

Washington State

BarNews

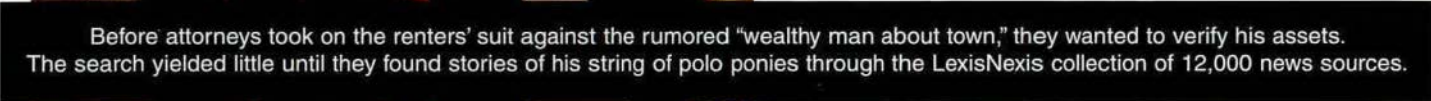
The Official Publication of the Washington State Bar ■ MAY 2003



Garfield County Courthouse

Bar News on the Road:
Garfield County
p. 34

Uncovering the landlord's hidden assets was as easy as reading the sports page.



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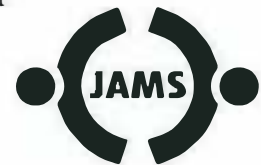


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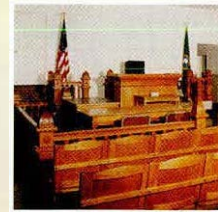
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On the cover: *The century-old Garfield County Courthouse in Pomeroy, Washington. Photo reprinted by permission from Washington's Historical Courthouses by Ray Graves; photographed by Erick Erickson. (See related article on page 34.)*



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Readers are invited to submit correspondence and articles. They may be sent via e-mail to comm@wsba.org or provided on disk in any conventional format with accompanying hard copy and sent to *Bar News* Editor, 2101 Fourth Avenue, Suite 400, Seattle, WA 98121-2330. Article submissions should run approximately 1,500 to 3,500 words. Graphics and photographs are welcome. The editor reserves the right to edit articles as deemed to be appropriate.

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(not pictured)

Letters to the Editor

No offense too trivial

As a lawyer practicing criminal law in the state of Washington, it has become evident, and alarming, of certain trends in our municipal and district courts. I suppose there are always easy solutions, in that we can tell people not to break the law, just like our government decided to tell people not to have sex without marriage. Practically, that does not solve very many problems. The problem that I see, which is increasing on basically a daily basis, is the policy of municipal and district courts to continue to give exorbitant fines for minor criminal acts. I have clients that are on Social Security disability, or are extremely poor, who have violated the law, and they are fined thousands of dollars. Even the fines are not completely unrealistic, but when the court demands minimum payments of \$50 to \$100, there is no possibility of payment. Of course, one of the solutions is to build more jails.

This is a growing problem that will cause further difficulties in our society. Failure of people to even complain of the situation also becomes a travesty. I will continue to attempt to complain, but I am pessimistic that anyone listens.

John L. Farra
Ocean Shores

Doctors are smarter than lawyers, and work harder, too

I am an attorney and member of the Washington State Bar who recently read, and am sending to you my thoughts in reference to, an article in the *Washington State Bar News* by Dick Manning, the Washington State Bar Association president (presumably also a trial attorney), wherein he expresses his views on tort reform. As a trial attorney, and as one might expect, Mr. Manning bemoans the current "attack" against trial attorneys. One of the self-serving comments he made was the alleged inequity of "capping" attorneys' fees as compared to other professional fees (accountants, engineers, architects, etc.) that are not legally "capped." I am also responding to a recent article in the *Seattle Post-Intelligencer* dated Monday, March 10, 2003, on the topic of medical malpractice. I am enclosing an article from the *Puget Sound Business Journal* that discusses the fact that another medical malpractice in-

surer has been placed in receivership.

In response to Mr. Manning's comment re "capping" legal fees, let's be real — no one can collect the types of fees trial attorneys collect — Mr. Manning is not comparing apples and apples — we are talking huge sums of money — most other professionals (including medical malpractice defense attorneys) charge by the hour — an architect can't make millions on a jury award — look at the tobacco cases — movie stars and professional sports team members are some of the lucky few that make more than good trial attorneys. Fur-

thermore, physician fees are effectively "capped" — physicians can collect only what insurance companies are willing and able to pay. Capping malpractice awards and reining in lawsuits will yield a positive result. I doubt that trial attorneys are in any way sympathetic to the plight of the obstetrician who faces dwindling reimbursements and higher premiums and phenomenal stress. I personally know of personal injury attorneys who were able to retire early (very early) as a result of very significant medical malpractice judgments rendered in their favor. In a capi-



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talistic society, how can we expect that insurance companies will obtain the best attorneys when the defense attorneys are only paid by the hour and plaintiffs' attorneys can earn huge awards? And, again, for Dick Manning to suggest that trial attorneys are being unfairly treated if they cannot collect huge percentage awards is comical — it is common knowledge that successful trial attorneys "make an absolute killing." Again, Mr. Manning should also know that physician salaries are very severely capped. The fact is, obstetricians are burning out and it will probably take longer and longer to make an appointment with a good one.

My spouse is a Harvard-educated OB/GYN (four years medical school, three years arduous residency, two years fellowship, \$150K owed on student loans when done at age 35, without a penny to her name) and she is under severe economic and professional stress due to the excessively litigious nature of matters today, combined with ever-increasing malpractice premiums and decreasing reimbursements. She is a very objective, educated, technically bright, very hard working and highly respected physician and she is more often than not appalled at the suits that are filed and the payments that are being made. If a handicapped baby and human being is at issue, human compassion, the "all doctors and insurance companies are rich" mentality, and bulldog lawyers and legal theatrics too often cause the money to liberally flow to the attorney and the patient, irrespective of the existence of negligence. My spouse and I have seriously started to plan for my spouse's early retirement from obstetrics, and she will be missed, as she is an excellent and very popular physician.

The economics of practicing obstetrics in consideration of ever-increasing malpractice premiums and ever-decreasing reimbursements, combined with the ever-increasing mental and physical stress caused by fear of significant liability exposure, causes early burnout. Because of the deteriorating economics, obstetricians are finding it necessary to deliver more babies, which only causes more stress, thus the early burnout. You can rest assured that more Cesarean sections are being performed and many, many more expensive

medical tests and procedures are being run for fear of lawsuits — if the outcome is anything but positive, irrespective of negligence — look out! Have you looked at the statistics in California and other states since tort reform was introduced? Lower malpractice premiums.

I think we should let the lawyers take over the hospitals and take care of the patients and see what happens. Most successful litigation attorneys (four-year liberal arts degrees, mostly, followed by three years' law school as compared to years and years of arduous training required to be

an MD) make much more \$\$ than the hard-working, educated, stressed out MDs who are being sued left and right. This is not to say no mistakes are being made by MDs (we all make mistakes — that is why insurance exists) for which the victims should be compensated, but matters have gotten a bit out of control. Unless something is done, the whole system may soon collapse and we can all line up for our medical service Canada-style (except the trial attorneys who will have enough \$\$ to pay out of pocket). I trust most trial attorneys supported Clinton's "Patient (at-

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torney) Bill of Rights." I certainly would not want either of my sons to become physicians in today's environment — really sad when you think about it.

As was aptly pointed out in the *Seattle Post-Intelligencer*, the Republicans and the Democrats are squabbling to protect their respective revenue sources, but they are missing the forest for the trees — we need reform in the medical malpractice arena before the high-risk specialists are driven out of business and the patient-physician relationship deteriorates further. Let the

trial attorneys continue to earn their huge percentages on tobacco, etc., but let's try and find a solution to the medical malpractice crisis before matters deteriorate further. I would recommend panels of disinterested third-party medical experts that are paid healthy salaries who can determine the existence or nonexistence of negligence, and appropriate and fair restitution. This may bring a better result than the involvement of attorneys who siphon off huge sums of money to cover their huge percentage of recoveries and fees,

and who engage in legal theatrics and feed on the human compassion of lay juries who are unknowledgeable as to the intricacies of obstetrics or other high-risk specialties. If we take away the huge payments to lawyers, there would be considerably more money to pay patients who do suffer damage.

*Lawrence J. Graham
Bellevue*

WSBA Executive Director Jan Michels responds:

Thank you for your comments and personal story. I appreciate that you took the time to write. WSBA studies do not show that medical premiums go down when tort caps are implemented. We believe that insurance-industry economics dictate premiums, and that the higher premiums we see now for physicians are also true for home, car, lawyer liability and business insurance. The huge awards are as rare as bad physicians, but they are sensational, and news of them is highly exploited. Lawyers are very sympathetic to the malpractice insurance problems of doctors but do not feel that capping damage awards is a response that helps the problem.

Manning hits the nail on the head

Thank you, Dick Manning. I, for one, thoroughly enjoyed and appreciated our WSBA president's article in the March *Bar News*. "Tort reform" is nothing less than an all-out assault on the Seventh Amendment (trial by jury) by the "Liability Reform Coalition." The coalition, driven by the insurance industry, has one objective — cut costs and increase profits at the expense of the victims of tortious misconduct. The coalition whines incessantly about "runaway juries" while concealing the fact that invariably it is the insurance defense attorney who files a jury demand. The Liability Reform Coalition is on a deliberate campaign of disinformation through the media and in the legislatures and Congress. But as always, if you want to know the truth, just "follow the money." I applaud our state Bar Association president for taking a stand on this important issue as the leader of Washington's organization of lawyers — all lawyers. I would suggest the Bar Association print Mr. Manning's article in pamphlet form and dis-

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A surreal painting of a man in a suit standing in a cave. The man is holding a briefcase and a cane. To his right, a tiger is lying down. The cave walls are textured and colorful, with a large, stylized animal head (possibly a bear or dog) on the left and another large animal head on the right. A bright light source is visible in the background, creating a dramatic effect.

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tribute it to every Washington state legislator and member of Congress. I think it is the most succinct treatise on the issue of "tort reform" I have ever read.

Thank you again, Mr. Manning.

Brian L. McCoy
Puyallup

Grammar mavens, unite!

Thank you very much for the article by Robert C. Cumbow, "Top 10 Writing Errors for Law Students (and Lawyers)..." (March *Bar News*, p. 21). Does he belong to the Apostrophe Club that I have heard about? Please ask him to write a paragraph on the proper use of "affect" and "effect," as that is one of my pet peeves. His article is going to be mandatory reading for everyone in my office.

Cynthia Whitaker
Seattle

I enjoyed Robert C. Cumbow's article in the March issue on the top 10 writing errors. May I be so bold as to add two more? Affect and effect, as in: that testimony really affected me vs. that testimony really had an effect on me. But I think my all-time favorite is disperse (to break up or scatter) used in place of disburse (to pay out). I certainly want to be present the next time an attorney decides to "disperse" that \$50,000 in excess trustee funds.

Carole Allen
Bailiff to Judge Deborah Fleck
King County Superior Court, Seattle

As a smug English major, I was surprised that I was actually guilty of Mr. Cumbow's first admonition — use of an apostrophe after a singular noun ending in "s" without adding another "s." Thank you for setting me straight.

While I doubt I'll remember all of them, here are a few tips I've learned along the way, with a nod to William Safire's "The Fumblers of Grammar":

- Never use a big word when a diminutive one will do.
- Avoid colloquial stuff.
- No phrases.
- Be sure to proofread to make sure you don't any words out.
- Use the apostrophe in it's proper place and not in its improper place.
- Avoid misspelling errors.

- Never use a foreign term if there's an adequate English *quid pro quo*.
- If you must use a foreign word, it is *de rigueur* to use it correctly.
- It behooves the writer to avoid archaic expressions.
- Don't use no double negatives.
- You must remember to never split infinitives.
- Avoid "superfluous" use of "quotation marks."

Greg Samuels
Vancouver, BC

Hoping that law students and lawyers can handle more than 10 writing errors to correct in a year (*Bar News*, March 2003), I would add the use of commas in a string. The title of another article in *Bar News* provides an illustration. "Gertrude, Mr. Stevens and I Plan Some Picaresque Adventures" can be read as an announcement to Gertrude that Lindsay Thompson is planning some picaresque adventures with Mr. Stevens. The sentence needs a second comma after "Mr. Stevens."

Jay McCain
McClellan, CA

I thoroughly enjoyed Robert Cumbow's article about lawyers' top 10 writing errors. As a former newspaper and wire-service writer and editor, I often despair at lawyers' misuse of language and lack of knowledge, or carelessness about simple grammar. I once offended a county commissioner and attorney who misunderstood my use of "loath" as an adjective, and I felt embarrassed to have to explain to him the difference between "loath" and "loathe."

Among other things, your article reminded me about correct use of "begging the question" and the difference between "lead" and "led." In your next wonderful article, I hope you'll include discussions of "impact" and other nouns used as verbs, such as "loan" when the writer means "lend." You and the former Miss Grammar, who earned doctoral degrees in English and German literature, who previously wrote an enlightening and charming but reproachful monthly column about grammar and legal writing for the *Oregon Bar Bulletin*, and who, until retirement, worked as a writing consultant for the Miller Nash firm in Portland, have much in common.

Thank you for caring enough to teach people how to write well.

Melinda Eden
Milton-Freewater, Oregon

Thank you for the great article by Robert Cumbow. I pay now for the times I played hooky during English, and for my past lackadaisical attitude toward proper usage. I enjoy and benefit from this type of article. However, I completely disagree with Mr. Cumbow's outdated, paternalistic, and chauvinistic (wrong) assertion that male gender language is somehow gender neutral. Odd, but it seems to me that it is frequently a male who holds such an outdated precept.

There are numerous reasons not to respect such a (wrong) position: Even assuming that male usage is gender neutral (it is not; never was), such status achieved its current "neutral" usage from past and current gender discrimination. Lots of it. To "respect" such paternalistic status by continued usage is a demeaning gender slap in the face to all.

Mr. Cumbow, if you truly believe the male to be gender neutral, then I suggest the opposite should also hold: that the feminine is gender neutral as well. And considering the eons of past discrimination by men against women, by right, the feminine usage should now be substituted as a matter of course. So as you feel that male gender usage serves the feminine fairly, perhaps you will embrace allowing the feminine portion of the language equal opportunity at language neutrality. From now on, please always substitute the feminine for male gender: Her for his, she for he. And please, insist that all male fire persons in your acquaintance now refer to themselves as fire women; all male police persons refer to themselves as police women, male chairpersons as chairwomen. It's gender neutral after all. In the meanwhile, please refrain from assuming your paternalistic (wrong), outdated beliefs represent the state of English usage.

Andy Hess
Spokane

Robert Cumbow responds:

The position taken by Mr. Hess — and he is not alone — arises from confusing gender with sex. Nowadays, too many of us (Mr.

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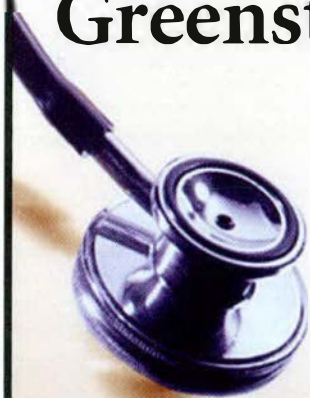
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Hess included) even say "gender" when we mean "sex." The past couple of decades of politically correct academic jargon notwithstanding, "gender" is a property of words only; "sex" is a property of living creatures. Gender in language often has little to do with sex — though this is less apparent in modern English than in Middle and Old English, and the languages English originally came from.

I was ill-advised in using the term "gender-neutral"; obviously, the word "he" is masculine (not "male") in gender, not neutral. That, however, does not mean that its use always indicates a person or creature of the male sex. Until the era of political correctness, it never occurred to anyone that the word "he," used where a subject's sex was indefinite, referred only to male creatures. Indeed, any kid who'd made it to 6th grade knew the opposite, that the proper pronoun to use with an antecedent of indefinite sex was "he," "his" or "him," and that this rule emphatically did not assume that the subject was male, any more than Italians say "il gato" because they think all cats are male, or Germans say "die Katze" because they think all cats are female. The use of a word of masculine gender does not always necessarily signify a creature of male sex.

For the record, (1) "outdated" and "paternalistic" are not synonyms for "wrong"; (2) "chauvinistic" does not mean what Mr. Hess thinks it means; (3) I try to give feminine pronouns equal time with masculine ones to relate to antecedents of nonspecific sex; and (4) I think "firefighter" is a much better word than "fireman" or "firewoman."

Editor's note:

Reaction to Bob Cumbow's article — both in volume and in enthusiasm — has been nothing short of amazing. We are pleased he has agreed to revisit the water hazards and sand traps of lawyer-speak on a quarterly basis in Bar News.

Readers are invited to submit letters of reasonable length to the editor via e-mail (comm@wsba.org), fax (206-727-8319) or mail. Due date is the 10th of the month for the second issue following — e.g., May 10 for publication in the July issue.

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A Big, Hairy, Audacious Scenario for Court Funding

by Jan Michels

WSBA Executive Director

In long-range planning, "big, hairy, audacious goals" are encouraged. These are goals that represent the ultimate of where the planners want to be, uninhibited by reservations about feasibility, money or politics. These goals lit my definition of the future scenario I wrote about last month, so I'll bend the nomenclature a bit to discuss the "big, hairy, audacious scenario" (BHAS) for court funding. The BHAS for the future of Washington courts is "stable, adequate, long-term funding of Washington trial courts to provide equal justice throughout the state." *This is a big, hairy, audacious scenario of the future we desire, and it is the scenario adopted by the Court Funding Task Force.*

Beginning on page 18 of this issue, the immediate past-president of the Superior Court Judges' Association, Judge Deborah Fleck, reviews the history of this scenario and her important work in building it. The BHAS is set, and under the capable leadership of WSBA Past-president Wayne Blair, the Court Funding Task Force (CFTF) is developing action plans to get there. The Board for Judicial Administration, the WSBA, judicial associations, court managers' associations, and others are part of creating the reality we picture.

For the significant work ahead, the CFTF has appointed five workgroups (WGs): Problem Definition, Funding Alternatives, Courts of Limited Jurisdiction, Implementation Strategies and Public Education. The Problem Definition WG is tasked with defining, describing and quantifying the problem. The Funding Alternatives WG will then develop alternatives for stable and adequate revenue to support the courts' needs. Concurrent with the work of these WGs, the Courts of Limited Jurisdiction WG is working to analyze the unique issues surrounding district and municipal court structures, contracts, revenue and funding. With the findings and recommendations of these three WGs, the Implementation Strategies WG will take on the task of implementation planning. And throughout the process, the Public Education WG will bring the public into the scenario with education and public discussion.

Following is a snapshot of the work of the WGs:

Problem Definition Workgroup

This WG has met every two weeks in March and April, and

will continue to meet in May, to accomplish its task of defining, describing and quantifying the problem. It has developed an overall approach, an outline of its report, an inventory of court functions, and preliminary recommendations about what court functions should be included under the

In long-range planning, "big, hairy, audacious goals" are encouraged.

"court funding" umbrella. In deciding to discuss the problem in terms of "court mission and court functions" as a whole, rather than maintaining previous distinctions of "core and noncore functions," the

WG intends to demonstrate that court services are a continuum of public service, courtroom adjudication, appropriate dispute resolution mechanisms and specialty courts, and the enforcement of court orders.

Defining the problem

The problem must be defined in compelling enough terms to rally citizen support and legislative action. The WG characterizes the issue thus: "Reckless funding cuts endanger our social contract to be governed, and the public's right to an objective forum for the resolution of disputes." For this element of their work, the WG solicited examples, anecdotes and horror stories about the results of funding cuts and constraints.

Concepts underlying this definition of the problem include the following:

- Social order depends on the rule of law;
- Citizens are guaranteed an objective forum for the resolution of disputes;
- Courts are a general government expense;
- Trial courts are state courts;
- Equal justice demands equal access;
- When all efficiencies are realized, further cuts are reckless of public safety and order; and
- Legislation and public expectation increasingly put courts as a last resort for the public in the role of social protector and service provider.

Describing "the courts"

To develop a description of the problem, the WG created an inventory of all court functions and developed a paradigm to explain to citizens the critical nature of these functions.

The WG is in the process of developing recommendations to the CFTF about what is and is not included in "court funding." Obvious inclusions are such things as judicial salaries and support staff; less obvious but important inclusions are defense, probation and the enforcement of court orders. Still under consideration by the WG are valuable and important services such as noncourt dispute-resolution services and indigent civil representation.

Another issue being studied by the WG is the current myriad of patchwork funding streams, along with the imbalance among state, county and city funding for court functions, and how these mechanisms affect the mission of the courts.

Quantifying the problem

Following the determination of which court functions are included under the rubric of "court funding," the task of the WG becomes quantifying, in dollars and other resources, current expenditures, and projecting the levels needed for appropriate and adequate funding. There are many studies, analyses, flow charts and audit reports about current and historic funding levels, and there is great incentive for auditors, counties, and the state Office of Financial Management to cooperate in defining the current level and source of revenue for the courts. The challenge will be to credibly project the unmet need and recommend possible methods for periodic evaluation of changing needs. Once the problem has been defined, described and

quantified, the burden will shift to the Funding Alternatives WG.

Funding Alternatives Workgroup

The Funding Alternatives WG's challenge is to document available funding sources and revenue streams. This WG is compiling information, and based on the Problem Definition WG's quantified extent of the problem, will search for a stable, adequate funding stream for Washington courts, which may include a variety of sources for various court functions.

Courts of Limited Jurisdiction Workgroup

This WG's focus is on whether public policy is currently being uniformly administered, and determining the most effective structure for delivering services. The WG will determine where there are gaps in public access or service, and analyze whether these gaps can be addressed by additional funding or other changes. Toward this objective, various customers of the courts of limited jurisdiction are involved in the discussion (domestic-violence petitioners, the Bar and law enforcement). Another important perspective will come from city and county officials and executives. These groups will help decide which are the most important considerations in deciding how court services will be provided to their community. The WG reports demonstrable progress with these tasks. The findings and recommendations of the WG will be merged into

both the problem statement and the funding alternatives recommendations, and may involve other recommendations.

Implementation Strategies Workgroup

This WG is currently developing implementation "outlines" for three to four generic funding alternatives. This approach will help jumpstart the implementation-strategy process once concrete alternatives have been adopted. With the recommendations of the first three WGs, this WG will develop strategies for the achievement of the BHAS — stable and adequate court funding. This task will take high energy, tenacity and creativity.

Public Education Workgroup

The effort of this WG has begun with the education of court-related associations and individuals on the work of the Court Funding Task Force. As more specific definitions and recommendations are adopted by the other WGs, this WG will begin its primary effort to develop public information and legislative campaigns to achieve the scenario we picture.

Court Funding Task Force — The "Committee of the Whole"

The CFTF must hold the vision we have created and coordinate all the components. The task force is the ultimate arbiter for the final recommendation on "court funding." Members meet at critical junctures of WG-recommendation development to break through any hurdles or impasses among the WGs or posed by the public. Action plans are to define and quantify the problem, develop alternatives, blend in courts of limited jurisdiction issues, both short- and long-term, and develop implementation strategies by late fall 2003. Changing the funding and structure of court functions entails adjusting major social policy, and will take the attention and energy of many: first, judges, lawyers and our partners in the courts — clerks, administrators and other officers; then, local officials, the public and the Legislature.

We have our scenario and therefore know where we want to be. We're developing flexible strategies and garnering support. We can do it! There is too much at stake not to!

For more information on the CFTF, see <http://www.courts.wa.gov>. ☞

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Rethinking Our Court System: Judicial Initiatives

*R*ecently I completed a year serving as president of the Superior Court Judges' Association (SCJA). Though probably below the radar for most lawyers, the SCJA and its judge-trustees work hard dealing with the convergence of local, county and state legislative and executive actions, and their consequences, in Washington courts.

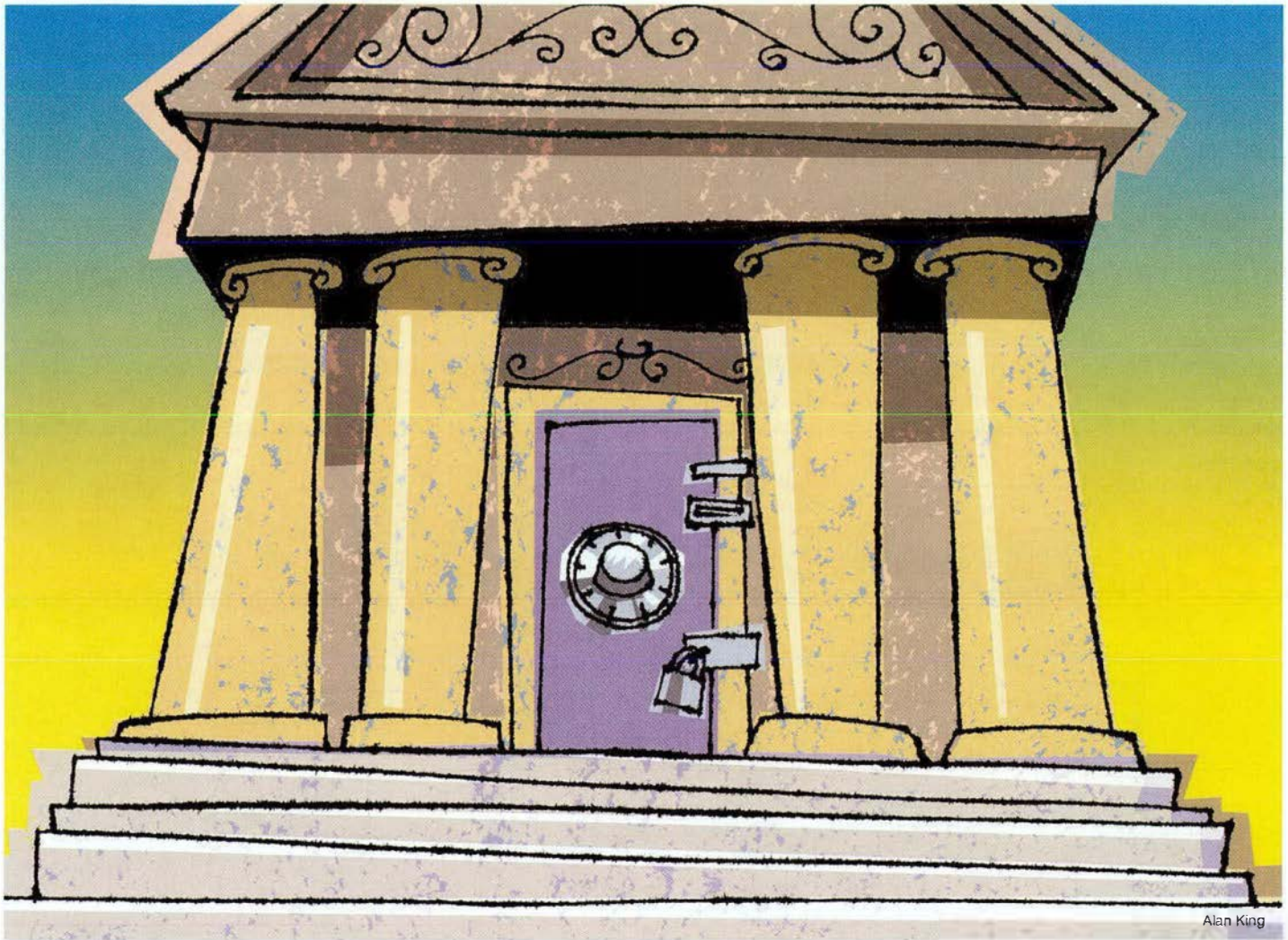
I write to describe to you two significant initiatives we started this past year and where we believe they will lead.

Court Funding Task Force

The SCJA was instrumental in launching the Court Funding Task Force (CFTF) under the auspices of the Board for Judicial Administration (BJA). This task force is truly an exciting project. It is the culmination of 20 years of studies that have documented the need for stable and adequate funding for Washington trial courts. Courts and local governments have struggled financially to comply with unfunded statutory mandates for many years. The continuing, significant increase in criminal caseloads without sufficient increase in judicial resources threatens the civil justice system, despite innovations implemented by the courts to more efficiently handle caseloads — innovations such as civil case management; court-annexed family law ADR; unified family courts; adult, juvenile and family drug courts; use of volunteers such as CASAs and people from AARP in the estate and guardianship area; and mandatory arbitration of smaller cases, to name just a few.

The mission of the task force is "[t]o develop and implement a plan to achieve stable, adequate, long-term funding of Washington's trial courts to provide equal justice throughout the state." It is chaired by Wayne Blair, past president of the Washington State Bar Association, whose leadership and experience are invaluable. Mr. Blair has been a critical working member of virtually every study over the past 20 years that has looked at the problems and needs of the judicial branch of government. The task force has 32 members, representing a cross-section of the stakeholder groups from the counties, cit-

by Judge Deborah Fleck



ies and Legislature; business, labor and citizen groups; and the judicial branch of government, including judges, clerks, administrators and Bar leaders.

The task force plans to have a proposal ready for the 2004 Legislature. We are pursuing the effort through five workgroups, addressing problem identification, funding alternatives, delivery of services by district and municipal courts, public education, and implementation strategies. More than 100 people are involved in this effort. (See *Executive's Report*, p. 15).

It was the budget process in King County in 2001, together with the grim projections for the upcoming several years, that led me in November 2001 to contact Chief Justice Gerry Alexander, asking for a meeting to determine whether we could address the longstanding and critical need for adequate and stable funding of our trial courts under the umbrella of the newly revamped BJA.

After our initial meeting with the Chief Justice in November 2001, leaders from

all levels of court, as well as Bar leaders, met in December to begin the discussion.

My SCJA long-range planning retreat in March 2002 was focused on this subject alone — the attendance was expanded to include not only the SCJA board and committee chairs, but also representatives from all levels of court, including Chief Justice Gerry Alexander and Bar leaders. We brought in a court futurist, reviewed the legal basis to pursue adequate financial support of our trial courts, and addressed budgets and approaches in other states. Finally, we reviewed the proposed action plan.

I particularly appreciate the willingness of the Chief Justice and Kitsap County District Court Judge Jim Riehl, BJA co-chairs, to accept this major undertaking as a task force the following month at the April 2002 BJA meeting.

What have studies over the past 20 years told us? The lack of adequate and stable trial-court funding has been documented in court studies for two decades.

The final report of the Commission on Washington Trial Courts, in December 1990, documented the belief that courts were underfunded, and therefore lacked secure facilities, adequate staff and support services, as well as an adequate number of judges:

The Commission... believes that the Supreme Court and the Superior Court Judges' Association should determine the areas in which the lack of funds is most serious, and then take a more active role in helping the courts obtain the necessary funding.

A decade later, the 1999 Commission on Justice, Efficiency and Accountability's final report recommended that the BJA "should develop an overall funding strategy for the judiciary, consistent with the long-range plan" and "should evaluate the desirability of the state assuming greater responsibility for funding mandated judicial services." In 2001, the state Jury Com-

mission report highlighted the often shabby treatment of Washingtonians called for jury duty, due to underfunded court operations and the low jury service fee, unchanged in nearly half a century. Regrettably, it has taken the current financial crisis to focus attention on problems identified long ago.

What problems currently exist?

The current system fails to promote equal justice. The state has a clear interest in equal justice; those accused of crimes have a right to expect uniform application of the laws. Civil litigants should be entitled to the same. Cases should not lan-

guish. However, court budgets are largely determined by the level of financial support available from counties, which can vary widely depending on the county fiscal capacity and budget priorities. Most of Washington's 39 counties are rural: jobs and tax dollars are perennially scarce. In the most populous counties, greater tax resources seem offset by greater caseloads and their resulting costs. It is obvious that this funding system creates disparities in access to the courts and in the administration of justice. Nothing short of changing that funding system can make a dent in these disparities.

The current system does not maximize the ability of the courts to operate in an efficient and effective manner. Courts and local governments struggle financially to comply with unfunded statutory mandates. It is popular to be tough on crime, but no one wants to spend the kind of money needed to cover the costs of such policies as they crowd the courts.

Increasingly I hear this dichotomy expressed by county officials and taxpayers alike: Why, they ask, should taxpayer dollars be used to fund the civil justice system?

The question is a chilling one. It ought to trouble us all. It underscores the need to think anew, act anew, and salvage our endangered justice system.

An ABA report has declared:

Although the justice system is not the only governmental activity hurt by a lack of funding, *it is the only such activity which cannot control its own workload.* The demands placed upon the justice system are driven not by choice, but by outside forces which do not allow for revenue fluctuations. When caseloads increase dramatically, without a corresponding increase in funding, limitations are imposed on the time spent on each case. (Emphasis added.)

With stable and adequate funding, judicial officers and court administrators could devote their skills to developing new and effective methods of structuring the resolution of cases. Judicial talent and experience are siphoned off each year — and time on the bench is lost — as judicial officers and senior staff have to devote more and more time in seeking to maintain a patchwork of categorical funding to keep court operations functioning and programs alive.

The current system places a strain on county finances. Both the state and the counties impact the workload of the courts. The state enacts laws that frequently have substantial fiscal impact on the courts. Legislation to address school truancy, for example, required the courts to make entirely new calendars to handle this workload at substantial cost to the counties, which had to sue to obtain the funding for it.

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of juvenile offenders — young people staying in school and obtaining the training they need to be productive citizens. But now, funding for these programs is in jeopardy, even as the courts may be required to handle the same workload — without adequate funds to do so.

Life-imprisonment sentences mean more cases go to trial and last longer. This has obvious cost impacts. Press reports in recent years have indicated some counties have to make decisions on whether to seek the death penalty based on whether they can incur the huge expenses of doing so.

Counties also impact the workload by decisions of local law enforcement and prosecutors regarding whom to arrest and whom to prosecute.

In evaluating the control and impact that each level of government has on the courts and their workloads, the concept of equal justice statewide must outweigh concern for local influence on the workload in terms of participation in the cost of the courts.

**Washington ranks
50th of the 50 states in
terms of the state's share
of trial-court funding.**

A review of a few figures shows how serious the problems in our courts are. Washington ranks 50th of the 50 states in terms of the state's share of trial-court funding. At 14.7 percent in state support, we are behind Alabama, Arkansas and Mississippi. Some 85 percent of court costs is carried by counties, with some private and government grants as well. There is concern that courts not rely on "user fees" as a significant source of funding, in part because of their effect on access to justice for all. While other states around the country have moved to a more balanced sharing of these costs — or a full state assumption of them, as was done in California and Oregon — Washington has not moved forward. Even our neighbor Montana began work on this a few years ago.

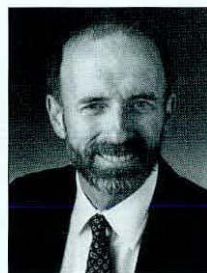
Another critical figure is that only threethirds of one percent of the state general fund is spent on the judicial

Child Abuse Cases

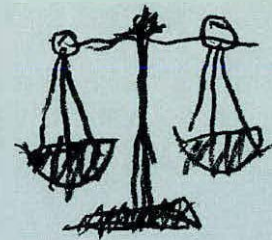
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branch, including the appellate courts and the law library — a truly miniscule portion of the \$50 billion state budget for 2001-03. Countrywide, the figure for the entire justice system is about four percent at all levels of government.

At the local level, according to figures prepared by Judge Gordon Godfrey of Grays Harbor County, Washington's criminal-justice costs to the counties nearly tripled between 1990 and 1999. After the Legislature eliminated the motor-vehicle excise tax, Judge Godfrey's figures show that reimbursement to the counties decreased from less than 20 cents on the

dollar to 12.6 cents on the dollar for the cost of increased criminal-justice expenses. In terms of superior courts, the sole contribution by the state is \$15 million for judges' salaries and benefits. The counties and cities cover the costs of district and municipal courts.

Local government's annual expenditures are \$160.6 million for superior courts (a figure that includes public-defense costs in some courts' budgets). The cost of juvenile court operations is another \$105.6 million, including detention, and the cost of the district courts is \$80.1 million. Municipal courts cost \$55 million, for a total

local government annual expenditure of \$401.3 million. This figure does not include the costs of jails or prosecution.

We are at a crossroads — and it is one being faced across the nation. Will we continue to have a justice system that is generally accessible to all, one that allows people in a civilized society to resolve their disputes peacefully, or will the court system in the United States become quite irrelevant?

Will we continue to provide due process and equal justice in the area of criminal law — one that is critical to the public's trust and confidence in the justice system and in our democratic form of government?

Will we continue to meet the needs in the civil justice system — providing a fo-

There is concern that courts not rely on "user fees" as a significant source of funding, in part because of their effect on access to justice for all.

rum for ordinary people as well as major corporations to resolve their most personal and critical disputes — family law, landlord tenant, probates, real estate, personal-injury claims, contract and commercial litigation, toxic torts, and the like?

As we proceed through the work of the task force, every funding option must, and will, be on the table. While we have not pre-identified any approach, I can say that I am interested in reviewing several areas. Should we have a more balanced approach to funding the trial courts, an approach more consistent with other states in which a greater sharing between state and local government occurs? In recognition of the courts as a separate branch of government, should a portion of the current tax system (property, sales, B&O taxes) be dedicated to cover the core responsibilities of the courts? Clearly, national reports caution against reliance on "user fees" and fines to meet this critical function of government in a free society. Should the courts be funded by a very small percentage of state revenues? Should the state create a new funding source? Should the

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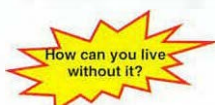
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current level of contribution by the counties be capped, as in California, with the counties transferring that fixed amount annually to a trust fund, and the state assuming responsibility for all increased costs? The task force will review every funding option.

Once we have developed a proposal through the efforts of the workgroups, identified the problem through steps including reviewing the core functions of the courts, considered the delivery of services by district and municipal courts, determined the appropriate funding responsibility between state and local government, and considered the appropriate source of funding, we will then develop the strategic plan. We will need to be smart in terms of our choice of those to carry the message, and in terms of educating the public and members of the Legislature.

The Court Funding Task Force is a critical project for the system of justice — it will take time and substantial effort.

The SCJA has identified this effort as our highest priority until the goal is accomplished. The superior courts and the limited-jurisdiction courts will devote their resources in terms of judicial officers working on the task force.

This is *the* opportunity to make changes that will not only improve the system, but also ensure that the third branch of government can meet the mission of the courts: to serve the public and ensure justice by providing the forum for the fair, efficient and cost-effective resolution of disputes in a timely manner.

We have the vision and the talent — let's join together, roll up our sleeves, and get to work.

Race and Justice Initiative

The second initiative of the SCJA this year is to help correct the racial disproportionality that exists in the application of Washington's drug laws, particularly in the jail and prison populations. As we know, jail costs are significant drivers in the cost of local government. There are many steps, some of them legislative, that we can take to address both disproportionality and these costs.

Racial disproportionality statistics. Just a few statistics contained in the Sentencing Guidelines Commission's report for fiscal year 2000 demonstrate why we as elected officials cannot remain silent on

the issue of racial disproportionality. They show that while the state's African American population is only three percent, African Americans constitute nearly one-third of all drug offenders in confinement. Although there are no figures available for drug use by race at the state level, the national figures show that 72 percent of all illicit drug users are white, 15 percent are African American and 10 percent are Hispanic, which is comparable to their relative proportions in the general population. Yet, statewide in Washington, African-American males are sentenced for drug offenses at a ratio that is 7.8 times greater than for Caucasian males. In King County,



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African American males are sentenced for drug offenses at a ratio that is 25 times greater; in Spokane County, the ratio is 13 times greater; in Snohomish County, the ratio is 5.9 times greater; and in Pierce County, the ratio is 3.9 times greater. This is clearly a statewide problem.

Lack of proportionate sentences. Based on our experience in sentencing drug offenders, many judges believe that the majority of those in prison and jail for violating drug laws are drug users who are incarcerated because of possession or delivery of very small amounts of these substances. With cocaine and heroin, the

amount is usually only a fraction of a gram (an easy comparison is to a packet of sweetener, which is also one gram), with a street value of \$10 to \$20.

Citizen juror attitudes. Jurors in drug cases, particularly those in the majority of cases in which the defendant has a drug problem, routinely state that they endorse both treatment and education over incarceration as a response to the problem of drugs in our society.

Costs to local and state government. The estimated cost of incarcerating people convicted of drug crimes and sentenced to prison in 2002 is \$177,796,492. It will

cost Washington taxpayers \$144,772,648 to house the 1,934 individuals imprisoned for drug delivery crimes with an average length of stay of 35.3 months. For those 870 defendants sentenced to prison (not including those sentenced to jail) for non-dealing (possession) drug crimes, the cost to incarcerate them, with an average length of stay of 17.9 months, is \$33,023,844. These figures do not include the costs of incarcerating addicts who commit other crimes such as burglaries, car thefts, and forgeries to obtain money for drugs.

The Washington State Institute for Public Policy report issued to the Legislature last year states:

The return for new beds for drug offenders probably turned negative in the 1990s. Some drug treatment programs provide better returns to taxpayers today.

Legislative change, significant savings possible. Last year, the Legislature passed HB 2338, which reduced sentences to some degree and captured a capped amount of 8.25 million for treatment purposes. This legislation will help, but we can take further steps to focus limited resources where they will be most effective — by providing treatment for nonviolent drug offenders at a fraction of the cost, which has the potential of reducing recidivism and turning drug addicts into productive citizens.

We cannot reduce the jail and prison populations without the corollary of drug treatment. We know as elected officials that the public will not support such an approach. However, based on jurors who regularly favor education and treatment over incarceration, it appears that the public has been focused on what works — drug treatment. Recognizing the state's grim fiscal forecast, the SCJA worked in advance of the legislative session with executive branch members, such as Department of Corrections Secretary Joseph Lehman and his staff, Juvenile Rehabilitation Administration Assistant Director Cheryl Stefani and her staff, and other organizations such as the Washington Association of Prosecuting Attorneys, to identify creative ways to save money, to preserve programs that affect the courts, and to ensure that our sentences are carried out. We have proposed a number of



Clockwise from left: Vernon Smith, Douglas Cowan, William Kirk, Garth O'Brien

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legislative changes that we believe will reduce racial disproportionality, result in fiscal savings, provide the opportunity for treatment to reduce recidivism and improve lives, and ensure that our sentences are carried out.

The cost of treatment in most drug courts is about one-tenth the annual cost of incarceration, or \$2,500 per year. With additional statutory changes, we can reduce incarceration costs significantly. A portion of the additional savings should be set aside for treatment through drug courts or other court-supervised drug-treatment programs. Drug courts work; Washington is a leader, having formed the 12th drug court in the nation more than

The cost of treatment in most drug courts is about one-tenth the annual cost of incarceration, or \$2,500 per year. With additional statutory changes, we can reduce incarceration costs significantly.

eight years ago. Today there are more than 700 drug courts around the country.

Drug crimes are one of the few crimes that aren't divided into degrees to reflect the seriousness of the offense — a person who "delivers" the amount of cocaine equivalent in quantity to 2/10ths of a packet of sweetener is given the same sentence as someone who delivers a quarter pound.

The first-offender waiver could be restored to apply to drug-delivery cases. Drug possession, at least of small quantities, could be an unranked felony and thus avoid the possibility of prison costs. Those convicted of drug crimes could be moved from prison to partial confinement options earlier than is currently the case to participate in treatment in a less expensive setting.

As a justice system and a society, we can rethink old approaches. We should expand the concept of "partial confinement" for prison inmates to include far more cost-effective Community Justice Centers operated by the Department of Corrections, as well as Day Programming Centers operated in some counties. The Department should be authorized to use partial confinement for a longer period of time for these low risk offenders. The defendants would report to these centers in

order to complete court-ordered services such as drug evaluation and treatment, and domestic-violence evaluation and treatment. The centers could include job-readiness training, literacy training, and other programs defendants need to break the cycle. Then, rather than using expensive and often ineffective individual supervision in the community, supervision costs could be eliminated entirely.

We should extend the community custody portion of the *drug offender sentencing alternative* to a minimum of at least 12 months and preferably 18 or 24 months. The Legislature could create a new exceptional-sentence mitigating factor for cases in which the criminal history

overrepresents the seriousness of the defendant's criminal history or the likelihood of committing future offenses.

The Legislature could also establish some limited form of community custody for those sentenced to jail, to ensure that the period of "confinement" served in a less expensive alternative to total confinement (such as electronic home detention, work crew or day reporting centers) is completed.

These are suggestions to reduce racial disproportionality and the costs of incarceration, while ensuring that our sentences are carried out, particularly in the area of court-ordered treatment to reduce recidivism.

All too often, discussion of serious problems like these bogs down in soundbites and spin. It should be apparent to Washingtonians of all points of view that our justice system needs a major rethinking. The state's judges, at all levels, are committed to taking part in reaching new solutions for new times, and a fairer system for all. ☞

Hon. Deborah Fleck is outgoing president of the Washington Superior Court Judges' Association and a King County Superior Court judge.

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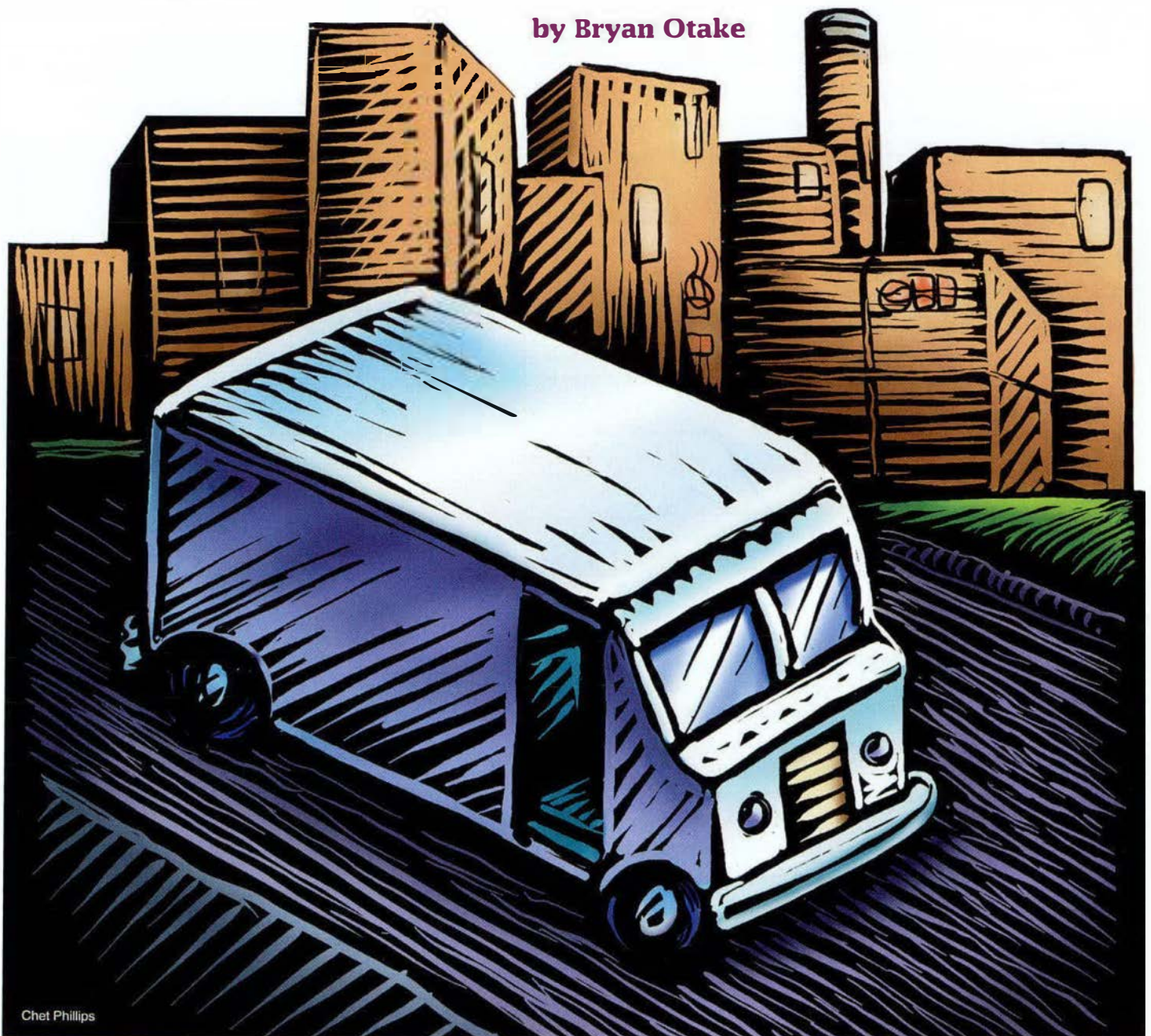
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Statutory Vacations:

Acquiring Title to Land Underlying Unused Public Roads, Streets and Alleys in Washington

As Washington's population continues to expand, municipalities have come under increasing pressure to intensify or modify existing land uses. But in many areas, outdated public easements and little-used public roads, streets and alleys sever or crisscross communities. As a result, landowners and developers face considerable challenges when trying to consolidate adjacent lots in order to revitalize areas of urban decay or to construct neighborhood facilities that outstrip old plat designations.

by Bryan Otake



Chet Phillips

The Washington Legislature has created a statutory scheme for the "vacation" (i.e., extinguishment) of public easements over unused public roads, streets and alleys,¹ but few people are aware of its existence.

In this article I will review the basic legal issues encountered by property owners attempting to acquire unencumbered title to land underlying old public thoroughfares. I hope this information will facilitate new and dynamic real estate projects in Washington.

The Interests and Rights of Abutting Landowners

Generally, the maintenance and administration of public thoroughfares is a governmental function.² Nonetheless, when a strip of land is dedicated for use as a public road, street or alley, the public acquires only an easement for travel.³ Landowners on either side of a public street or road will retain title to the underlying fee up to the thoroughfare's centerline, subject only to the public easement.⁴

Under the vacation procedures outlined in chapters 35.79 and 36.87 RCW, an abutting landowner may petition a municipality to extinguish the public's interest in a public thoroughfare and quiet title in his or her favor.⁵ The precise procedure will depend largely upon whether the thoroughfare is considered a "county" or a "city" road or street. A landowner should also reference any local ordinances affecting the vacation of local thoroughfares. However, a statutory vacation will not affect private easements over streets held by those who purchased neighboring plots of land in reliance on references in a plat.⁶

County Roads

A property owner with a lot adjacent to a little-used county road may attempt to gain title to the underlying land by either petitioning the county government for a legislative vacation, or demonstrating that the road has been left unused by the public for a period of five years or more.

Legislative Vacation of County Roads

In unincorporated areas, property owners with lots adjacent to an unused county road may seek unencumbered title by filing a petition to vacate with the county's legislative authority, usually the board of

county commissioners. Under RCW 36.87.020, a majority of the landowners fronting the targeted county road must sign the petition. The petition must also list the affected properties and demonstrate both the proposed public benefit that would arise from the road's vacation and abandonment, and the road's current lack of utility to the public road system.⁷

After the petitioners post a bond or cash deposit to cover processing costs, a county board may then declare its intent to vacate the road and order the county road engineer to prepare a report on the petition's merits.⁸ The county government must hold a public hearing on the matter and provide at least 20 days' notice of the

In rare instances, landowners may also gain unencumbered title to old county roads by establishing their longstanding closure or abandonment under the Road Laws of 1890.

proposed land-use action to local residents.⁹ If approved by a majority of the board, the county road will then be vacated and abandoned to the abutting private landowners.¹⁰ In the absence of any collusion, fraud or interference with a vested right, a court will not generally override a board's legislative decision to vacate an unused county road.¹¹

Despite the existence of these statutory procedures, a legislative vacation may not always be a viable option for a planned development. Neighboring landowners may oppose the vacation and mount considerable political opposition. County roads near bodies of water usually cannot be vacated, unless the vacation would enable a public authority to open up the area for boat moorage, recreation, education, or other socially beneficial uses.¹² Landowners and developers should closely examine surrounding natural features and carefully assess community sentiments toward any proposed construction or modification of land uses.

Automatic Vacation of County Roads Due to Public "Non-use"

In rare instances, landowners may also gain unencumbered title to old county roads by establishing their longstanding closure or abandonment under the Road

Laws of 1890. Under these provisions, a county road which has remained closed to the traveling public for a period of five years or more will automatically revert to private ownership.¹³ But due to legislative amendment,¹⁴ this non-use statute will apply only to county roads and thoroughfares which have lain unopened to the public for the required five-year period and were dedicated by plat or deeded to a state or county *before* 1909.¹⁵ Any county road, street or alley dedicated or platted *after* 1909, or annexed by a town or city before the expiration of the five-year period, will not fall under the automatic vacation provisions.¹⁶ The non-use statute is therefore of relatively limited utility and will probably apply only to a relatively small number of old county roadways.¹⁷

Vacation of City or Town Streets and Alleys

Developers and property owners in urban areas may likewise petition a local town or city gov-

ernment for the vacation of unused city streets and alleys under the procedures set forth in chapter 35.79 RCW. The statutory procedures outlined there are the "exclusive method" by which a property owner with land abutting a little-used city street or alley may extinguish the public's easement for travel.¹⁸ Any proposed vacation should provide a public benefit or serve a public purpose.¹⁹ However, the concept of "public benefit" is construed broadly and includes such things as the provision of desirable goods and services, the enlargement of municipal property tax revenues, and the enrichment of the local economy.²⁰

The statutory procedure for the vacation of city or town streets and alleys is similar to the one for county roads. Property owners seeking to acquire unencumbered title to land underlying a little-used street or alley must petition their city or town government. Under RCW 35.79.010, this petition must be signed by owners of two-thirds of the lots facing the targeted right-of-way. The city or town government will then hold a hearing on the proposed vacation and must provide at least 20 days' notice to the public.²¹ After fully reviewing the matter, the town or city's legislative authority may vacate the street or alley by local ordinance.²² Owners of lots on either side of a vacated city street or alley

will split title to the abandoned land and take a one-half interest up to the centerline.²³ However, failure to substantially comply with the petition and hearing requirements of chapter 35.79 RCW will invalidate a vacation.²⁴ In addition, a town or city government may require a successful petitioner to pay the government all or part of the vacated land's appraised value as compensation.²⁵

Property owners and developers in incorporated areas should take special care when undertaking projects near bodies of fresh or salt water. As in the case of county roads, a town or city government may not

generally abandon a street or alley that touches upon a body of water, unless the vacation would enable the city or town to acquire property for port purposes, boat moorage, recreation or educational purposes, or some other public use.²⁶

Washington's vacation statutes provide a powerful tool for land-use development and redevelopment. After extinguishing unneeded public right-of-ways and easements, a landowner or developer may readjust property lines or join disparate lots previously separated by public streets or roads. The vacation statutes have already been used to facilitate port and shipping

development in the Seattle area.²⁷ As Washington continues to grow, private citizens will undoubtedly make greater use of the statutory-vacation procedures to facilitate new and energetic real estate projects. *z*

Bryan Otake is a staff attorney at the Washington State Supreme Court in the Office of the Commissioner. The opinions expressed herein are the author's and are not necessarily the official or unofficial positions of the Washington State Supreme Court.

NOTES

1. Chapters 36.87 and 35.79 RCW.
2. *Yarrow First Assocs. v. Town of Clyde Hill*, 66 Wn.2d 371, 375, 403 P.2d 49 (1965).
3. *Bradley v. Spokane & Inland Empire R.R.*, 79 Wash. 455, 458, 140 P. 688 (1914).
4. *Puget Sound Alumni of Kappa Sigma, Inc. v. City of Seattle*, 70 Wn.2d 222, 226, 422 P.2d 799 (1967).
5. See *London v. City of Seattle*, 93 Wn.2d 657, 663-64, 611 P.2d 781 (1980); *Thayer v. King County*, 46 Wn. App. 734, 737-38, 731 P.2d 1167 (1987).
6. See *Humphrey v. Jenks*, 61 Wn.2d 565, 567, 379 P.2d 366 (1963).
7. See RCW 36.87.060(1).
8. RCW 36.87.010, .030.
9. RCW 36.87.050; *Thayer*, 46 Wn. App. at 738.
10. RCW 36.87.080.
11. See *Thayer*, 46 Wn. App. at 738.
12. RCW 36.87.130.
13. *Laws of 1889*, ch. 19, § 32, p. 603; *Tamblin v. Crowley*, 99 Wash. 133, 138, 168 P. 982 (1917).
14. See *Laws of 1909*, ch. 90, § 1, p. 188-89, repealed in 1937 by the Washington State Aid Highway Act, *Laws of 1937*, ch. 187, § 70, p. 778, but re-enacted as part of the same act, *Laws of 1937*, chap. 187, § 52, p. 761 62 (current version at RCW 36.87.090).
15. *Gillis v. King County*, 42 Wn.2d 373, 379, 255 P.2d 546 (1953); *Real Progress, Inc. v. City of Seattle*, 91 Wn. App. 833, 841, 963 P.2d 890 (1998).
16. See *Gillis*, 42 Wn.2d at 376-77; *Northwestern Indus., Inc. v. City of Seattle*, 33 Wn. App. 757, 760-61, 658 P.2d 24 (1983).
17. See *William B. Stoebuck, The Law of Adverse Possession in Washington*, 35 WASH. L. REV. 43, 56-57 (1960).
18. *Greater Harbor 2000 v. City of Seattle*, 132 Wn.2d 267, 270, 937 P.2d 1082 (1997).
19. *Banchero v. City Council of Seattle*, 2 Wn. App. 519, 523-24, 468 P.2d 724 (1970).
20. *Id.* at 524.
21. RCW 35.79.010, 020.
22. RCW 35.79.030.
23. RCW 35.79.040.
24. See *Smith v. City of Centralia*, 55 Wash. 573, 576-77, 104 P. 797 (1909).
25. RCW 35.79.030; see also *Greater Harbor 2000*, 132 Wn.2d at 274-75 n.15.
26. RCW 35.79.035.
27. See *Greater Washington 2000*, 132 Wn.2d at 269-71.

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Anatomy of an Anecdote

by Lindsay Thompson

John N. Rupp, *Bar News's* first editor, was one of the best writers — and by far the best storyteller — I ever met. When I joined the line of his successors in 1988, he wrote me a letter of congratulation so offhandedly elegant I was at once charmed and intimidated. You felt you'd known him forever, and his lapidary prose was so effortless I used to tell friends I'd bet John Rupp's grocery lists were funnier than the best things I'd ever written.

We traded letters and stories — we were both fans of P.G. Wodehouse — for seven years. We met, finally, in 1995 as I was leaving the editorship. Not too long after, he died, having been a member of the Bar for nearly 60 years.

From time to time Mr. Rupp would send one of his little 1,500-word stories to

me for consideration by *Bar News*. They always went in, because they were funny and illuminated bits of Washington's past (his father was a lawyer before him, so his knowledge of the Bar went back to statehood), and they always generated lots of letters from readers whose memories had been triggered by his tales. So when "The Douglas-Fortas Connection" "came over the transom," as Mr. Rupp used to describe how he got work, I ran it in the magazine 10 years ago this coming July.

I pulled out the article again recently



John N. Rupp

light to shed on Mr. Rupp's reminiscence.

And he does. According to Murphy, someone at the ACLU telephoned Whistlin' Jack Motel — the closest phone to Justice Douglas's ranch — to tip him that New York representative Elizabeth Holtzman and others had sued to stop President Nixon's bombing of Cambodia. A New York federal judge issued a stay of the bombing July 27, 1973, but it was overturned by the 2nd Circuit Court of Appeals. Opponents of the war needed to find a Supreme Court justice to issue a stay until the full Court could hear the matter in the fall.

The effort was symbolic to some extent, as Congress had voted to terminate funding for the bombing as of August 15, 1973, "but the symbolism of having the Court stop the war for any period of time, no matter how small, could not be overlooked," Murphy writes. "Congresswoman Holtzman had asked Justice Thurgood Marshall to issue an order immediately ending the bombing in Cambodia, but he was expected to refuse, and now they wanted Douglas to stand ready to rule on the matter."

Douglas, on receiving the message, drove down to Whistlin' Jack to use the pay phone "so that he would not be overheard by any electronic surveillance that he suspected existed inside the hotel." Douglas informed the ACLU he'd rule after holding a hearing on the matter in the Yakima County Courthouse.

Justice Marshall declined to rule, as predicted, on August 1, 1973, citing the Court's past rulings declining to rule on the constitutionality of the war. Douglas stepped up to the plate and held a hearing in Yakima August 3. After the hearing, in which U.S. Attorney Dean Smith of Spo-

So when "The Douglas-Fortas Connection" "came over the transom," as Mr. Rupp used to describe how he got work, I ran it in the magazine 10 years ago this coming July.

as the filibuster of Abe Fortas's nomination for chief justice returned to the headlines in the debate over the nomination of Miguel Estrada to the D.C. Circuit bench, and as Random House published Bruce Allen Murphy's impressive new biography, *Wild Bill: The Legend and Life of William O. Douglas, America's Most Controversial Supreme Court Justice* (2003, 713 pp., \$35). When I bought a copy, I immediately thumbed the index to see if Professor Murphy had found any additional

kane argued for the federal government, Douglas left the courthouse, Murphy writes, declaring, "I will not let [the question] become moot."

There followed a series of phone calls by Douglas to his chambers from pay phones around downtown Yakima and en route back to Goose Prairie, the justice dictating at each stop what he'd composed since the last call. Then he asked to have the draft read back to him: "As he listened to the reading (from Whistlin' Jack's pay phone), Douglas edited the opinion from 2,300 miles away. When he was finally satisfied, he told the staff to release it immediately. The fact that there was no one left in the building except his office staff, the printers, a couple of guards, and the night janitors was of no consequence to the man who was to stop the Vietnam War all by himself," Murphy comments.

After Douglas issued his order, the government appealed to Justice Marshall, who polled the other justices by telephone. Six hours after Douglas's order was released, the Court overruled it.

While he expected to be overruled, Douglas began to wonder how the Court did it so quickly. "After fussing and fuming for a while, Douglas decided that the only answer was that the phone at Whistlin' Jack had been tapped by the FBI, meaning that his initial call to the ACLU had been intercepted and passed on to Marshall.... Now furious, he phoned for help from his longtime aide-de-camp, Abe Fortas, then practicing law in Washington. 'They bugged my phone at Whistlin' Jack,' he told Fortas. 'Look into it for me.' Douglas said that he wanted to sue the phone company for its 'cooperation' with the government in using the tap."

At this point Murphy takes up Rupp's end of the conversation, noting that Fortas "remained convinced that he himself had been forced off the Court by such nefarious governmental means," prompting him, on calling Rupp, "to go into full legal confrontational mode."

Murphy's account rounds out what John Rupp put together from a couple of strange phone calls and some newspaper accounts, and at last we have the full story of how international affairs swirled briefly through Yakima County 30 years ago this summer. ☞

The Douglas-Fortas Connection

by John N. Rupp

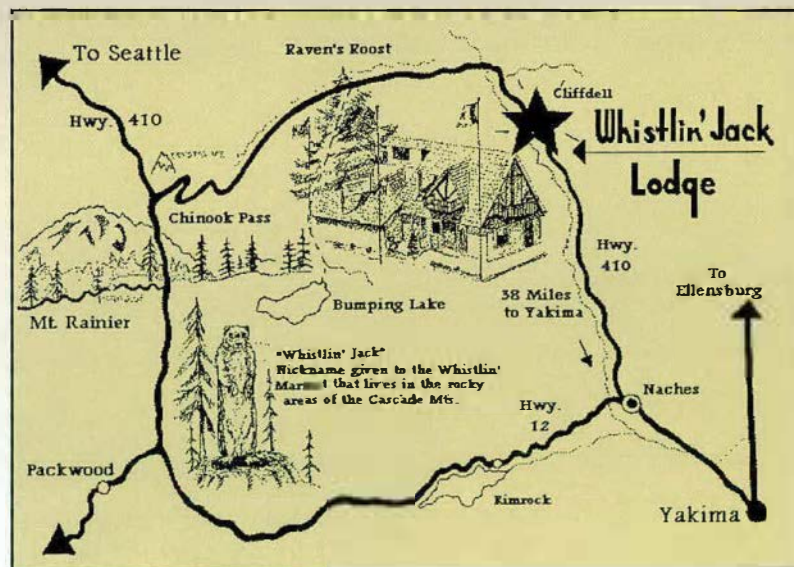
The minor historical event which I am about to relate occurred one summer. I am quite sure it was summer because one of the actors was Mr. Justice William O. Douglas of the Supreme Court of the United States, and Douglas used to spend the time of the Court's summer recess at his home in Goose Prairie in Yakima County, Washington. I am not sure of the year, although I think it was either 1971 or 1972. I know it was after 1969 because another actor was Abe Fortas, acting as a private attorney, and Fortas was a member of the Supreme Court until he resigned in 1969; and I know it was prior to 1973 because the incident involved the war in Vietnam, and this country withdrew from Vietnam in 1973.

Anyway, here is what happened.

Someone of the many individuals, groups and organizations opposed to our involvement in Vietnam petitioned the Supreme Court to declare the war illegal and unconstitutional and to enjoin the president from continuing it. The Court was in its summer recess, but somehow the petition was referred to Douglas. I assume that most judges would have simply denied such a petition, but Douglas decided to pursue it and to hold hearings on it. So he came down from Goose Prairie and held a several-day hearing in a Yakima courtroom. Naturally, the hearing received considerable attention from the press. Douglas announced that he would promptly write and file an opinion. I assume he planned to grant the petition.

After he figured out what he wanted to write, he telephoned his office in Washington, D.C., and dictated his opinion to his clerks there. Within a day or so, and before the opinion was released, Chief Justice Burger convened the Court in special session, and the Court voted to deny the petition.

I'm guessing, but my guess is that Douglas's plan was to have his opinion given to the press before the Court could be convened and that there



Graphic courtesy of Whistlin' Jack Lodge

would be headlines such as "Douglas Enjoins Vietnam War." But the prompt action of the chief justice and the Court spoiled all that. How did Burger find out so soon, thus enabling the Court to finesse Douglas? Naturally, Douglas thought there had been a "leak" somewhere, and he employed his friend Abe Fortas to be his lawyer to find out what happened.

All I knew about the Court's opinion was what I had read in the newspapers, and the press coverage was fairly routine. It is hardly big news when the Supreme Court refuses to enjoin the president in a foreign-policy mat-

ter, or to entertain any of the hundreds of similarly goofy petitions which, one assumes, the Court receives every year.

Suddenly, however, the matter became important to the Pacific Northwest Bell Telephone Company. I was informed that Abe Fortas had telephoned PNB's Yakima manager and had flatly accused the company of having leaked to someone in Washington, D.C., the substance of Douglas's opinion. The startled manager had told Fortas that he would ascertain the facts and report to him as soon as that was done. I phoned the manager and told him not to do so. I said that, if anyone was to talk to Fortas, it should be Rupp as the

company's general counsel. This was a considerable relief to the manager because (a) he was not keen on getting into the middle of a high-level scrap and (b) Fortas had been quite high-handed and rude in talking to him.

So the manager gave me the facts of the matter, and I telephoned Fortas in New York or Washington. I introduced myself and then told him that under the Communications Act, I could discuss Douglas's phone calls only with Douglas or his attorney. He took umbrage at that and said, if I didn't believe him, he'd get a letter from Douglas. I told him there was no need for that formality and that, if he'd just tell me that he was Douglas's attorney, that would be sufficient. I thought that I was being quite courteous, but Fortas seemed to

Douglas did not have a telephone at Goose Prairie, so he made his phone calls from a public telephone at "Whistlin' Jack"...

think I was impugning his honor. Anyway he said he was indeed Douglas's attorney in the matter, and I gave him the facts as follows:

Douglas did not have a telephone at Goose Prairie, so he made his phone calls from a public telephone at "Whistlin' Jack," a small resort on the Naches River by the side of the Chinook Pass Highway (A "Whistlin' Jack" is a hoary marmot. They make a sharp whistling call). PNB did not serve that area, and the telephone was the property of the Naches Telephone Company. Long-distance calls from it went into Yakima and were handled by the PNB operators there. The telephone was in an open booth outside of Whistlin' Jack, and the wires from it out to the telephone cable on the highway went right past the windows in one of the resort cabins. Anyone could stand outside the booth and hear everything Douglas said, and a sleuth who wanted to tap the wires could simply reach out the cabin window and put a couple of clips on the two wires. Since that was Naches Telephone Company territory, PNB had no control over it, but we checked at

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Dennis Mandell, George Johnson, Neil Beaton, Bob Duffy and Tom Davis

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Whistlin' Jack and had been informed that no one there had seen any such eavesdropping or wiretapping, either then or any other time. Still, it was evident that such a telephone was hardly the thing for a man to use if he were seriously concerned with privacy.

When the call came into the Yakima office it would be handled by a PNB operator who would take directions from Douglas and put the call through on the Bell System long-distance lines to Washington, D.C. "Ah," said Fortas, "that operator could listen to the call." I replied that of course it was possible, but such conduct was a major sin in the telephone business, and operators don't do it and anyway they're too busy to spend time that way. "Yes, I know," he said, "but Bill Douglas says there was something fishy about that call. He told me that the person he talked to was not an operator. It was a man!"

I thought it was a bit ironical for Douglas and Fortas, of all people, not to realize that there were no longer "women's jobs" and "men's jobs" in industry, but I contented myself with pointing out that we had three male telephone operators at Yakima. I added that one of them was blind. That seemed to surprise Mr. Fortas, and I sensed he was backing off a little from his earlier challenging attitude.

Then I told him, "You know, I think you're looking at the wrong end of the line. Bill Douglas was brought up in Yakima Country, and the people there take him for granted. They don't pay much attention to him. And when he comes into town from his ranch he looks like any other farmer. I think he likes it that way. And I don't think those Yakima folks are much interested in what he might try to do about Vietnam. Don't you think that, if there was a leak, it was in Washington, D.C.? I gather that leaks are a way of life there." After a little more conversation we agreed that, if either of us learned any more facts bearing on PNB's involvement, we would be back in touch. I learned nothing more and I assume that he didn't either because we had no further contact. Nor did I ever read or hear anything about whether there had been a leak or whether Fortas had found out where it was. There could well have been one, but maybe not. Burger knew Douglas and probably could have figured

out what Douglas planned to do without benefit of leak.

So that ended the incident, and we went back to what Archbishop Cramer in *The Book of Common Prayer* called our "lawful occasions." I'm not sure whether ever Fortas actually understood that our operators and the other people in Yakima really didn't give much of a damn about Bill Douglas and his hearing on Vietnam. People in and around the government in Washington, D.C., tend to think that nothing of importance occurs west of the Potomac and Hudson rivers, and that the rest of the country waits with bated breath to find out the news from Washington and

New York. Perhaps Fortas really did think that Yakima County was teeming with wire-tapping spies (armed with alligator clips) and eavesdropping telephone operators, all just dying to learn of Justice Douglas's opinion so they could phone the chief justice and tell him about it.

I wonder if Abe Fortas ever saw a Whistlin' Jack. ♪

Founding editor of Bar News, John Rupp was a member of the Board of Governors and president of the Washington State Bar Association. Famed as a raconteur and writer, Rupp contributed this story — one of many — to Bar News in July 1993.

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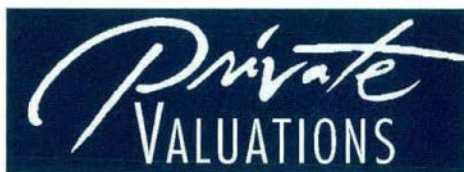
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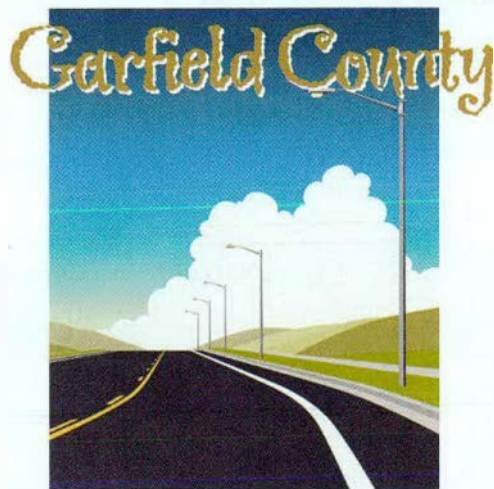
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Bar News on the Road:



"This county in extreme southeast Washington is bounded on the north by Whitman County; on the east by Whitman County; on the south by Asotin and Columbia Counties; and on the west by Columbia County. The southern portion of the county's 714 sq. miles is in Blue Mountains, and mostly within Umatilla National Forest. Much of the northern section is devoted to livestock raising, and to wheat and fruit culture. On November 29, 1881, it was created by legislative action from Columbia County. It was named for James A. Garfield, twentieth president of the United States."

— Robert Hitchman,
Places Names of Washington
(Washington State Historical Society,
1985)

2000 Population: 2,397
County Seat: Pomeroy
Lawyers: Two

Senator Sam Ervin used to joke that in his experience any town not big enough to support one lawyer could always support two. That seems borne out by Garfield County, where there are all of two lawyers — the part-time prosecuting attorney, John R. Henry, and Richard D. Burns.

"I went to law school in Idaho intending not to come home," says Burns, a

Garfield County native. "One of my professors told me not to. He said everyone would remember me as little Richie Burns, the kid who grew up there. If anything, it's the opposite. Everyone knows everyone here. They trust their own."

So after graduating law school in 1974, Burns returned to Pomeroy, Garfield's only incorporated town (and the only county seat picked by the U.S. Congress). He picked up the law practice of an elderly attorney looking to retire; the firm's origins go back to 1883, when it was formed by Mack F. Gose (1859-1942), variously city attorney, council member, mayor of Pomeroy, state bar president, and justice of the state Supreme Court from 1909 to 1915. In nearly 30 years, Burns has done a little of everything, but tries to stay out of court now. He mainly handles wills, probate matters, taxes and farm leasing in the agricultural county. He gets a steady stream of work out of nearby Asotin and

Inside the century-old Garfield County Courthouse (beneath the oak seats are wire hat racks for men's hats).

Photo reprinted by permission from *Washington's Historical Courthouses* by Ray Graves; photographed by Erick Erickson.

Mr. Graves is pleased to offer the book to WSBA members for \$20, plus tax (retail price is \$28); contact him at 11005 80th Ave. Ct. SW, Lakewood, WA 98498.



Columbia counties, whose warm climates attract lots of retirees. On the side he acts as superior court commissioner. The county shares a superior court judge with Columbia and Asotin counties; Judge William Acey rides the circuit among the three county seats.

There's no traffic light in Pomeroy, but Burns says there are enough traffic stops along the Lewis & Clark Trail, Highway 12, to keep the criminal docket occupied. "Are you expecting an uptick in tourism for the Lewis & Clark Bicentennial?" I asked. "I'm not sure," Burns said. "A lot of people think there's money to be made on souvenirs" from people retracing the Corps of Discovery's path (on the way home the exploring party took the ancient Nez Perce Trail overland from the Walla Walla to Clearwater rivers, and camped on Pataha Creek the night of May 3, 1806).

Courthouse architecture enthusiasts have been making their way to Pomeroy for decades. The 1901 structure, built after a 1900 fire consumed most of the business district, cost an eye-popping \$18,000. Extensively restored, the Queen Anne style, cupolaed structure has wire hat racks installed on the bottom of each seat in the courtroom. Justice, atop the building, is one of about a dozen in America with her eyes open.

Burns misses the old state bar conventions, which fell prey to declining attendance in the early '90s. He gets to Seattle fairly often to visit his son Ryan, a jazz pianist; a second son died of cancer while a student at Evergreen State College five years ago.

"It's a great place to raise kids," Burns says of Pomeroy. "People really do leave their doors unlocked. The retired minister across the street called the other day to tell us our car door was open."

Our conversation wandered off, as talk among lawyers is prone to do, to odd or funny cases we've seen or tried, two small-town kids comparing notes on farm communities in eastern Washington and eastern North Carolina. In one of Shakespeare's plays, two characters agree to "do as adversaries do at law — strive mightily, but eat and drink as friends." Fielding a call from the stranger with a stranger request for an interview, Rich Burns made me right at home.

— Lindsay Thompson



In Memoriam

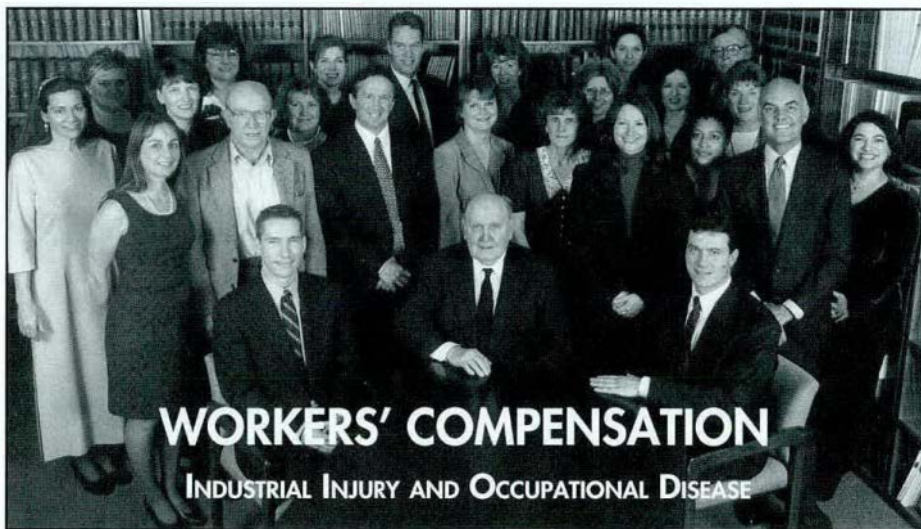
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Reading Around

by Lindsay Thompson

Bellingham Lawyers Oppose War

About 30 Bellingham-area lawyers led a March 26 rally and marched through the city's downtown, according to *The Seattle Times*. The event was one of a series organized by longtime activist and Bellingham attorney Joe Pemberton. He told the *Times* reporter his calls to colleagues as war loomed showed a consensus against armed conflict. He decided to organize. The week before, a Pemberton-organized effort led to 15 lawyers and firms closing, signs on their doors reading "In honor of those now dying in Iraq."

Maritime lawyer Dennis Murphy said he felt an obligation, as an officer of the court, to call attention to violations of international law by the United States. And as officers of the court, they made sure to get a permit for the march, which ran from the federal courthouse to the county courthouse. "We're not radicals," Pemberton said. "We're lawyers."

Supreme Court Upholds Washington's IOLTA Program

The Washington Legal Foundation's de-

cade-long effort to kill off state programs which give interest on lawyer trust accounts to legal-aid programs met with a setback March 26 when the U.S. Supreme Court ruled Washington's IOLTA program does not violate the constitution's Fifth Amendment takings clause.

The case, styled as *Brown v. Legal Foundation of Washington* after the court found the Washington Legal Foundation had no standing, held that clients suffer no pecuniary loss. Justice John Paul Stevens, writing for the majority, found that the administrative costs of tracking and paying in-



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terest on the average trust-account deposit were greater than the average interest earned, so no just compensation is required. Justice Antonin Scalia, in a sharply worded dissent, argued that under the court's ruling in *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998), once interest is earned, it belongs to the client, period. Justice Anthony Kennedy, who joined in the dissent, added his own, arguing that plaintiffs' claims requiring clients to give over their trust-account interest to legal services compels them to support programs with which they disagree, and predicting that will be the next issue to reach the Supreme Court.

Petitioners in the case were Allen Brown and Greg Hayes, who alleged they regularly buy and sell real estate through

Brown said he was deprived of \$4.96 interest on \$90,521.29 in escrow for two days.

limited practice officers in title companies, who are also covered by IOLTA regulations. Each objected to use of the interest on their monies being used to fund legal services or paid to anyone but themselves, and that they felt compelled to support organizations they disagree with. The court could not determine in the record how much Hayes claimed to have lost; Brown said he was deprived of \$4.96 interest on \$90,521.29 in escrow for two days.

Justices Stevens, O'Connor, Souter, Ginsburg and Breyer were in the majority; Justices Scalia, Kennedy, Thomas and Chief Justice Rehnquist were in the minority. *Brown v. Legal Foundation of Washington*, 538 U.S. ____ (2003).

St. Louis Archivists Find Slaves' Lawsuits for Freedom

State archivists invited to restore and preserve some four million court documents left unexamined for over a century in file cabinets in the St. Louis Courthouse have found nearly 300 lawsuits by slaves seeking their freedom between 1809 and 1865.

Missouri enacted legal safeguards to

protect slaves from retaliation if they sued, and set aside tax monies to pay for legal counsel. There were three grounds for suits: claims that they were free and kidnapped into slavery; that slaves had previously bought their freedom; or that they had been set free by their masters. Defendant slaveholders had to put up a bond against failure to appear or selling the slaves before trial; some judges took plaintiff slaves into the courts' protection and hired them out for labor, allowing them to keep their wages if they won.

Notable among the cases discovered is

the pleading filed by Dred Scott in 1846, alleging that with his master, an Army surgeon, he had lived in free states for years and could not become a slave again when he was brought to Missouri. Scott won his case, but the U.S. Supreme Court ruled in 1857 that since he was African American and not a citizen, he had no right to sue. Missouri stopped funding slave suits shortly before the decision, and after it the suits trickled to a halt.

The complete records of all 283 freedom suits are available for download at <http://www.stlcourtrecords.wustl.edu>. ☛

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The Perfect Tim Eyman Birthday Present

by Howard Goodfriend

*The Washington State Constitution:
A Reference Guide*

by Robert F. Utter and Hugh D. Spitzer
Greenwood Publishing Group, 2002;
280 pp. hardcover; \$89.95

Few legal issues are as newsworthy, and as little understood, as those involving the Washington State Constitution. In recent years, the Washington State Supreme Court has relied on our constitution to authorize tax dollars to fund sports stadiums and municipal parking garages, overturn voter approved initiatives limiting vehicle excise taxes, and invalidate term limits for state officers.¹ Just last term, the Court addressed the constitutional mandate that the state fund basic education, Wash. Const. Art. IX, Section 1, when it held that Initiative 732 required the state to fund cost-of-living increases for all school district employees.²

Given these recent events, publication of a reference guide to our state's constitution could not have come at a better time. And who better to summarize the various provisions of the Washington Constitution than Justice Robert Utter (Ret.) and Hugh Spitzer, an affiliate professor of law at the University of Washington.

During almost a quarter century as a justice of the state Supreme Court, Justice Utter became a leading advocate of independent interpretation of state constitutional law.³ Professor Spitzer teaches state constitutional law at the University of Washington School of Law and practices in the area of public finance.

Together, Spitzer and Utter have written a concise and useful book providing a section by section analysis of the state's constitution. The *Washington State Constitution: A Reference Guide* is number 37 of the Greenwood Press series *Reference Guides to the State Constitutions of the United States*, and follows the clause-by-clause format of previous guides for other states in the series.

**Practitioners briefing
an issue of state
constitutional law will
find the *Reference Guide*
helpful in getting
oriented and finding
other research sources,
though they may be
frustrated with its
citation format.**

The *Reference Guide* will prove useful to lawyers interested in a cursory review of the history and interpretation of any section of the Washington Constitution. It will be a helpful starting place for advocates and scholars. But lawyers and historians should not mistake this work for a definitive analytical guide to the Washington Constitution. Such an analysis would take far more than the 258 pages that the *Reference Guide* devotes to the subject.

Brevity is thus the *Reference Guide's* biggest advantage, as well as drawback. The authors walk the reader through the Washington Constitution, beginning with Article I, the Declaration of Rights, providing the verbatim text of each section, along with brief accompanying text on that section's drafting history, subsequent amendment and judicial interpretation. Although well annotated with citations to other commentators, historians and case law, the explanatory text for any section seldom exceeds two pages. And although the authors refer us to the Supreme Court's insistence on addressing the *Gunwall*⁴ factors when interpreting the meaning of the Washington Constitution, they do little more than identify the textual language and the historical source of each section, along with a cursory review of interpretive decisions.

The *Reference Guide* is thus appropriately titled. What it lacks in depth, it makes up in citations to hundreds of treatises, law review articles, and cases. Practitioners briefing an issue of state constitutional law will find the *Reference Guide* helpful in getting oriented and finding other research sources, though they may be frustrated with its citation format. The authors cite cases by name only, with full citations provided only in the inaptly titled "Table of Cases," which fails to crossreference page or section numbers of the main text. These are minor inconveniences, which can be easily fixed in subsequent editions. As a comprehensive bibliographic resource for the Washington Constitution, the *Reference Guide* is unparalleled.

Although light summer fare it is not, the *Reference Guide* does make for some interesting reading. There are several surprises in our state's constitution. Lawyers (and hopefully Tim Eyman) have learned quite a bit about the single-subject rule of Article II, Section 19, in recent years. But did you know that in the same article which prohibits the Legislature from enacting a single piece of legislation covering more than one subject, one can find a section entitled "Lotteries and Divorce"?⁵ Did you know that women were enfranchised by the Territorial Legislature in 1883, that the Territorial Supreme Court twice invalidated the suffrage laws, and that women were not again granted the right to vote until Amendment 5 in 1910?⁶ Did you know that the constitutional provisions dealing with private corporations in Article XII derive from a U.S. Supreme Court decision holding that states lacked the power to impair a corporate charter by subsequent legislative act?⁷ I could go on. I'm sure a portion of *Bar News* readership would be equally enthralled by the provisions dealing with state taxation and indebtedness, but you get the point.

Those like me who prefer the big picture will find Justice Utter's foreword far more interesting than the details concerning particular sections of the constitution. At a time in our state's history when almost every assertion of state authority is called into question, it was heartening to be reminded of the fundamental differences between state and federal constitutions: The federal Constitution comprises a limited delegation by the states to the federal government to exercise limited powers. If the basis for federal authority is not spelled out in the federal constitution, the federal government lacks the ability to assert its authority. By contrast, the state constitution serves as a limitation on the otherwise plenary power of state government to do anything not expressly forbidden by the state constitution or federal law.⁸

This notion of plenary state power serves as a useful backdrop to view not only the Declaration of Rights in Article I, but also other constitutional provisions. For instance, the first sentence of the state constitutional provision dealing with taxation states: "The power of taxation shall never be suspended, surrendered or contracted away." Art. VII, Section 1.

The foreword also provides valuable insight into the historical and political forces that shaped the drafting of the Washington Constitution by the delegates who met in Olympia in 1889. The most hotly debated portions of our constitution were not the sections that are now the most hotly litigated. Instead, the sections dealing with the regulation of railroads⁹ and tidelands¹⁰ engendered the most debate. The geographic split between the constitutional delegates from eastern Washington and those from western Washington, more concerned with industrial development and resource extraction than with agriculture, has continued relevance to today's state politics, where we still see agrarian versus industrial interests debate issues in Olympia. The authors aptly and succinctly capture the economic forces driving the delegates, as well as the populist mood of the late 19th century.

In their long and distinguished careers, Justice Utter and Professor Spitzer have done much to advance the jurisprudence of the Washington Constitution. There are

no two better advocates to advance the cause of public knowledge and understanding of our state constitution. *The Washington State Constitution: A Reference Guide* takes the state's formative document to a broader audience by providing an accessible and concise reference tool, equally useful to lawyers, judges, teachers, historians and students. It should find a place not only in law libraries, but in school and public libraries throughout our state. ✍

Howard Goodfriend has an appellate practice in Seattle with Edwards, Sieh, Smith & Goodfriend. He is a member of the Bar News Editorial Advisory Board.

NOTES

1. See *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 11 P.3d 762 (2000) (invalidating 1995, the \$30 license-tab initiative); *Brower v. State*, 137 Wn.2d 44, 969 P.2d 42 (1998) (rejecting challenge to Seabawk Stadium financing referendum); *Gerberding v. Munro*, 134 Wn.2d 188, 949 P.2d 1366 (1998) (initiative imposing term limits on state officers' invalid attempt to impose qualifications

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2003 Fee-Arbitration Panel Training Seminar

by Constance Gould • ADR Program Committee Member

Lawyers and clients who wish to resolve fee disputes in a simple, effective manner have been successfully using the WSBA Fee-Arbitration Panel for years, but panel members had never been offered special training unique to fee arbitrations until this year. The first Arbitration Panel Training Seminar, conducted by the WSBA Alternative Dispute Resolution Committee, was held at the WSBA office on March 7, 2003. All 130 lawyer and nonlawyer panel members were invited to attend the free three-hour seminar. Although a snowstorm prevented many panel members who come from outside the Seattle area from attending, 33 lawyers and 11 nonlawyer panel members were present.

The Fee Arbitration Program was started by the WSBA in the mid-1970s to give clients an inexpensive and quick method to resolve fee disputes with attorneys. The program was informal and administered parttime by a clerk in the Office of Disciplinary Counsel. In 1998, the program became part of the Lawyer Services Department's ADR Program. Mediation was added the following year, and the ADR Committee was formed to oversee the new programs. Chris Sutton, WSBA professional responsibility counsel, serves as ADR program manager and liaison to the ADR Committee. Talia Clever is the ADR program coordinator.



Participation in fee arbitration is voluntary and confidential, and either party may file a request. The other party must then also consent to arbitration. Each party pays a \$75 administrative fee. The parties also must agree to the amount in dispute. If the amount in dispute is \$5,000 or less, the matter is referred to one lawyer-arbitrator. If more than \$5,000, the dispute is heard by a panel of arbitrators consisting of one lawyer and two nonlawyers. The decision of the arbitrator(s) is binding.

This seminar included presentations by Chris Sutton, Talia Clever and Carol Teather. On the agenda were discussions of the

history; procedure for fee arbitrations; and RPC 1.5, which governs the reasonableness of attorney fees. Much attention was given to the need to ensure the appearance of fairness, as well as to avoid conflicts of interest. The audience actively participated in the training by asking thoughtful questions and offering best practices. The seminar concluded with a lively mock arbitration conducted by Carol Teather, with ADR Committee Chair Lisa Schuchman serving as the attorney, and committee member Constance Gould playing the role of client (see photo above). ☛

(continued from previous page)

for public office beyond those established by Const. Art. II, Sect. 7; Art. III, Sect. 25); *CLEAN v. City of Spokane*, 133 Wn.2d 455, 947 P.2d 1169 (1997) (public support for privately developed parking garage was not invalid loan of state credit under Art. VIII, Sect. 7).

2. *McGowan v. State*, 148 Wn.2d 278, 60 P.2d 67 (2002).

3. See *State v. Coe*, 101 Wn.2d 364, 373-74, 679 P.2d 353 (1984) (state courts have a duty to independently interpret and apply their state constitutions that stems from the very nature

of our federal system); *City of Seattle v. Mesiani*, 110 Wn.2d 454, 456, 755 P.2d 775 (1988) (this court will first independently interpret and apply the Washington Constitution in order, among other concerns, to develop a body of independent jurisprudence); *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 840 P.2d 174 (1993) (Utter, J., concurring) (a truly independent state constitutional discourse cannot occur if we resort solely to federal jurisprudence in defining rights protected under our state constitution).

4. *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986).

5. Article II, Sect. 24 provides, "The Legislature shall never grant any divorce." Lotteries were also prohibited in the state by this section until 1972, when Amendment 56 authorized them upon approval of 60 percent of the Legislature and 60 percent of the voters.

6. Art. VI, Sect. 1.

7. *Trustees of Dartmouth College v. Woodward*, 17 U.S. (Wheat) 518 (1819).

8. *Fain v. Chapman*, 89 Wn.2d 48, 53, 569 P.2d 1135 (1977).

9. See Article XII, Sect. 13 22.

10. Article XV.

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Around the State

King County Report

Caroline R. Suissa has opened her practice in estate planning, probate administration, adoptions, trusts, guardianships, property rights and domestic partnerships in Des Moines. The UW LL.M.'s virtual office is at www.suissalaw.com.

Douglas S. Morrison, late a partner of Lane Powell Spears Lubersky, has opened his new firm, Environmental Law Northwest, in Redmond (www.envirolawnw.com). Another solo act is that of Steve Karimi in Seattle. The former municipal prosecutor for Kenyon Dornay Marshall has opened his criminal defense firm at 119 First Avenue S., fifth floor.

Black Lowe & Graham (www.blacklaw.com) has added Dale C. Barr to its roster. He's an IP lawyer doing patent and trademark law.

Levy-von Beck & Associates PS (www.levy-law.com) is the result of the partnership of David M. von Beck and Sanford R. Levy in Seattle.

Catching some z's, Seattle's Hall Zanzig Claffin McEachern PLLC has become Hall Zanzig Zulauf Claffin McEachern PLLC with the addition of 30-year trial lawyer Jay H. Zulauf.



Armstrong



Thomas



Myhra



Seder

Sarah Armstrong and Kelly Thomas have joined Bennett Bigelow & Leedom (www.bbhealthlaw.com) (who have a really clever flash graphic on their homepage) in Seattle as associates. Armstrong's practice focuses on health care and health-care litigation. Thomas's practice focuses on regulatory and reimbursement matters, and litigations.

Betts Patterson & Mines PS (www.bpmlaw.com) has hired Kasey C. Myhra as an associate handling complex litigation. She comes to the firm from the Attorney General's Office. Another former assistant AG, Jeff Kray, has moved to Marten Law Group PLLC, an environmental law firm. Another government lawyer, Robert Tad Seder, has moved from

the civil division of the Snohomish County Prosecutor's Office to the U.S. Attorney's Office, civil division.

Graham Lundberg & Peschel (www.glpattorneys.com) has added Angela L. DeWig as an associate.

Another Graham, Graham & Dunn (www.grahamdudd.com), has recently added two lawyers. Mark A. Dowd (California State Bar member) works in the firm's financial-services industry team. Eric E. Kepler is an associate in the hospitality, beverage, franchise and distribution team.

William F. Knowles, formerly with Knowles & Ferguson PLLC, has joined Cozen & O'Connor's insurance practice group (www.cozen.com).

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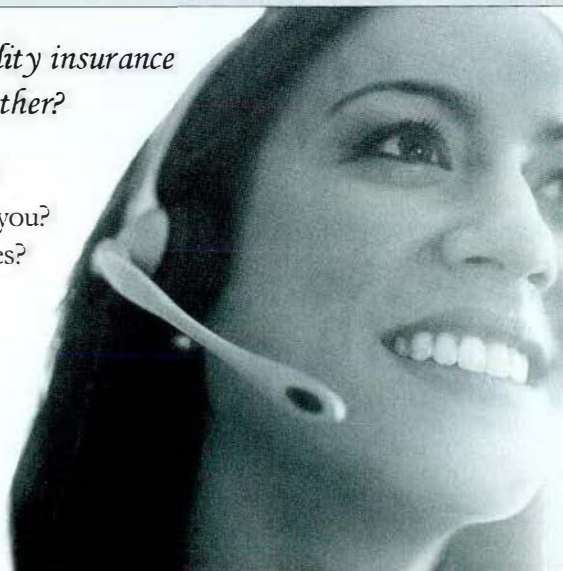
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Felice



DeFelice

Joseph Sakay, previously clerk to a Denver judge, has become a principal at Hillis Clark Martin & Peterson PS (www.hcmp.com).

In Bellevue, Loretta S. Story has become of counsel to Peterson Russell Kelly PLLC (www.prklegal.com). Story has a family law practice with an emphasis on domestic violence and mediation, and serves on the board of the Eastside Legal Assistance Program.

Spokane County Report

Jodi M. Felice, a 2002 honors graduate of Gonzaga University School of Law, has joined the Spokane firm of Powell, Kuznetz & Parker PS as an associate concentrating on employment law, personal injury, and civil litigation.

Dale DeFelice and Scott Nass have become partners in Paine Hamblen Coffin Brooke & Miller LLP (www.painehamblen.com). Nass works in the firm's Coeur d'Alene office.

Elizabeth F. Baker, late of Johnson Law Group, is now with Carlson McMahon & Sealby PLLC in Wenatchee.

Comi L. Stamper has joined Empire Health Services as vice president and corporate counsel.

Changes/Relocations/Honors

Sedro-Woolley attorney David Lowell has earned selection to the U.S. Army Judge Advocate General Corps. He will hold the rank of first lieutenant in the JAG reserves and will drill out of Fort Lewis. He will continue in private practice in Skagit County.

The Washington chapter of the American Board of Trial Advocates has awarded Tacoma attorney William H. Mays its Lifetime Achievement Award for exemplifying the organization's commitment to the right to a jury trial and its code of pro-

fessionalism. Mays helped found the chapter in 1983 and has served twice as its president. He is a member of Williams Kastner & Gibbs's Tacoma office. Tom Harris won the chapter's Trial Lawyer of the Year Award; Grays Harbor County Superior Court Judge David Foscoe was named Judge of the Year; and H. Frank Stubbs was given the chapter's Lifetime Achievement Award.

While they were at it, the advocates also elected officers for the coming year. The

roster is Cheryl Robbins Berg, president; Thomas H. Fain, presidentelect; Reed P. Schifferman, vice president; Elizabeth A. Leedom, treasurer; James S. Rogers, secretary; and Timothy D. Blue and Lish Whitson, national board representatives. Judge Ronald Leighton is immediate past president.

A former WSBA Young Lawyers Division president, Alicia L. Lowe, has been named a shareholder in the Vancouver office of Schwabe Williamson & Wyatt

The law firm of D'Amore & Associates, P.C. has earned Martindale-Hubbell's Highest AV Rating.



Tom D'Amore is licensed to practice in Washington, Oregon and California, and is certified as a civil attorney by the National Board of Trial Advocacy. Tom is a WSTLA Eagle member, a member of the OTLA Board of Governors,

a member of the OTLA President's Circle, a sustaining member of ATLA, and serves as an ATLA delegate for Oregon.

The attorneys at D'Amore & Associates, P.C. are available for association and referral on cases involving motor vehicle accidents, serious personal injury and wrongful death. D'Amore & Associates also represents consumers and policyholders in individual bad-faith claims as well as national and state class-actions against insurance companies that wrongfully deny policyholder benefits.



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(www.schwabe.com). So has Michael Cohen, who joined the firm in 1997.

Patrick W. Harwood has relocated his law practice from Walla Walla to Coeur d'Alene, joining Kirkpatrick & Startzel PS there as a civil litigator.



Harwood

Mark Rutzick of Portland has been appointed senior advisor to the general coun-

sel for the National Oceanic & Atmospheric Administration in Washington, D.C.

J. Rodney DeGeorge reports he is winding down his practice to become municipal court commissioner for Lakewood, a part-time position, and to *pro tem* elsewhere until a full-time judicial post comes available.

Law Studies Forum, an interdisciplinary journal published by West Virginia University College of Law, reprinted five of Dan Caine's legal-theme poems in its spring issue; three of them were first pub-

lished in *BarNews*. Caine is of counsel with Ryan, Swanson & Cleveland PLLC in Seattle.

The Life of the Mind

The Puget Sound Lawyers Chapter of the Federalist Society held a discussion on "The President and Future of Initiatives and Referenda in Washington" at the Washington Athletic Club in Seattle March 26. Justice Richard Sanders moderated the event, which featured panelists James Bond of Seattle University School of Law, Olympia lawyer Jim Johnson, Seattle attorney Hugh Spitzer, and retired Supreme Court Justice Phil Talmadge.

Attorney and television journalist Tim O'Brien delivered the 32nd annual William O. Douglas Lecture March 31 at Gonzaga University School of Law. Honored with an Emmy, the ABA's Silver Gavel and a Columbia-DuPont Award for Excellence in Journalism, O'Brien is D.C. correspondent for *Moneyline* on CNN and a veteran of the Supreme Court beat. The Douglas Lectures honor Washingtonian William O. Douglas, who taught at Yale Law School, chaired the Securities and Exchange Commission, and was the longest-serving member of the U.S. Supreme Court (1939-75). Douglas inaugurated the lecture series in 1972.

The Judiciary

In a March 26 agreement with the Seattle City Attorney's Office, approved by Municipal Court Judge Michael Hurtado, Supreme Court Justice Bobbe Bridge received the standard deferred-prosecution agreement for driving under the influence.

Bridge was arrested February 28 while driving from a party to her home after a witness saw her vehicle sideswipe a parked truck and continue down the street. Another driver then blocked her car, forcing a stop. A companion hit-and-run charge was dismissed as part of the agreement.

Justice Bridge will be required to comply with the terms of a two-year program that requires her to abstain from consuming alcohol, attend two 12-step program meetings a week, undergo an outpatient treatment program, and have an ignition interlock device installed in her car. If she

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complies with the terms of the agreement, the DUI charge will be dismissed.

Bridge told the court, "I have never been afraid of hard work, and I will use all of my effort to pursue the treatment plan." Her lawyers, **Jeff Robinson** and **Bill Bowman**, told the press that while they felt the DUI test results could have been challenged in court, their client "made it clear that she did not want us to make any legal maneuvers and that she wanted to accept responsibility for what she did."

Former WSBA Chief Disciplinary Counsel **Barrie Althoff** has been named executive director of the Washington State Commission on Judicial Conduct. Althoff, 57, assumed the position at the end of February, succeeding David Akana. Althoff was with the WSBA for eight years; before that he spent seven years with the Securities and Exchange Commission, and 14 in private practice.

In Memoriam

Remembering our colleagues and friends

Eugene Arron

World War II officer became respected trial lawyer

A Seattle native, Gene Arron graduated from Garfield High School in 1937 and received a B.A. from the University of Washington in 1941. Commissioned a second lieutenant in the Army upon graduation, he was immediately called to active duty; two weeks after Pearl Harbor he was aboard the first military convoy to Hawaii. Arron spent the next two-and-a-half years in the Pacific theater, seeing action at Guadalcanal and Christmas Island, and reaching the rank of major.

Rotated through Seattle in 1944, Arron married his Portland, Oregon, fiancée, **Irene Feinstein**. It was a marriage that would last 59 years. On his discharge, Arron returned to Seattle and entered the UW School of Law. After graduation he worked for Bonneville Power Administration before joining the Walthew law firm in Seattle.

Arron became a partner in the firm and developed a practice in the fields of workers' compensation and personal injury law. He was a dynamic man with a lifelong love of the law; as a trial lawyer he served his

profession with skill, passion and integrity. He became known as one of the finest plaintiffs' workers' compensation attorneys in Washington and tried more than 500 cases throughout his career. Arron was a member of the Washington State and American Trial Lawyers associations. In 1980 the Supreme Court of Washington honored him for his work on pattern jury instructions. Though he retired from practice in 1985, Arron maintained his active membership in the Washington State Bar Association and celebrated his 50th anniversary as a member in 1998.

Gene Arron loved his profession and was also a man of many other interests. He was a skilled craftsman and fisherman, and loved travel. A true intellectual, he had a genuine love for the classics, music and literature. He was a lifelong sports fan and strong supporter of the University of Washington and its teams. After retiring, he enjoyed his hobbies, and for many years he and Irene spent their winters in Oahu, Hawaii.

Gene Arron's survivors include his sister, wife, six children and eight grandchildren. A daughter, Seattle attorney **Deborah Arron**, died in 2002.

Eugene Arron died in Seattle February 25, 2003, aged 82.

(This remembrance of Eugene Arron was contributed by his grandson, Seattle attorney Paul L. Schneiderman.)

Rebecca Bloom

Walla Walla lawyer was longtime resident

Rebecca Bloom practiced on both sides of the Columbia River, residing in both Pendleton, Oregon and Walla Walla, where she was an attorney with the Minnick Hayner firm. Graduating *magna cum laude* from St. Olaf College in 1974, she received her law degree from Willamette University and was admitted to practice in Oregon in 1978. She joined the Washington Bar in 1994 and was a business lawyer at Minnick Hayner.

Survivors include her husband, **Stephen**, Pendleton attorney and U.S. magistrate, and three children.

Rebecca Bloom was born in Alexandria, Minnesota, in 1951 and died January 20, 2003, in an auto accident near Weston, Washington, aged 51.

Kendall W. Druby

Alaska insurance executive

Kendall Druby was a Navy lieutenant in World War II. After the war he entered and graduated from UW School of Law, and joined the Bar in 1950. After a career with Kemper Insurance in Seattle, he bought Arctic Adjusters, Inc., and ran the Anchorage company for 32 years. After retirement, he and his partner, **Tommy Garasick**, particularly enjoyed the time they spent fishing on the Situk River.

Kendall Wayne Druby was born in Seattle in 1922 and died in Anchorage, Alaska, in October 2002, aged 80.

Kingsley B. Eaton

California court employee

Kingsley Eaton grew up in Olympia and served in the U.S. Army in the Pacific from 1943 to 1946. He received his undergraduate and law degrees from the University of Washington. He was admitted in 1952, and, after passing the California bar exam, spent his working career with the Office of the Reporter of Decisions for the California Supreme Court. Survivors include his wife and brother.

Mr. Eaton was born in Olympia in 1926 and died March 11, 2002, in Daly City, California, aged 76.

Douglas M. O'Coyle Sr.

Bar News has learned of the death of WSBA member Douglas M. O'Coyle Sr. during 2002. Mr. O'Coyle held undergraduate and law degrees from Gonzaga University, was admitted in 1986, and practiced in Spokane. He was 51.

Phillip Offenbacher

Midwesterner turned teenage merchant marine; lawyer, artist and traveler

Phillip Offenbacher graduated from high school in 1943 and immediately tried to join the armed services. Rejected because he was only 17, he joined the Merchant Marines and spent the war at sea. In the Korean War he saw heavy combat, was wounded, and won the Bronze Star.

Having entered Seattle Pacific University between the wars, Offenbacher entered the UW School of Law in 1956, and after graduation practiced in Seattle. An accomplished artist, he worked in wood-carving, cabinetry, and silver jewelry and

Disciplinary Notices

ornaments. Survivors include his wife, three children and two stepchildren, four grandchildren and twin sisters.

Phillip Offenbacher was born in Neodesha, Kansas, August 31, 1926, and died in Seattle March 28, 2002, aged 75.

Hart Snyder

Spokane lawyer was MacArthur staff member

A pilot, ham-radio operator, horseman and polo player, Hart Snyder loved travel and shared interests in politics and government with his wife, Evelyn. Editor of the University of Washington *Law Review*, Snyder joined the Bar in 1926 and had a varied career. In the early 1940s he was involved with development at Grand Coulee Dam and Hanford Nuclear Plant reclamation project in his capacity as assistant U.S. attorney in the office's lands division.

During World War II, Snyder was a JAG officer in the United States, the Philippines and Japan, serving as a JAG on General Douglas MacArthur's staff during the occupation of Japan. He also enjoyed a 50-year career with the Spokane firm of McKeivitt, Snyder & Thomas.

Hart Snyder died July 29, 2002, aged 100.

William A. Tombari Jr.

Spokane attorney

Bill Tombari served in the U.S. Army from 1968 to 1971, leaving the service with the rank of lieutenant. He practiced in Spokane after graduating from Gonzaga University School of Law in 1976. He concentrated his practice on commercial real estate development and shopping-center law; as general partner of Tombari Enterprises he was instrumental in developing several commercial projects in North Spokane and the Spokane Valley. His practice also included land acquisitions, sophisticated leasing, and the structuring of complex real estate transactions. He was listed in the *Best Lawyers in America* for 10 years.

At his death, Tombari was in practice with Joseph Esposito, Richard George, John Campbell, Jim Topliff, Dan O'Rourke and Kevin O'Rourke. During his career he served on the boards of a number of schools in the Diocese of Spokane and was a recipient of the Bishop's Certificate of Merit.

Survivors include his wife, five children, including attorney Courtney Tombari, and one grandchild.

William A. Tombari Jr. was born March 15, 1945, and died February 17, 2003, aged 57.

Joanne B. Wilson

Supreme Court veteran; wartime visit to Washington brought her back for life

Joanne Bailey longed to escape the confines of small-town Texas, and so "ran off to New York with her friend Billie" to study creative writing as soon as she could manage it. During World War II she served in the Coast Guard SPARS and in the course of her service visited Seattle. Falling in love with the people and scenery, she vowed to return, and in the early 1950s she packed everything into her car and drove back to Seattle. A pioneer among women lawyers, Wilson worked her way through the UW School of Law, and after graduating in 1954, married another lawyer, James B. Wilson, who died in 1996.

Wilson worked briefly in private practice before becoming a clerk for Justice Hugh Rosellini in the Washington State Supreme Court. She remained at the Court until her retirement in 1983. She then served as an arbitrator in the Personnel Appeals Board until she retired again in 1989.

Always adventurous, she traveled constantly, took up skiing in her 40s and golf in her 60s, and worked on improving her skills as a pianist for most of her life. Friends remember her for "her enormous generous heart for all creatures, human and otherwise, and her unflinching commitment to liberal values." Survivors include her brother, her innumerable friends, and her two cats.

Joanne Bailey Wilson was born November 7, 1920, in Wichita Falls, Texas, and died December 26, 2002, in Seattle, aged 82. ♣

Obituaries and remembrances of WSBA members are welcomed. Please forward to the editor at the WSBA office or by e-mail at tradelaw@thompson-law.com.

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

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

Disbarred

David B. Harris (WSBA No. 25881, admitted 1996), of Portland, Oregon, was disbarred, based on a disbarment order from the Oregon Supreme Court. The Washington State Supreme Court's order of reciprocal discipline was effective February 5, 2003. This discipline is based on 32 violations involving six clients, criminal conduct, and practicing between 1996 and 1999 while his license was suspended. (*Mr. Harris is to be distinguished from David E. Harris of Issaquah.*)

Matter 1: In November 1996, Mr. Harris agreed to assist a client with an appeal of a decision denying his petition for post-conviction relief. He did not inform the client of the oral argument date or the final outcome of the appeal. Mr. Harris stated falsely during the investigation that he had informed the client of these matters.

Matter 2: In February 1998, Mr. Harris agreed to represent a client in a petition for post-conviction relief. Mr. Harris filed a brief, but did not send a copy to the client. Mr. Harris did not tell the client that the court had dismissed the petition. Mr. Harris also gave false responses to the Bar Association in this matter.

Matter 3: In September 1997, Mr. Harris was appointed to represent a client in an appeal. He filed several questionable compensation requests and failed to offer an explanation when requested by the court. After Mr. Harris failed to file a brief, the court ordered him to appear at a show-cause hearing. Mr. Harris failed to appear as ordered. Mr. Harris told the court he could not appear because of a family medical emergency and a computer failure. He refused to identify the family member involved in the medical emergency. The Court of Appeals referred Mr. Harris for criminal prosecution.

Matter 4: In December 1998, Mr. Harris was appointed to represent a client charged with assault, burglary and kidnapping. He appeared late for pretrial motions and did not appear for the trial. He called the court and said that he had a conflicting court appearance and had been in a car accident. Later, he admitted to the court that his statements were not true. The court He failed to appear, made further misrepresentation to the court, was removed as counsel on the case, and found in contempt of court. He was sentenced to 18 months' probation, and drug and alcohol treatment. He violated the terms of his probation.

Matter 5: In July 1999, Mr. Harris filed a police report that his car had been stolen. Later, he admitted he had loaned his car to another person for 12 hours as payment for a drug purchase. The other person did not return the car, so Mr. Harris filed the police report.

Matter 6: In April 1998, the court appointed Mr. Harris to represent a client charged with attempted murder and assault. Mr. Harris appeared late for the first trial date and not at all for the subsequent trial dates. He also failed to provide discovery and to inspect evidence in the state's custody; communicate with his client, including a plea offer and communication from counsel for a co-defendant; and subpoena witnesses.

Matter 7: In February 1997, Mr. Harris was appointed to represent a client in the appeal of an order denying his *habeas corpus* petition. After the court denied the appeal, the client requested that Mr. Harris mail his file to his sister. Mr. Harris wrote a letter to the Bar Association indicating he had located the file, but he never sent it to the client's sister.

Matter 8: Mr. Harris continued to practice law when his license was suspended. Mr. Harris's conduct violated ORS 162.375; and DRs 6-101(B), 1-102(A)(3), 1-102(A)(4), 7-106(A), 1-103(C) and 1-102(A)(2).

Felice Congalton and Leslie Allen represented the Bar Association. Mr. Harris represented himself.

Disbarred

James D. Jensen (WSBA No. 25733, admitted 1996), of Bellingham, was disbarred, following a default hearing, by order of the Supreme Court, effective Feb-

ruary 5, 2003. This discipline is based on 38 counts of misconduct involving 11 clients from 1999 through 2001.

Matters 1 and 2: In March 2000, Mr. Jensen's firm closed its Fife office and he assumed responsibility for two clients' bankruptcy matters. Mr. Jensen did not notify either client that the Fife office had been closed or that he had taken over responsibility for their representation. He failed to complete the required work on both cases. He failed to file required corrected schedules in one case, leading to a delay in the sale of the client's house. In the other, Mr. Jensen placed the client's filing fee in his business account and took no action on the case. He failed to refund the client's money upon request. Mr. Jensen did not cooperate with disciplinary counsel's requests for information regarding these matters.

Matters 3, 4 and 5: In August 2000, Mr. Jensen agreed to assist three clients with bankruptcy matters. Mr. Jensen deposited the clients' funds in his business account and did not complete the agreed work. He did not return the clients' funds upon request, although he did make a partial refund to one client in January 2001. In one case, Mr. Jensen testified falsely in his deposition that he had paid the client's funds to the bankruptcy court. He also stated falsely that he had filed documents to reopen the client's bankruptcy.

Matter 6: In April 2000, Mr. Jensen agreed to represent a client in a bankruptcy petition, and attended the meeting of creditors. In August 2000, the trustee filed a motion to dismiss. Mr. Jensen failed to respond to the motion and the court dismissed the client's petition. At the courthouse on the day of the hearing, Mr. Jensen falsely told the client that the hearing had been continued until October 1, 2000. In October, Mr. Jensen told the client that he had filed an appeal. The client asked for a refund when he learned from the court that Mr. Jensen had not filed an appeal. Mr. Jensen did not provide a refund.

Matter 7: In August 2000, Mr. Jensen agreed to represent a client in an uncontested marriage-dissolution action. Mr. Jensen sent the client a letter stating that the dissolution would be final in 90 days. Mr. Jensen's assistant told the client the dissolution would be final on January 6,

2001. Mr. Jensen had no further communication with the client. On May 5, 2001, believing he was divorced, the client remarried. The court finalized the dissolution on June 25, 2001.

Matters 8, 9 and 10: In late 1999 and in June 2001, Mr. Jensen agreed to represent three clients in bankruptcy matters. In each case, Mr. Jensen accepted the client's money and did not complete the required work. In one case, the wife was discharged in bankruptcy, but the husband's petition was dismissed. Mr. Jensen did not tell the client about the dismissal, and the creditors garnished the client's paycheck. In another case, Mr. Jensen failed to list the client's potential lawsuit against the sellers of her house. The client retained separate counsel for the claim against the sellers. Although Mr. Jensen filed a motion to reopen the bankruptcy to list the lawsuit, he failed to attend the hearing, and the motion was stricken. The client's bankruptcy was reopened and the claim against the seller settled. The client retained substitute counsel and incurred additional attorney's fees.

Matter 11: In September 1998, Mr. Jensen agreed to represent a client in a marriage-dissolution action, but not work on the client's matter. Mr. Jensen failed to comply with the client's requests for a restraining order. The client retained substitute counsel and requested her file. Mr. Jensen told the client he had lost the file. Mr. Jensen delivered the file to the client on August 9, 2001. The file contained original documents necessary for trial. The client's trial was set for August 20, 2001.

Mr. Jensen's conduct violated RPCs 1.3, requiring lawyers to act with reasonable diligence and promptness in representing clients; 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters and promptly comply with reasonable requests for information; 5.3, requiring lawyers with direct supervisory authority over a nonlawyer to make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the lawyer's professional obligations; 1.14, requiring lawyers to deposit client funds into trust accounts; 1.15(d), requiring lawyers, upon termination of representation, to take reasonable steps to protect a client's interests; 8.4(c), prohibiting lawyers from

engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and RLDs 2.8, requiring lawyers to promptly respond to disciplinary counsel's requests for information relevant to grievances; and 1.1(p), subjecting lawyers to discipline for conduct demonstrating unfitness to practice law.

Marsha Matsumoto represented the Bar Association. Mr. Jensen represented himself. The hearing officer was Kelby Fletcher.

Disbarred

Charles E. Robbins (WSBA No. 3976, admitted 1967), of Puyallup, was disbarred, following a stipulation to discipline approved by the Supreme Court on January 22, 2003. This discipline is based on his dishonest conduct in 2000, and failure to return disputed funds to his trust account in 1999. (*Mr. Robbins is to be distinguished from Charles M. Robbins of Tacoma.*)

Matter 1: In October 1997, Mr. Robbins agreed to represent a client in a personal-injury claim. In May 2000, the client settled the claim for \$49,500. Mr. Robbins told the client that he would attempt to negotiate a reduced amount with the medical providers to increase her recovery. The client specifically asked Mr. Robbins to pay the PA (medical provider) bill in full. Mr. Robbins paid seven providers in full, but paid PA and PH (medical provider) only 75 percent of their billed amount. Mr. Robbins sent a cover letter to PA stating that the payment "represent[s] payment in full of [the client's] outstanding account, less 25 percent for attorney's fees in collecting this account, per Washington State law." Washington law did not entitle Mr. Robbins to these fees.

On June 9, 2000, Mr. Robbins sent the client a settlement statement indicating he had paid PA and PH's entire bills. On June 12, 2000, PA disputed the payment. In response, Mr. Robbins reissued a check to PA in the same amount. Four days later, without notice to his client, Mr. Robbins paid himself the \$1,684.51 remaining in his trust account.

Matter 2: In May 2000, Mr. Robbins filled out a credit-card application for Robbins Enterprises. He used his office address and his business post-office box address. He used a birthdate close to his

son's and his son's Social Security number. The credit card company believed the application was from Mr. Robbins's son; however, Mr. Robbins's son did not authorize use of his Social Security number for the credit card application.

Matter 3: In January 1997, Mr. Robbins agreed to represent a minor in a personal-injury claim. Mr. Robbins did not prepare a written fee agreement. He told the clients any fee had to be approved by the court, but would likely be one-third of any recovery. Later in 1997, Mr. Robbins began representing the minor's grandparents. In December 1998, the grandparents' case settled and they disputed Mr. Robbins's \$4,400 fee. Although he told the grandparents he would not take the fee, he did not return the money to the trust account. In January 1999, the personal-injury client, who was now over 18, terminated Mr. Robbins's services. Mr. Robbins wrote a letter to her parents indicating he was charging \$6,241.25 for work on the daughter's case and that he would apply the grandparents' \$4,400 to the unpaid balance. The grandparents objected to use of their funds to satisfy a bill for an unrelated matter. As of the date of the stipulation, Mr. Robbins had not returned the grandparents' money to his trust account.

Mr. Robbins's conduct violated RPCs 8.4(b), prohibiting committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; 8.4(c), prohibiting conduct involving dishonesty, deceit, fraud or misrepresentation; and 1.14(a), requiring lawyers to deposit all client funds in a trust account.

John Bergmann and Christine Gray represented the Bar Association. Steven J. Brown represented Mr. Robbins.

Suspended

G. Patrick Healy (WSBA No. 4835, admitted 1972), of Tacoma, was suspended for one year, following a stipulation to discipline, by order of the Supreme Court, effective January 22, 2003. This discipline is based on his conduct in several investment partnerships and corporations in the late 1980s and early 1990s.

In the early 1980s, Mr. Healy and Richard Butko began investing in real estate development ventures. By the late 1980s,

they began forming partnerships and corporations to manage these ventures. Mr. Butko's mother, Ann, and Mr. Healy's brother Michael were involved in some of these corporations and partnerships.

In early 1992, Mr. Healy and Mr. Butko encountered financial difficulties, and loan-default proceedings were begun. Mr. Healy asked Mr. Butko to make capital contributions to the entities with property in default. When Mr. Butko made no capital contributions, Mr. Healy, claiming to protect the corporate and partnership assets, extinguished the Butkos' interests. Mr. Healy took many actions to accomplish this goal over the next two years. In several cases, Mr. Healy prepared resolutions purporting to transfer property, dissolve corporations, or forfeit the Butkos' interest in property. These resolutions stated that they had been unanimously approved by the shareholders. In fact, Mr. Butko, and sometimes Ms. Butko, voted against these resolutions. In other cases, Mr. Healy prepared partnership resolutions, even though he did not have a majority interest.

In 1993, Richard and Ann Butko sued Mr. Healy under separate cause numbers. Ann Butko's claim was resolved in arbitration with a judgment of \$103,000 in her favor. The court granted Mr. Butko an award of \$2.4 million. These lawsuits restored the Butkos' interests in seven of the nine partnerships and corporations.

Mr. Healy's conduct violated RPC 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation.

Linda Eide represented the Bar Association. Mr. Healy represented himself.

Suspended

Richard McKay (WSBA No. 19987, admitted 1990), of Venice, Florida, was suspended for one year, following a stipulation to discipline, by order of the Supreme Court, effective January 22, 2003. This discipline is based on his failure to protect two clients' property and interest upon closing his office in 2000 and 2001.

Matter 1: In April 2001, Mr. McKay represented the defendant in a district court lawsuit. Following a trial, the court awarded the plaintiff \$13,981.30. Mr. McKay told the client that she could appeal, but that he would not handle the appeal. Mr. McKay did not notify the client

of the date for presentment of the judgment. The client learned of the date through her own efforts. She decided not to appeal and paid the judgment. The client tried to contact Mr. McKay to pay her bill and pick up her file, but was unable to contact him. Mr. McKay's son tried unsuccessfully to locate the client's file. Mr. McKay did not cooperate with disciplinary counsel's requests for information on this matter.

Matter 2: In May 2000, Mr. McKay agreed to represent a client in a breach-of-contract case. The client paid a \$1,000 advance fee deposit. Mr. McKay did not file the client's lawsuit. The client learned that Mr. McKay planned to retire and wrote a letter requesting his file and an accounting of his fee deposit. Mr. McKay did not respond to the client's letter. In September 2002, Mr. McKay sent disciplinary counsel a money order payable to the client 12 days prior to the scheduled hearing date. Mr. McKay did not cooperate with disciplinary counsel's requests for information on this matter.

Mr. McKay's conduct violated RPCs 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters and promptly comply with reasonable requests for information; 1.14(b)(4), requiring lawyers to promptly pay or deliver client funds upon request; and 1.15(d), requiring lawyers, upon termination of representation, to take reasonable steps to protect a client's interests.

Linda Eide represented the Bar Association. Mr. McKay represented himself.

Suspended

Mark A. Patlan (WSBA No. 24003, admitted 1994), of Fort Lauderdale, Florida, was suspended for six months, following a stipulation to discipline, by order of the Supreme Court, effective January 22, 2003. This discipline is based on his lack of diligence involving two clients in 2000.

Matter 1: In August 1999, Mr. Patlan agreed to represent a client in a lawsuit filed against him. In July 2000, Mr. Patlan filed the joint statement of arbitrability without advising his client the matter would be arbitrated. Mr. Patlan did not notify his client of the arbitration date, file a prehearing statement, or appear at the arbitration. The arbitrator attempted to contact Mr. Patlan, but Mr. Patlan's telephone was not working. The arbitrator awarded the plaintiff \$35,000 plus attorney's fees.

Matter 2: Mr. Patlan agreed to represent clients in a lawsuit filed against them in December 1999. Mr. Patlan filed a notice of appearance, and an answer and counterclaim. After June 2000, the clients heard nothing from Mr. Patlan. In July 2000, Mr. Patlan's former law partner told the clients Mr. Patlan was gone, and she agreed to represent them.

Mr. Patlan's conduct violated RPCs 1.3, requiring lawyers to act with reasonable diligence and promptness in representing clients; and 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters and promptly comply with reasonable requests for information.

Sachia Stonefeld Powell represented the Bar Association. Mr. Patlan represented himself. ❖

New WSBA Web Site

Check out the new WSBA Web site! You'll still find us at www.wsba.org, but the site has a new look and has been redesigned for easier use.

We welcome your comments and suggestions; please e-mail them to comments@wsba.org. And if you have any difficulty finding information, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org.

WSBA Presidential Search

Application deadline: May 15, 2003

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2004-2005. Pursuant to Article IV(A)(2) of the WSBA bylaws, the primary place of business of candidates for the 2004-2005 president must be King County. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications will be accepted through May 15, 2003, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no less than five or more than 10 references. The Presidential Search Committee and the Board of Governors will consider endorsement letters received by May 30, 2003. Applications and endorsement letters should be sent to WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Confidential interviews with the Presidential Search Committee will be conducted May 16-30, 2003, at the WSBA office. Direct contact with the governors is also encouraged. All candidates will have an interview with the full Board of Governors in open session at the June meeting. Following the interviews, the board will select the president.

Although prior experience on the WSBA's Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid; some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2003, following selection. A one-year term as president-elect will begin at the WSBA annual business meeting in September 2003. The president-elect is expected to attend two-day board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national and local meetings.

In September 2004, at the annual business meeting, the president-elect will assume the position of president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, courts, media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time will need to be devoted to communication by letter, e-mail and telephone in connection with these responsibilities.

The duties and responsibilities of the president are set

The duties and responsibilities of the president are set forth in the WSBA bylaws.

Presidential Search Committee: *Lucy Isaki, chair; Dick Manning, president; Dave Savage, president elect; Robert Boggs, Ray Gonzales, Bill Hyslop and Fawn Sharp*

WYLD President-elect Election

Filing deadline: June 2, 2003

Young lawyers interested in serving as president-elect of the WYLD are invited to submit a statement of eligibility and qualifications for this position. The president elect automatically succeeds to the position of WYLD president upon completion of a one-year term commencing October 1, 2003.

To be eligible for the position of president-elect, candidates must have a principal place of business in Washington and must be a member of the WYLD at the time of taking office for the president-elect position. Additionally, the bylaws require that the president and president elect have principal places of business in different counties. Therefore, this year's candidates may not have a principal place of business in King County.

Any active member of the Washington State Bar Association is also a member of the Washington Young Lawyers Division until December 31 of the year in which he or she turns 36, or until December 31 of the fifth year in which he or she has been admitted to practice, whichever is later.

Individuals intending to stand for election must send their statement of eligibility and qualifications to Lisa Harper, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; lisak@wsba.org; or fax 206-727-8319.

WYLD Trustee Elections

Filing deadline: June 2, 2003

Young lawyers interested in serving on the WYLD board of trustees are invited to submit a statement of eligibility and qualifications for the following trustee district positions:

- **King District** — representing King County (two positions available)
- **Peninsula District** — representing Clallam, Grays Harbor, Jefferson, Kitsap and Mason counties
- **Pierce District** — representing Pierce County

To be eligible for one of these positions, a candidate must reside or have his or her principal place of business in the district he or she wishes to represent, and must be a member of the WYLD for at least the first two full years of the position. Elected trustees will serve three-year terms commencing October 1, 2003.

Any active member of the Washington State Bar Association is also a member of the Washington Young Lawyers Division until December 31 of the year in which he or she turns 36, or until December 31 of the fifth year in which he or she has been admitted to practice, whichever is later.

Individuals intending to stand for election must send their statement of eligibility and qualifications to Lisa Harper, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; lisak@wsba.org; or fax 206-727-8319.



Washington Legislature Passes Senate Bill 5044

Ken Luce, chair of the WSBA Legal Services to the Armed Forces Committee, facilitated passage of Senate Bill 5044, giving notice of the termination of a tenancy. The bill aligns the RCWs pertaining to notice provisions required when military personnel are given orders for reassignment or deployment. Army Col. Rouse, Navy Cmdr. Sherman, and their offices assisted with the bill, which passed unanimously in the Senate and House, and was signed into law by Governor Locke on March 24, 2003.

WYLD Seeks Award Nominations

The WYLD is accepting nominations for the *Thomas Neville Pro Bono Award*, *Outstanding Young Lawyer of the Year*, and the *Professionalism Award*. All three awards recognize lawyers who epitomize the best in the legal profession. Nominations are also being accepted for *Outstanding YLD Affiliate or Organization* for recognition of public service and/or member-service programs. For detailed information, please see www.wsba.org/lawyers/groups/wyld. Letters of nomination should include the nominator's complete contact information, as well as a copy of the nominee's résumé or list of accomplishments. Nominations must be received by July 31, 2003, and should be sent to Lisa Harper, WSBA, 2101 Fourth Avenue, Suite 400, Seattle, WA 98121-2330; or lisak@wsba.org.

2003 Board of Governors Elections, and Candidates' Biographical Statements

On April 15, ballots were mailed to all active WSBA members eligible to vote for the 5th or 7th-West district governor. Returned ballots must be postmarked by May 15 in order to be counted.

Board of Governors nomination forms for the 1st, 5th and 7th-West congressional districts have been received from Kristin G. Olson (1st District), unopposed; Peter J. Karademos, Mark H. Kim and Michael J. Pontarolo (5th District), candidates; and Kevin C. Baumgardner, Ellen C. Dial and Mark A. Johnson (7th-West District), candidates. The governor-elect and candidates have provided the following biographical statements:

1st District

Kristin G. Olson, 1st District, governor elect, states: I am a shareholder in O'Shea Barnard Martin in Bellevue and have

engaged in commercial litigation practice since 1991, when I graduated from the University of Washington School of Law. I have been actively involved in bar activities. I served as trustee of the East King County Bar Association for several years, as its secretary in 1997, its vice-president in 1998, and its president in 1999. I served as trustee of the King County Bar Association from 2000 to 2002. I would be honored to serve on the Board of Governors for the 1st District. As 1st District governor I would represent my constituents to the best of my ability and would try to ensure that their needs are met by the WSBA.

5th District

Peter J. Karademos, 5th District candidate, attorney since 1974, working in civil litigation, criminal cases and probate; currently in family law. Involved in Legal Assistants Committee; Family Law Executive Committee (13 years); Legislative Committee, currently vice chair; 13 years as Superior Court Commissioner *Pro Tem*. Reviewed hundreds of legislative bills; drafted bills adopted as law. Attended several BOG meetings per year as liaison, fully understanding the board's workings. My goal is representing attorneys' interests rather than making politically expedient decisions. With 29+ years' experience, I promise to continue working hard for you. I understand problems and concerns of lawyers working in many aspects of the law. Thank you for your consideration.

Mark H. Kim, 5th District candidate, was admitted to the Bar in 1997. Mark's service to the legal community began as a trustee of the Spokane County Young Lawyers. His service continued with the Young Lawyers, being elected as president for 2001. Currently, he is the chair of the Greater Access and Assistance Project (GAAP), and a committee member of the Law Office Management Assistance Program (LOMAP) Committee. He was awarded the Professionalism Award for 2002 by the WSBA Young Lawyers Division. Mark is a lawyer devoted to uplifting the legal community by providing innovative ideas in addressing the challenges lawyers face in this district. He seeks your support to be elected to the Board of Governors to continue his service.

Michael J. Pontarolo, 5th District candidate, states: As lawyers, we're called to be stewards of our profession, face challenges, listen and seek solutions. For 30 years I have accepted this calling as an adjunct law professor; state bar special district counsel; Judicial Recommendation, and Character and Fitness committees chair; committee memberships including Interprofessional, Consumer Protection, and Rules of Professional Conduct; Spokane County Superior Court Liaison Committee chair; and Spokane County Bar president. Each position provided insight into the needs of lawyers. Being an effective governor requires time, energy, common sense, decisiveness, and listening to members. I wish to bring these qualities to the position and welcome the opportunity to serve.

7th-West District

Kevin C. Baumgardner, 7th-West District candidate, states: I live on Vashon Island, and have practiced law in Seattle for

Photo Bar Cards Available

The WSBA is pleased to offer photo bar cards to active members. This is an option for those who are interested in having their photo on their card; original and replacement cards without photos are provided at no cost. Here's how it works:

- You can either e-mail an electronic photo in .bmp format or mail a hard-copy photo that we will scan. Photos can be any size.
- You may submit a black-and-white or color photo, however all photos will be printed in black and white.
- The cost is \$10 for cards created from electronic photos, and \$15 for cards created from hard-copy photos. Checks, MasterCard and Visa are accepted for payment.
- If you're mailing a hard-copy photo, please mail the photo with the completed order form and payment.
- If you're e-mailing an electronic photo, mail the completed order form with your payment. If paying by credit card, you may fax the order form.

If you have questions, please contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA or questions@wsba.org.

YES! I would like to order a photo bar card (I am an active member).

Select one of the following:

- Photo submitted electronically \$ 10.00
(If in Washington, add WA state sales tax @ 8.8%.) .88
Total \$ _____
- Hard-copy photo enclosed \$ 15.00
(If in Washington, add WA state sales tax @ 8.8%.) 1.32
Total \$ _____

If submitting an electronic photo, please e-mail to amy@wsba.org. We recommend that you e-mail the photo the same day you send this form. If paying by credit card, you may fax this form to 206-727-8319. If submitting a hard-copy photo, be sure to write your name on the back and enclose it with this form. Your photo will be returned to you.

- check enclosed (payable to WSBA)
- MasterCard Visa

No. _____
 Exp. date _____
 Name as it appears on card _____
 Signature _____

Please send to:
 Member and Community Relations
 Communications Division, WSBA
 2101 Fourth Ave., Ste. 400
 Seattle, WA 98121-2330

Name _____
 Address _____
 City _____ State _____ ZIP _____

WSBA office use only: 45060/LICMR
 date _____ check no. _____ amount _____

my practice is focused on civil litigation. From 1984 to 1999, I was at Bogle & Gates, where I was a member of that firm's executive committee and chair of the product liability practice group. Having been part of both a large law firm and now a much smaller firm, I have an appreciation for the wide variety of challenges and concerns that face lawyers on a daily basis. As a WSBA governor, I want to serve the diverse interests of all lawyers.

Ellen C. Dial, 7th-West District candidate, states: In 1977, my husband and I moved to Washington state with our two young children. We learned that Washington is a wonderful place to raise a family, pursue a career (Joe in public education, I in the law), and to be involved in the community. Now a 23-year member of the WSBA, I am deeply impressed by the commitment of its lawyers to the success and integrity of our legal system. I am inspired by that commitment to seek a seat on the Board of Governors to contribute what I may to the future strength of the WSBA.

Mark A. Johnson, 7th-West District candidate, states: I would appreciate the opportunity to serve Washington's lawyers on the WSBA Board of Governors from the 7th-West Congressional District. I am 49 years old and was admitted to practice in 1978. I am a member of Johnson-Flora, a Seattle professional liability trial practice firm. I am the current chair of the WSBA's Character and Fitness Committee and a member of the Professional Development Committee. I have authored approximately one-half dozen articles which have been published in WSTLA's *Trial News* and the WSBA's *Bar News*. I have been listed in *The Best Lawyers in America* since 1997.

Notice of Deadline for Filing WSBA Resolutions

Pursuant to WSBA Bylaw Article VII, Section F — Resolutions, any 10 active members of the Washington State Bar Association may present a written resolution to the Board of Governors for consideration at the WSBA's annual business meeting (September 11, 6:00 p.m.; Bell Harbor International Conference Center, 2211 Alaskan Way, Pier 66, Seattle).

Resolutions must be filed with the WSBA executive director at least 90 days before the annual meeting (by 5:00 p.m. June 13, 2003), and must be accompanied by a written report explaining the resolution. The resolution and explanatory report together must not exceed a total of 1,000 words. Send resolutions to WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

The Board of Governors will refer any resolutions addressing issues within the purposes of the WSBA to the WSBA Resolutions Committee. Those purposes are set forth in Article I of the WSBA Bylaws and General Rule 12 of the Washington Court Rules.

Not more than 11 nor less than seven days before the annual meeting, the Resolutions Committee will hold a public hearing at the WSBA office (2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330) to consider the views of proponents and opponents of resolutions. Proponents and opponents may attend the hearing in person or present their views in written form for consideration by the committee. Proposed resolutions will be published in the August 2003 issue of *Bar News*,

along with the date of the Resolutions Committee meeting and a list of committee members.

For further information, contact WSBA General Counsel Robert D. Welden at bobw@wsba.org or 206-727-8232.

Notice of Hearing on Petition for Reinstatement of Thomas A. Gish Sr.

A petition for reinstatement after disbarment has been filed on behalf of Thomas A. Gish Sr., who was disbarred on May 14, 1998. He had previously been suspended from practice on September 11, 1997. At the time of his suspension and disbarment, Gish practiced in King County, Washington.

A hearing on Gish's petition will be conducted before the Character and Fitness Committee on Saturday, June 28, 2003. Not later than June 13, 2003, anyone wishing to do so may file with the Character and Fitness Committee a written statement for or against reinstatement, setting forth factual matters showing that the petitioner does or does not meet the requirements of Admission to Practice Rule 21.5(a). Except by its leave, no person other than the petitioner or petitioner's counsel shall be heard orally by the Character and Fitness Committee.

Communications to the Character and Fitness Committee should be sent to Robert D. Welden, General Counsel, Washington State Bar Association, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330. This notice is published pursuant to APR 21.4(a).

Filing-Fee Notice for CLE Sponsors

Effective July 1, 2003, all CLE sponsors will be required to pay a \$50 filing fee. At the November 22, 2002, Mandatory Continuing Legal Education (MCLE) Board meeting, a motion was passed to increase a sponsor's filing fee for a Form 1 application for approval of MCLE credit to \$50.

In addition, a motion was passed to increase the fee for the WSBA's processing of manually submitted CLE attendance to \$3 per name, with advance notice to providers that fees will be raised effective July 1, 2003. The fee for electronically submitted attendance will remain at \$1 per name.

This increase in fees will be subject to review to ensure that the generated income is sufficient to cover costs.

Washington UCC Revised Article 9 Deskbook to Be Introduced at June 13 Seminar

Join the practitioners who led the way in drafting and adopting revised UCC Article 9 for a full-day seminar on secured transactions. Keynote speaker Steven O. Weise served as the ABA liaison to the Revised Article 9 Drafting Committee. Panelists will analyze case studies and address manufacturer, agricultural, retailer and M&A financing; real estate lending; enforcement; and software and bank account issues. Registrants will receive a copy of the *Washington UCC Revised Article 9 Deskbook*, edited by Dan Ritter. This deskbook covers Article 9 practice, including a summary of new changes; local variations to the rule in Washington, Oregon and Idaho; transition rules; implications for bankruptcy; and resources for Washington lawyers.

To register for the seminar, see www.wsba.org/cle/

To register for the seminar, see www.wsba.org/cle/seminars. To order the deskbook, visit the WSBA Store at <http://store.yahoo.com/wsbastore>, or call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

LOMAP Traveling Seminar

The WSBA's Law Office Management Assistance Program (LOMAP) presents its traveling seminar in the following cities: Silverdale, June 9; Oak Harbor, June 10; Bellingham, June 11; Colville, June 16; Spokane, June 17.

The cost is \$69, and you'll earn 40 CLE credits (2.0 general, 2.0 ethics). Learn about case-management software, client management, career transitions, unbundled legal services, and how to handle a Bar complaint.

For more information or to register, contact Allison Durazzi at allisond@wsba.org or 206-733-5914, or contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Litigation Section Midyear at Lake Chelan, June 20-21

Join the WSBA Litigation Section at Campell's Resort on Lake Chelan for "Honing Your Skills: Lessons from the Trials of the Century," featuring Todd Winegar. The program will include an ethics session and an evening reception. See actual trial film footage and recreations; and hear transcripts of trials such as the Scopes "Monkey Trial," Leopold and Loeb, the Clinton impeachment, and O.J Simpson. Additional topics include lessons in cross examination and argument, dealing with difficult witnesses, and borderline ethics. 7.5 CLE credits for Washington attorneys (includes 2.5 ethics credits); the cost is \$250. To register, call the WSBA Service Center at 800-

945-WSBA or 206-443-WSBA, or visit www.wsba.org/cle/seminars. To reserve a room, call 800-553-8225 or 509-682-2561 and use group code WABR3 (special rate expires May 20).

CLE for Managing Partners

Save the date to attend a unique CLE for managing partners, featuring national and regional experts in law-firm management. "Law Firm Hiring, Retention & Productivity: New Tools for Success" takes place May 21, 2003, at Seattle University School of Law from 1:00 p.m. to 5:45 p.m., with a reception following. For more information, please contact Eileen Concannon at 206-624-3600 or econcannon@riddellwilliams.com.

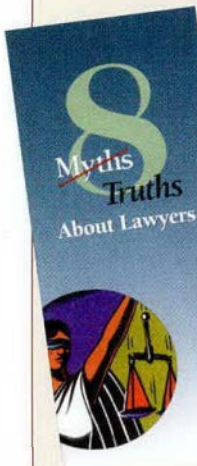
The CLE is being sponsored by King County Bar Association; Seattle University School of Law; Washington State Supreme Court Commission on Gender and Justice; Washington State Minority and Justice Commission; Washington State Bar Association; Washington Women Lawyers; and the law firms of Heller Ehrman White & McAuliffe, Preston Gates & Ellis, Riddell Williams, Stokes Lawrence, and Williams, Kastner & Gibbs.

Request for Attorney Input United State District Court, Eastern District of Washington

The U.S. District Court, Eastern District of Washington, is conducting a survey of attorneys and other users of the court in order to plan for courthouse facilities that may be needed over the next 20 years. The court holds hearings at courthouses in Spokane, Yakima and Richland. The criteria for assignment of cases to the three facilities for court hearings

8 Myths Truths About Lawyers

Help us stamp out some of those myths about lawyers! The *8 Myths Truths About Lawyers* brochure, developed by the Proud to Be a Lawyer Task Force, is available for purchase. The brochure tackles the following myths:



- *The United States has more lawyers than any other country.*
- *Lawyers are selfish and greedy.*
- *Lawyers stir up litigation for their own personal profit.*
- *Huge punitive damage awards are frequent and on the rise.*
- *The McDonald's verdict shows how foolish juries are.*
- *Lawyers who defend criminals are just promoting crime.*
- *When there's an accident, lawyers are among the first on the scene, soliciting business.*
- *The jury system is not worth keeping.*

The cost is \$35 per 100 (price includes shipping and handling).

Yes! I would like to order _____ packets @ \$35 per packet (100) \$ _____

If in Washington, please add WA state sales tax @ 8.8% \$ _____
Total \$ _____

check enclosed (payable to WSBA)

MasterCard Visa

No. _____ Exp. date _____

Name as it appears on card _____

Signature _____

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are based upon the county in which a case arises, or which has the closest nexus to the events involved in the case.

The court is interested in determining the opinions of the users of the federal court as to whether any changes should be made in the assignment of cases to the three courthouse facilities. For instance, should cases arising in Grant County be sent to Spokane, or is it more logical to assign them to Richland or Yakima?

You are requested to participate by accessing the court's Web site at <http://www.waed.uscourts.gov/attorney/survey/default.htm> and completing the survey. Responses should be made by May 16, 2003.

Join the Administrative Law Section

It's not too late to join the WSBA Administrative Law Section! Non-members who join the section before the May 16th CLE "Administrative Appeals — A Winning Strategy in Superior Court" (Tacoma Rhodes Center; 5.0 credits, 3.5 reg. and 1.5 ethics, pending) apply their \$20 membership fee as a discount, and register for \$60. For more information about this program or the section, visit www.wsba.org/lawyers/groups/administrativelaw or call Tom Kalenius at 360-753-6823, ext. 231. (See *Calendar* on p. 58 for related information.)

Shop Online for WSBA-CLE Publications

Convenient, fast and easy to use! Browse the entire inventory of WSBA CLE publications by practice area, add to your shopping cart, and pay by credit card. Look for the "WSBA Store" link on the WSBA Web site (www.wsba.org) or go directly to the store at <http://store.yahoo.com/wsbastore>, and find coursebooks, tapes, CD-ROMs and deskbooks; stock your library; and acquire CLE credits. You'll also find links to the CLE seminar calendar, individual upcoming seminars, law-office management and lawyer assistance products, WSBA merchandise and more. Shop online, and send your feedback about the store to cle@wsba.org.

Online MCLE Credit-Tracking System

Using the online MCLE Credit-Tracking System, you can do the following:

- View your CLE courses and credits on your online attendance roster.
- Make changes to your online attendance roster.
- Search for approved courses.
- Apply for course approval.

To enter the MCLE Credit-Tracking System, go to the WSBA Web site at www.wsba.org and click on MCLE on the left navigation bar. Alternatively, go to <http://pro.wsba.org> and click on the Member tab. Select Member Login, and follow the onscreen instructions. If you have questions, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

2003 Bar Leaders and Access to Justice Conference

The 2003 WSBA Bar Leaders Conference and Access to Justice (ATJ) Conference will be held at the WestCoast Wenatchee

Center June 7-8. For Bar leaders registration information, contact Desiree Ogden at 206-733-5931 or desireeo@wsba.org. For ATJ registration information, contact Sharlene Steele at 206-727-8262 or sharlene@wsba.org.

Loren Miller Bar Association Scholarship Dinner

The Loren Miller Bar Association's Philip L. Burton Memorial Scholarship Dinner will be held on May 30, 2003, in the Grand Ballroom of the Westin Hotel in downtown Seattle. The reception will be 5:30 p.m. to 6:45 p.m.; the dinner, 7:00 p.m. to 9:00 p.m. The cost is \$75. Please RSVP to LMBA President Karen Murray at 206-624-8105, ext. 247. The theme of the dinner is "Equal Justice for All." The keynote speaker will address the issue of justice before and after 9/11 and our roles as lawyers in responding to this crisis.

WSBA Members on Active Military Duty

WSBA members who are on active duty in the U.S. military service may transfer to inactive status (if they are not otherwise engaged in the practice of law that requires them to be active members of the Bar). The WSBA bylaws provide that a member in military service who has been inactive for five years or less may, within 90 days after termination from active duty, transfer to active Bar membership status by paying the current active membership fee and otherwise complying with the bylaws. For more information, see WSBA Bylaws Art. II (C)(3); www.wsba.org/info/bylaws.

WSBA Legal Services to the Armed Forces Committee Is Calling Volunteers

Mobilization of military personnel creates a great need for legal assistance in the areas of basic estate planning, powers of attorney and health care directives. The WSBA Legal Services to the Armed Forces Committee is spearheading an effort to gather names of WSBA members willing to serve Washington-based reservists and active armed forces and their families by volunteering their time. Volunteers will receive training from legal staff at local military bases. Please contact Ken Luce, chair of the Legal Services to the Armed Forces Committee, at 253-922-8724 or guardhi@aol.com.

The WSBA Store Is Open

The WSBA online store is open at www.wsba.org (click on WSBA Store on the left navigation bar). Purchase Cutter & Buck polo shirts, twill baseball caps, ball-point pens, and brass luggage tags emblazoned with the WSBA logo. The store features secure online credit-card ordering. You may also purchase logo merchandise by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

- Polo shirt (pewter or white, size L or XL) – \$56
- Baseball cap (stone) – \$24
- Ballpoint pen – \$12
- Luggage tag – \$7

Prices include shipping and handling. Sales tax (8.8 percent) will be added to orders shipped within Washington.

WSBA Civil Rights Committee Survey

The WSBA Civil Rights Committee has proposed that the WSBA sponsor a full-day CLE with a specific focus on Title 42, Section 1983 of the U.S. Code (civil action for deprivation of rights). The committee is conducting a survey to gather information about interest in such a topic. If this is of interest to you and you would likely attend such a CLE, we'd appreciate hearing from you. Please e mail civilrights@wsba.org with "Yes to 1983" in the subject line. This seminar would be priced at \$199 for approximately 6.5 general credits, and is tentatively scheduled for September 2003. For more information about the WSBA Civil Rights Committee, see the WSBA Web site at www.wsba.org/lawyers/groups/civilrights.

Web Site Links from Lawyer Directory

A link to your Web site can be added to your directory listing, so current and potential clients can find out more about you and your practice at the click of a button.

The fee is \$75 annually (\$50 if you sign up July 1 or later). If your firm has seven or more lawyers, you'll save through our special pricing structure. Special pricing is also available for those who work for nonprofit or government agencies. For more information and sign up instructions, see www.wsba.org/lawyers/adlink.htm.

BOG Meetings

- May 9-10 – Spokane
- June 6 – Wenatchee
- July 25-26 – Bellingham

With the exception of a one-hour executive session the morning of the first day, BOG 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 clonnas@wsba.org. The complete BOG schedule is available on the WSBA Web site at www.wsba.org/info/bog/schedule.htm.

Keep in Touch

The WSBA uses e-mail to communicate with members quickly, efficiently and inexpensively, and increasingly it is becoming the preferred method of communication among committees and sections. Please consider providing us your e mail address. Contact the WSBA Service Center at 800-945-WSBA, 206 443-WSBA or questions@wsba.org. Representatives are available Monday through Friday, 8:00 a.m. to 5:00 p.m.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in April 2003 is 1.161 percent. The maximum allowable interest rate for May is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988 June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date is on the WSBA Web site at www.wsba.org/media/publications/barnews/usury.htm.

Creed of Professionalism

The WSBA's aspirational Creed of Professionalism, developed by the Professionalism Committee with input from members around the state, and approved by the Board of Governors, has as its purpose to "inspire and guide lawyers in the practice of law." The full text of the creed can be found on the WSBA Web site at www.wsba.org/creed.



Printed copies of the creed are available for purchase (we have made every effort to keep the cost as low as possible). Printing is in black and gold on heavy cream-colored paper. The creed is available unframed, or mounted on a mahogany-finish wooden plaque. It is our hope that Washington lawyers will display the creed proudly in their offices.

Creed suitable for framing:

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health care, health-care litigation,

and

Kelly Thomas,
regulatory and reimbursement matters
and litigation, have joined the
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EDWARDS, SIEH, SMITH & GOODFRIEND, PS

is pleased to announce that

Carl T. Edwards

has rejoined the firm as of counsel
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ESS&G remains available for
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Mr. Edwards will continue his practice in
complex family law litigation.

JOHANNESSEN & ASSOCIATES, PS

is pleased to announce that

Ruth A. Holmes

has joined the firm as an associate.

Ms. Holmes' practice focuses on environmental litigation, criminal law, water law, and land use. She was previously an environmental attorney with the South Florida Water Management District and a former assistant state attorney in Florida. She received her J.D. from the University of Miami School of Law in 1997.

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KINGMAN PEABODY PIERSON & FITZHARRIS, PS

is pleased to announce

John C. Gibson

has become a shareholder of the firm.

John will continue his commercial litigation practice, with a growing emphasis representing commercial insurance policyholders in coverage disputes. He will also continue to practice in the areas of construction defect, professional liability, and wrongful death.

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SALMI & GILLASPY, PLLC

is also pleased to announce that

Daniel L. Dvorkin

has joined the firm as an associate.

Mr. Dvorkin is a 2002 graduate of the University of Washington School of Law and practices primarily in the area of construction defect defense.

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Calendar

Please check with providers to verify approved CLE credits. To announce a seminar, please send information to: WSBA Bar News Calendar, 2101 Fourth Avenue, Suite 400, Seattle, WA 98121-2330.

Fax: 206-727-8319; E-mail: comm@wsba.org

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

ADMINISTRATIVE LAW

Administrative Appeals: A Winning Strategy in Superior Court

May 16 – Tacoma. 5 CLE credits, including 1.5 ethics pending. By WSBA Administrative Law Section; 360 753-6823, ext. 231.

BANKRUPTCY

The Lawyer's Toolbox: Nuts and Bolts for New Practitioners – Consumer Bankruptcy

June 4 – Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

BUSINESS

Business Law Section Midyear

May 16 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Lawyer's Toolbox: Nuts and Bolts for New Practitioners – Business Law

June 25 – Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CONSTRUCTION LAW

Construction Law Midyear

June 20 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CRIMINAL LAW

The Lawyer's Toolbox: Nuts and Bolts for New Practitioners – Criminal Law

June 25 – Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ELDER LAW

Vulnerable Adults

June 17 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.



ENVIRONMENTAL & LAND USE LAW

Building a Vision for Washington's Future: What Will Our State Look Like in 2025?

The Environmental and Land Use Law Section Midyear Meeting and Seminar

May 1-3 – Yakima. 11.5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

The Lawyer's Toolbox: Nuts and Bolts for New Practitioners – Estate Planning and Probate Practice

June 11 – Seattle. 2.5 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Real Property, Probate and Trust Section Midyear

June 6-8 – Yakima. 11 CLE credits, including 2.25 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

The Lawyer's Toolbox: Nuts and Bolts for New Practitioners – Family Law

June 18 – Seattle. 3.25 credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Family Law Midyear

June 27-29 – Ocean Shores. 11 CLE credits, including 1.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

GENERAL

2003 Inter-County Guardian Ad Litem Training

May 8-9 – Seattle. 13.75 CLE credits, including 1.75 ethics. By King County Bar Association; 206-340-2578.

The Lawyer's Toolbox: Nuts and Bolts for New Practitioners – Setting Up Your Practice and Handling Your Trust Account

June 18 – Seattle. 3.5 credits, including 1.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

UCC Article 9

June 13 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

INDIAN LAW

WSBA Indian Law Section CLE: Tribal Land and Wealth Management

May 9 – Seattle. 8.25 CLE credits, including 1 ethics pending. By UW-CLE; 800-CLE-UNIV.

INTERNATIONAL PRACTICE

The World Wide Web of Commerce – The International Law Section CLE

May 16 – Seattle. 6.75 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LITIGATION

Workers' Compensation: Healing the Worker through Difficult Times

May 9 – Seattle. 6.25 CLE credits, including .5 ethics. By WSTLA; 206-464-1011.

Nursing-Home Litigation and Elder Law: Protecting the Vulnerable

May 14 – Seattle. 4 CLE credits. By WSTLA; 206-464-1011.

Brain Injuries

May 22 – Seattle. CLE credits TBD. By WSTLA; 206-464-1011.

Trial Skills in the Courtroom

May 29-30 – Seattle. Up to 12.75 CLE available. By WSTLA; 206-464-1011.

Nuts and Bolts of the PI Practice

June 12 – Seattle. CLE credits TBD. By WSTLA; 206-464-1011.

The Lawyer's Toolbox: Nuts and Bolts for New Practitioners – Civil Litigation

June 11 – Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Litigation Midyear Seminar

June 20-21 – Seattle. 7.5 CLE credits, including 2.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Building Trial Skills

June 21-29 – Seattle. CLE credits TBD. By National Institute for Trial Advocacy; 800-225-6482.

REAL ESTATE

The Law of Adjoining Properties: Handling Matters Relating to Neighboring Lands

May 8 – Tacoma; May 9 – Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Lawyer's Toolbox: Nuts and Bolts for New Practitioners – Residential Real Estate

June 4 – Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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Associate position: Thriving Spokane law firm with large probate, will, and elder law practice seeks an experienced associate. Excellent benefits/compensation negotiable. Please send résumé to: *WSBA Bar News* Job Code 632, 2101 4th Ave., Ste. 400, Seattle, WA 98121-2330.

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mental agencies. Please contact Law Dawgs, Inc. in confidence at 206 224 8269; e-mail seattle@lawdawgs.com; <http://www.lawdawgs.com>.

Minzel and Associates, Inc. is a temporary and permanent placement agency for lawyers and paralegals. We are looking for quality lawyers and paralegals who are willing to work on a contract and/or permanent basis for law firms, corporations, solo practitioners and government agencies. If you are interested, please call 206-328-5100 or e-mail mail@minzel.com for an interview.

Quality attorneys sought to fill high end permanent and contract positions in law firms and companies throughout Washington. Contact Legal Ease, LLC by phone, 425-822-1157; fax 425-889-2775; e-mail legalease@legalease.com; or visit us on the Web at <http://www.legalease.com>.

Export your legal skills: The Central European and Eurasian Law Initiative (CEELI), a project of the American Bar Association, seeks law professionals with at least five years' experience to develop, coordinate and implement legal-reform projects in central and eastern Europe and the former Soviet Union. Positions of various lengths are available throughout the region to work on judicial reform, gender issues, anti-corruption, legal education, criminal law, legal-profession reform, and conflict management. CEELI participants receive a generous support package covering all housing, transportation, and general living expenses. To request an application, please contact Warren at ceeli@abanet.org or visit our Web site at <http://www.abanet.org/ceeli>.

Join the world's largest law firm, the Army JAG Corps! The Army Reserve needs a "few good lawyers" to serve as judge advocate officers in Seattle, Spokane, Tacoma and Vancouver. Become part of a 225 year tradition of providing legal counsel to commanders and soldiers. One weekend a month and two weeks a year provide supplemental income, low cost life insurance and dental benefits, commissary and exchange privileges, a defined-benefit retirement plan, travel opportunities, continuing legal education, and personal and professional development. Prior

military service is preferred, but not required. Idaho and Oregon attorneys and law students are welcome to apply. Visit our Web site at <http://www.jagcnet.army.mil>. Send cover letter and résumé to Commander, 70th Regional Support Command, Attn: AFRC CWA-JA (Staff Judge Advocate); 4570 Texas Way W., Fort Lawton, WA 98199 5000.

Litigation attorney: At least one year's experience in insurance defense, personal-injury law needed for downtown Portland, OR, law firm. We are looking for an attorney to handle cases for our SW Washington practice group. Washington Bar membership required, Oregon Bar a plus. Competitive salary, benefits, team-oriented atmosphere. Please send cover letter and résumé to Managing Partner, Smith Freed & Eberhard PC, 1001 SW 5th Ave., Ste. 1700, Portland, OR 97204. Visit our Web site at <http://www.smithfreed.com>.

Attorney: At least one year's experience in construction law needed for downtown Portland, OR, law firm. We are looking for an attorney to handle cases for our SW Washington practice group. Washington Bar membership required, Oregon Bar a plus. Competitive salary, benefits, team-oriented atmosphere. Please send cover letter and résumé to Hiring Partner, Smith Freed & Eberhard PC, 1001 SW 5th Ave., Ste. 1700, Portland, OR 97204. Visit our Web site at <http://www.smithfreed.com>.

Associate attorney for downtown law firm: Carney Badley Spellman seeks a litigation associate, minimum five years' experience, for our asbestos department. Products liability experience preferred. Ideal candidate will have in depth experience with discovery, depositions, writing briefs, motion/courtroom practice, settlement negotiations, as well as trial management. Strong academics, proven communication and writing skills, leadership qualities. E-mail résumé to dillard@carneylaw.com or mail to Deborah Dillard, 700 5th Ave., Ste. 5800, Seattle, WA 98104.

Assistant general counsel/manager, legal services: This position reports directly to the general counsel and is responsible for providing legal counsel to all levels of staff concerning policy issues and operational matters. The incumbent must have management and leadership skills; proven ability to manage activities of both internal staff and coordination of efforts of outside attorneys. Required criteria: demonstrated mastery of the following areas of expertise: finance, labor/human resources, contracting, procurement and regulatory law. In depth knowledge of Washington state statutes as applied to public entities, federal statutes applicable to labor, and affirmative action and EEO laws is required.

Experience in managing complex litigation is required; an aggregate of 10 years' experience in municipal or public utility law. The minimum prerequisites necessary for the position include a J.D. degree and active membership in the WSBA. Energy Northwest is a tobacco-free environment and administers drug/alcohol testing. Please e-mail your résumé to slschwartz@energy-northwest.com and indicate the job title in the subject line. If you do not have access to e-mail, please mail or fax your résumé and indicate job title and requisition number to Energy Northwest, Attn: Sherri Schwartz, PE07; PO Box 968, Dept. 235-SS, Richland, WA 99352; fax 509-372-5205. Energy Northwest is committed to a diverse workforce. Non-U.S. citizens must prove authorization to lawfully work in the United States. Please visit our Web site at <http://www.energy-northwest.com>.

Young, deNormandie & Oscarsson, a commercial law firm, seeks attorney with at least three years' litigation experience to join our litigation department, emphasizing business, real estate, maritime and employment litigation. A strong commitment to a litigation practice is essential, as well as excellent analytical and writing skills. We provide a competitive salary, benefits and a congenial work environment. Send résumé to Karien Balluff, 1191 2nd Ave., Ste. 1901, Seattle, WA 98101; balluff@youngdenormandie.com. No phone calls please.

Small AV-firm that focuses on representing plaintiffs in construction defect and product liability cases seeks attorney with a minimum of four years' experience for Seattle office. Strong academic background and superior writing skills. Please fax résumé to Levin & Stein at 206-521-8614.

Land-use attorney: Small firm, Pike Place location. Looking for candidates with two years' experience in land use. Some real estate and/or litigation background helpful. We represent owners, users and developers seeking entitlements throughout Washington. All responses kept in confidence. Résumé and writing sample to Hiring Partner, McCullough Hill Fikso Kretschmer Smith, 2025 1st Ave., Ste. 1130, Seattle, WA 98121. No calls please. <http://www.mhfs.com>.

Small creditors' rights: Bankruptcy/foreclosure/collection law firm seeks associate attorney. Send résumé and salary requirements to: WSBA *Bar News* Job Code 631, 2101 4th Ave., Ste. 400, Seattle, WA 98121-2330.

Bankruptcy lawyers needed: National company seeking attorneys licensed in Washington in order to provide personal bankruptcy services. Cases assigned to attorneys on a referral basis. Fax qualifications to 410-265-6767, Attn: Washington Attorney Recruiter,

or e-mail drchargeit@cs.com for immediate consideration.

Riddell Williams PS currently has an opportunity for a litigation associate with a minimum of three years' experience to work with our expanding base of self-insured product manufacturers. Our clients produce a wide variety of products, ranging from electrical components to bicycles to cranes. Candidates must have outstanding academic credentials and excellent written and oral communication skills. Strong organizational and case-management abilities a must due to substantial and immediate client contact. To serve these clients, a strong interest, background and/or aptitude in mechanics is essential. Send cover letter, résumé and transcript to Claudia Moshuk, Director Human Resources, Riddell Williams PS, 1001 4th Ave., Ste. 4500, Seattle, WA 98154. We are an equal opportunity employer committed to employing a diverse workforce. No phone calls please.

The law firm of **Phillips & Bohyer** is seeking applicants for an associate attorney position. Candidates must have at least one year's experience, preferably in litigation/insurance defense. Phillips & Bohyer was founded in 1982, is an AV-rated firm, and has a growing practice with 11 attorneys and an experienced paraprofessional staff. Salary DOE, with excellent benefits package. Applications should be sent by June 1, 2003, to Attn: Robert Phillips, PO Box 8569, Missoula, MT 59807.

Kingman Peabody Pierson & Fitzharris PS, an AV-rated civil litigation firm in downtown Seattle, is seeking an associate with at least two years' experience handling all aspects of litigation. The successful candidate will have strong academic credentials, keen research and analytical skills, a solid work ethic, and the demonstrated ability to write persuasively. Insurance coverage experience is a plus. Please send a cover letter and résumé to John C. Gibson, 505 Madison St., Ste. 300, Seattle, WA 98104.

Established Bellingham firm seeks two associate attorneys with at least two years' experience. Salary DOE, plus benefits. Send résumé to Diane at Tario & Associates PS, 119 N. Commercial St., Ste. 1000, Bellingham, WA 98225.

Dickson Law Offices, a firm representing local businesses and individuals in the areas of real estate, construction and business law, is seeking an attorney with at least two years' experience to join the firm. Candidates must have a strong academic background, interest in real estate and construction, or business law, and excellent communication, writing and client-relations skills. The ideal applicant must be able to work independently and feel comfortable working in a fast-paced environ-

ment. Send résumé and cover letter to Kelly DeLaat-Maher, 1201 Pacific Ave., Ste. 1425, Tacoma, WA 98402.

Litigation: 14-attorney firm in downtown Seattle (AV rated) is seeking a recent law school graduate to work as a contract attorney on a large nationwide litigation project. The work will initially consist of assisting in the development of the process to effectively coordinate the litigation with local counsel in various states, document control and calendaring, and handling telephone calls and written inquiries from parties and counsel concerning the litigation. The position may assume additional duties and responsibilities as the litigation progresses, and upon the demonstration of proficiency. For information regarding our firm and practice, please see our Web site at <http://www.yarmuth.com>. Please send résumé and cover letter to John Jamnback at Yarmuth Wilsdon Calfo PLLC, 1201 3rd Ave., Ste. 3080, Seattle WA 98101.

Family law and litigation attorneys: Lasher Holzapfel Sperry & Ebberson PLLC has immediate openings for attorneys with a minimum of three years' experience in family law or commercial litigation (construction law experience a plus) to support our busy litigation department. Plenty of interesting work for motivated individuals who desire to build a practice. Candidates must have excellent academic credentials as well as strong interpersonal, writing and research skills. We offer competitive salary and benefits; and a friendly, supportive workplace. Interested candidates should submit résumé and writing sample to Personnel, LHS&E, 601 Union St., Ste. 2600, Seattle, WA 98101; fax 206-340-2563; <http://www.lasher.com>.

Family law associate attorney: Tacoma law office seeks qualified associate with superior writing and oral presentation skills. Successful candidate must be independent self-starter and able to work independently, result-oriented; possess common sense and a strong work ethic. Family law experience and WSBA membership required. Send cover letter, résumé with references, and three-page writing sample to josephsondb@aol.com or by mail to Deborah Josephson, 7025 27th St. W., Ste. 6, University Place, WA 98466.

Small AV-firm representing plaintiffs in personal-injury matters is hiring an attorney with at least three years' litigation experience. We are seeking an attorney who can handle all aspects of civil litigation, including discovery, depositions, arbitrations and trials. Excellent oral and written advocacy skills necessary. Submit cover letter and résumé to Gail Lundgren, 900 Aurora Ave. N., Ste. 100, Seattle, WA 98109; or gail@bernardlundgren.com. No phone calls.

Litigation associate: Chisn, Thiel, McCafferty & Campbell PLLC, a six-attorney AV-rated downtown Seattle firm with a growing litigation practice, seeks an associate with at least two years' litigation experience. Construction experience will be helpful. Applicants should possess good academic credentials; superior research, writing and oral advocacy skills; and a strong work ethic. Excellent salary and benefits package. Send cover letter and résumé to Hiring Partner, CTMC; 2001 Western Ave., Ste. 430, Seattle, WA 98121; or e-mail scampbell@ctmclaw.com.

Associate position: Established downtown Seattle commercial litigation firm seeks an associate with at least three years' experience. Excellent academic credentials. Law Review preferable. Contact Linda at 206 621-7100 or e-mail résumé@linclap@smythlaw.com.

Half-time litigation attorney: Minimum three years' insurance defense experience required. Ideal position to bridge to your own practice or simply work part-time. Excellent pay on contract basis. Bellevue. Fax résumé to 425-818 4882.

Chmelik Sitkin & Davis PS is a well-established eight attorney business, municipal, real estate and land use firm in Bellingham. We represent a wide variety of business clients, port districts, fire districts and other municipal governments throughout northwest Washington. We are seeking an associate attorney with a minimum of three years' experience in business and transactional law. The ideal candidate will have demonstrated success in law school, solid experience, and the desire to work in a collegial environment in an expanding law practice. The firm provides a competitive salary and excellent benefits in an ideal location with an opportunity to develop a successful practice. Please send a résumé, references and a cover letter to Chmelik Sitkin & Davis PS, Attn: Linda Sahlin, 1500 Railroad Ave., Bellingham, WA 98225.

Disciplinary counsel: One or more regular or contract positions are available with the WSBA. Must have five years' practice experience including litigation, be licensed in WA, and have excellent writing skills. \$50-55,000 per year. Send cover letter, résumé and references to HR@wsba.org or Human Resources, WSBA, 2101 4th Ave., Ste. 400, Seattle, WA 98121-2330; or fax 206-727-8319. See also www.wsba.org.

WILL SEARCH

Searching for the will of Michael Arthur Toomey who was a resident of Port Orchard, WA. Prior to, he resided in Sacramento, CA. He was born in 1938. If you have a copy of any will or know any information, please contact Diane at 360-876-5567 or polawyers@hotmail.com.

Searching for the will of George Q. Tussup of Seattle, WA, who passed away in January 2003. If you have a copy of his latest will or information about it, please contact Robert Baker at 206 464 1000 or rbaker@lbb-law.com.

SERVICES

Forensic scientist: 25 years' crime-laboratory experience. Expert in civil and criminal issues associated with firearms, alcohol and crime scenes. <http://www.pexforensic.com>; Jim Pex, 541-756-2044.

● **Oregon accident?** Unable to settle the case? Associate with an experienced Oregon trial attorney to litigate the case and share the fee (proportionate to services). OTLA member; references available; see Martindale, AV-rated. Zach Zabinsky, 503-223-8517.

Fast cash for seller carry-back real estate or business notes, divorce liens, structured-settlement annuities, and other cash flows. We appraise notes. 31 years' experience. Larry or Lorelei Stevens (father/daughter team). Wall Street Brokers, Inc.; 800-423-2114 or 206 448 1160. Free amortizations.

Forensic document examiner: Trained by Secret Service/U.S. Postal Crime Lab examiners. Court qualified. Currently the examiner for the Eugene Police Dept. Only civil cases accepted. Jim Green, 541-485-0832.

Lump-sums cash paid for remaining payments on seller-financed real estate notes and contracts, business notes, structured settlements, annuities, inheritances in probate, lottery winnings. Since 1992. Cascade Funding, 800-476 9644; <http://www.cascadefunding.com>.

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Contract briefing: Research, write or publish. 19 years' litigation at Perkins Coie, three years' advanced writing studies. Harvard College/Chicago Law honors graduate. \$55/hour. Rex Browning, 206-236 2723 or wcw7360@attbi.com.

Corporate filings made easy: Olympia law firm will file your client's corporations, LLCs same day and fax you proof. Set fee. Call 360 786 6500.

Certified fraud examiner/investigator: Specializing in fraud, ethics, Wash. "RICO" and liquor liability cases. 28 years' experience. Expert witness. Kenneth Wilson, 360-956-1674; e-mail ken@wilsonis.com; <http://www.wilsonis.com>. UBI 602-097 839.

Contract attorney at your service: Legal research and writing for Washington lawyers. I draft briefs and memoranda, and review documents. Located near UW law library. Many satisfied clients. Elizabeth Dash Bottman, 206-526 5777; e-mail bjelizabeth@qwest.net.

Contract attorney: All aspects of litigation and appeals, including research. Former name partner in small litigation firm. 11-plus years' experience. Have conducted numerous civil jury trials, including complex litigation. Reasonable rates; variable per type of work. Pete Fabish, 425-377-8296.

Translating and interpreting services for Chinese language: 30 years' experience in immigration, medical, marine, commercial fields. China Pacific Ventures, 206-361-1981.

Plaintiffs' attorneys: Venture capital now available to cover your costs in contingent-fee cases. Professional; confidential. Repayment contingent on recovery. \$25,000 to \$5,000,000. SK Litigation Funding Corp., 360-690-1182; e-mail litigationfund@aol.com.

Experienced central Washington attorney: Available for contract or part-time legal services in civil and/or criminal law. Substantial litigation and trial experience. References and résumé available upon request. Also will consider full-time position. Call 509-949-3694.

MISCELLANEOUS

Sunriver, OR: Four bedrooms, two and a half baths, sleeps 10. Hot tub, pool table, four TVs, two VCRs, two DVDs, canoe (near Deschutes River), bikes. Large decks overlooking golf course. No smoking/pets. \$195-295 per night. 541-276 1865.

Maui: Deluxe one-bedroom beachfront condo in West Maui. Sleeps four. Pool, tennis, workout room, daily maid service. \$130-150/night. Call 206-728-7799 or e-mail sfriedmanlaw@aol.com.

Vacation in Sunriver, OR, with Sunset Realty: 250 plus vacation homes and condos from rustic to luxury! Discounts on lodging, Mt. Bachelor lift tickets, golf and recreation! Call 800-541-1756 or book online at <http://www.sunset.com>.

Escape to one of the best-kept secrets in Oregon's magnificent coast: Beautifully designed beach house on hillside in scenic village of Oceanside. Panoramic view with only five blocks to beach. Three bedrooms, three baths, four decks, gourmet kitchen; master suite includes king bed and spa tub with view. Crabbing in nearby Netarts Bay. 75 miles from Portland and a four-and-a-half hour drive from Seattle. \$250 weekend, \$500 week, \$60 weekday. Call Michael at 503-478-1280.



"How could they tell?"

— Dorothy Parker, on hearing the news that President Coolidge had died (1933)

Washington Journal died last October. Like Mrs. Parker, I wasn't sure how they could tell; I didn't hear about it until one of its former staffers e-mailed me a few weeks ago seeking freelance work.

WJ was a tabloid newspaper owned by the Daily Journal Corporation of Los Angeles. Figuring — like another cloner of the time, the *Lawyers Weekly* newspaper chain — that one size would fit all states, *WJ* tried wrapping a wisp of local content around its LA-based copy and stormed north just after another entrant, *Minnesota Law*, cloned itself, called itself *Washington Law*, and went broke.

Well-bankrolled, *WJ* launched at the state Bar convention, sponsoring a luncheon event *Bar News* had to buy a ticket to cover. They got WSBA's president to wave a copy in the air and tell the assembled members it looked like a fine new paper they should all sign up for. They had a big booth in the exhibition hall. *WJ* got a sitting member of the Board of Governors to write a column on BOG meetings. Their main claim was having case-law summaries out before the *Advance Sheets* did, but over time the Internet wore down that competitive advantage. The rest was copy from their other papers, wire-service features, and a cover page with two or three Washington items. For a few years they were the big deal in our little marketplace of ideas. Then they seemed to drift out of sight. No one talked about the paper; you didn't see it around much.

In October 2001 *WJ* closed its Seattle office and stopped publishing, but kept the paper's Internet version going. "It had proven a very unprofitable venture for us," *WJ*'s editor said in an interview. "Our publishers have not been very bottom-line oriented and have been willing to keep unprofitable ventures going if they were providing a service to the community, but we were losing subscribers and readers in Seattle. We felt that the support of the readership wasn't there and what it would take to get it back was really more than it was prudent for us to invest at this point." A year later, last October, the Internet version was shut down, too.

I expect the handwriting had been on the wall for a while. In 1997 *WJ* contacted the Board of Governors and proposed buying *Bar News*, promising to include some of its content in their paper in return for getting their mitts on your addresses.

Still Standing

by Lindsay Thompson
Bar News Editor

Unlike another 1981 buyout proposal the *Bar News* Editorial Advisory Board rejected out of hand, the Board of Governors actually considered doing it. Fortunately, the idea eventually went away, and, in due course, so did *Washington Journal*. Commercial publications may have more resources, look flashier, and pay lots of staff writers for shiny copy, but when they aren't making money they bail out. Had the WSBA made the deal, we'd be SOL now.

By contrast, *Bar News* may seem sort of boring and it may not manage to find the right mix of articles to satisfy every taste every month, but it's always there. It costs only a few bucks a month out of our licensing fees, and covers its direct costs because Jack Young, who has been advertising manager for 11 years, is brilliant at winning advertisers. He gets too little credit for his work, and I am glad to be able to shine the spotlight his way in this space.

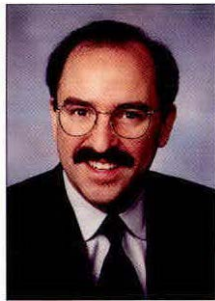
For a long time the WSBA starved *Bar News*, pool-poohing things like money for cover and inside art, and spot color, as trendy fripperies, then complaining later on when members said the magazine looked boring and dated. More recently, WSBA Executive Director Jan Michels and Member and Community Relations Director Judy Berrett have given *Bar News* the staff and resources, and Managing Editor Amy Hines provides the wise eye for design and layout, to realize its current professional look and feel. I am grateful to them for giving me a lot of rope to run with as editor. The BOG's current oversight committee, chaired by President-elect David Savage, has people on it who actually like *Bar News*. In April we looked at models for an all-member reader survey. If we can get the funding for it, we'll have the opportunity to ask all of you what you like about *Bar News*, and what you'd like to see that's not here now.

The committee also recognizes *Bar News*'s core value: it's our magazine, WSBA members' magazine. Virtually all the copy is by WSBA members and about the law we practice. *Bar News* is the only publication for *all* WSBA members, all the time, and no one else. It has been that way since 1935. Not much glamour, but plenty of professional debate, fellowship and practical content. I hope that will never change. ♣

Lindsay Thompson edited Bar News from 1988 to 1995 and returned in December 2002. His friends call him the Grover Cleveland of Bar News editors. You can reach him at tradelaw@thompsonlaw.com.

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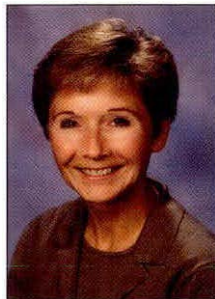
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