Business Examiner*. Thomas owned and managed several corporate ventures before joining the firm in 1999, served in the state Legislature, and wrote the booklet "Payroll Taxes Without Tears."

Spokane County

Ryan M. Best joined Spokane's Paine Hamblen firm during the summer. He practices tort-defense and personal-injury law. He graduated from Seattle Pacific University and Baylor School of Law.



Best

Thurston County

Graham Lundberg & Peschel announced that John A. Hogle became of counsel to the Olympia firm August 1. He was WSTLA president in 1984.

Whatcom County

The September *Whatcom County Bar Association Newsletter* had a community-service theme. Among other news, the association published a *Pro Bono* Resolution for 2003. It announces that the association commits to "expanding civil legal services for low-income persons in Whatcom County through LAW Advocates; urges all law firms and governmental employers to promote and support the involvement of *pro bono* civil legal services; and encourages its members and all practicing attor-

neys in Whatcom County to provide civil legal services to the poor in the following ways: (1) providing direct civil legal representation by accepting two civil cases per year through LAW Advocates; (2) providing advice and consultation services through LAW Advocates; and (3) providing a financial contribution or assistance with fundraising for LAW Advocates."

In Memoriam

Remembering our colleagues and friends

Tom Kingen

Longtime Spokane and Pullman lawyer
Thomas F. Kingen graduated from Washington State and Gonzaga School of Law and served two tours in Vietnam, reaching the rank of captain. He joined the WSBA in 1976. After practicing with former WSBA President Dick Eymann, Kingen joined the Spokane city attorney's office as lead trial attorney. He also practiced with the Perkins Coie and Preston Gates firms. After running for prosecuting attorney, he semiretired and worked as of counsel for a number of Spokane and Pullman governmental entities. He was active in a variety of civic organizations as well. Survivors include his wife, attorney Cheryl Demers Kingen, and three children.

Thomas F. Kingen was born in Colorado Springs, Colorado, and died July 16, 2003, aged 56.

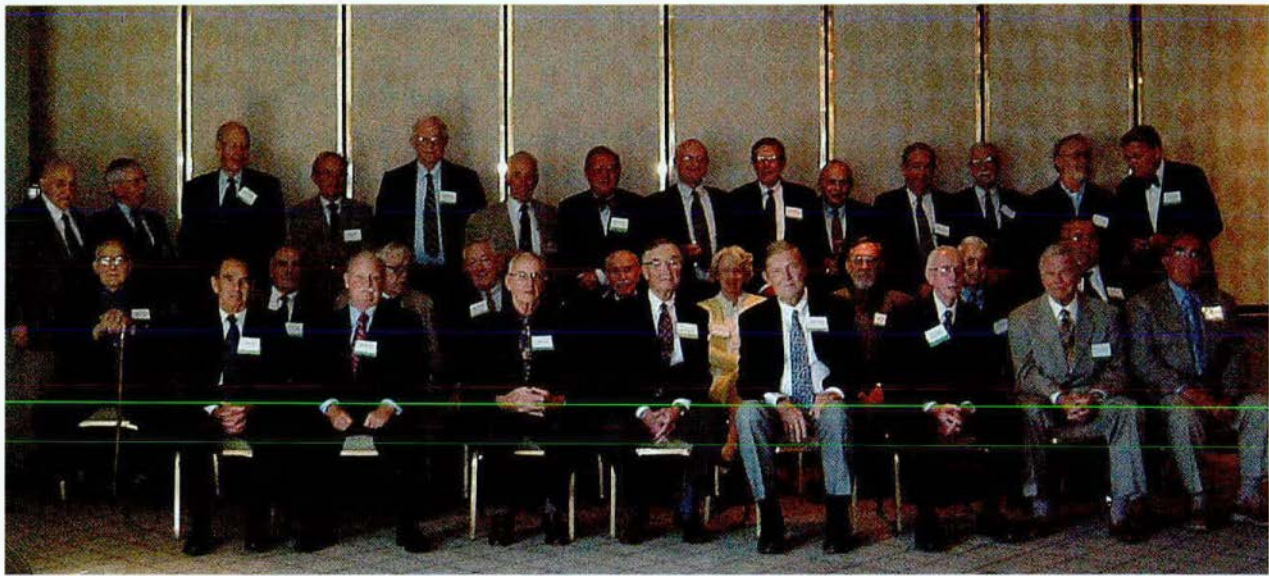
Patrick Murphy

Attorney, athlete, horseman, Irishman
A British Columbia native, Patrick Murphy was educated in Vernon, B.C., before entering Gonzaga University to play hockey in 1939. After graduation from law school, he remained active in hockey as a player and referee. His interests also included golf and thoroughbred horses.

Murphy practiced law in Spokane for over 50 years, in partnership with the late WSBA president Mike Hemovich, Court of Appeals Judge John Schultheis, U.S. Bankruptcy Judge John Klobucher, and Spokane County Superior Court Judge Thomas Merryman.

Survivors include his wife of 61 years, Mary Frances; four children; 10 grandchildren; and a sister.

Patrick H. Murphy was born in Enderby, British Columbia, and died August 19, 2003, aged 85.



The WSBA Honors Its 2003 50-Year Members

The Washington State Bar Association proudly congratulates its members who are celebrating 50 years of membership in the Bar and service to the public.

Keith S. Bergman, *Spokane*
William Charles Boettcher,
Vancouver

Charles Roscoe Branson, *Seahurst*
Boardman Warren Brown,
Pasadena, CA

Charles Edward Cole, *Fairbanks, AK*

James Patrick Connelly, *Spokane*

Gordon Francis Crandall, *Seattle*

Michael Joseph Cronin, *Spokane*

Gerald Norman Curtis, *Seattle*

Robert S. Day, *Richland*

Carl Diana, *Spokane*

Carolyn R. Dimmick, *Seattle*

John William Ellis, *Bellevue*

Virgil Frederick Floch, *Omak*

H. Weston Foss, *Seattle*

Alan Lee Froelich, *Friday Harbor*

Slade Gorton, *Seattle*

Raymond Robert Greive, *Seattle*

Murray Bernard Guterson, *Seattle*

Victor Evald Haglund, *Everett*

Coleman Pritchett Hall, *Seattle*

John Larimer Hay, *Seattle*

John Nathan Hazelwood,
Nevada City, CA

William F. Hennessey, *Seattle*
George E. Kargianis, *Seattle*

Richard Lee Kelleher, *Kent*

Billy Edwin Kohls, *Kaneohe, HI*

Robert J. Kroum, *Sun Lakes, AZ*

Charles Richard Lonergan, *Seattle*

James Irving Maddock, *Port Orchard*

Roy James Mocer, *Friday Harbor*

James Otis Neal, *Ephrata*

Oliver Joseph Neibel, *Omaha, NE*

Richard Anthony Nelle, *Blaine*

James Edwin Nelson, *Seattle*

Nels Bernhard Nelson Jr., *Tacoma*

C. Brent Nevlin, *Vancouver*

Charles R. Olson, *Bellingham*

Charles I. Palmerton, *Seattle*

Ronald Lloyd Peters, *Gilbert, AZ*

Raymond James Petersen, *Seattle*

Robert Henry Peterson, *Tacoma*

Harve H. Phipps Jr., *Spokane*

Richard Lewis Pitt, *Oak Harbor*

Frank B. Platt, *Port Angeles*

George Notman Prince, *Mercer Island*

John Ranquet, *Seattle*

John Henry Rayback, *Des Moines*

W. Stanley Riddle, *Kihei, HI*

■ Daniel John Riviera, *Ketchum, ID*

Louis Rousso, *Seattle*

Theodore Roy Saldin, *Pullman*

Thomas Sauriol, *Tacoma*

Richard E. Schulteis, *Ephrata*

Thomas W. Secrest, *Chehalis*

George Terkel Shields, *Spokane*

Grant Josiah Silvernale, *Kirkland*

Irving Davenport Smith, *Shoreline*

John Dimmitt Smith, *Seattle*

John D. Spellman, *Seattle*

Robert A. Stewart, *Seattle*

Walter E. Webster Jr., *Bellevue*

John A. Westland, *Kennewick*

Thomas Jerome Wetzel, *Seattle*

William L. Williams, *Kenmore*

Donald Howard Wollett, *Clinton*

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 a letter of interest and résumé.

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.

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.

Limited Practice Officer Board—Two Positions

Application deadline: November 15, 2003

The WSBA Board of Governors will be nominating two members who are appointed by the Supreme Court to serve a four-year term on the Limited Practice Officer Board, which will commence on January 1, 2004. One position is for an escrow professional and the second board position is for an attorney of the WSBA. Incumbents are eligible for reappointment (up to two consecutive terms) and must also submit a letter of interest and résumé. 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.

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.

Bar News Survey Coming Soon

In order to provide you with the best publication possible, we want to know what you think!

In November, a number of randomly selected WSBA members will be contacted by phone. If you're able to, we would very much appreciate your taking a few minutes to participate in the survey. For those not contacted by phone, you also are invited to participate. The survey will be printed in the December issue of *Bar News*, and we encourage you to complete it and return it to us.

The survey results will be printed in a future issue of *Bar News*.

Establishment of New Armed Forces Section Awaiting Board of Governors Approval

This notice is posted pursuant to the WSBA Bylaws, Article IX, "Sections," regarding prior notification of intent to establish a new section. There is a current effort to form an Armed Forces Section. If approved by the Board of Governors, the WSBA Legal Services to the Armed Forces Committee would be discontinued in lieu of the new section. For additional information, please contact Ken Luce, chair, Legal Services to the Armed Forces Committee, at 253-922-8724 or kenyon.luce@ilrwa.com.

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 suggestions for rule changes to the Supreme Court of Washington, Temple of Justice, P.O. Box 40929, Olympia, WA 98504-0929; or e-mail Lisa Bausch at Lisa.Bausch@courts.wa.gov.

Elder Law Section Contributes \$25,000 to LAW Fund

The Elder Law Section made a \$25,000 contribution to Legal Aid for Washington ("LAW") Fund. Since 1999, the section has made annual financial commitments to LAW Fund and other programs that help the poor achieve meaningful access to justice. This gift is in recognition of the current crisis in legal aid funding for seniors. Thanking the Elder Law Section for its most recent contribution, LAW Fund President Salvador A. Mungia stated, "We applaud the Elder Law Section, which has demonstrated, with this gift, its convincing leadership at a crucial juncture. The gift is an inspiration for bar sections and private attorneys across the state." For more information about the Elder Law Section, visit www.wsba.org/lawyers/groups/elderlaw. For more information about LAW Fund, visit www.lawfund.com.

CLE Bookstore Open for WSBA Members in December

For members who must complete their MCLE credits before December 31, 2003, the WSBA CLE Seattle bookstore will be open at the Washington State Bar Association, 2101 Fourth Ave., Ste. 400, from December 1 through December 31. Hours of operation will be 9 a.m. to 4:30 p.m., Monday through Friday, with

the exception of Thursday, December 25, when the bookstore will be closed, and Wednesday, December 24, and Wednesday, December 31, when the bookstore will be open from 9 a.m. to noon only. New this year, for added convenience, the bookstore will stay open on Thursday evenings, December 4, 11, and 18, until 6:00 p.m. Available MCLE A/V credit-approved material will include a limited supply of selected taped seminars with coursebooks. Payment may be made by cash, check, MasterCard, or Visa, and there are no shipping and handling charges for members who take their purchases with them. (You may claim up to 15 total A/V credits for the current reporting period. All ethics credits can be acquired using approved A/V self-study.)

For Spokane area members, a "satellite" version of the CLE Bookstore will be set up at the "Best of CLE" seminar on December 3 at the Red Lion River Inn in Spokane. Whether you are attending the seminar or not, we invite you to stop by, browse, and select your ready-to-go A/V credit-approved coursebooks and tapes.

For members ordering CLE materials through the online store (<http://store.yahoo.com/wsbastore>), or by mail, phone, or fax, orders must be received by December 12 in order to guarantee delivery by December 31.

Lawyer-to-Lawyer Program: Mentors Needed for Newer Admittees

The WSBA's Lawyer-to-Lawyer Program matches newer admittees with experienced lawyers. The program is not a structured mentoring program and does not supplant any similar programs of local or specialty bars. We connect lawyers with similar practices in the same geographic area for mutual information-sharing and goodwill. We need experienced attorneys to serve as informal mentors, especially in King County. Help new lawyers get a head start on learning those lawyering skills not found in any textbook. Interested members may contact Pete Roberts (206-727-8237 or peter@wsba.org) or Allison Durazzi (206-733-5914 or allisoncl@wsba.org) in the Law Office Management Assistance Program. Program guidelines and sign-up forms are online at www.wsba.org/lawyers/services/lawyertolawyer.htm.

MCLE Credits for Group 3 Due at Year-End—Make Reporting Easy

Active WSBA members in MCLE Reporting Group 3 will be required to report compliance with MCLE credit requirements for the 2001-2003 reporting period 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.

If you are a Group 3 member, you 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 of WSBA approved CLE activities

If a Group 3 member does not meet the credit requirement by December 31, 2003, an automatic extension will be granted until May 1, 2004; however, a late fee will be imposed. If this is the first period in which a member has not met MCLE compliance requirements, 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.

To make reporting easy, all courses listed in Group 3 member rosters on the MCLE system by November 1 will be pre-printed on the Continuing Legal Education Certification (C2) form, which will be included in the 2004 license-renewal packet sent to Group 3 members. Most of the courses taken by members should already be on member rosters, since sponsors are required by APR 11 to report member attendance at each course. You may want to check your roster on the MCLE system to ensure that all courses you have taken are listed.

In addition to reviewing courses taken and credits earned, you can also use the MCLE system to do the following:

- * Apply for CLE activity approval, including writing credit, prep-time credit, and *pro bono* credit.
- * Search for approved courses being presented in the future.

To use the MCLE system, go to <http://pro.wsba.org>, click on the "Member" tab, then select "Member Login." The online instructions will lead you through creating 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.

Address Update Reminder

Now is the ideal time to check that the WSBA has your correct contact information in its database. The 2004 license fee renewal packets are scheduled to be mailed in early December. The deadline for updating your address to be included in the license fee renewal packet mailing was November 1, so please call the WSBA to request a duplicate packet if you have not received yours by December 31, 2003. 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, or e-mail address) has changed, please update the information by e-mailing questions@wsba.org, faxing the change to 206-727-8319, or calling us at 800-945-WSBA or 206-443-WSBA.

Upcoming Board of Governors Meetings

December 5-6—Leavenworth

January 8—Olympia

February 27-28—Seattle

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. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

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. Please direct questions or comments to Committee Reporter Douglas Ende at 206 733-5917 or ethics2003committee@wsba.org.

Upcoming Ethics 2003 Committee meetings:

November 12—WSBA office

December 10—WSBA office

January 14—WSBA office

2002-2003 Committee Reports

Alternative Dispute Resolution

The committee held a successful arbitrator training for both lawyers and nonlawyers. Modifications were made to program forms and procedures based on issues that arose at the training. The committee also published an article in *Bar News* on arbitration training, and staffed information tables promoting ADR Programs at Legal Community Resources Fairs at all three state law schools. ADR discussed program fees and proposed to the Board of Governors changes in guidelines and fees for fee arbitration.

Amicus Committee

The committee participated on an expedited basis in two *amicus* briefs requested by the appellate court and prepared by the Family Law Executive Committee. See *In re Marriage of Furrow*, 115 Wn. App. 661 (2003), and *In re Welfare of C.A.M.A.*, Washington State Court of Appeals No. 51001-14. The committee is supporting a request from the Real Property, Probate, Trust & Estate Section for *amicus* assistance in the Supreme Court, in *Estate of Jones*, Washington State Supreme Court No. 73951-0, petition pending.

Character and Fitness

The committee considered all petitions for reinstatement and all applicants for admission that were referred by the WSBA executive director. It prepared written findings regarding the fitness of each applicant and petitioner considered by the committee, and provided written recommendations for action to the Board of Governors for consideration by the Washington State Supreme Court. The committee heard nine matters: eight petitions for application to sit for the bar examination and one petition for reinstatement by a disbarred attorney.

Civil Rights

The committee held a CLE September 10 that provided education on 42 U.S.C. § 1983—a major and complex civil-rights statute. A civil-rights pamphlet was finalized and distributed identifying resources for those in need of legal services in the area of civil rights. Rule 4.12, proposed by the committee, was approved by the Washington State Supreme Court. This rule is expected to increase protection for victims of sexual harassment and assault from improper inquiries regarding past sexual history.

Continuing Legal Education (CLE)

The committee was rechartered as a policy-guidance body for the CLE Department. To that end, four standing subcommittees were established: Quality Control, to address CLE program quality; Technology, to address the use of various technologies in CLE presentation and marketing; Section and External Relations, to address section and outside-provider CLE programs; and CLE Programs, to address program development and speaker recruitment. The committee also provided input awarding CLE credit

for volunteer bar activities and made numerous other policy recommendations.

Court Rules and Procedures

The committee concentrated on the ERs and IRLJs, and responded to requests for comments from the Washington State Supreme Court and WSBA Board of Governors. It recommended, and the board approved, several amendments intended to conform Washington's rules to the federal rules, and technical amendments to RAP 15.4, RALJ 9.3 and 10.2, and CRLJ 63. The committee recommended amendments to CrR and CrRLJ 4.6, and new rules CrR and CrRLJ 4.11. Board action is tabled until December 2003.

Electronic Communications (EC2)

The committee provided a CLE brown bag featuring its research over the past year. This event included detailed ways in which attorneys could use personal digital assistants (PDAs), web conferencing, and listserves for their practices. Throughout the year, the committee met with vendors to discuss the feasibility of adopting technologies such as web conferencing with WorldCom, LexisNexis, and office-management tools.

Judicial Recommendation

This committee screens and interviews candidates for state appellate court positions and makes recommendations thereon to the Board of Governors. The committee did not interview judicial candidates this year. A special JRC subcommittee made recommendations for changes to the Board of Governors. The board formed a special JRC Review Committee to update and revise the JRC guidelines and procedures. Revisions include the institution of a mandatory training for all JRC members.

Law Clerk

The goals and activities of the Law Clerk Committee included: (1) overseeing the running of the Law Clerk Program; (2) interviewing new law clerk applicants; (3) acting as liaison to various law clerks; (4) reviewing individual law-clerk progress through the program; and (5) continuing the pursuit of support of complete reciprocity for Washington law clerks in Oregon and Idaho.

Law Examiners

The committee continues to maintain its goal of having a full exam in its "question bank," which serves as an excellent training tool for new examiners and provides a reserve of approved questions. The committee updated the *Handbook of Procedures*, for writing and grading bar examinations, and involved more members of the executive committee in the training of new examiners. In addition, an executive committee member attended a special three-day question writing and grading workshop sponsored by the National Conference of Bar Examiners.

Lawyers' Fund for Client Protection

The committee evaluated more than 100 claims by clients who suffered a loss. Each claim was considered on its own merits and awarded compensation as allowed by the committee rules. In total, the committee approved 51 claims and awarded \$125,913.24.

Legal Services to the Armed Forces

The committee (1) was instrumental in the passage of APR 8(g), allowing JAG officers in Washington state to receive a limited license to practice law; (2) sponsored a two-day (15-hour) CLE for JAG officers to meet the requirements of the APR 8(g) excep-

tion; (3) worked on the passage of amendments to RCW 59.18.200, 59.18.220, and 59.20.090, allowing early termination of long-term residential leases upon receipt of reassignment or deployment; and (4) worked toward creating a military law section.

Law Office Management Assistance Program

LOMAP services include phone and onsite consultations, LOMAP-CLE seminars (including an annual "roadshow"), speaking engagements with county bar associations and law schools, a lending library, a software laboratory, "Law Office in a Box™," and the Lawyer-to-Lawyer mentoring program. A subcommittee addressed revising the "Up and Running" chapter on Technology. The committee addressed the backlog of new lawyers waiting to be matched with experienced mentors, and continues to identify, pursue, and publicize programs for delivering law-office management services to WSBA members.

Mandatory Continuing Legal Education Board

The board (1) reviewed many requests for CLE exemptions from WSBA members, indicating that many members are having difficulty maintaining minimum CLE requirements; (2) developed a joint WYLD/MCLE rule-change proposal for new WSBA admittees; (3) evaluated and ratified the MCLE late-fee schedule; (4) evaluated and recommended an increase in MCLE program fees; (5) considered the certification of certain volunteer activities for CLE credit; and (6) continued to develop guidelines for WSBA-MCLE staff making decisions in response to routine requests by WSBA members.

Professionalism

A new project, "Random Acts of Professionalism," was implemented, with the goal of recognizing lawyers and judges who have displayed exemplary professionalism. The committee presented the annual highly successful CLE seminar "Ethics, Professionalism, and Civility: The Hard Questions," and continued to encourage county bar associations to purchase framed copies of the creed for display in each courtroom. To date, plaques hang in courtrooms in 27 counties.

Pro Bono and Legal Aid (PBLAC)

The committee continues to work to implement the Volunteer Attorney Legal Services Action Plan adopted by the Board of Governors in 1994. PBLAC operated this year through four subcommittees: Corporate Counsel and Government *Pro Bono*, Local Rules, *In Forma Pauperis*, and Supreme Court Involvement. Also, PBLAC worked to ensure the adoption by the Supreme Court of amendments to RPC 6.1 and proposed changes to APR 8(f) that will permit in-house corporate counsel to engage in *pro bono* work through qualified legal services providers.

Public Information and Media Relations

The committee is charged with broadening public knowledge about, and respect for, the law; the rule of law; and the roles, responsibilities, and contributions of lawyers and judges, including their ethical commitments. This year, the committee developed and implemented a plan to respond to unjust criticism of judges.

Rules of Professional Conduct (RPC)

The committee's major activities this year have included: (1) responding to more than 30 requests for informal ethics opinions by WSBA members; (2) continuing to participate in the

development of the forthcoming *WSBA Legal Ethics Deskbook*; and (3) coordinating work with the WSBA's Special Committee for the Evaluation of the Rules of Professional Conduct (Ethics 2003 Committee), which is examining possible changes to the Washington Rules of Professional Conduct.

2002-2003 Section Reports

Animal Law

The executive committee met at least four times, and the general membership met twice, with both meetings well attended. In March, the section organized an Animal Law CLE (nearly 100 attended) and in August, a brown-bag CLE (about 50 attended). The section compiled three cutting edge newsletters during the year, complete with case summaries, member profiles, philosophical articles, ALS Committee reports, book reviews, and more. The ALS has two very successful e-mail listservs, one for attorneys and one for nonattorney members.

Antitrust, Consumer Protection and Unfair Business Practices

The section's annual meeting was held November 1, 2002, and officers (chair: Craig Heyamoto; chair-elect: David Dadoun; secretary: Mark Griffin; treasurer: Ramona Emerson) and Executive Committee members (Mark Griffin, Craig Heyamoto, David Lundsgaard, Bradford Axel) were elected. The section's annual CLE, designed to serve the needs of both experienced and "not so experienced" practitioners, was also held that day. The section's 2003 annual meeting will take place November 7, when current Chair-elect David Dadoun will become chair.

Business Law

The section's midyear meeting on May 16 was a tremendous success. Alfred Falk succeeded Brad Furber as chair; Dori Brewer became chair-elect and treasurer; Daren Nitz became vice chair and program chair for next year's meeting (to be held April 1-4 in Seattle in conjunction with the ABA Business Law Section's spring meeting); Pam Grinter was elected recorder; Paul Davis and Jason Farber were elected executive committee at-large members; and Joel Bodansky became Website Committee chair.

Dispute Resolution

The section completed long-term efforts to develop and upgrade its website and online directory of ADR providers; co-sponsored (with the UW School of Law) the Eleventh Annual Northwest ADR Conference, the most successful conference to date (with two-thirds of participants nonlawyers, a tribute to the section's outreach efforts); developed guidelines and procedures for the receipt, review, and consideration of requests for funding assistance for ADR-related programs and activities; and supported two law-student summer clerkships in ADR activities.

Environmental & Land Use Law

The section hosted a successful midyear meeting and CLE in Yakima. The CLE earned over \$5,000. ELUL's quarterly CLEs were also well attended. The section is working with a consultant to develop an environmental and land-use-law curriculum for high school students. The section completed a survey of its members to determine what services they are interested in. The ELUL section newsletter continues to be the most important service offered. The section also hosts a website.

Family Law

The section increased its membership, membership services, and community involvement, while creating a budget surplus. It prepared a first draft of the *Family Law Handbook*, mandated by legislation from the prior legislative session; analyzed dozens of bills; participated actively in third-party custody issues; prepared a column in each issue of *De Novo*; and maintained a listserve. The section sent a delegation to participate at the Council of Community Property States. The annual meeting and CLE was held in Ocean Shores.

Indian Law

In collaboration with the Northwest Indian Bar Association (NIBA), the section discussed with bar leadership testing Indian law on the bar exam, and the unique nature and significance of Indian law and tribal-court practice. Gabe Galanda, chair-elect and two-term NIBA president, addressed groups that included bar leadership, the WSBA Diversity Committee, and the Washington State Supreme Court, on these and other Indian law issues. The section sponsored an all day CLE titled "Tribal Land and Wealth Management" and a free brown-bag CLE; and awarded two \$1,000 scholarships.

Intellectual Property

The executive committee increased coordination with other Northwest sponsors of continuing legal education. The section continued its significant monetary support for Washington Lawyers for the Arts; co-sponsored, with the WSBA, a seminar on intellectual-property licensing; and filed an *amicus* brief in the remand of the *Festo* case. A subcommittee recommended amendments to Washington's trademark statute (Ch. 19.77 RCW); these amendments became effective in July. The section welcomes volunteers to assist with projects such as web-resource development, listserves, and the newsletter.

International Practice

In November 2002, the section hosted its annual reception for more than 70 local and foreign lawyers and judges. In March 2003, the section hosted an Olympia tour for about 25 foreign lawyers. In May, the section offered a very successful full-day CLE, "The World Wide Web of Commerce." The section offers a bimonthly brown-bag lunch forum carrying 1.0 or 1.5 CLE credits. The section published the fourth edition of "Doing Business in Washington State—A Guide for Foreign Investment."

Labor and Employment Law

The section developed a listserve; enhanced and regularly updated its website; attended the WSBA fairs; continued to strengthen ties with labor and employment law professors, and law students; and will provide a superb, reasonably priced CLE to members at its annual meeting. It increased membership to more than 830 and contributed financial resources to the Unemployment Law Project and Mary Ellen Krug Scholarship Funds at Seattle University School of Law and UW Law School; and developed a welcome letter to new members.

Law Practice Management and Technology

The section enhanced and updated its website and listserve, launched a weblog, and is exploring converting to an electronic newsletter. It successfully completed its all-day CLE in March, and made plans for next March. It will present its award-winning "Winning Strategies CLE" again this fall. Its Brown-Bag Seminar Series continues. The section is in the process of merg-

ing with the General Practice Section to better address the needs of small-to solo practitioners, and is designing a survey for section members, to help the section design better programs.

Litigation Law

The *WSBA Civil Procedure Deskbook* was updated, edited, and published; special thanks are owed to the deskbook's editor-in-chief, David Swarling, longterm section member and former chair. The midyear CLE in Seattle, highlighting trial skills, with national presenter Sonya Hamlin, was a huge success. The section hired a paid newsletter editor and established a regular newsletter-publication schedule. It also developed a successful member listserve, and published an updated *Trial Practice and Evidence Manual*.

Real Property, Probate and Trust

The section had its midyear and annual business meeting in June, with Tom Culbertson becoming chair; and sponsored or co-sponsored several seminars, published its quarterly newsletter, enhanced and updated its website, and developed and improved two listserves. It is putting together an *Estate Administration Deskbook* and *Estate Planning Deskbook*, exploring producing a single-volume *Real Property Deskbook*, and revising the Washington Condominium Act. Task forces will consider the termination age for UTMA accounts, the Uniform Trust Act, and the legislative overruling of *Bachmeier*; and prepare legislation for an original-will repository.

Senior Lawyers

The annual meeting and CLE was a great success, with more than 130 attending. The program included practical aspects of senior housing and care, dividends and investments, website information, and other topics. The executive committee has been putting together seminar programs, including a midyear mini-CLE and an educational cruise. The newsletter was published quarterly. In April, Pete Francis became chair; other officers include Ken Selander, Phil DeTurk, and Dudley Pancho. Executive committee members include Rod Dimoff, Herb Freise, Joanne Primavera, Larry Salkield, and Tom Wampold.

Taxation

The section enhanced its website and discontinued its newsletter. It created listserves for all its committees. The State and Local Tax subcommittee held several successful joint sessions with top personnel from the Washington State Department of Revenue, and the International Tax subcommittee was reactivated and re-energized by working with the International Committee of the Washington Society of CPAs. The section hosted a very successful annual luncheon, and again awarded a \$5,000 scholarship to an LLM program applicant. The section will sponsor a tax CLE with the Washington Society of CPAs.

World Peace Through Law

Monthly meetings include hour-long lectures carrying 1.0 CLE credit. The annual Ralph Bunche Award Luncheon honors people or groups which have made a significant contribution to world peace through law. A monthly newsletter summarizes CLE content for those not able to attend. The section plans to electronically record CLEs for distribution to members who cannot attend—to increase membership outside Seattle and provide a fundraising opportunity. Other plans include reaching out to local law schools, developing a website and listserve, and communicating electronically during the summer hiatus.

MARSTON HEFFERNAN PLLC

is pleased to announce that
the firm's name has changed to

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The firm also announces
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Rich R. Roland

Mr. Roland is the former chief executive officer of the administrative manager for Washington state's UA Plumbing and Pipefitting employee-benefit trusts. He is a trial and transactional lawyer with over 15 years of experience, and is licensed in Washington and California. He will focus his practice on construction claims, insurance and commercial disputes, and labor/ERISA matters.

Mario J. Madden

Mr. Madden was formerly a lawyer at Schwabe, Williamson & Wyatt in Portland, Oregon.

The addition of these lawyers adds to our established construction-law practice, and expands our ability to represent policyholders in all types of insurance-coverage disputes.

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Nancy K. Plant, Esq.
Managing Member

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Calendar

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

Secured Transactions in Washington: Introducing the *Washington UCC Article 9 Deskbook*

November 5—Yakima. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Securities and Investment Law for the Business Lawyer

December 2—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Essentials of Accounting for Lawyers

December 9—Spokane; December 10—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CREDITOR/DEBTOR

Collection of Judgments

December 4—Spokane; December 5—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CRIMINAL LAW

The Widening World of White-Collar Crime and Whistleblowing

November 14—Seattle. 5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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.

EMPLOYMENT LAW

Employment Law Litigation

December 2—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Tele-CLE for Employment Lawyers

December 15—your office. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

Advising Estate and Trust Fiduciaries/Beneficiaries

November 13—Seattle. CLE credits pending. 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.

Gifting to/Trusts for Minors plus Durable Power of Attorney

December 11—Seattle; December 16—Vancouver. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ETHICS

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.

Ethics for Litigators Tele-CLE

November 14—your office. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

11th Annual Professional Responsibility Institute

November 15—Seattle. Ethics credits pending. By UW-CLE; 800-CLE-UNIV.

Ethics and Technology in the Law Office Tele-CLE

November 18—your office. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Office Ethics for Criminal Law Tele-CLE

November 19—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.

Negotiation Ethics: Winning without Selling Your Soul Tele-CLE

December 2—your office. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics for Estate Planning Tele-CLE

December 3—your office. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The First Annual WSBA Conference on the Law of Lawyering—Comprehensive Instruction in Issues of Professional Liability and Responsibility Facing Washington Attorneys

December 5 & 12—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics for Business Lawyers Tele-CLE

December 10—your office. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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Laurie J. Bolton,**

and

Glen E. Templeton.

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The Ethics of Aspiration (featuring Hon. John Coughenour, U.S. Attorney John McKay, and Federal Public Defender Tom Hillier)

December 16—Seattle. 6 ethics credits. By Emerald Education; 866-244 6EEG.

Ethics for Family Law Tele-CLE

December 17—your office. 1.5 ethics credits. By WSBA CLE; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

Adoption Law Updates and Review

November 7—Seattle. 5 CLE credits, including 1 ethics pending. By King County Bar Association; 206-340-2578.

Family Law Motion Practice Tips from the Bench

November 19—Seattle. 2 CLE credits pending. By King County Bar Association; 206-340-2578.

How to Prepare for Your First (or Next) Dissolution Trial

December 11—Seattle. CLE credits pending. By WSBA CLE; 800-945-WSBA or 206-443-WSBA.

10th Annual Family Law Institute

December 18—Seattle. 5 CLE credits and 1 ethics pending. By King County Bar Association; 206-340-2578.

GENERAL

The Essentials of Community Property: Introducing the Third Edition of the Washington Community Property Deskbook

November 3—Seattle; November 10—Spokane; November 24—Vancouver, WA. 6 CLE credits. By WSBA CLE; 800-945-WSBA or 206-443-WSBA.

The Mold Epidemic: Fact or Fiction?

November 4—Seattle. 6.5 CLE credits. By The Seminar Group; 800-574-4852.

Liens Creations and Enforcement

November 5—Seattle. 6.5 CLE credits. By King County Bar Association; 206-340-2578.

Trials of the Century II (with Todd Winegar)

November 6—Seattle; November 7—Spokane. 5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Bar Trek V

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

Bench Bar Conference

November 11—Seattle. 2.75 CLE credits and 2.5 ethics. By King County Bar Association; 206-340-2578.

Violence Against Women Act and Special Immigrant Juvenile Status

November 13—Seattle. 3.75 CLE credits, including .75 ethics. By UW-CLE; 800-UNIV-CLE.

Cybercrime and Computer Security

November 21—Seattle. 5 CLE credits and 1 ethics pending. By King County Bar Association; 206-340-2578.

Northwest Gaming Law

November 21—Seattle. 5.5 CLE credits, including 1 ethics. By The Seminar Group; 800-574-4852.

Digital Signatures, Electronic Contracting and E-Filing

December 2—Seattle. 5 CLE credits and 1 ethics pending. By King County Bar Association; 206-340-2578.

Best of CLE

December 3—Spokane; December 12 & 19—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

3rd Annual Start-ups and Beyond

December 3—Seattle. 5 CLE credits and 1 ethics pending. By King County Bar Association; 206-340-2578.

Marketing Skills for Attorneys: How to Make Rain in a Parched Economy

December 4—Seattle. 7.75 CLE credits. By Emerald Education; 866-244-6EEG.

Advanced SGAL

December 5—Seattle. 5 CLE credits and 1 ethics pending. By King County Bar Association; 206-340-2578.

Public Speaking With Pleasure: Secrets of Confident Communicators

December 8—Mt. Vernon; December 10—Seattle. 8 CLE credits. By Emerald Education; 866-244-6EEG.

Avoiding and Defending Against Malpractice

December 9—Seattle. 6 ethics credits pending. By King County Bar Association; 206-340-2578.

Persuasive Writing, Including Ethical Boundaries of Persuasion

December 10—Seattle. 2.5 CLE credits and .5 ethics pending. By King County Bar Association; 206-340-2578.

Last Chance Video Round-up

December 16, 22, & 23—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Paul Luvera's Trial Demonstration Program

December 18—Seattle. 7 CLE credits. By Emerald Education; 866-244-6EEG.

How to Win the Toughest Cases

December 19—Seattle. 7.25 CLE credits. By Emerald Education; 866-244-6EEG.

Negotiation Psychology for Attorneys (featuring Boston University's Dr. Thomas Anastasi)

December 20—Seattle. 6.75 CLE credits. By Emerald Education; 866-244-6EEG.

The New Reality of a Global Workforce

December 18—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LAND USE LAW

Land Use Planning: What Every Land Use Lawyer Should Know

December 10—Seattle. CLE credits pending. By UW-CLE; 800-CLE-UNIV.

LAW PRACTICE MANAGEMENT AND TECHNOLOGY

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

November 12—Seattle; November 21—Tacoma. 4.75 CLE credits. By WSBA CLE; 800-945-WSBA or 206-443-WSBA.

LITIGATION

Medicine You Can Really Use: Knowing and Presenting Medical Damages

November 6—Seattle. 6.5 CLE credits. By WSTLA; 206-464-1011.

Motions Oral Argument Skills CLE

November 7—Spokane. 3 CLE credits. By WSTLA; 206-464-1011.

Products Liability

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

The Power of Negotiation and Mediation

November 21—Seattle. 6.25 CLE credits, including 1 ethics. By WSTLA; 206-464-1011.

REAL ESTATE

Tenth Annual WSBA Fall Real Estate Conference

November 14—Seattle. 5.25 CLE credits, including .75 ethics. By WSBA CLE; 800-945-WSBA or 206-443-WSBA.

REAL PROPERTY

Condo & HOA

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

WATER AND NATURAL RESOURCES

Water Law

December 5—Southcenter. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

INTELLECTUAL PROPERTY MATTERS

Anthony Claiborne,

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APPEALS

Margaret K. Dore

Counsel for appellant in *Marriage of Lawrence*, 105 Wn. App. 683, 20 P.3d 972 (2001)

Former law clerk to the Washington State Supreme Court and the Washington State Court of Appeals

Passed CPA exam in 1982

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Nobody knows what I am trying to do but I know and I know when I succeed.

—Gertrude Stein, in John Malcolm Brinnin's *The Third Rose: Gertrude Stein and Her World* (1959)

It's hard to explain how to be *Bar News* editor. You have to develop a sense of the WSBA's membership, and what combinations of articles people submit will meet my goal, which is to make every issue varied enough that nearly everyone will find something interesting or useful in it. Gertrude Stein's comment is as precise as I can get.

Happily, almost all of you who have contacted me since February seem to think I'm succeeding. Hundreds of you have sent me letters and e-mails commenting on content, suggesting articles, and passing on news. You've been telling the Board of Governors you've noticed changes and like them. That's helpful, as I serve at their pleasure.

I like hearing from you and value your views. Please keep the contacts coming. I answer all my calls and mail, although, with the demands of The Annoying Day Job, sometimes it takes me a little while.

Your votes of confidence were a big influence on the unanimous decisions of the Editorial Advisory Board and the Board of Governors at summer's end to confirm me as editor. I'm grateful to them, and to you.

I can't tell you everything I'm going to do next, because I don't fully know. These interim months, I concentrated on minding the store. Now that I can think in years instead of months, I'm thinking hard.

I can, however, tell you five things I need from you.

1. I need your advice.

Thanks to the BOG, WSBA management, and a BOG committee to review *Bar News* chaired by President David Savage, we're doing a member survey in November. If you get called, please take a few minutes and answer the questions we're asking. We want to get away from "management by anecdote" and see what you like or don't like about the magazine, or would like to see in it. The results will help us shape *Bar News's* future and get more advertising.

I'm running the survey in the December issue. Even if you're not part of the random sample of readers who get called, I want to know what you think. Please fill it out and send it to me.

2. I need your news.

Please let me know what's up with you—moves, honors, cases you handle, local bar events. "Around the State" is about law on

Act Two

by Lindsay Thompson

Bar News Editor

the ground, lawyer by lawyer. If you're not seeing your county or bar group in the reports, it's 'cause no one's reporting it. John Nichols, who used to write the hilarious *Clark County Reports*, ended up a judge. Randy Gordon went from the *East King County Report* to the Board of Governors.

Who knows? It could be a real career kick-start.¹

3. I need your articles.

Bar News readers are also our writers. I'm always looking for articles that will help us be better lawyers—stories about trends and changes in the law in your fields, and views from the bench. Sure, I turn out one fabulous column after another here (John Rupp, the first editor, modestly called his column "Scintillae"), but that leaves 63 more pages to fill every month.

4. I need your patience.

Every decision I make about content will make some of you unhappy. As any water witch will tell you, it's hard striking water every time. Some people tell me *Bar News* is too liberal; others that it's too conservative. But I'll always pick stuff I think you need to know about. Times are changing. As a profession, we have to keep within hailing distance of the public that gives us our living.

5. I need you to write Amy Hines (amyh@wsba.org) and thank her for being such a wonderful managing editor for five years.

My job is vague. Amy's job is hard. Every piece of every issue—ads, photos, articles—starts as a separate piece of copy or visual material. There are hundreds and hundreds of them, and Amy has to shoehorn them all in, 64 pages an issue, 12 times a year, and come up with covers and interior art as well. She has made me look good.

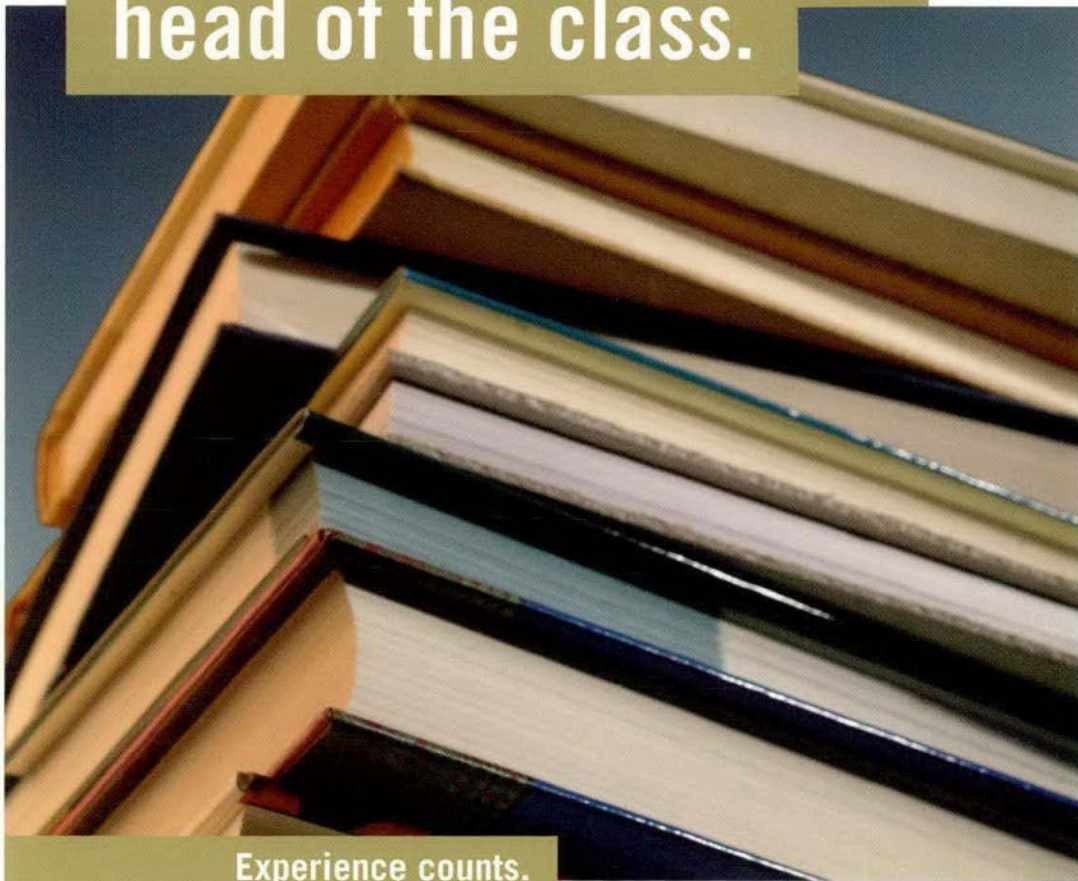
After five years—including this one, bailing me out of all the things I didn't know—Amy has decided to go find something completely different. I will really, really, really miss her. She has become a friend as well as one of my bosses. As the sportsman Sir Toby said admiringly of Maria in *Twelfth Night*, "She's a beagle, true bred."

Thank you, Amy. Send us postcards. ☺

1. Yes, then there's me, who went from *Bar News* to the Board of Governors, then back to *Bar News*. I prove the Peter Principle—"In a hierarchy, every employee tends to rise to his level of incompetence"—in spades.

Lindsay Thompson practices law at Fishermen's Terminal in Seattle. You can contact him at tradelaw@thompson-law.com.

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