Vol. 57 No. 8

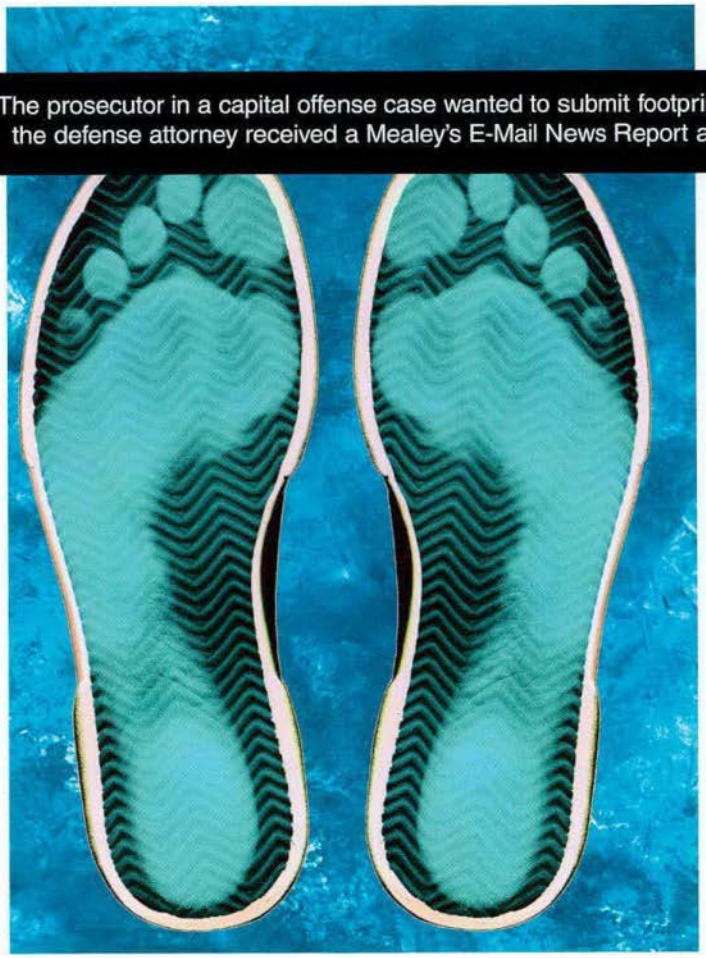
Washington State

BarNews

The Official Publication of the Washington State Bar ■ AUGUST 2003

It Can't Happen Here?
p. 26

Are footprints as foolproof as fingerprints?



The prosecutor in a capital offense case wanted to submit footprints taken inside a shoe as evidence. Two nights before the trial, the defense attorney received a Mealey's E-Mail News Report about a case that questioned the admissibility of this evidence.

The Mealey's E-Mail News Report notified the defense attorney of a recent court decision from the highest court in a neighboring state. He was surprised to find the prosecution's expert witness had also testified in that case. But the court held that footprints from inside a shoe were not a recognized area for expert testimony under the Daubert standard. As the defense attorney continued his search of analytical sources from Matthew Bender® including *Moore's Federal Practice*® on the LexisNexis™ services, he quickly found further supportive commentary and analysis. When you need to go a step beyond cases and codes in your research, use the LexisNexis™ Total Research System—**It's how you know.**

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Aaron J. Wolff

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August 2003

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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 appropriate.

BarNews

Published by the

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Ave., Ste. 400
Seattle, WA 98121-2330

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Washington State Bar News (ISSN 886-5213) is published monthly by the Washington State Bar Association, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, and mailed periodicals postage paid in Seattle, WA. $8.15 of an active member's dues is used for a one-year subscription. For inactive and emeritus members, a free subscription is available upon request (contact Amy O'Donnell at amyo@wsba.org or 206-727-8213). For honorary members, the annual subscription rate is $15. For nonmembers, the subscription rate is $36 a year. Washington residents add 8.8 percent sales tax.

Postmaster: Send changes of address to:
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2101 Fourth Avenue, Suite 400
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Letters to the Editor

Nothing should ever be done for the first time

I've been reading more about this firestorm of controversy about "new" sections in the Bar, triggered by publication of the article on WSBA's animal rights section. (*Editor's note:* The new section is the Animal Law Section.) It seems to be all grumbling from what I speculate are charter members of the "just-like-me" section of the Bar. They appear to be uncomfortable with anything that is different in any manner from the way they see things. Bless their hearts; they're just advancing the so-called homo-sectional agenda.

David Hiscock
Seattle

A new copyright system is needed

J. Michael Keyes hit the nail on the head regarding the extension of copyright protection to the now absurd life plus 70 years ("Has the Duration of Copyright Turned Wrong?" June 2003). While the majority in *Eldred v. Ashcroft* found that Congress acted within its power in expanding copyright duration, it gave short shrift to the economic policy underlying intellectual property rights as laid out in the Constitution.

While most Americans intuitively understand the need to provide incentives (through copyright or patent protection) to create intellectual property works, few also recognize the equally important goal of maximizing distribution of those products to all consumers who would stand to benefit. The extension of copyright protection to the life of the author plus 70 years thereafter will not increase incentives to create copyrightable works in any meaningful way, but will keep works out of the public domain for a truly excessive amount of time.

Given this dilemma, the United States should consider the creation of a "government-run reward system" under which authors and innovators would be paid directly by the government for their intellectual property creations. In turn, their works would pass immediately into the public domain so that they are freely reproducible and distributable at their marginal cost of production (rather than the monopoly price which prevails under copyright and patent law today). In its ideal form, the reward system thereby allows for both: (1) socially optimal creation (because authors/inventors still receive financial inducement to create) and (2) optimal distribution of intellectual property works (because there is no longer any monopoly protection over the work keeping it out of the public domain). Taxes would need to be raised to fund these public "rewards," but prices would correspondingly fall dramatically so that the net outlay from the consumer's perspective would be close to the same. The only difference would be that many more Americans—especially poorer Americans—could have access to creations and innovations which they cannot afford today.

Steve P. Calandrillo
Assistant Professor
University of Washington School of Law
Seattle

I never realized life could be so simple

Thank you for publishing Roger Ley's letter (*Bar News*, June 2003) about why the Columbia Legal Services program should be abolished and why IOLTA funds should

not be used to fund it in any event. If I ever read a brief that would persuade me to rule in the other party's favor without reading the other brief, it is Ley's letter. Ley's arguments are breathtaking.

He says that Columbia is bad because "Columbia discourages self-reliance." That argument is so persuasive I request legislation immediately barring anyone from hiring a lawyer to help them in court. After all, isn't allowing lawyers to help anyone discouraging self-reliance? I'm sure that's what Ley really intends—because I'm sure he's truthful and honest—so he must be refusing help to every prospective client who comes to him.

Ley then argues, "Columbia and courts are poor institutions for deciding entitlement claims. All they do is substitute the judgment of a legal services lawyer and a judge for the judgment of someone in the executive branch. There is no reason to assume that judgment is better (a pun here) and there is plenty of room to discredit it."

Hooray for Roger, now we can completely eliminate the judicial systems of America and let President Bush make all the decisions! Think of the money we'll save! What the hell was the matter with those who wrote such nonsense in our federal and state constitutions as creating constitutional rights and courts to check the powers of the executives and majority in our legislatures? And I'm especially happy to hear that Roger would never take a client of his to—forbid the thought—the courts.

Then Ley says, horrors—"Columbia lawyers are bound by their ideology and the need to please their benefactors." Now when I worked at Bogle & Gates years ago, I was given the crazy idea that the only thing that mattered in the world was what their large clients wanted and how solvent they were. I am sure Roger and the rest of you lawyers aren't that way, though. (By the way, I left that firm to go to work for King County Legal Services so I wouldn't go to hell.)

Lastly, Ley says, "IOLTA raises issues of taking, freedom of speech, use of public money for private parties, taxation, and the authority of courts." Talk about taking, I just know that Roger is going to demand that the Mariners and Seahawks give us taxpayers back the hundreds of millions of dollars they took in value from the stadiums we built for them.

Roger, where have you been when this country needed your wisdom?

Bert Metzger
Seattle

CLS takes up the Thompson challenge

In the April cover story, *Bar News* Editor Lindsay Thompson offered a challenge to some of his readers: find the answer to the unmet legal needs of the poor. Thompson's story gives us a fresh look at a long-standing problem.

New Mexico attorney John Robb was a member of the ABA's Legal Services Corporation (LSC) committee in 1967 and helped launch LSC in 1974. President Clinton recognized Robb's efforts in the White House in 1999, and a few months ago the LSC board presented to Robb its Lifetime Achievement Award.

In 1997 Robb was nearing the end of a distinguished career in his big Albuquer-

que firm, a career that included one notable cross-examination of Perry Mason (uh, that is, actor Raymond Burr). Instead of retiring to sailboats and golf courses, Robb went of counsel at his firm and threw his time and endless energy into building a new army of *pro bono* legal services providers working through community clinics.

Robb took his vision to the Christian Legal Society (CLS), a national association of Christian lawyers, judges, law professors and students founded in 1961. A past board member, Robb saw CLS as the perfect vehicle to inspire a new generation of legal clinics designed to address not merely the legal needs of the poor, but also their emotional, physical, educational, career and even spiritual needs.

Robb's dream is driven by his passion for legal aid and his unshakeable belief in the power of Jesus Christ to give hope and change lives. Robb's plan drew a warm welcome from CLS, and one of this nation's most promising networks of legal aid providers was born.

In the fall of '97 Robb kicked off his five-year plan at the CLS conference in Lexington, Kentucky, with a call to law students gathered from around the country. Among them was Bernard Veljacic, a 3L from Seattle University, who caught the bug. Upon his return Veljacic approached Herb Pfiffner, executive director of Seattle's Union Gospel Mission, about establishing a legal clinic at the mission. Pfiffner agreed to hire the young student and put him to work serving the mission's clients as soon as he graduated and passed the bar exam. Union Gospel Mission Legal Services opened its doors in Pioneer Square in the summer of 1999. It now helps about 20 new clients each month under the guidance of its current full-time director, Teresa Tippett, a former Perkins Coie associate with a heart for legal aid.

Nearly two dozen local attorneys and judges serve on an advisory committee for the mission's clinic, including King County Prosecutor Norm Maleng. Maleng says, "Union Gospel Mission has served the poor in Seattle for 70 years. I'm so proud to partner with Teresa as she and others at the legal clinic offer direction and hope to the needy and disenfranchised in our community."

Last year, with the help of nearly 40 volunteers, from solo practitioners to big-firm partners, first-year law students to experienced county prosecutors, more than 230 clients received legal advice at the mission's clinic. That clinic, however, is just one of 35 CLS-affiliated legal aid clinics in the U.S. In 2002 this network of about 600 lawyer and law student volunteers and staff delivered 21,000 hours of legal aid to more than 4,000 hurting people.

These impressive numbers are not the measure of success. Nor is a win in court. The real victory is being there for just one person in a time of need. "What I enjoy most about my job," says Tippett, "is working one-on-one with the clients, and partnering with them as they transition from homelessness to self-sufficiency."

Three years ago James Noriega slept on the streets of Seattle's Pioneer Square, unemployed, hooked on meth, alienated from everyone who cared for him. Noriega accepted an invitation to the mission. Soon afterwards, then-director Veljacic learned that Noriega's ex-wife had filed to terminate his parental rights to their nine-year-old son and seven-year-old daughter.

Veljacic made arrangements for Noriega to meet with a volunteer attorney at the clinic. Kyle Netterfield, an associate at the Seattle firm of Ellis, Li & McKinstry, agreed to take the case *pro bono*. But before his case went to trial, the cops arrested Noriega on a warrant from a previous drug charge and took him directly to jail from a church service in Bremerton.

Unfortunately, Noriega lost his case and the right to see his children. Even so, he says of Netterfield, "He helped me when I was at the bottom. He started out as my attorney, but became my friend. Kyle visited me in jail. And he prayed with me," recalls Noriega. "In fact, he had me over at his place last Christmas with his wife and kids. I really love that guy."

Today Noriega is on staff at the mission as outreach coordinator, helping others get off the street. Netterfield may have lost in the courtroom, but he was and he continues to *be there* for Noriega. That is the measure of success.

CLS recently unveiled its second five-year plan. "We're going from 35 to 150 clinics by the end of '07," exclaims Robb. That's not as big as Robb's other startup, Legal Services Corporation, but it's an awfully good start to the challenge presented by Lindsay Thompson in April.

"We're so proud of the job Teresa is doing in Seattle," Robb adds. "And we're excited to see God raise up similar legal clinics all over Washington state and around the country."

If you want to know more about Christian Legal Society's legal aid program or want to explore starting a clinic in your community, visit www.clsnet.org, or call John Robb at 505-765-5900.

Andrew J. Toles
Seattle

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., August 10 for publication in the October issue.

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Time to Go Public?

(Should We Invite Nonlawyers to Sit on the Board of Governors?)

by Dick Manning
WSBA President

Change is all around us. Usually it augurs improvement—something that fulfills an unsatisfied need. But rarely does change—almost always a departure from "the way we've always done it"—come about without stress and anxiety, and, for some, a lot of pessimism.

It's time to consider whether we should add to the WSBA Board of Governors a couple of wisely chosen nonlawyer members of the public, with full voting rights. "You must be kidding!" No, I'm not! And to those to whom I just responded, I can only say that you're letting fear grip you before you've heard the statement *for* public members.

Over the last four years, WSBA leadership has emphasized and promoted *diversity* in who sits as a governor.

When I approach this subject—something I've sought and discussed for several years—I'm reminded of how far we've come, and yet how far we have to go. To some, having nonlawyer members on the BOG would be as loathsome as helping the fox get into the henhouse. The reaction might be likened to that presented in a case before the U.S. Supreme Court in 1873. Speaking for the Court in Myra Bradwell's petition to be admitted to the practice of law, one of the justices said (perhaps with a large dose of chauvinism as well as trepidation), "there is not the slightest expectation that a license to practice law would ever be extended to women."

So why should the BOG go public? In a phrase? *Our own self-interest!* Our primary calling, as in every other profession, is to serve the public. A nonlawyer can come to the policy-making body of the BOG without the trappings and baggage that we lawyers accumulate over the years. A nonlawyer can provide insight into our board work that would otherwise be absent. "Hogwash!" you say. "We lawyers are in a much better position to know what's best for the profession—we know more about it than anyone else!"

It reminds me of the self-satisfaction (it's forgivable—it's ingrained in lawyer lore) some of us have when we talk about trying a lawsuit—we can hardly wait to get into the courtroom and show the other side how wrong they are. Yet, according to a survey of litigants in civil trials that was conducted in the 1980s by the American Judicature Society, 70 percent of the "winners" were dissatisfied with the process. Presumably, 100 percent of the "losers" were dissatisfied. So much for this vision of ourselves.

This is a new idea, you say. Wrong! Eleven states have nonlawyer members (with full voting rights in eight states) on their policy-making boards of governors or trustees. This includes two of our Northwest neighbors, Oregon and Utah. Oregon has four nonlawyer members on its 16-member board. In numerous discussions with Oregon's bar leadership, we have heard nothing but praise for the contributions of the citizen members. Ditto for Utah. In fact, in a poll of these 11 states by a study group chaired by WSBA Governor Howard Graham, not a single expression of criticism or dissatisfaction has been voiced about this public representation. *However, everyone agrees the quality and wisdom of the process of selection of such a member are vital.*

Still skeptical? We are a state agency (defined by statute), a quasi-public body. We have a written open-meetings policy. Over the last four years, WSBA leadership has emphasized and promoted *diversity* in who sits as governor. Our efforts are beginning to be fruitful. Why should we be any different from public corporations such as many of the Fortune 500s? The wise, forward-thinking leaders of these companies seek out board directors for their diversity of professions, occupations, education, ethnicity, and life experiences.

Still not convinced? Then why is it that the leadership of our bench and bar has elected:

- to constitute the present membership of the Washington State Commission on Judicial Conduct with a majority of nonlawyers;
- to require in our lawyer discipline system that every review committee (the gatekeeper before a complaint is filed by the state bar against a lawyer after a grievance has first been investigated) consist of at least one nonlawyer; and
- to require that four members of the 14-member Disciplinary Board be nonlawyers?

And it goes on and on: Nonlawyer members on the Lawyers' Fund for Client Protection Committee (two), Character and Fitness Committee (three), Mandatory CLE Board (one), Limited Practice Officer Board (four), Practice of Law Board (at least four), etc. All of these people have served the profession with grace and wisdom.

So you say, well then, if we have that many nonlawyer members on these bench and bar boards and committees, we don't need any more. Wrong! We need them for the same reasons they already serve: They keep us from being belly-button watchers; they force us to look beyond our own horizons.

And since our State Bar Act allows up to 15 members on our board, the Supreme Court can approve this kind of change.

Now it's time for me to step down from the pulpit. I hope I've said something that stirs you—that gets you excited enough to support—or oppose—my proposal. It's your turn now. E-mail, fax, telephone. But voice your opinion today!

(Dick Manning invites your comments/criticism; e-mail jmb@seanet.com; fax 206-624-3865; telephone 206-623-6302.)

Summer Daze

by Jan Michels
WSBA Executive Director

My favorite "Far Side" cartoon features two dairy cows in a couch-potato position in front of a television. A phone on the table where they've propped their "feet" is ringing wildly. "Well, there it goes again," one says to the other. "And we just sit here without opposable thumbs."

I think of WSBA staff as the opposable thumbs of the Association. Ideas, wishes, projects, services—all need our "grip," our version of prehensile facility, to help bring members' and the board's desires to fruition. That's 120 pairs of make-it-happen opposable thumbs. So let me tell you about all this energy.

As a baseline, you should know that the ratio of WSBA staff, at 120 persons, to members is 1:195, about average for comparable bar associations and a ratio that has held pretty steady over the last 10 years.

Who Are We?

WSBA staff is about 60 percent professional—accountants, therapists, lawyers, program directors, and technologists. Our support personnel include paralegals, investigators, bookkeepers, Service Center representatives, production service employees, and administrative staff. We are widely diverse in heritage, race, interests, and age. We are an unusual 70 percent female. We like each other, and we like working here. At a recent all-staff meeting led by Chief Disciplinary Counsel Joy McLean, we talked about why we work here. Mostly we heard each other say we like supporting the rule of law, we like the work, and we like having and living with agreed communication norms and values.

And we have fun. We walk off to lunch in the most unlikely pairings and groupings; we celebrate birthdays; we celebrated, with the governors, the WSBA's 70th anniversary on June 8; and we toast each other's achievements. At times we also share each other's grief. I think we work hard; our timesheets show that on average we clock the work hours of more than 140 equivalent staff.

With more than 30 program units, including Access to Justice, discipline, the Practice of Law Board, the Law Office Management Assistance Program, *Bar News*, and the ethics line, we depend on our commonality of interest in assuring the public of an ethical profession, and in serving our members.

Who Are We as People?

Our work slows down somewhat in July and August—we're between license-fee and bar-year cycles; committee work lessens as our volunteers focus more on family activities. We spend down our vacation hours and rest up for September, when the pace will quicken again. Recently I asked a few staff members to give me snapshots of their summer plans.

Robert Levinson, information technology director, plans to hop down to Davis, California, for a few days, where among other pastimes, he will cycle through fields, swim in the community pool, and sit under an olive tree with a stack of books.

Steve Carroll, one of the voices on the WSBA Service Center line, is celebrating the pleasure of the imminent arrival of his and his wife's first child. He has also just moved into a new home, which he (naively) looks forward to remodeling. Rather than taking time off this summer, he's saving his vacation hours for parenting time after his baby arrives. Steve recently tracked down a signed photograph of San Francisco Mayor Willie Brown (one of new President-elect Ron Ward's inspirations) to present to Ron. When I asked him what had inspired him to do it, he replied, with typical humility, that he wanted to return to Ron the respect Ron always shows for staff.

Mark Sideman, CLE director, reports that it has been a big year for WSBA CLE in that the department has recommitted itself to serving WSBA members and sections. He'll write about it in the next few months (marketing just happens with Mark). As for Mark himself, he is an avid diver and has recently returned from seven days of cave-diving training in the Yucatan Peninsula in Mexico (site of the IMAX film "Amazing Caves"). Upon returning, Mark was then fortunate enough to participate as surface support for a National Geographic film project with the Seattle Aquarium on six-gill shark research. Very tentatively the film is scheduled for unveiling this fall.

Toni Doane, sections liaison, says she's not taking a lump time of vacation but will instead treat herself to three-day weekends by taking Mondays off all summer. She plans to rescue her garden of flowers, shrubs, and herbs, which suffered through the Vashon Island caterpillar infestation this June. Since we've all enjoyed the bounty of her rosemary bouquets and flower arrangements, we love her plans!

Barbara Harper, lawyer services director, says her husband, Pete, and she are planning a trip to New Hampshire in July. "It's a little too early for the fall leaves, but we plan to enjoy hiking and antiquing with our daughter and her husband, who is beginning his first year of residency at Dartmouth-Hitchcock Medical Center."

Candace Barbieri, human resources coordinator, whose daughter and two grandchildren recently moved out and emptied the "nest," says she's going to recarpet the house and get reacquainted with her husband of 27 years. Here she flashed a bemused smile as she noticed that 27 years is a lifetime to some of the WSBA staff she has recently ushered in.

After Disciplinary Counsel *Christine Gray*, *Jean McElroy*, and *Linda Eide* worked many long, hard hours this spring preparing for and conducting two separate two-week disciplinary hearings in Moses Lake, they were ready for a break. Chris Gray did it right, spending a week at a spa in the Southwest. Native Seattleite Jean McElroy plans one of those non-vacation vacations where she and her husband, Mike, will move from their longtime home in Everett to take up residence in her childhood home in Wedgwood. She and Mike are using their vacations to move! Linda Eide had a more relaxing idea, and flew to California with her son to purchase a friend's convertible, then vacationed while driving back along the coast to Seattle.

Bob Welden, general counsel, plans to attend his high-school reunion (dare I say it is his 40th?), after going to a reunion of staff members from Camp Omache, the Boy Scout camp where he worked during high school and college (campfire director, rifle range director, chaplain—can you believe it?).

After 27 years as Pacific Northwesterners, Director of Finance and Administration *Pat Dieken* and her family have purchased a home in the Valley of the Sun (i.e., Phoenix). Pat has enjoyed house-hunting and exploring the new environs this summer. She plans to leave behind the lawnmower, tire chains, and four-wheel drive in exchange for pool-maintenance equipment, a convertible, and books on desert gardening.

Peter Lee, web programmer, at first called his summer boring, but then admitted to seven weddings of family and friends, a summer project of restoring his vintage '65 Vespa to running condition, and training with friends for an Arthritis Foundation event in Ireland.

Gail Stone, legislative programs director, will mark the summer clearing her house of 20 years of three generations of detritus, and will follow the clearing out with a major remodel. This "fun" will make returning to work the real vacation.

Me? I plan to reach my summer goal of 2,000 miles on my bicycle. Barring goathead[1] flats, crashes, and running out of ibuprofen, I should hit the fall ready to sit down (on a soft cushion) for a new board of governors and new challenges.

Enjoy your summer . . . whatever it holds!

1. Goatheads are burrs spawned by vine-like shrubbery that grows close to the ground. The actual burrs are similar to small, round marbles with quarter-inch spikes protruding from them. When they dry out and split, the two remaining spikes resemble a goat's horns, hence the name.

Overcoming Obstacles—and Involvement in the Community:

The Story of Latino Lawyers in Washington State

by Maria Chavez, Ph.D.

As part of my dissertation research, in 2001 I surveyed WSBA members across the state on the civic engagement of lawyers. What they shared is an amazing testament to the commitment and devotion they exhibit toward their communities and their profession.

The first survey, "Washington State Latino/a Attorney Survey," was mailed to 221 Spanish-surnamed active members of the Washington State Bar Association and 101 members of the Washington State Hispanic Bar Association.

A second survey, "Civic Engagement Among Members of the Washington State Bar," was mailed to a random cross-section of 1,900 active, non-Latino WSBA lawyers for comparison. One hundred two (102) Latino lawyers returned completed survey questionnaires, and 757 non-Latino lawyers returned questionnaires. The surveys showed that both Latino and non-Latino lawyers in Washington are highly civically engaged in their communities, and have similar positive experiences in the profession. However, Latino lawyers have additional personal and professional obstacles to overcome. (The first survey instrument included two sections on Latino cultural background. Aside from those two sections, the questions on both surveys are identical.)

The WSBA has few Latino members. Their lack of presence in the Washington legal community (currently around 1.1 percent) hinders the development of the civic health of Washington, especially now that Latinos are the largest ethnic/racial minority group in the state. The Latino population in Washington state increased 143 percent between 1990 and 2000, and now constitutes 7.5 percent of the population.

Underrepresentation of different groups in the legal profession is not new; its causes have evolved over time. Southern and Eastern European immigrants were excluded from joining the profession in the early 20th century. In some states, non-WASP (white, Anglo-Saxon, Protestant) lawyers were not admitted into the American Bar Association (ABA) until the World War II era. Nighttime law school classes were reserved for poor and minority students. Daytime schools became the preparation for the elites who had entry into established firms directly from law school.[1] More recently, increasingly prohibitive law-school costs and bar-exam fees have resulted in poor and minority students continuing to be excluded from joining the legal profession. In Washington and the United States generally, the legal profession continues to be highly stratified by both race and class. Public confidence in the legal profession as a whole would increase if the profession looked more like society as a whole.

The ABA's Commission on Opportunities for Minorities in the Profession reported several major concerns about the status of minority lawyers in the legal profession during the period 1986-1998. Though minority representation in the U.S. legal profession has increased from five percent in 1980 to 7.45 percent in 1990, that growth has not had much impact on diversity in upper-level private-firm positions. Most minority lawyers serve in government or in public-interest organizations. Representation of minority women continues to be bleak, with persistent problems such as being "pigeonholed" in family law positions; low representation in law school faculty positions; a high attrition rate at law firms (close to 86 percent of minority women leave law firms within seven years); and minority males vastly outnumbering minority females in areas of law firm partners, patent lawyers, and judges. The report makes clear that much more needs to be done to bring about diversity in the legal profession: "Despite this incremental progress, however, formidable obstacles to 'full and equal participation' remain."[2]

The Role of the Legal Profession in Civic Engagement

Turning to civic engagement, the legal community has had a long-standing concern with civic engagement and professional outreach efforts. Norms of professional behavior include public service through volunteerism, *pro bono* work, and mediation services, among others. These standards stem, in part, from the fact that lawyers exercise great influence on the public and society and, thus, have a civic duty to serve society as part of their professional role.

What is the current level of commitment to civic engagement and *pro bono* work of the legal profession in Washington, and how does it compare to other states?

A 2001 study addressed the role of Chicago lawyers and the character of their civic engagement by investigating their participation in civic and voluntary asso-

Table 1: Level of Educational Attainment of the Parents of Washington Lawyers

	Mother's Educational Background		Father's Educational Background	
Highest Grade Completed	Latino (n=99)	Non-Latino (n=739)	Latino (n=99)	Non-Latino (n=734)
Not a high-school graduate	43.4%	5.4%	38.4%	7.6%
High school graduate	22.2%	34.6%	24.2%	24.8%
Some college (no degree)	5.1%	10.7%	6.1%	8.0%
Associate degree	5.1%	7.3%	4.0%	4.1%
Bachelor's degree	15.2%	27.5%	15.2%	24.4%
Some graduate work (no degree)	—	.3%	—	.1%
Graduate degree	8.1%	13.1%	10.1%	21.9%
Law degree	1.0%	1.1%	2.0%	9%

ciations. The study found that over 70 percent of Chicago's lawyers are involved in community organizations or civic associations.[3]

Another study looked at the ABA's civic trends and behaviors over the period 1875-1995. The authors examined the role of civic engagement among various professions and professional associations throughout a 120-year period, finding that, overall, "community and civic activities are embedded in the organizational life of the professions to a greater degree than they were in the past."[4] Civic engagement has become incorporated into the structures of lawyers' lives, so that "professional associations are actively engaged in civic and community life, in all likelihood more than ever before."[5]

Public confidence in the legal profession as a whole would increase if the profession looked more like society as a whole.

Scholar Ryan Bennett has argued that lawyers have a special responsibility "to serve as community educators."[6] This view of the lawyer as "statesman" or "social trustee" is not new.[7] However, Bennett contends that "cultivating virtue in the community as legal educators" is one of the greatest responsibilities with which lawyers are entrusted. He argues forcefully that "public education is simply part of the lawyer's professional and civic duty." Recognizing increasing interest by bar associations and law schools in civic engagement, Bennett says the legal profession presents an opportunity for enhanced civic renewal in America, and lawyers are a hope for saving and preserving American democracy.

Viewed from this broader perspective of professional obligation, it is especially important to understand the civic engagement patterns of Washington's Latino lawyers, because of their unique position as professionals from a minority ethnic and racial community with many needs. Latino lawyers are in a good position both to make policy changes in their respective communities and to encourage those communities to become more civically engaged.

Presentation of Data

Current Latino WSBA members have practiced law for an average of only nine years, with a median of seven years. The comparison group of non-Latino lawyers' average years of practice in Washington is 14, with a median of 12 years. Latino lawyers also come from vastly different socio-economic backgrounds than their non-Latino counterparts. This is referred to as "inherited intellectual capital,[8] the educational background of one's grandparents and parents. Survey data on both groups of lawyers provide dramatic evidence of their disparate upbringings. Table 1 (above) presents the survey results. The table clearly shows that Washington's Latino lawyers come from backgrounds with decidedly lower levels of "inherited intellectual capital," indicated by their par-

ents' modest levels of formal education compared with non-Latino lawyers.

The contrasts are especially noticeable in the differences in the rate of attainment of high-school diplomas and baccalaureate degrees. The percentage of Latino attorneys' mothers and fathers who did not have a high-school diploma—43.4 percent and 38.4 percent, respectively—compared to non-Latino attorneys' mothers and fathers—5.4 percent and 7.6 percent, respectively—is the most pronounced. Only 15.2 percent of the mothers and 15.2 percent of the fathers of Latino lawyers held B.A. degrees, as compared to 27.5 percent of non-Latino lawyers' mothers and 24.4 percent of non-Latino lawyers' fathers.

The difference between the two groups holds with respect to the completion of advanced degrees as well. Non-Latino lawyers' fathers hold twice the percentage of graduate degrees (21.9 percent vs. 10.1 percent) as those of their Latino lawyer counterparts. Nine percent of the comparison-group lawyers reported having fathers who were lawyers themselves, while only two percent of Latino lawyers reported the same.

How do these lower levels of inherited intellectual capital have an impact on Latino lawyers in their law-school experiences and the likelihood that they would make the same career choices again? To answer these questions, it was important to attempt to document what "obstacles and burdens" both Latino and non-Latino lawyers said they faced during their law-school experience. To gain insight into possible obstacles faced, a multi-element statement was devised. The question-and-response format used in the survey reads as shown above.

The survey findings reveal that the greatest difference in the obstacles faced by the two groups of Washington lawyers arises from family obligations and insufficient knowledge of how to get into law school. Both groups of lawyers indicated that the cost of a law-school education presented the biggest obstacle they faced in attaining their law degrees. The proportion of survey respondents identifying family obligations as an obstacle differs significantly across comparison groups: 40.5 percent of Latino lawyers called family obligations "somewhat" an obstacle or a "substantial" obstacle, compared to only 23.1 percent of non-Latino lawyers.

Non-Latino lawyers' fathers hold twice the percentage of graduate degrees . . . than those of their Latino lawyer counterparts.

There is also a considerable difference in the survey responses on knowledge of how to get into law school; 34.3 percent of Latino lawyers indicated that such knowledge was "somewhat" an obstacle or a "substantial" obstacle, as compared to only 3.4 percent of the comparison group. As noted above, the overall *cost* of a law-school education was seen as a formidable obstacle for both groups of lawyers; however, there were marked differences between Latino and non-Latino lawyers on this dimension as well; 65.7 percent of Latino lawyers indicated that cost was "somewhat" an obstacle or a "substantial" obstacle, while just over half (53.1 percent) of the comparison group of non-Latino lawyers indicated that cost was "somewhat" an obstacle or a "substantial" obstacle for them.

How big an obstacle to your law-school education were each of the following:

Family obligations:
❑ None ❑ A little ❑ Uncertain ❑ Somewhat ❑ Substantial

Knowledge about how to get into law school:
❑ None ❑ A little ❑ Uncertain ❑ Somewhat ❑ Substantial

Cost of a law school education:
❑ None ❑ A little ❑ Uncertain ❑ Somewhat ❑ Substantial

Despite these substantial gaps in levels of obstacles experienced during law school, overall satisfaction with law school education was quite high for both groups. On the high end of the "satisfaction" scale, 47.5 percent of Latino lawyers indicated they

were "very satisfied" with their law-school education, compared to 49.9 percent of the comparison group of non-Latino lawyers. The proportion expressing dissatisfaction ranged from 12.9 percent of Latino lawyers who indicated they were either "a little dissatisfied" or "very dissatisfied," to 8.7 percent of the comparison group of non-Latino lawyers who indicated they were either "a little dissatisfied" or "very dissatisfied" with their law-school education.

There was a bigger gap between Latinos and non-Latino lawyers when asked how likely it would be that they would go to law school again if given the choice. 52.5 percent of Latino lawyers indicated "very likely," as compared with only 39.5 percent of non-Latino lawyers. There is a smaller gap in those who replied "a little unlikely" or "very unlikely," with 18.2 percent of Latino lawyers, compared to 22 percent of non-Latino lawyers, stating that it was "a little unlikely" or "very unlikely" that they would go to law school all over again.

The level of overall job satisfaction is high for both groups. 84.2 percent of Latino lawyers and 82.9 percent of the comparison group indicated they were either "very satisfied" or "moderately satisfied"; 11.9 percent of Latino lawyers indicated they were either "a little dissatisfied" or "very dissatisfied" with the work they currently do, while 12.9 percent of the comparison group felt that way.

In terms of membership in professional organizations, more than half the lawyers from both groups belong to at least three professional organizations—54 percent of Latino lawyers and 53.5 percent of the comparison group. When asked the question, "Do you personally provide any *pro bono* legal services?" over half the lawyers surveyed—66.3 percent of Latino lawyers and 65.2 percent of non-Latino lawyers—replied "yes." With regard to type of law practice, Table 2 (above) summarizes the survey findings. Latino lawyers and the comparison group of non-Latino lawyers are quite similar in areas of practice.

Both Latino and non-Latino lawyers share a strong interest in politics. Voting rates were extraordinarily high for both groups of lawyers. Ninety-six percent of Latino lawyers and 97.3 percent of non-Latino lawyers said they voted in the 2000 presidential election. Asked if they were interested in local community politics and local community affairs, 72.1 percent of

Table 2: Type of Law Practice for Washington Attorneys

	Latinos (n=97)	Non-Latinos (n=711)
Solo practice	22.7%	22.4%
Small firm	16.5%	21.7%
Middle sized firm	10.3%	10.7%
Large firm	9.3%	13.5%
City or county government	10.3%	8.7%
State government agency	2.1%	5.2%
Federal government agency	8.2%	3.8%
House counsel for a firm	1.0%	3.8%
Judge or magistrate	3.1%	2.4%
Other (write-in category)	16.5%	7.9%

Latino lawyers responded that they were either "very interested" (41.2 percent) or "moderately interested" (30.9 percent), as compared with 78.9 percent of non-Latino lawyers (with 33.3 percent responding "very interested" and 45.6 percent indicating they were "moderately interested").

The amount of time and money Washington lawyers spend on community political activities is comparable for both groups. 41.6 percent of Latino lawyers indicated that they have worked as a volunteer for a candidate running for national, state, or local office; and 57.9 percent of non-Latino lawyers indicated that they have done so. In the last four years, 63.4 percent of Latino lawyers contributed money to a political candidate, political party, or political action committee or similar type of organization, compared to 71.4 percent of non-Latino lawyers. When asked how often they discuss local politics, 41.8 percent of Latino lawyers indicated they discuss politics every day or nearly every other day, as compared to 44.8 percent of non-Latino lawyers.

To further measure Washington lawyers' patterns of civic engagement, I asked more questions concerning volunteerism. The survey data revealed that 63.6 percent of Latino lawyers spend time on charitable or voluntary service activities, while an even higher rate—71 percent—of the comparison group of non-Latino lawyers are so engaged. Overall, financial contributions to charitable or voluntary service activities are even more frequently noted than are time commitments for both groups; 78.6 percent of Latino lawyers and 89.8 percent of the comparison group reported contributing money to charitable and/or voluntary service organizations. However, the proportion of voluntary activities decreased substantially for both groups with regard to church-related volunteer activities in the previous 12 months, with 23.5 percent for Latino lawyers as compared to 30.2 percent of non-Latino lawyers reporting being active in special projects and/or serving on committees in their churches or synagogues.

My surveys reveal that Latino lawyers in Washington are highly satisfied in their professions and are actively engaged in their communities. They report similar levels of civic engagement and association membership as non-Latino Washington lawyers. Indeed, Washington lawyers' engagement in civic life is quite high by any measure, and is comparable to the civic engagement rate of Chicago lawyers mentioned previously. The Washington state attorney survey data demonstrate that Latino lawyers use their newfound status to become civically engaged, mainly in the larger community.

. . . Latino lawyers in Washington are highly satisfied in their professions and are actively engaged in their communities.

In general terms, what did the survey reveal about Latino lawyers and the comparison group of non-Latino lawyers in Washington?

Both groups are similar on many measures, ranging from satisfaction with the lawschool experience to the type of legal work in which they are engaged. The similarities experienced in terms of satisfaction with their profession, levels of civic engagement, and types of law practiced are testaments to the professional success of Washington Latino lawyers.

The results also reveal that both groups of lawyers begin their professional careers from very different places, thus telling the story of Latino lawyers having to travel a greater distance to get to where they are today. Indeed, because of their lack of inherited intellectual capital, most Latino lawyers have had to negotiate a variety of educational boundaries, sometimes including language and class. These Latino lawyers truly "come from a different world" than their otherwise similar counterparts in the legal profession.

Professional Obstacles Faced by Latino Lawyers

My research revealed an increasing desire and obligation on the part of lawyers toward civic engagement and community service. However, this small presentation of the data is only the tip of the iceberg. Despite the many positive findings in the surveys, Latino lawyers face greater demands and also often greater obstacles in their professional lives.

In the survey, I asked if being Latino/a has caused difficulties in their profession. The survey questionnaire featured a two-part question, with a "yes" or "no" checkbox and two lines for comment.

Forty-six percent of the survey respondents answered yes—being Latino has caused them difficulties in their profession. Fifty of the 100 Latino lawyers answering this question included a comment, closely matching the 46 percent who marked "yes."

Many of the comments included strong statements reflecting negative experiences with stereotypes and discrimination. The following examples are representative of their written comments:

"Societal stereotypes are very common in the legal profession. Most people believe you are a clerk/bailiff, or interpreter."

"Having to overcome other people's prejudice; feeling different due to different values."

"Only to the extent that persons of color must be better than others to succeed. I truly believe this."

"Difficult to do jury trials because majority of jurors are retired white people."

"Not treated the same as my counterparts by courts, colleagues."

"Do not fit in with the big firm culture."

"Latinos are not well regarded in this

country and other professionals do not know how to interact (threatening?)."

"I was not considered a good 'mix' for certain firms; looked upon as unqualified or undesirable."

"The primary difficulty being Latino/Hispanic has caused [me] has been in the interview process as I was seeking my first job. Later, it has been a problem working within the system due to systemic and long-held racial discrimination issues. I served on the original Minority and Justice Task Force and that confirmed my view about widespread discriminatory practice."

"People don't take you seriously."

"Presumption of incompetence."

"Negative stereotypes: lazy, affirmative action."

A few lawyers believe being Latino is an asset to their professional practices, and they wrote positive comments:

"Being bilingual is an advantage in my area of practice."

"My answer might be different if I had chosen a different area of practice. In immigration law it is an asset—gives me credibility."

"It has also been a great advantage."

"If anything, it makes my perspective unique, and that's what the legal community needs."

Many of these themes were elaborated upon by participants in focus-group interviews I conducted with some of the Latino respondents. Many feel exclusion is still an issue with which they must contend. Their civic involvement is largely intertwined with the complexity of their sense of Latino ethnic identity and history, and the fact that they have had, and continue to have, unique struggles in their professional experiences.

I also found Latino lawyers strongly desire to help the Latino community get to a better place in American society. These Latino lawyers, more than half of whom are first-generation college graduates, know firsthand what discrimination and cultural alienation feel like.

At the same time, they have transcended many of the obstacles with which the Latino community at large is still contending. Most of these Latino lawyers understand that their professional status is what separates them from the lives of less-privileged Latinos throughout the country. Because of this, they are committed to using their newfound professional status not only to give back to the greater Latino community, but also to improve prospects for social equity in the United States. By the nature and types of their civic and professional involvement (however uncomfortable and alienated they may feel at times), they are using their professional location to bridge Latino and mainstream communities with the goals of fostering understanding and acceptance between Latino and mainstream groups, promoting justice, and advancing civic ideals.

Perhaps the most important theme I found time and again in my research was the notion that Latino lawyers needed to be "*ten times better*" as professionals than their non-Latino counterparts. This subtle, pervasive knowledge that these Latino professionals have to deal with throughout the day and every day—that they are being judged by a higher standard by their colleagues, clients, and even community members—is something that must be explored further, because it may be easy to understand in a theoretical sense; however, it is an issue that may be difficult to

grasp in a personal sense unless one has experienced it. The demoralizing nature of dealing with the daily *"micro-aggressions,"* or of having one's clients questioning one's credibility and *"proper credentials,"* or the energy required because *"you have to be ten times better,"* or *"most people believe you are a clerk/bailiff, or interpreter,"* cannot be emphasized enough. It can affect all aspects of one's professional and civic life as an ethnic and racial minority professional in American society.

Conclusion

It is encouraging that this community of Latino lawyers—who have surpassed many obstacles to achieve their professional status—displays extraordinarily high levels of civic engagement. Overall, 80.4 percent of Latino lawyers were engaged in one or more of a list of civic activities, as compared to 86.9 percent of the comparison group of non-Latino lawyers.

This study has clear implications for the legal community, and for every professional group that is diversifying (or hoping to diversify). Given that Latino lawyers are highly satisfied with their choice of profession and are civically engaged in comparable ways to the comparison group of non-Latino lawyers, it is essential that the legal profession take the steps required to ensure that more Latinos and other minority lawyers make it to the ranks of partner in law firms.

How can a group of lawyers who are so committed to the profession and to the communities in which they reside continue to remain marginal-ized? If the legal profession does not address the issue of diversifying its profession, particularly in the area of firm retention and promotion of minority lawyers, a pattern of increased marginalization will exist, and we will have lost an opportunity to promote social cohesion in an increasingly diverse state.

Maria Chavez is an assistant professor of political science at Seattle University, and has a Ph.D. in political science from Washington State University. She adds: "The survey data collected for this paper was made possible by the support of my mentor and friend Nicholas P. Lovrich, with funding from the Division of Governmental Studies and Services at Washington State University, Pullman, Washington."

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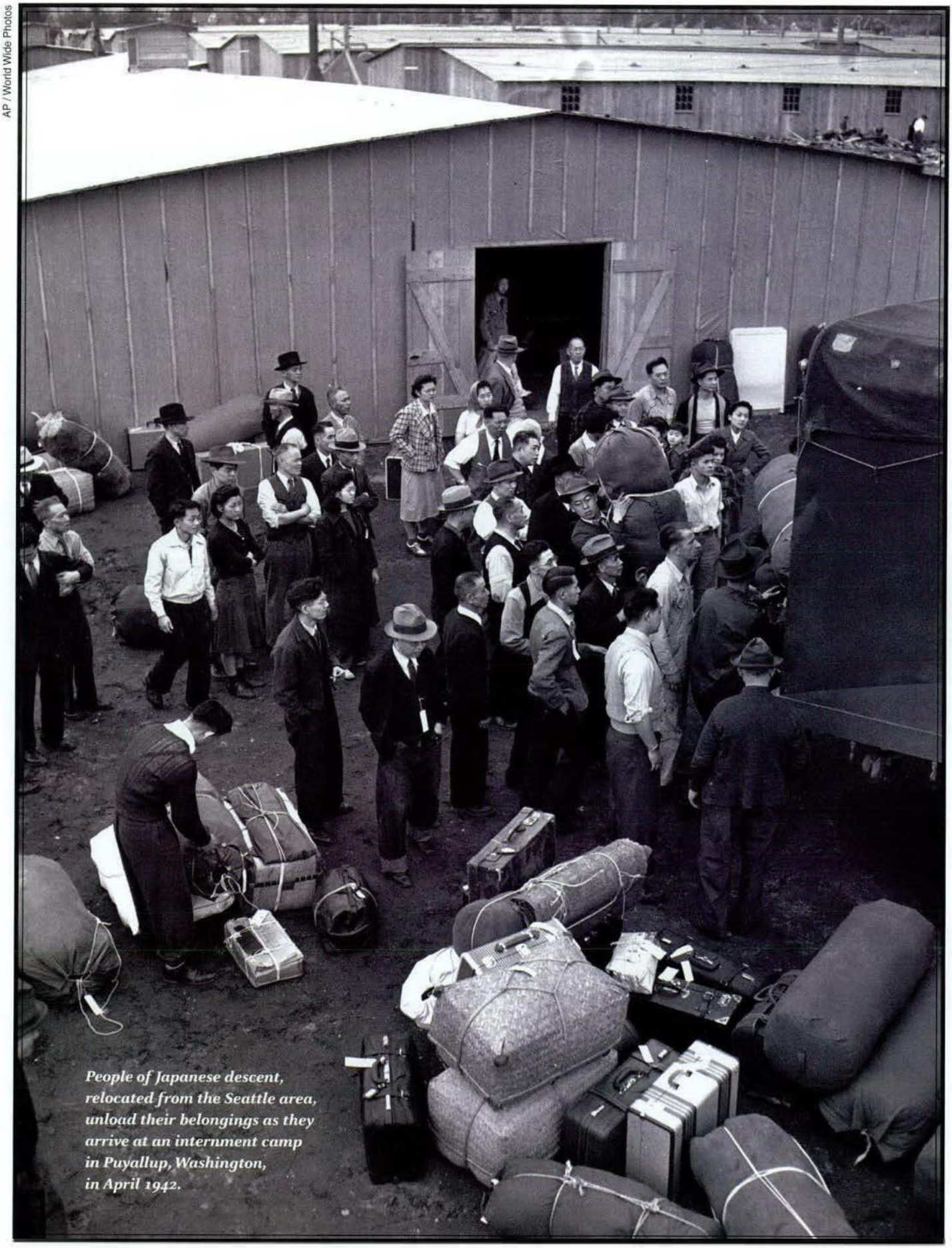

People of Japanese descent, relocated from the Seattle area, unload their belongings as they arrive at an internment camp in Puyallup, Washington, in April 1942.

It Can't Happen Here?

A Look Back at a Sad Chapter in the Law

Will the specter of the so-called "internment camps" be resurrected, as more Americans become comfortable with suspecting an entire ethnic group or religious community of disloyalty to or hatred of America?

Shortly after the 9/11 attacks, I stood waiting for an elevator. Next to me, two elderly women were talking. One said to the other, "Now I can understand why they locked up the Japanese after Pearl Harbor." I understood the implication all too well: perhaps our government should emulate that move, and round up the enemy and stick them in modern concentration camps. Of course, I could only guess who the "enemy" was: Arabs? Muslims? All Middle Easterners? I doubt the speaker knew for sure herself.

I could not contain myself. I asked the woman if she could tell me why only Japanese Americans were rounded up and imprisoned en masse, even though we were also at war with Germany and Italy. Why didn't the government do the same with German and Italian Americans? The woman looked at me with surprise, looked back at her companion, and replied, "Well, I guess I never thought of that."

The exchange saddened me terribly. I thought the act of incarcerating American citizens (or noncitizens for that matter) because they belonged to an ethnic group with which we were at war was widely recognized as a horrible crime our government had committed during World War II, and that there was no chance any American could justify it or want it to happen again.

Clearly I was wrong. In a February 2003 interview, North Carolina con-

by David F. Shayne

gressman Howard Coble said not only that the internments were justified but that the Japanese were imprisoned for their own good. He argued the extreme level of hatred the average American bore toward the Japanese over the attack on Pearl Harbor placed them at risk for falling victim to violent assaults. Imprisonment was just some benign form of protective custody.

Nothing could be further from the truth. Now we are again engaged in open war against an enemy who has killed thousands of his own civilians, has murdered and tortured American prisoners of war, and is in all probability closely allied with the perpetrators of the September 11, 2001, terrorist attacks.

Will the specter of the so-called "internment camps" be resurrected, as more Americans become comfortable with suspecting an entire ethnic group or religious community of disloyalty to or hatred of America? Will "national security" be raised, as it was during World War II, to justify a wholesale suspension of basic constitutional and human rights?

2002 marked 60 years since the U.S. Army issued the orders resulting in the incarcerations. I saw no recognition of this anniversary in the media. Those events are worth remembering. They are relevant to the events of today.

To gain some insight into the causes of the Japanese imprisonment, it is worthwhile to examine the opinions of the U.S. Supreme Court. The Court produced a detailed rendition of the events and underlying reasons for the mass imprisonment of Japanese Americans in two opinions: *Hirabayashi v. United States*, 320 U.S. 81 (1943), and *Korematsu v. United States*, 323 U.S. 214 (1944). Although the Court failed to uphold basic constitutional principles and deferred, almost unquestioningly, to an indefensible policy promoted by a racist general, supported by a racist group of self-interested white citizens, and tolerated by the president of the United States, its decisions provide invaluable insight to how these events came to pass.

The legal issues in both cases were straightforward. Did the executive branch exceed its authority to take certain actions deemed necessary to carry out its war-making function? Or, as applied to these cases, did the military exceed its authority as defined by executive order when, first, it imposed curfews and, later, imprisoned all Japanese aliens and Americans of Japanese ancestry then residing on the West Coast?

A majority of the Supreme Court justices answered "no" to both questions, displaying extreme deference to the military, refusing to subject its rationale to any kind of scrutiny. The majority justified its "hands-off" approach in part based on a "war is hell" attitude, and dismissed the detentions as part of the suffering all Americans had to endure. The Court accepted military arguments that the Japanese, both citizen and alien, were as a whole "disloyal" to the United States, and that this fact justified the draconian measures taken.

I believe the historical record developed by the justices concurring and dissenting in *Hirabayashi* and *Korematsu* is of far greater interest than the facile legal analysis of the majorities. While both cases addressed the same underlying military orders, only the latter arose from the mass relocations and detentions, producing the strongest dissents.

Korematsu, however, builds on *Hirabayashi*. Thus, while *Korematsu* may be more

I believe the historical record developed by the justices concurring and dissenting in Hirabayashi and Korematsu is of far greater interest than the facile legal analysis of the majorities.

interesting, it is important to understand *Hirabayashi* first.

Hirabayashi, a native-born American citizen and resident of Seattle, appealed two convictions for curfew violations. In its initial review, the Court discussed the background for the curfew orders. General J.L. DeWitt, the commander of the Western Defense Command, at first developed the policy of restricting Japanese to their homes at night. Later he ordered the "orderly evacuation and resettlement (ultimately in "relocation centers") of Japanese" from their homes in certain designated areas along the West Coast, including Seattle. DeWitt justified his orders based on "suspected widespread fifth column activity"—Japan's allowance of dual citizenship and "propaganda" from "Buddhist priests and other leaders."

DeWitt's "suspicions" were unsupported by hard facts. The crowning indignity in *Hirabayashi* occurs later, however. Justice Harlan F. Stone, writing for the majority, noted with no irony that the Japanese deserved suspicion because the bigotry and discrimination practiced by the majority American population prevented effective integration of the Japanese into the larger American society.

Put another way, the Court accepted the fact that the Japanese as a whole suffered significant discrimination and bigotry at the hands of mainstream society. It then followed, in the Court's reasoning, that the Japanese must be more susceptible to disloyalty and hostility toward America, and therefore be more likely to engage in hostile acts. Recognizing the Japanese were already an oppressed minority justified oppressing them even more harshly.

Three justices—William O. Douglas, Frank Murphy, and Wiley Rutledge—wrote separate concurring opinions in *Hirabayashi*. Douglas and Rutledge took no particular issue with the majority's analysis. Foreshadowing the *Endo* case (footnote 6), Douglas simply suggested that Hirabayashi might have to be given an opportunity to prove his loyalty. Rutledge said the military's ability to act, even pursuant to the broad grant of authority by Congress and the president, was not unfettered or immune from possible judicial scrutiny.

Justice Murphy, on the other hand, discussed at length his extreme discomfort with the Court's acquiescence to the use of ancestry and color as a basis for distinguishing between citizens. He found in the curfew order a "melancholy resemblance to the treatment accorded members of the Jewish race in Germany. . . . In my opinion this goes to the very brink of constitutional power."

Despite his misgivings, Murphy went along with the majority. They upheld the military order as an "allowable judgment"

under the circumstances. Murphy added, however, "Whether such a restriction is valid today is another matter." He revisited that theme in his *Korematsu* dissent. Like Hirabayashi, Korematsu was a U.S. citizen. He appealed two criminal convictions arising from his failure to report for "relocation." Technically, the trial court convicted him for failing to obey the exclusion order. Justice Hugo L. Black deftly avoided addressing the detention by claiming that this issue was not before the Court, only the issue of the exclusion order that forced the Japanese Americans to leave their residences.

The Court relied heavily on *Hirabayashi* to uphold Korematsu's convictions. The only additional fact the majority cited in support of its ruling was a claim that the refusal by 5,000 Japanese Americans to swear "unqualified" loyalty to the United States, and that the request of "several thousand" for repatriation to Japan showed that all Japanese remained loyal to Japan.

Despite the majority's acknowledgement that, even without taking the actual imprisonment into consideration, the exclusion of citizens from their homes is a "far greater deprivation" than confinement thereto during a curfew, they reached the same result as in *Hirabayashi*, relying on the same posture of extreme deference toward the military.

But this time three justices refused to support the result, and each authored a dissenting opinion.[1] Collectively, they thoroughly developed the factual record, providing the details the majority chose to ignore in reaching its decision.

Justice Owen S. Roberts thoroughly traced the legal history of the military orders and the criminal prosecution leading to Korematsu's conviction. He criticized the "officialese" the government used to disguise the odious nature of its actions, such as characterizing the forced detentions as "voluntary migrat[ion]." He characterized the conviction for what it was: punishment for failing to submit to "imprisonment in a concentration camp."[2]

Roberts also described, and protested, the legal dilemma that snared Korematsu. Two of the military's orders were inherently contradictory: Korematsu was forbidden to be within a certain area; at the same time, he was forbidden to leave it. The only way to solve the problem was to submit to involuntary imprisonment before seeking redress from the courts.

Justice Robert Jackson (who later acted as lead prosecutor at the Nuremberg war crimes tribunals) wrote primarily to decry the irony that neither a congressionally enacted statute nor an executive order issued by the president containing the same directives would have passed constitutional muster. Because the orders in question were issued by the military in wartime, though, the Court refused to interfere. As he put it, "We may as well say that any military order will be constitutional and have done with it."

It was Justice Murphy, however, who brought to light the folly and wrongfulness both of the underlying actions perpetrated against Japanese Americans and the timidity of the Court's majority in allowing these actions to stand. Building on his concurrence in *Hirabayashi*, Murphy said the military's exclusion order "goes over 'the very brink of constitutional power' and falls into the ugly abyss of racism."

Murphy's *Korematsu* dissent—alone of all the internment cases' opinions—laid bare the nature of General DeWitt's actions. Murphy argued that the military's

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justification for the exclusion orders was based not on "reliable evidence" of widespread criminal or treasonous acts, but rather on "questionable racial and sociological grounds not ordinarily within the realm of expert military judgment." He quoted General DeWitt's declaration that all Japanese were "subversive [persons who belong to an] enemy race whose racial strains are undiluted." The general further declared, "I don't want any [persons of Japanese ancestry] here. . . . The danger of the Japanese was, and is now—if they are permitted to come back—espionage and sabotage. It makes no difference whether he is an American citizen, he is still a Japanese. . . . We must worry about the Japanese all the time until he is wiped off the map."

Apparently, neither the general nor anyone else in the military involved in these decisions wanted to bother with facts. Justice Murphy pointed out that, in fact, only two isolated acts of sabotage could possibly be attributed to Japanese Americans and one of these—the igniting of an incendiary device in Oregon—occurred after the detentions had taken place.[3] In the bigoted mind of General DeWitt and his supporters, the lack of evidence of any hostile acts committed during the first three months of the war with Japan was only a "disturbing and confirming indication that such action will be taken."[4]

Justice Murphy further brings to light what may in fact lie at the core of these orders: the greed and hatred of many in the white population. It appeared that many white farmers and land holders lusted after the considerable accumulation of property by Japanese Americans. Murphy quoted Austin Ansen, an officer of the Salinas Vegetable Grower Shipper Association:

> We're charged with wanting to get rid of the Japs for selfish reasons. . . . We do. It's a question of whether the white man lives on the Pacific Coast or the brown men. They came to this valley to work, and they stayed to take over. . . . They undersell the white man in the markets. . . . They work their women and children while the white farmer has to pay wages for his help. If all the Japs were removed tomorrow, we'd never miss them in two weeks, because the white farmer can take over and produce everything the Jap grows. And we don't want them back when the war ends, either.

Finally, Murphy raised the one fact that made the obvious injustice of the military order inescapable: We were at war not only with Japan but with Italy and Ger

many as well. German naval vessels sank millions of U.S. marine tonnage, killing large numbers of Americans even before Pearl Harbor. German vessels came closer to our shores and attacked American targets far more frequently than did the Japanese navy.[5] American citizens of German ancestry actually did engage in sabotage and espionage.[6] They were punished individually[7] and no collective action was taken against large concentrations of German or Italian Americans, whether living on the Atlantic coast or in the interior. Justice Murphy argued, "No adequate reason is given for the failure to treat these Japanese Americans on an individual basis by holding investigations and hearings to separate the loyal from the disloyal as was done in the case of persons of German and Italian ancestry.[8]

Sometimes, as in *Korematsu*, dissenters may lie ahead of the curve, their views harbingers of a coming shift in the way we see our society, and a redefinition of what we perceive to be right and wrong.[9]

Although none of the justices said it directly, the inescapable conclusion of these cases is that the Japanese were treated differently than German and Italian Americans because they were not white and were not well integrated into mainstream American white society.

Justice Murphy closed his opinion: "I dissent from this legalization of racism. Racial discrimination in any form and any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States."

I have often heard it said, from learned judges and law professors alike, that dissenting opinions are irrelevant. I know one judge, an excellent jurist, who would get annoyed if any attorney would attempt to rely on a dissent.

Nevertheless, publishing judicial opinions—majority and minority alike—serves purposes beyond the immediate need to determine the current state of the law. At the U.S. Supreme Court, particularly, these expressions of disagreement and occasional frustration—and, as in the case of Justice Murphy, a sense of outrage—can provide great insight into the American character and the values over which society argued in years past.

Sometimes, as in *Korematsu*, dissenters may lie ahead of the curve, their views harbingers of a coming shift in the way we see our society, and a redefinition of what we perceive to be right and wrong.[9] When its military branch issued the orders resulting in the dislocation and imprisonment of more than 100,000 innocent people, the U.S. government committed a great injustice, one of the worst—if not *the* worst—abuses of power towards its own citizens in the 20th century.

Perhaps it is farfetched for me to worry that our government would impose such

abuses again, this time against Arab Americans, Muslim Americans, or simply persons born in another country. While I do not take lightly the dangers confronting us at this time of active warfare against terrorism and the conflict in Iraq, we must be careful not to allow our natural fears to unleash our deepset and ever-present bigotries, and allow these to dictate our actions. If we do, as the *Korematsu* dissenters and those who agree with them have shown, we will come to regret it.

More than 60 years have passed since General J.L. DeWitt issued the orders that resulted in the injustice of internment. Children who were robbed of a significant part of their childhood are now aging. Their parents' generation is elderly or has passed. More should be done by modern American society to recognize the great injustice done in its name and memorialize it for future generations. One small way to do this is to recall the unsuccessful but gallant efforts by a handful of lawyers and jurists to right this national wrong. And to promise ourselves that this great injustice shall never be repeated.

WSBA member David F. Shayne is an attorney with the Office of Regional Counsel of the Federal Aviation Administration in Renton.

NOTES

1. A fourth justice, Felix Frankfurter, wrote a separate concurrence. He added little to the discussion other than to point out, in a manner reminiscent of Pontius Pilate's handwashing, that the Court's refusal to overturn the military orders at issue did not constitute "approval" of the result.
2. Despite the harsh language and arguments employed by all three dissenters, especially Justice Murphy, this comment alone drew a wounded reproach from Justice Black, who replied, "[W]e deem it unjustifiable to call them concentration camps with all the ugly connotations that term implies."
3. It is a matter of further irony that Justice Murphy got this fact wrong: The launching of incendiary devices and their detonation in the Pacific Northwest were acts carried out by the Japanese military, and there is no known or suspected involvement by any then living in the United States. *See, e.g., Oregon Blue Book*, www.bluebook.state.or.us and J. David Rogers, "How Geologists Unraveled the Mystery of Japanese Vengeance Bombs."
4. Not only was DeWitt dead wrong in his prediction of Japanese-American treachery, large numbers of Japanese Americans enlisted in the military and fought alongside their fellow Americans. The heroic actions of the 100th Infantry Battalion and the 442nd Regimental Combat Team, all-Japanese volunteer units, are now acknowledged. Indeed, the 442nd is one of the most highly decorated units in U.S. military history.
5. *See*, for example, Homer Hickam's *Torpedo Junction* (Dell, 1991), describing in detail how German U-Boats destroyed more U.S. shipping within a few miles of the Atlantic coast than the entire Japanese navy destroyed during World War II, including Pearl Harbor.
6. *See* Ex parte Quirin, 317 U.S. 1 (1942).
7. In fact, when the Court did confront the issue of the legality of detaining loyal Japanese Americans, the Court found that the underlying executive order that authorized the military orders upheld in Hirabayashi and Korematsu did not authorize the detention of a citizen whose loyalty the government conceded. *See* Ex parte Mitsuye Endo, 323 U.S. 283, 1944.
8. Justice Jackson made a similar point in his dissent, noting that no German or Italian aliens, let alone treasonous U.S. citizens, would have been arrested under the same orders had they been present in the same areas as those at issue in the military orders.
9. For example, two of the most infamously racist opinions the Court issued, *Dred Scott v. Sanford*, 60 U.S. 393 (1856), and *Plessy v. Ferguson*, 163 U.S. 537 (1896), included dissents expressing ideas that decades later would become the Court's norms for addressing racial-discrimination issues.

Stephanie Carter

Some Do's and Don'ts of Mediation Advocacy

by Mori Irvine

Mediation is a powerful tool that is deeply integrated into the civil justice system. It is a rare case that does not have at least one brush with mediation during its life cycle. Whether that encounter is court-ordered, court-annexed, or voluntary, sooner or later most cases will find their way to the mediation table. This means that all lawyers engaged in civil practice need to be fully prepared to represent their clients in this alternative forum. Unfortunately, our adversary system has produced many attorneys who are ill equipped for the mediation arena. Because of their lack of preparedness, or antipathy to anything other than litigation, some lawyers actually impede the settlement process. As attorneys better understand mediation, they can appreciate what it has to offer and learn to maximize its use. This will result in more settlements that are crafted to satisfy more of the parties' interests.

Most attorneys are well trained in combative adversarial techniques that are fine for the courtroom, but they lack the skills to excel in the mediation session.

While much has been written about mediation, little attention has been given to how attorneys should adapt their skills to work in this environment. Most attorneys are well trained in combative, adversarial techniques that are fine for the courtroom, but they lack the skills to excel in the mediation session.

At our court, we have tried to educate and assist counsel in this process. When a case on appeal has been selected and scheduled for mediation, we send a notice to all counsel for the parties, advising them of this fact. A seven-page document called "Mediation and Guidelines for Effective Mediation Representation" accompanies this notice. The guidelines give counsel an excellent snapshot of mediation and provide helpful suggestions to make the process productive. The two most crucial elements addressed in the guidelines are the "confidential mediation statement" and the attorney's role as an advocate in the mediation conference.

At our court, the confidential mediation statement is prepared for the mediator's eyes only. Because it is one of the most important documents generated in the mediation, attorneys should take the time to craft it well. More than almost anything else, this statement helps the mediator understand the important issues in dispute from the parties' points of view and obtain an idea of their interests. The statement also provides the mediator with a starting point in the process of trying to facilitate resolution of the parties' problem.

The guidelines offer detailed suggestions about what the attorneys should cover in a mediation statement. The suggestions include a brief recitation of the circumstances that gave rise to the litigation, the present posture of the case (for example, are any related matters pending in other courts?), and any recent developments that may have an impact on the resolution of the case. They also suggest that the attorneys summarize their clients' legal positions and candidly assess their respective strengths and weaknesses, highlighting any sensitive issues that may not be apparent from the pleadings or other filings that could influence settlement negotiations. The guidelines also suggest that the attorneys prioritize their clients' interests and suggest possible solutions.

Because the mediation statement is considered to be confidential, it is not shared with the other side and does not become part of the court's file. The purpose of this confidentiality is to allow the parties and their attorneys to be very candid with the mediator.

Some counsel take shortcuts for a scheduled mediation.

Instead of preparing the recommended mediation statement, they send copies of the pleadings. This is a mistake. It shows a lack of understanding about mediation, and it is not helpful to the mediator, who wants to help the parties solve their problem, not rule on the case.

Tips for Advocates

The attorneys are pivotal to the mediation. Their work as advocates is what makes the mediation productive. Every attorney has a different approach and needs to act in a way that best serves the client's interests. The guidelines our court prepared outline some recommendations for counsel when acting as an advocate in a mediation environment. These recommendations can help attorneys maximize the full potential of mediation and help achieve their clients' goals. Here are some of the more important recommendations.

Be Professional

Attorneys can reap substantial benefits for their clients when they act with courtesy and professionalism and are willing to work with the other side to reach a mediated solution.

- *Do* be on time and listen respectfully. The Golden Rule applies in mediation.
- *Don't* flip through your file, read the paper, or look at your calendar.

Use Temperate Language

A lawyer should never engage in name-calling (you're a fraud, liar, etc.), or insult or threaten anyone. The use of pejorative and intemperate language can only alienate the other side and ultimately chill settlement talks.

- *Do* choose words that warm your opponent to you. Use motivating language that accentuates the positive. You don't want to repel your adversary. You want to encourage behavior in the adversary that will lead to cooperation.
- *Don't* give in to the temptation of lambasting your adversary.

Listen Carefully

There is nothing more important in mediation than listening. Certainly, the mediator must listen to the lawyers and the parties. In mediation, the lawyers must listen to their clients, to their adversaries, and to the mediator. Each lawyer must listen with the kind of attention that makes the person speaking feel he has been heard and seen. Active listening is essential.

- *Do* listen, seek to understand, then to be understood.
- *Don't* tune out—you might learn something helpful.

Know the Client's Interests

The advocates must know what the issues are in order to understand their clients' interests and needs. This is essential, to prepare the clients for the mediation and to engage in productive private caucuses with the mediator. An advocate who cannot do this might as well be absent.

- *Do* know your client's "Best Alternative to a Negotiated Agreement" (BATNA) and "Worst Alternative to a Negotiated Agreement" (WATNA). These should be realistic. Remember, if the WATNA is highly likely (for example, a court's low reverse rate makes reversal a slim hope), then even a *slightly* better offer will be attractive.
- *Don't* come into the mediation unprepared or with unrealistic expectations.

Identify any Common Interests

Equally important is knowing the opponent's interests. Only in this way can common interests be identified. With common

interests comes motivation, with motivation come concessions, with concessions come solutions, and with solutions comes settlement.

- *Do* be prepared to acknowledge the other party's interests, perspectives, and feelings.
- *Don't* overlook common ground like the parties' desire to get on with their lives, put the conflict behind them, save money, and feel respected.

Show off Your Preparedness

Mediators generally require a decision-maker with settlement authority to attend a mediation. This provides a rare opportunity for an advocate to display his or her skills and view of the case to the opponent's decision-maker. This opportunity should not be squandered.

- *Do* prepare rigorously for the mediation and submit a carefully crafted mediation statement.
- *Don't* wing it.

Know Your Case

Credibility requires equal parts honesty and knowledge. The lawyers must be prepared on both fronts. Cases settle only when each side appreciates the merits of the other side's case. The more merit, the more interest in settling. A fair resolution requires constant reevaluation.

- *Do* discuss the weaknesses of your client's case openly and candidly with the mediator and the opposing side, and state how you can minimize them.
- *Don't* miss the opportunity to build credibility and trust by being candid.

Search for Common Solutions

Mediation and creative problem-solving go together. This is what business people look for. Lawsuits start as problems that clients bring to the lawyer to solve. Mediation is the venue in which those solutions can emerge.

- *Do* look outside the box. Be open to creative ideas.
- *Don't* focus only on the position you came to the table with.

Support Your Proposals

To give proposals more weight, the advocates should have independent, objective benchmark standards. Proposals that rely on a "gut feeling" or a client's wish list are more likely to sink.

- *Do* temper proposals with the reality of the situation—for example, you lost in the court below and are now in a less favorable position.
- *Don't* give in to the argument, "But I have much more invested now."

Let Everyone Win

Success in mediation depends on each side making a decision that the other party wants. The opponent will say "yes" more readily if you make the solution as painless as possible for her client.

- *Do* find a solution that satisfies at least some of the interests of the other side.
- *Don't* make it hard for the other side to say "yes" by insisting on impossible terms.

Conclusion

Mediation works best when the attorney keeps in mind that "a dispute is a problem to be solved together—not a combat to be won." No matter how skilled the mediator, the mediation is only as good as the parties and attorneys let it be. The clients must be prepared to put the dispute behind them, and the lawyers must be prepared to help their clients solve the problem. The mediator is only part of the solution. Well-prepared lawyers are what make mediation work. The successful mediation starts with a lawyer who has the correct attitude and brings the same creativity, energy, and dedication to this process as he does to his litigation duties. But instead of being the client's sword and shield, the lawyer must be his problem-solver and peacemaker. ✍

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The Board's Work

by Lindsay Thompson

Wenatchee, June 6, 2003—When you edit *Bar News* you have to attend BOG meetings and write a report on the BOG's deliberations. So, like Ruth, whither the BOG goest, I will go.

The BOG went to Wenatchee for the annual Access to Justice/Bar Leaders Conference. The ATJ side of the event is always interesting—hundreds of people gathering to share ideas on new or better ways to provide legal services to the poor among us. They're a remarkably philosophical lot, discouraged sometimes by the endless political effort spent on chiseling away the meager funds available, but never bowed.

They produce a musical every year, too. The Moderately Talented (Yet Plucky) Repertory Theatre of Justice's annual production is worth the trip by itself. Afterward they roll up the rug and dance out both their shoes to the tunes of the all-attorney band Funk Pro Tunc. You can even see it broadcast on TVW.

The Bar Leaders Conference does something useful too, I'm told. This year, I hear, they produced actor **Clay Jenkinson**, who is to Jefferson what Holbrook is to Twain. He was part of a program/panel on technology ("the Rittenhouse Orrery is the last word on tracking the movements of all seven planets").

WSBA President **Dick Manning** called the BOG to order and asked for a round of applause for the governors who, organized by Governor **Fawn Sharp**, ran in the Susan G. Komen Breast Cancer Foundation Run in Seattle, styling themselves the Bogger Joggers and raising a lot of money for the cause. Well done, said everyone.

The Sage of Poulsbo, **Jeff Tolman**, presented a report for the Professional Development Committee, created by the president to see what the WSBA and the state's law schools could do to make the experience of law students more relevant to what they need to know when they pass the exam and start practice.

Made up of lawyers, judges, law school staff and faculty, young lawyers and law students, and WSBA staff, the committee recommended requiring a four-hour orientation and training session for all new Washington lawyers before admission; requiring lawyers to do 15 hours of CLE in skills-training fields their first year after admission (now they get a free pass on that year); expanding and promoting mentor programs between new and more senior WSBA members; reviewing the effectiveness of the Rule 9 intern program, which lets law students appear in court; asking the state's law schools to adapt skills instruction to cover more of the ground covered in the ABA's *McCrate Report* on legal education; establishing a task force to develop recommendations for a pre-licensure practical experience for new lawyers; and developing a lawyer-skills checklist to get down in fixed form what new lawyers need to know to make a good start in practice.

Overall the report was well received as a road map to actually helping new lawyers be really good lawyers. Articling, which provoked paroxysms a decade ago, seemed worthy of examination. WYLD President **Lance Hester** asked the BOG to hold off on the intro four-hour CLE and the first-year CLE requirement until he could consult his board, and the BOG agreed, swiftly adopting the rest of the recommendations.

Cashmere lawyer **Steve Crossland** presented a report on the first year of operation of the Practice of Law Board. It was created to determine if and how legal practice can or should be unbundled to allow nonlawyers to do some things in order to alleviate the shortage of legal services, especially to the poor. The board also has some investigatory and regulatory power over unauthorized practice of law, and already has several dozen complaints they are looking into.

They've been busy working out rules for doing business, Crossland said. Crossland, who has been patiently dogging these issues for over a decade, is one of the WSBA's unsung heroes. He actually gets things done.

The BOG took up a report on Law Week, a program that tries to get lawyers and judges into every school in the state in May, to teach students how the legal system works. While the program has not yet reached its goal, it is outstripping current WSBA capacity to staff it, so the BOG's Long-Range Planning Committee was mandated to sort out what to do next.

Governor **Lucy Isaki** chairs the BOG's Awards Committee, and presented a partial list of persons and institutions recommended for honors this year. Since divulging the names now would spoil the fun at the annual meeting in September, I'll report who got what then, or you can sneak a peek at www.wsba.org/2003annawards.htm.

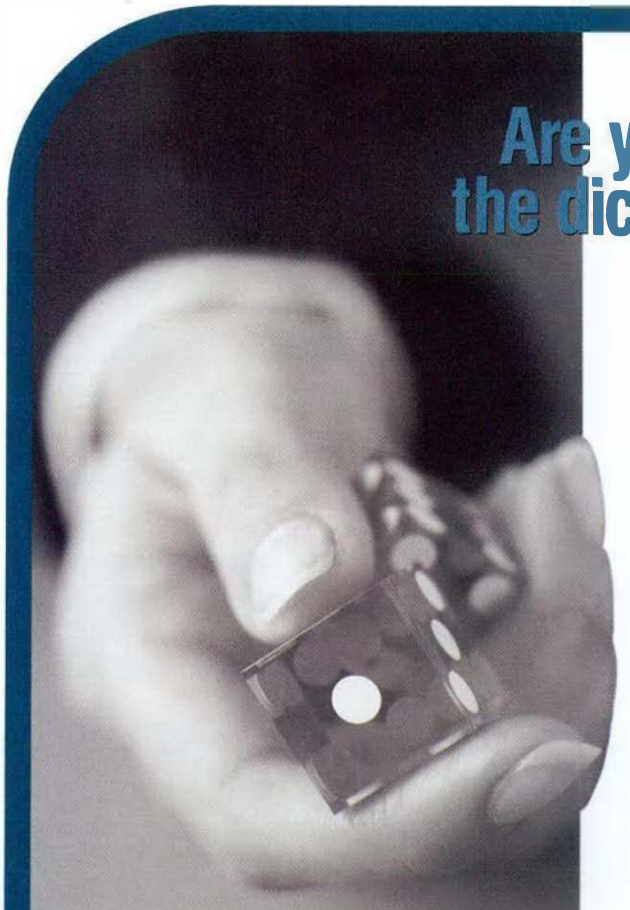
Evelyn Fielding Lopez chairs the Public Information and Media Relations Committee. They worked up some guidelines for defending the judiciary from unfair attacks in the media—an increasing problem. The board, having sung the committee's praises for doing a good job, approved the plan.

After lunching with the Access to Justice Board, the BOG spent the afternoon selecting the WSBA president for 2004-05.

The presidency rotates between eastern Washington, King County, and western Washington, in an attempt to ensure some geographic diversity at the top of the greasy pole. In September, Dick Manning (King County) turns over the gavel to **Dave Savage** (eastern Washington), so in 2004 the presidency cycles back through King County.

There were three candidates: **Ken Davidson**, an outgoing member of the BOG from Kirkland; **Steve Reisler**, a former *Bar News* editor and BOG member in the late 1980s who practices in Seattle; and **Ron Ward**, a Seattle lawyer who was elected to the BOG last year.

The candidates made written and oral presentations to the BOG, and fielded questions from BOG members and liaisons. The lengthy and thoughtful debate highlighted—but didn't resolve—increasingly apparent flaws in BOG governance. Although officially any WSBA member can run for president, in fact only one president has ever been elected without prior board service, and that was a quarter century ago. Although BOG members once commonly served their three years, returned to real life, then came back later to serve as president, now it is apparent that being away from the BOG (and the memories of sitting members) is effectively a disqualification, which diminishes an already small pool of potential choices. Although members run for a three-year term on the BOG, in the six presidential elections ending in Wenatchee, four resulted in presidents being chosen from sitting BOG mem-



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bers who then resigned their seats. That results in the BOG's appointing successors to serve the remaining year or two, reducing the number of democratically elected members and diminishing the experience base of the BOG.

The trouble is, the president-elect position was created in no small part on the assumption that the BOG would elect presidents from outside the BOG now and again, or from past BOG members who've been away awhile. The year-in-waiting was intended to give them a reasonable time to get up to speed on things before taking the gavel. That, of course, hasn't happened, and it now means if you want to be president you're looking at a five-year commitment—three on the BOG, a year as president-elect, and a year as president. So when you combine that with the iron grip of the rotation between eastern and western Washington, and King County (which can put one's next chance after leaving the BOG two to four years out, and thus push you into the black hole where the BOG consigns candidates they don't know), well, things are getting into a mess where being a BOG member is a means to an end rather than an end in itself. Considering that the WSBA is a strong-board, less-strong-president system, things seem to be stood on their heads.

I'll come back to these problems another time. For now, suffice it to say the BOG found they had three really good candidates from which to choose, and had a hard time choosing. They used to vote by voice, but now that they usually have a colleague (two this year) to consider, they went to a secret ballot and didn't announce the results—except that Ron Ward was elected and will become president-elect in September. We'll be reporting more about him in due course.

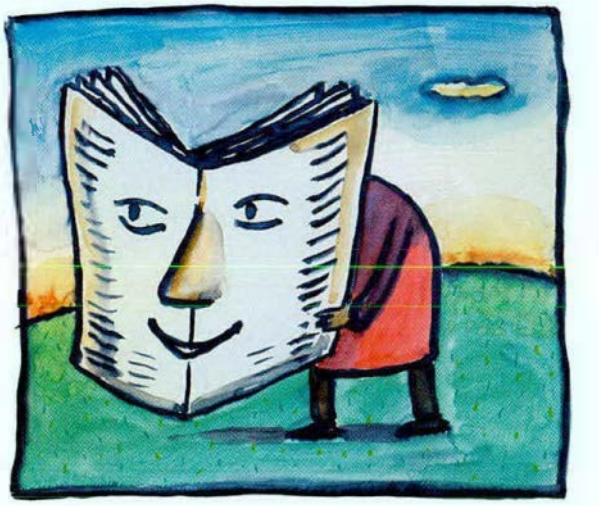
That took most of the afternoon. The BOG took some other, lesser actions, but they were all ministerial, and you'll get on fine not reading about them here.

The BOG met in Bellingham in July. That report will come next month. Meetings are open to WSBA members. You can ask questions and comment on the work. Come watch the sausage being made.

And, as always, the views expressed here are certainly not the WSBA's or the BOG's. Just mine.

Reading Around

Items of interest from around the state and nation



Everett Family Firm Celebrates a Century

"Law" and "the Bell family" seem synonymous in Everett. Three generations of Bells have practiced in Snohomish County, and a fourth-generation member is a recent law-school graduate.

It all started with Ralph Bell, who opened an office in Everett in 1903. He went on to become county prosecutor and, in 1912, Snohomish County Superior Court judge, a post he held until he retired in the 1950s.

Bell's son Lewis joined an Everett law firm and started Bell & Ingram in 1952. Over the last half century, the firm has grown to 11 attorneys and 22 staff members. Lewis's two sons, Doug and Bruce, went to law school and in due course joined the firm; Doug is now of counsel, but Bruce still works as a partner. And Doug's son Christopher, a Seattle University Law School graduate, is planning to—you guessed it—join his father and uncle at the firm.

From Welfare to the Bar

If you'd asked Tammy Bayard some years back if she ever thought she'd be a WSBA member, she'd probably have said, "No way."

Bayard dropped out of high school, got a GED, and found herself a single mother, on welfare for a time, then a student at Bellevue Community College. After getting an associate degree, she went to work for Bellevue District Court Judge David Admire. Six years ago, Admire suggested she consider taking part in the WSBA's Law Clerk Program, a nontraditional means for people to get a law degree without having to go to law school. Admire served as her tutor for four years. Bayard passed the February bar exam and was sworn in by Supreme Court Justice Richard Sanders May 23, 2003. She has joined the Bellevue firm of Veitch, Gaston & Kennedy as a criminal defense attorney.

The only discordant note in the happy ending comes from Judge Admire. "I won't have my court clerk anymore." Bayard worked for the judge for 10 years.

Preserving the Courts' Pasts

Thurston County's Superior Court has seen a lot of history pass over the clerk's counter in the form of pleadings, filings, and other documents. Now the clerk's office is in the middle of a yearlong project to digitally copy some 15 million pages of court records dating back to 1847. The archive includes all kinds of records covering much of western Washington: in territorial days Thurston County extended to the Canadian border. The $450,000 project will save the county nearly $100,000 a year in storage costs, and free up the jam-packed 1,000-square-foot county vault. Pre-1930 records will be sent to the state archives; later, historically insignificant records will be shredded.

Records of another court are also on the Internet. *Bar News* reader Linda Bell alerts us to "The *Proceedings* of the Old Bailey," 1674 to 1834, at www.oldbailey online.org. It's a fully searchable online edition of the largest body of "non-elite people" ever published, containing reports of more than a hundred thousand criminal trials in London's central criminal court. "The only caveat," Bell warns, "is that it's not a site to be looked at if one has an appointment in 10 minutes!"

The New *Washington Legal Ethics Deskbook*

by Christopher Sutton
WSBA Professional Responsibility Counsel

Almost two years ago, at a meeting of the Rules of Professional Conduct (RPC) Committee, Gail McMonagle called upon her fellow members to help create a handbook on ethics that would assist Washington lawyers faced with ethical dilemmas in their daily practices. The committee, which meets six times a year to answer ethics inquiries by WSBA members, immediately recognized the need for such a guide, and the response was overwhelmingly positive.

So began the two year task of writing the *Washington Legal Ethics Deskbook*. It was a huge undertaking involving many lawyers, whose cooperation and collaboration resulted in an excellent resource, a valuable aid to lawyers needing answers to ethical dilemmas. Information from many different source materials has been compiled in one place, thereby saving busy practitioners a great deal of time.

Have you ever asked yourself, when an attorney-client relationship arises and a member of an organization is represented by counsel because the organization has a lawyer, how to properly manage your trust account, or what to do if your client disappears? These questions, as well as myriad others, are addressed in the deskbook. It is an indispensable reference tool you will want to keep close at hand. The deskbook will be updated periodically to keep you abreast of new ethical developments. As a convenience, you may choose the automatic updating service.

Covering everything from client confidences and secrets, to the special problems of government lawyers, to malpractice and discipline, the deskbook offers clear, comprehensive, practical guidance to everyday ethical problems faced by lawyers. Each chapter was written by a lawyer well versed in Washington ethics and familiar with the area covered by that chapter. Writers include Editor-in-Chief Gail McMonagle, past chair of the RPC Committee and current professional standards counsel for Perkins Coie; RPC Committee Chair Mark Fucile, partner in the litigation group at Stoel Rives, where he concentrates on ethics and bar disciplinary matters throughout the Pacific Northwest; and Barrie Althoff, former WSBA chief disciplinary counsel.

It is an indispensable reference tool you will want to keep close at hand.

Some comments from the deskbook editors about the new project:

Gail McMonagle: "One of the most helpful features of the book is that it consolidates information from a multitude of resources, such as bar opinions, court cases, and the Restatement, in one place. Many of these resources are not readily available to lawyers. Also, it includes useful forms, such as conflict of waivers and examples of screens."

Mark Fucile: "I think Washington lawyers will find that the new deskbook offers a very practical approach to everyday issues."

Peter Jarvis, a member of the Washington and Oregon bars, and a partner at Stoel Rives: "I think the deskbook is a useful ethics guide written by practicing lawyers for practicing lawyers."

Megan McCloskey: "In my view, from having worked on the deskbook, it's a real-world guide for all lawyers, and particularly newer admittees."

The deskbook, which will be available for purchase in fall 2003 for $150, is being published by WSBA-CLE in three-ring-binder format so that updates can easily be inserted. It will include a table of authorities, an index, and a diskette containing forms and fee agreements. If you sign up for the automatic update service at the time of purchase, you will receive a 10 percent discount on the retail price of all future updates. For more information, call 800-945-WSBA or e-mail orders@wsba.org.

Chapter titles:

Chapter 1:	Formation of the attorney-client relationship
Chapter 2:	Advertising and solicitation
Chapter 3:	Attorney fees and fee agreements
Chapter 4:	Withdrawal from employment
Chapter 5:	Client trust accounts
Chapter 6:	Law practice organization, management and sales
Chapter 7:	Duties: client confidences and secrets
Chapter 8:	Duties: competence, diligence and zealousness
Chapter 9:	Limitations: litigation matters
Chapter 10:	Identification of client in organizational settings
Chapter 11:	Conflicts of interest
Chapter 12:	Washington mediation ethics
Chapter 13:	Government lawyers
Chapter 14:	Attorney malpractice
Chapter 15:	Washington's lawyer discipline
Chapter 16:	Bankruptcy ethics issues

The Practice of Law Board

by Robert D. Welden

It's new. It's unique. And it may have a profound effect on the way legal services are provided and regulated in Washington. It's the Practice of Law Board (PoLB).

The PoLB was established by the Supreme Court last year with the adoption of General Rule (GR) 25, and was developed by the WSBA Committee to Define the Practice of Law, which also drafted GR 24, the Definition of the Practice of Law.

The purposes of the PoLB are set out in GR 25(a):

> to promote expanded access to affordable and reliable legal and law-related services, expand public confidence in the administration of justice, make recommendations regarding the circumstances under which nonlawyers may be involved in the delivery of certain types of legal and law-related services, enforce rules prohibiting individuals and organizations from engaging in unauthorized legal and law related services that pose a threat to the general public, and to ensure that those engaged in the delivery of legal services in the state of Washington have the requisite skills and competencies necessary to serve the public.

The aim of the PoLB is to protect the public, not to protect lawyers' turf. GR 25 does this in two ways: by empowering the PoLB to enforce prohibitions on unauthorized practice of law, so as to protect the public from inadequate, incompetent, or dishonest law-related services; and by directing the PoLB to consider expanding and enhancing the availability of affordable and reliable law-related services by nonlawyers, through recommendations to the Washington State Supreme Court. It acts as both "protector" and "facilitator," all under the authority and direction of the Supreme Court.

The members of the PoLB come to it with various points of view, backgrounds, experiences, and philosophies. Together, members in their collective wisdom are called upon to make decisions and recommendations. As with any deliberative body, individuals or groups may disagree with decisions made by the PoLB, but ultimately the board is responsible for its decisions, and the Supreme Court can exercise its authority over the PoLB in reviewing board actions. The duty of the PoLB is to resolve each issue before it, then move on to the next, all in the context of its overall mission as defined by GR 25.

What Are the Board's Functions?

The board is charged with three functions:

1. To issue written advisory opinions on the practice of law, including the authority of nonlawyers to provide legal and law-related services.
2. To investigate complaints alleging the unauthorized practice of law.
3. To recommend to the Supreme Court whether nonlawyers should be authorized to engage in activities that otherwise would be defined as the practice of law under GR 24 and, if so, in what areas and under what conditions.

Who Is on the Board?

The PoLB consists of 13 members (see below), at least four of whom are required to be nonlawyers (GR 25(b)). The Board of Governors and any other interested person or organization may nominate individuals for appointment to the board, and appointments are made by the Supreme Court for three-year terms. The current membership comprises nine lawyers and four nonlawyers from all areas of Washington and from a wide variety of backgrounds and experiences.

The board is administered by the Washington State Bar Association, which provides funding and staff support, including an administrator and an investigator.

What Is the PoLB Doing?

Most of the issues that have been submitted to the PoLB relate to allegations of unauthorized practice of law. There have also been several requests for advisory opinions on the practice of law. Since it is a new entity, the board spent most of late 2002 and early 2003 developing procedural regulations and systems for carrying out its duties. Its next step is to tackle the issues brought to it.

Name	City	Position	Term
Stephen Crossland *Chairperson*	Cashmere	Member, WSBA	September 2003
Hon. Paul A. Bastine *Vice Chairperson*	Spokane	Member, WSBA	September 2005
Rita Bender	Seattle	Member, WSBA	September 2003
Stephanie Delaney	Seattle	Member, WSBA	September 2003
Douglas A. Cruickshank	Bellevue	Member, WSBA	September 2004
Brian J. Dano	Moses Lake	Member, WSBA	September 2004
Jeanne J. Dawes	Spokane	Nonlawyer	September 2005
Howard H. Marshack	Vancouver	Member, WSBA	September 2003
C. Robert Ford	Bellevue	Nonlawyer	September 2003
Ricardo R. Garcia	Granger	Nonlawyer	September 2005
Nancy C. Ivarinen	Burlington	Member, WSBA	September 2004
Pamela B. Loginsky	Olympia	Member, WBA	September 2005
Jane M. Smith	Nespelem	Nonlawyer	September 2004
Robert D. Welden	Seattle	Administrator	
Katherine Johnson	Seattle	Investigator	

You Are Cordially Invited to Attend

The Washington State Bar Association's

Annual Awards Dinner *and* Business Meeting

Please join us for an evening of inspiration as we celebrate the accomplishments of the 2003 WSBA award recipients. All members of the legal community are invited to attend.

Thursday
September 11, 2003

Bell Harbor
International
Conference Center
Harbor Dining Room
2211 Alaskan Way
Seattle

Reception 5:30 p.m.
(no-host bar)
Dinner/Program
6:30 p.m.

Name _____ WSBA No. _____

Address _____

Phone _____ E-mail _____

Affiliation/organization _____

Please note the name(s) of those attending and indicate dinner selection(s).

_____ ❑ beef ❑ salmon ❑ vegetarian

_____ ❑ beef ❑ salmon ❑ vegetarian

_____ ❑ beef ❑ salmon ❑ vegetarian

Cost for the dinner is $60 per person. To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received no later than September 3, 2003. (Please note that refunds cannot be made after September 3.)

❑ MasterCard ❑ Visa No. _____ Exp. date _____

Name as it appears on card _____

Signature _____

Please send to: **Washington State Bar Association**
Annual Awards Dinner
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330
Phone: 800-945-WSBA; Fax: 206-727-8320

TOTAL $ _____

❑ Check here if you require special accommodations. If checked, please explain:

_____

_____

WSBA office use only:

Date _____

Check No. _____

Amount _____

No. AAD903

The PoLB is also considering issues relating to nonlawyers in the delivery of legal services. It has already met with representatives of the Access to Justice Board, which recently completed an Unmet Civil Legal Needs Study, and will be meeting with representatives of other groups concerned with the availability and quality of law-related services. One of the issues in any consideration of the role of nonlawyers in the delivery of legal services is the extent to which the current system is failing to meet the legal needs of the populace.

The PoLB is entering uncharted waters. Its members are committed to fulfilling its mission as set out in GR 25. They are taking care to see that its course goes smoothly, because the PoLB is setting a precedent important to the citizens of Washington. It is also being watched nationwide as a model in addressing difficult and complex issues relating to the practice of law.

The PoLB meets on the second Friday of each month at the WSBA office. Meetings are open to the public, except when the board goes into executive session for discussions on particular complaints and investigations. The meeting schedule, minutes, and 2003 annual report are posted online at www.wsba.org/lawyers/groups/practiceoflaw.

Bob Welden is WSBA general counsel and administrator to the Practice of Law Board.

Cowlitz County Report

by Our Local Correspondent

Senior Deputy Prosecuting Attorney "Rip Snortin" **Ed Norton** has moved to the Skagit County Prosecuting Attorney's Office, where he will be working under a federal domestic violence grant. This move will allow Ed and his wife to be closer to their families. Although Prosecuting Attorney **Sue Baur** says that Ed's departure "is like having an arm ripped off," she and her entire staff wish Ed all the best.

During his last week, Ed was presented with a plaque commemorating his seven years of service to the citizens of Cowlitz County and his fierce defense of crime victims' rights. Deputy Prosecuting Attorney **Michelle Shaffer** will be moving into Ed's office—no word yet on whether the sunlight will make her less cranky. **Arne Denny** returned to the Cowlitz County Prosecuting Attorney's Office after two years in Island County. Arne's first day back was June 23. On June 24, Deputy Prosecuting Attorney **Tierra Busby** came back after a couple of months of maternity/Utah leave. Welcome back to T-Buzz.

A surprise party for the ever-irascible **Ann Mottet** was held June 13 at the Hall of Justice. Happy 50th, Ann!

Congratulations to the newest member of the Cowlitz-Wahkiakum Bar Association, **Dainen Penta**. Superior Court Judge **Jill Johanson** swore in Dainen on May 30. Dainen is the son of attorney **Vince Penta**, for whom he most recently worked as a clerk while studying for the bar exam. Dainen is now learning the title insurance business at Cowlitz County Title Company in Longview.

Rumor also has it that **Anne Mowry Cruser** has returned to work in the area. Anne, formerly of the Cowlitz County Prosecuting Attorney's Office, most recently worked for the Clark County Prosecuting Attorney.

(Information for the next report must be received by August 14 at CWBAnews@hotmail.com.)

King County Report

by Jim Varnell

Ads-R-Us

Whatever did the King County legal community do for humor when advertising by attorneys was prohibited? Fortunately, the recently delivered Qwest Dex Yellow Pages' attorney advertisements provide some comic relief. For example, there have been many previous ads of attorneys depicted holding a telephone (presumably talking to someone important). However, we now have the first cellular telephone shot: that of **Patrick Moriarty** (p. 161), whose ad states that he provides "tough, effective defense 24/7." **Eric J. Schurman** (p. 146) tells us that he is "aggressive" and "effective," but that may not be the case. In the ad, it appears that one of his clients is being led away in handcuffs instead of being let out the jailhouse door. **Tucker & Stein** (p. 145) informs us that it has been serious about defense since 1987. That leaves one to wonder how serious it was prior to 1987. But we do know that **Don Tesch** (p. 138) is serious about practicing law, because he has rolled his sleeves up and appears ready to go to work. **Christine A. Foster** (p. 178) apparently believes that it lends credence to your workers' compensation practice advertisement to have a hardhat in your ad.

One would presume that this correspondent's former UW Law School classmate **Mike Jacobs** (p. 106) either submitted the same photo taken when he graduated in 1971 or hasn't changed in 32 years. I vote for the former.

Q: How do you convey to the public you are experienced at handling motorcycle-accident claims?

A: Submit an "Easy Rider" ad featuring yourself in a leather jacket sitting on a Harley, without a helmet, as **Martin D. Fox** (p. 130) did.

Other dubious photo props or ideas include the full-family shot (**Jeffrey S. Floyd**, p. 129), the examining-x-rays shot (**Joanne Werner**, p. 127), the Mt.-Rainier-in-the-background shot (**Bishop Law Offices**, p. 128), the courtgavel-with-American-flag-in-the-background shot (**Anderson Law Group**, p. 104), and the handshake-in-front-of-the-Temple-of-Justice-in-Olympia shot (**Cespedes & Griffin**, p. 89). However, my favorite is the firm-members-gathered-in-the-law-library shot that is featured in the ads of at least seven King County law firms, too numerous to name.

This correspondent's award for the most likeable ad is a tie between that of former U.S. Bankruptcy Trustee **Charlie Johnson** (p. 138) and that of **Jim Purcell** and **Rob Rabine** (p. 131). With those casual looks and genial smiles, it just seems that you couldn't go wrong being represented by any of them.

Changing Venues, Honors, and Other Moves

Janet H. Cheetham is now a member of Ryan Swanson & Cleveland. **Heather Wolf** has joined Brownlie & Evans as a partner.

Wolf

Anderson

Vincent T. Lombardi was elected a member in Short Cressman & Burgess. **Donna M. Chamberlin** and **Erik B. Anderson** have joined Bullivant Houser Bailey as associates in its Seattle office. **Peter Ehrlichman** has joined Dorsey & Whitney as a partner and co-chair of the Seattle trial practice group. **Holly Hearn** and **Jeffrey Youmans** have been made partners at Davis Wright Tremaine. **Joaquin M. Hernandez** and **Anna A. Jancewicz** have become associates at Barokas Martin & Tomlinson. **Christina L. Corwin** has

joined Reed, Longyear, Malnati & Ahrens. New associates at Scheer & Zehnder are **Benjamin C. Waggoner**, **Latife H. Neu**, and **Nathan Furman**.

Pamela H. Feinstein has been selected to receive the first Access to Justice Leadership Award of the Access to Justice Board. The Access to Justice Board was established by the Washington State Supreme Court and is administered by the Washington State Bar Association. **Tony Rafel** has been elected chair of the litigation group at Riddell Williams.

New KCBA Officers

Newly elected officers and members of the board of trustees of the King County Bar Association are **Thomas E. Kelly Jr.**, president; **John M. Cary**, first vice-president; **Gary A. Machara**, second vice-president; **Joseph E. Bringman**, secretary/trustee; **Karen F. Jones**, treasurer; and **Carolyn Cairns** and **Gary Strauss**, new trustees.

Oregon Report

Julie M. Zavin has joined Kay B. Wakefield, PC in Portland. Licensed in Oregon, Washington, and California, Zavin concentrates in estate planning, business transactions, and real estate law.

Pierce County Report

A June reception at Tacoma's African-American History Museum honored five black judges serving in the courts of Pierce County. Museum leaders unveiled portraits of the five in a room already honoring the service of black mayors in Washington. Those honored were judges **Steen Armstrong**, **Franklin Burgess**, **Frank Cuthbertson**, **Beverly Johnson-Grant**, and **Jack Tanner**.

Spokane County Report

The Spokane County Bar Association has announced its officers for 2003-04: **Michael P. Price**, president; **William C. Maxey**, president-elect; **Susan W. Troppmann**, secretary; and **Paul B. Mack**, treasurer. Trustees are **S. Edward Carroll III**, **John R. Clark**, **Arthur K. Hayashi**, **Angela M. Hayes**, **Kevin D. O'Rourke**, and **Patrick M. Risken**.

Taudd A. Hume and **Kelly E. Konkright** have joined the Spokane office of Lukins & Annis. **Patrick Harwood**, reported in the May *Bar News* to be practicing in Coeur d'Alene, is actually in Spokane with Kirkpatrick & Startzel, PS. He is a 2000 honors graduate of Gonzaga University School of Law. We regret the error.

Thurston County Report

Elizabeth M. Knight has joined **Stephen J. Henderson**—he of the snappy bow ties—as a partner in the firm now called Henderson & Knight Lawyers. The firm continues to emphasize personal injury, workers' compensation, real estate, estate planning, and probate matters.

Lawyers at Fristoe, Taylor & Schultz, Ltd. in Olympia are delighted that their partner **E. Robert Fristoe** won the 2003 Daniel Bigelow Lawyer of the Year Award from the Thurston County Bar Association. Fristoe was honored for 54 years of outstanding professional and community service.

Yakima County Report

Halverson Applegate is pleased to announce **Sara Pirk** was sworn in as a Washington attorney on June 6, 2003. Sara previously worked for Halverson Applegate as a law clerk during the summer of 2001. She grew up in Wisconsin and graduated from the University of Minnesota, where she majored in international relations, with emphasis on international environmental policy. She subsequently graduated from the University of Oregon School of Law and was admitted to the Oregon State Bar in 2002. Sara will focus her practice on general business law.

Pirk

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

In Memoriam

Remembering our colleagues and friends

Charles O. Carroll

Longtime King County prosecutor was best remembered for '20s gridiron exploits

Seattle native Charles Carroll was a WSBA member for 71 years. Arriving at the University of Washington with 16 high school athletic letters in 1926, he was a sensation on the football field, playing a variety of positions with equal facility. He rushed 136 yards for two touchdowns in UW's 1927 defeat of WSU, and scored six touchdowns in a 1928 defeat of College of Puget Sound, a university record. He played all but six minutes the entire 1928 football season, and President Herbert Hoover declared, "You're the captain of *my* All-America team." He was inducted into the College Football Hall of Fame.

Graduating from UW law school, Carroll was a judge advocate general in World War II, leaving the service with the rank of colonel. He was in private practice in Seattle after the war. In 1948 he was appointed King County prosecuting attorney and held the post until 1970. He hired women and minorities, and gave a start to many who became state and local bar leaders and judges.

Defeated in the 1970 Republican primary, Carroll was one of 32 people indicted less than a year later on corruption charges arising from an investigation into gambling, bribery, extortion, and blackmail. He was tried by now-King County Prosecuting Attorney Norm Maleng, was acquitted, and returned to private practice. He retired in 1985. Carroll maintained his interest in politics and the law, hosting luncheons at his home for friends like former Governors Albert Rosellini and John Spellman, former Mayor Wes Uhlman, U.S. District Court Judge Carolyn Dimmick, and Maleng, with whom Carroll became friends after his trial.

WSBA member Joe Diamond, a friend of Carroll's since grade school, called Carroll "a good, honest, capable person. He was tough, but he was honest and aboveboard."

Carroll's wife, Alyce, died in 1995. Survivors include two children and four grandchildren.

Charles O. Carroll was born in Seattle in 1906 and died June 23, 2003, aged 96.

F. Robert DeBruyn

Devoted family man, Civil War student, and fan of the symphony and theater

A tax lawyer, CPA, and businessman, Robert DeBruyn was a Seattle native who wandered far in his career but came home to spend the last decade of his life in his hometown. A Garfield High School graduate, he served in the Korean War, then graduated from Dartmouth College and the University of Washington School of Law. He received his tax degree from NYU. Variously a lawyer and CPA, DeBruyn worked in New York City; San Francisco; Rapid City, SD; and Lincoln, NE, where most of his career was spent as partner with several area firms. He returned to Seattle in 1994 to work for the family business, Pacific American Commercial Company (PACO), with his father and brother. Survivors include a brother, a daughter, and two grandchildren.

F. Robert DeBruyn was born April 24, 1934, in Seattle and died in Seattle May 1, 2003, aged 69.

Ralph E. Julnes

Leader in education law had national influence

Ralph Julnes spent his professional life at the intersection of education and law. A graduate of Roosevelt High School in Seattle, he earned his B.A. and M.A. from the University of Washington. His law degree was from the University of Puget Sound.

Julnes served as executive director of the Legislature's Joint Commission on Education, then as assistant and legal counsel to the superintendent of public instruction (SPI). He created and directed the School Law Division in the UW College of Education, and taught school law at the University of Alaska-Fairbanks in the summers. His annual Pacific Northwest Institute on Special Education and the Law attracted more than 1,200 participants. While with SPI, he drafted the state code of professional responsibility for K-12 teachers. His work was so thorough it has never been amended, a friend wrote.

Survivors include his wife, Joan; a sister and brother; two children; and one grandchild.

Ralph E. Julnes was born November 28, 1937, in Moldes, Norway, and died in Washington October 13, 2002, aged 64.

Charles J. McCullough

Tacoma trial lawyer

Charles McCullough was noted for his easy-going manner and unique sense of humor, as well as for his successful 20-year career as a trial lawyer in Pierce County. He was a graduate of the University of Puget Sound School of Law.

Survivors include two children.

Charles Joseph McCullough was born in Sharon, Pennsylvania, September 6, 1950, and died in Tacoma May 28, 2003, aged 52.

Andrew T. Nielsen

Fifty-year Everett attorney loved the outdoors and raising horses

Raised in the Arlington-Marysville area, Andy Nielsen graduated from high school in 1941 and entered the service during World War II. He was discharged in 1946 and entered Everett Junior College, where he met his wife. They were married in 1948. He received his law degree from the University of Washington in 1951 and joined the Everett firm of Black Christiansen & Nielsen. In 1975 his son, WSBA member Drew Nielsen, joined the firm, which became Nielsen & Nielsen.

Survivors include his wife, a son, a daughter, and four grandchildren.

Andrew Toft Neilsen was born in Fairmont, Minnesota, May 28, 1923, and died in Everett June 7, 2003, aged 70.

John C. O'Rourke

Longtime Des Moines attorney

John O'Rourke was a Gonzaga alum through and through, attending Gonzaga Prep, the university, and the law school. Joining the WSBA in 1957, he practiced with the Attorney General's Office for a number of years before going into private practice. He opened his own firm in Des Moines in 1970 and was active in practice until a few months before he died.

Survivors include his wife, six children, 12 grandchildren, and a large extended family.

John Carroll O'Rourke died June 29, 2003, aged 69.

David C. Stewart

Seattle attorney died on eve of son's wedding

David Stewart's family gathered in Oahu, Hawaii, in April for the marriage of his son Jonathan. Coming down the stairs in a rented home the morning of the wedding, Stewart tripped, fell to the bottom of the stairs, and fractured his skull. He died later in the day. The marriage proceeded because the family agreed Stewart would have wanted it so.

His law partners at Oles Morrison Rinker & Baker recalled "you could tell if you listened carefully to his not-quite-Pacific standard broadcast speech that he was a New Englander." After graduating from the University of Massachusetts in 1963, Stewart did a stint in the Navy. One of his ports of call was Seattle. He liked it so well he returned to attend law school at the UW. Graduating in 1971, Stewart spent his career at the Oles firm, and served for a number of years as managing partner.

Stewart was a past president of the Mercer Island Rotary Club and a member of the Holy Trinity Lutheran Church choir. Survivors include his wife, three sons, and two grandchildren.

David C. Stewart was born in Lowell, Massachusetts, September 17, 1940, and died April 14, 2003, aged 62.

Bar News has been advised of the deaths of the following WSBA members:

- **Rebecca T. Borton**, Bakersfield, CA, admitted 1994, died March 29, 2003.
- **Paul W. Houser**, Renton, admitted 1941, died December 13, 2002.
- **Lewis A. Hutchison**, Olympia, admitted 1969, died January 31, 2003.
- **Brian R. Jones**, Portland, OR, admitted 1992, died December 16, 2002.
- **John Eddy Nelson**, Kent, admitted 1968, died April 20, 2003.

Obituaries and remembrances of WSBA members are welcome. Please forward to the editor at the WSBA office or e-mail 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

Charles O. Bonet (WSBA No. 19717, admitted 1990), formerly of Tacoma, was disbarred effective April 1, 2003, by order of the Supreme Court, following a hearing. For additional information, please see *In re Bonet*, 144 Wn.2d 502, 29 P.2d 1242 (2001). This discipline is based on his offering a prohibited inducement to a witness.

Mr. Bonet, a Thurston County prosecutor, was assigned the prosecution of Mr. M. Before the trial, Mr. Y, a defense witness and potential co-conspirator, made conflicting statements about whether he would testify as a witness for the defense. Mr. Y was charged as a co-conspirator before the M trial began. During the trial, Mr. Y sent a message to Mr. Bonet, asking if the charges would be dropped if Mr. Y did not testify for Mr. M. Mr. Bonet spoke to Mr. Y on the telephone and told him that if Mr. Y did not testify, they could "work something out," and that Mr. Bonet would wait to see what Mr. Y decided. Mr. Bonet told Mr. Y's lawyer that he had agreed to dismiss the charges if Mr. Y did not testify for Mr. M. Mr. Bonet declined to reduce this agreement to writing.

When Mr. M's lawyer learned that Mr. Y would not testify, he asked the judge to look into the circumstances. Mr. Bonet told the judge that "we have made no offer or inducement to this witness . . . in this matter, concerning this trial." The judge held an in camera hearing, during which Mr. Y testified that the final deal was that Mr. Bonet would make the charges go away if Mr. Y took the stand and pleaded the Fifth Amendment. After the hearing, Mr. Bonet dismissed the charges against Mr. Y, and Mr. Y testified for Mr. M. The jury found Mr. M guilty, and the Court of Appeals upheld the decision.

Mr. Bonet's conduct violated RPCs 3.4(b), prohibiting lawyers from falsifying evidence, counseling or assisting a witness to testify falsely, or offering an inducement to a witness that is prohibited by law; 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; and 8.4(d), prohibiting conduct that is prejudicial to the administration of justice.

Sachia Stonefeld Powell and Marsha Matsumoto represented the Bar Association at hearing. Douglas Ende represented the Bar Association on appeal. Robert A. Roden and Robert A. Wright represented Mr. Bonet at hearing. Mr. Bonet represented himself on appeal. The hearing officer was Michael Riggio.

Disbarred

Jason J. McCarty (WSBA No. 15985, admitted 1986), of Olympia, was disbarred effective May 13, 2003, by order of the Supreme Court, following a hearing. This discipline is based on his conduct from 1995 through 2002 involving dishonesty and criminal acts.

Matter 1: In July 1995, Mr. McCarty began representing a criminal defendant. Earlier, Ms. C, a friend of the client's, posted $5,000 bail to obtain his release. Following the hearing, Mr. McCarty asked the court to release the bail money to him. Mr. McCarty told the court that he had known Ms. C for two or three years, that she lived in Aberdeen and was working that day, that she wanted the money released to him, and that half the money belonged to him. Ms. C stated she had never lived in Aberdeen, was unemployed at the time of the hearing, did not know Mr. McCarty, and did not give him authorization to obtain the funds. Mr. McCarty did not give any of the bail funds to Ms. C. Ms. C filed a civil suit against Mr. McCarty for the funds and obtained a judgment, which has been paid in full.

Matter 2: On May 24, 2002, The Court of Appeals affirmed Mr. McCarty's conviction of two counts of money laundering. Mr. McCarty's conduct violated RPCs 3.3, prohibiting lawyers from knowingly making false statements of material fact to the tribunal; 1.14, requiring lawyers to pay client funds to the client upon request; and 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.

Joanne Abelson represented the Bar Association. Dennis L. McCarty and Clifton Johnson represented Mr. McCarty. The hearing officer was Marc Silverman.

Disbarred

Brenda J. Means (WSBA No. 26180, admitted 1996), of Mill Creek, was disbarred effective May 13, 2003, by order of the Supreme Court, following a hearing. This discipline is based on her criminal acts in 1998.

In 1995, Ms. Means moved to Washington. A friend, Ms. K, helped Ms. Means by co-signing a loan for moving expenses. Ms. Means received all the proceeds of the loan and was expected to make the payments. Ms. K's husband paid the loan amount to protect Ms. K's credit. Ms. Means reimbursed the Ks in 2000.

In February 1998, Ms. Means applied for a credit card using Ms. K's name and Social Security number, and her own address and phone number. Ms. Means signed Ms. K's name on the application and requested an additional card for herself. Capital One opened the new account on March 7, 1998. Between March and June, Ms. Means charged approximately $296 on the credit card and made a $100 payment. In June, Ms. K learned of the credit card when a representative asked her why she had not been making payments. In November 1998, Ms. K reported the charges on the card as fraudulent. Capital One determined that Ms. Means had opened the account, and began sending billing statements in her name. Ms. Means did not respond to these statements.

In March 1998, Ms. Means applied for credit through Associates Investment for a new transmission for her car. She used Ms. K's name, Social Security number, birth date, and other personal information, but used her own mailing address. In March 1998, Associates Investment opened the new account. Also in March, Ms. Means submitted a letter to the transmission company, purportedly signed by Ms. K, stating that she was Ms. K's sister and had authorization to use the credit card. The transmission company com-

pleted the work on Ms. Means's car, and she signed Ms. K's name to the charge slip for $1,582.75; Ms. Means did not make any payments. Ms. K learned of this billing in 1998 when she checked her credit report.

Ms. Means's conduct violated RPCs 8.4(b), prohibiting committing criminal acts that reflect adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; and RLD 1.1(a), prohibiting the commission of any act involving moral turpitude, dishonesty, or corruption, or that reflects disregard for the rule of law.

Marsha Matsumoto represented the Bar Association. Julie Gaisford represented Ms. Means at hearing. The hearing officer was Vernon Harkins.

Disbarred

Kenneth R. Mitchell (WSBA No. 17401, admitted 1987), of Tacoma, was disbarred effective July 8, 2002, by order of the Supreme Court, following a hearing. This discipline is based on his conduct in 1999 and 2000 involving lack of diligence, failure to refund unearned fees, misrepresentation, and failure to cooperate with the disciplinary process.

Matter 1: In March 2000, Mr. Mitchell agreed to serve as the guardian *ad litem* (GAL) in a paternity action. On April 11, 2000, the parties sent Mr. Mitchell the relevant documents and a check for $250. On April 19, Mr. Mitchell's license to practice law was suspended for 60 days. Mr. Mitchell did not complete the investigation or issue the GAL report. He failed to notify the parties of his suspension. The court removed Mr. Mitchell as GAL in the case. He did not refund the parties' fees or cooperate with the disciplinary investigation in this matter.

Matter 2: In 1999, Mr. Mitchell agreed to assist clients in enforcing an oral loan and written promissory note executed by their daughter and former son-in-law. In June 1999, the clients sent Mr. Mitchell $1,000 and provided information about the debtors' employers and property. Mr. Mitchell filed the clients' lawsuit, and in December 1999 the court granted them a $25,592.63 default judgment. The clients asked that Mr. Mitchell take immediate actions to collect the judgment, because they believed the son-in-law would try to avoid paying by selling his assets. Mr. Mitchell told the clients that he had filed a lien on the son-in-law's Snohomish County property. The clients visited the courthouse and discovered that Mr. Mitchell had not filed a lien. Mr. Mitchell scheduled supplemental proceedings for April 11, 2000, but they were continued to April 19, when the debtors retained counsel. The Supreme Court suspended Mr. Mitchell's license to practice law effective April 19, 2000. Mr. Mitchell did not conduct the supplemental proceeding and did not inform his clients of his suspension. The clients learned of Mr. Mitchell's suspension from another lawyer in his office and retained substitute counsel. Mr. Mitchell failed to cooperate with the disciplinary investigation of this matter.

Mr. Mitchell's conduct violated RPCs 8.4 (d), prohibiting conduct prejudicial to the administration of justice; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to keep their clients reasonably informed of the status of their matters; and 1.14(b), requiring lawyers to promptly pay client funds to clients upon request; and RLDs 8.1(c), requiring lawyers to notify their clients of license suspensions; and 2.8, requiring lawyers to cooperate with grievance investigations.

Marsha Matsumoto represented the Bar Association. Mr. Mitchell represented himself. The hearing officer was Douglas Dunham.

Disbarred

Stephen L. Palmberg (WSBA No. 3178, admitted 1972), of Grand Coulee, was disbarred effective October 29, 2002, by order of the Supreme Court, following a hearing. This discipline is based on 19 counts of misconduct in 2000 and 2001, involving practicing with a suspended license, lack of diligence, failure to cooperate with the disciplinary process, failing to return unearned fees, and conduct demonstrating unfitness to practice law.

Matter 1: In August 2000, Mr. Palmberg agreed to represent a client charged with a criminal offense. He filed a notice of appearance and arranged to meet with witnesses after the client's arraignment, but failed to appear at either the arraignment hearing or the status conference. The morning of the conference, Mr. Palmberg called the client's father, stating he was "dropping the case," so the court appointed a public defender to represent the client. Mr. Palmberg continued to work on the client's case, contacting the prosecutor and witnesses after the public defender was appointed. The public defender remained on the case. Mr. Palmberg told the client's father he would refund the attorney's fees to the client; however, he did not do so.

Matter 2: In October 2000, Mr. Palmberg agreed to represent a client in a tribal court guardianship and custody matter. Mr. Palmberg filed an agreed motion for continuance and then failed to appear for the rescheduled hearing. The issues at the November 2000 hearing were resolved against the client. Mr. Palmberg did not contact the client until January 2001. Mr. Palmberg also represented the client at a temporary custody hearing, but failed to call any witnesses who could have been helpful to her case. At the hearing, Mr. Palmberg told the court that he had represented the opposing party on unrelated matters. Mr. Palmberg did not respond to opposing counsel's letters or calls about the conflict of interest. Opposing counsel filed a motion to disqualify Mr. Palmberg. Mr. Palmberg filed a notice of concurrence the morning of the motion and did not attend.

Matter 3: Between July 1999 and May 2002, Mr. Palmberg commingled his personal funds with his client funds in his IOLTA account. He deposited earned fees and other personal funds into his trust account. Mr. Palmberg did not produce IOLTA records requested by disciplinary counsel, disbursed funds to a client that belonged to another client, and also disbursed client funds to himself.

Matter 4: The Supreme Court suspended Mr. Palmberg's license to practice law in July 2001 because he had failed to pay his license fee. In August, Mr. Palmberg spoke with a WSBA employee, who verified his suspension. After that conversation, Mr. Palmberg continued to practice law and failed to comply with the duties on suspension required by RLD Title 8. In six cases, Mr. Palmberg either failed to tell clients of his license suspension, met with

clients, appeared in court, drafted documents, or accepted money for work he could not perform.

In six additional matters, Mr. Palmberg failed to diligently represent his clients and adequately communicate with clients. In some cases, Mr. Palmberg failed to refund unearned fees.

Mr. Palmberg's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to reasonably communicate with clients about the status of their matters; 1.5, requiring attorneys' fees to be reasonable; 1.15, requiring lawyers to return unearned fees when the representation is terminated; 1.9, prohibiting lawyers from representing a client in the same or a substantially related matter if the client's interests are materially adverse to the interests of a former client, unless the former client consents in writing after a full disclosure; 5.5, prohibiting the unauthorized practice of law; and 8.4(d), prohibiting conduct prejudicial to the administration of justice; and RLDs 2.8, requiring lawyers to cooperate with the disciplinary investigation; 8.1, 8.2, and 8.3, requiring lawyers to discontinue practice and provide notice to clients, courts, and opposing counsel when the lawyer's license to practice law is suspended; and 1.1(p), prohibiting conduct demonstrating unfitness to practice law.

Jean McElroy represented the Bar Association. Mr. Palmberg represented himself. The hearing officer was Joseph M. Mano Jr.

Disbarred

Jeffrey B. Ranes (WSBA No.7732, admitted 1977), of Montesano, was disbarred effective May 8, 2002, by order of the Supreme Court, following a default hearing. This discipline is based on his conduct during 1998 through 2000, involving dishonesty, deceit, fraud, and misrepresentation.

Matter 1: In January 1995, Mr. Ranes agreed to represent a client in a personal-injury claim based on a 1993 car accident. In October and December 1997, the insurance company's lawyer sent Mr. Ranes a list of potential arbitrators. Mr. Ranes did not respond to these letters until June 1998. In November 1998, the case settled, and the insurance company issued a check to Mr. Ranes and the client. The check, containing a false endorsement for the client, was deposited into Mr. Ranes's trust account. Mr. Ranes's office returned a signed release to the insurance company, but the client's signature on the release was not genuine. Mr. Ranes instructed his secretary to notarize the false signature.

On January 22, 1999, three days prior to expiration of the statute of limitations, Mr. Ranes filed a complaint against the insurance company to compel payment of his client's medical bills. Mr. Ranes either directed or allowed his secretary to sign the client's name on the complaint and falsely notarize the signature. Mr. Ranes, without the client's knowledge or permission, agreed to dismiss the lawsuit if the insurance company agreed to consider the client's claims. Mr. Ranes failed to return the client's phone calls during the representation.

Matter 2: On November 17, 2000, the Disciplinary Board approved Mr. Ranes's stipulation to reprimand and restitution in an unrelated matter. Mr. Ranes agreed to pay the client $750 in restitution no later than 30 days after the board approved the stipulation. He also agreed to pay the Bar Association $1,500 to cover costs and expenses, within 30 days. Mr. Ranes did not pay the restitution or costs as agreed. He also failed to respond to the Bar Association's requests for an explanation of his failure to make the payments.

Mr. Ranes's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to keep clients reasonably informed of the status of their matters and explain matters to the extent necessary to allow clients to make informed decisions regarding the representation; 1.2(a), requiring lawyers to abide by a client's decisions concerning the objectives of the representation; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; 8.4(b), prohibiting committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer; 8.4(a), prohibiting knowingly assisting or inducing another to violate the RPCs; and 5.3, requiring lawyers having direct supervisory authority over nonlawyer assistants to make reasonable efforts to ensure that they comply with the RPCs.

Jonathan Burke represented the Bar Association. Mr. Ranes represented himself. The hearing officer was Julian Dewell.

Disbarred

R. Wayne Torneby (WSBA No. 12431, admitted 1982), of Longview, was disbarred effective June 19, 2002, by order of the Supreme Court, following a default hearing. This discipline is based on his abandoning his practice without notice to his clients and failing to file required Labor and Industries (L&I) reports in 2001.

Matter 1: In 2000, Mr. Torneby represented a client in an L&I matter. In October 2000, L&I began sending the client's $1,786.65 pension checks to Mr. Torneby. In April 2001, Mr. Torneby signed his name and the client's name, deposited the check and deducted his fee, but did not send any funds to the client. When the she tried to contact Mr. Torneby, she learned that his phone had been disconnected. Mr. Torneby abandoned his practice without notice to the client. Mr. Torneby's license to practice law was suspended in June 2001 for failure to pay his license fee.

Matter 2: In 2001, Mr. Torneby represented two clients in an L&I matter and a related personal-injury action. In February 2001, the clients arrived at the office for a meeting and were told that Mr. Torneby had closed his office and left no forwarding address. Mr. Torneby did not appear for the clients' L&I hearing. The court dismissed the clients' civil case for lack of prosecution. They did not learn of the dismissal until they reviewed the court file.

Matter 3: In 1997, Mr. Torneby knowingly ceased reporting his employees' payroll and hours to L&I. He also stopped paying industrial-insurance premiums. RCW 51.48.020(b) makes knowingly failing to report employees' payroll or hours to L&I with the intent to evade determination and payment a felony.

Mr. Torneby's conduct violated RPCs 1.14, requiring lawyers to preserve client property; and 1.3, requiring lawyers to diligently represent their clients; and RLDs 2.8, requiring lawyers to cooperate with disciplinary investigations; and 1.1(a), prohibiting committing acts involving moral turpitude, dishonesty, corruption, . . . or other acts reflecting disregard for the rule of law.

Joanne Abelson represented the Bar Association. Mr. Torneby represented himself. The hearing officer was Marc Silverman.

Suspended

Richard A. Alcorn (WSBA No. 7973, admitted 1977), of Phoenix, AZ, was reciprocally suspended for 30 days, based on a suspension order from the Disciplinary Commission of the Supreme Court of Arizona. The Washington State Supreme Court's order of reciprocal discipline was effective February 11, 2003. This discipline was based on his lack of diligence and communication with a client, and failing to promptly reduce a contingent-fee agreement to writing, during 1997 through 1999.

In January 1997, Mr. Alcorn agreed to represent a client who was hit by a car in a crosswalk. In May 1997, Mr. Alcorn filed a lawsuit on the client's behalf; however, he failed to file a required disclosure statement or serve answers to the defendant's interrogatories and requests for production. In February 1998, a partner in Mr. Alcorn's firm issued a memo instructing Mr. Alcorn to take no further action on the client's case, unless Mr. Alcorn prepared time slips and the client made payments. Mr. Alcorn prepared time slips and continued to do minimal work for the client, including filing a late list of witnesses and exhibits. On May 14, 1998, the trial judge granted the defendant's motion to strike Mr. Alcorn's list of witnesses and exhibits.

On June 7, 1999, the court granted the defendant's motion to dismiss the client's lawsuit. Over the next two months, Mr. Alcorn claimed to have performed extensive work on a motion to reinstate the lawsuit, but he never filed the motion. In mid-August 1999, the client retained substitute counsel. The court denied the client's motion to reinstate the lawsuit. Substitute counsel then filed a malpractice suit against Mr. Alcorn, which settled for a substantial amount in December 2000.

Mr. Alcorn's conduct violated ERs 1.3 and 3.2, requiring lawyers to diligently represent their clients and expedite the clients' litigation; 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters and provide sufficient information for clients to make informed decisions regarding their representation; 1.5, requiring contingent-fee agreements to be in writing; and 3.4(c), prohibiting lawyers from knowingly violating ethics rules.

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

Suspended

Christopher D. Browne (WSBA No. 24302, admitted 1994), of Tacoma, was suspended for 18 months effective March 7, 2003, by order of the Supreme Court, following a hearing. This discipline is based on his failure to preserve client funds in 2000. *(Mr. Browne is to be distinguished from Christopher S. Brown of Seattle.)*

In June 2000, Mr. Browne received a client's $6,107.64 worker-compensation check. Mr. Browne took $1,250 in cash and deposited the remaining funds into his trust account. In July 2000, Mr. Browne removed $5,350 from his trust account for his own purposes. By August 3, the balance in Mr. Browne's trust account was negative and he had not disbursed the client's worker-compensation payment. In September 2000, Mr. Browne issued a $5,100 check to his client.

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

Michael Deleo and Leslie Allen represented the Bar Association. Michael Austin Stewart represented Mr. Browne. The hearing officer was Waldo Stone.

Suspended

John L. McKean (WSBA No. 13294, admitted 1983), of Moses Lake, was suspended for six months effective March 26, 2003, by order of the Supreme Court, following a hearing. For additional information, please see *In re McKean*, 148 Wn.2d 849, 64 P.3d 1226 (2003). This discipline is based on his business transactions with his clients and failure to properly administer his trust account in 1997.

In 1997, Mr. McKean agreed to represent Mr. and Mrs. M in a Chapter 12 bankruptcy. In July 1997, Mr. McKean learned that his clients had not been filing required reports. He believed that the court would involuntarily dismiss the clients' bankruptcy. Mr. McKean advised the clients to dismiss the bankruptcy and form a corporation to protect them from creditors. The clients asked Mr. McKean for help managing their farm and for financial assistance. Mr. McKean, agreeing to take an ownership interest in the clients' business, took a 51 percent interest in the business; the clients retained 49 percent. In June and July 1997, Mr. McKean wrote four checks totaling $11,128.25 from his trust account for the clients' benefit. The amount was charged to an estate for which Mr. McKean was the personal representative with non-intervention powers. Mr. McKean did not notify the estate of this loan or prepare any documentation of the terms. After receiving financial help, the clients refused to dismiss the bankruptcy, so Mr. McKean did not perfect the corporation, but continued to treat it as a separate entity.

In November 1997, realizing that he would be unable to recoup the "loan" of estate funds, Mr. McKean borrowed $23,000 and reimbursed the estate account. The clients retained new counsel, who contacted the Bar Association. The Bar Association auditor found that Mr. McKean's trust account had errors, missing records, and, at times, a negative balance. Mr. McKean also used his trust account as his general business account for approximately two weeks.

Mr. McKean's conduct violated RPCs 1.14, requiring lawyers to preserve client funds deposited into the lawyer's trust account, keep the lawyer's funds separate from the client funds, and maintain complete records of funds in the lawyer's possession; 1.7(b), prohibiting lawyers from representing clients if the representation may be materially limited by the lawyer's responsibility to another client, a third party, or the lawyer's own interests; and 1.8(a), prohibiting a lawyer from entering a business transaction with a client, unless the transaction is fair and reasonable, the client consents, and the client is given a reasonable opportunity to seek independent advice.

Philip E. Cutler represented the Bar Association at hearing. Douglas Ende repre-

sented the Bar Association on appeal. Leland Ripley represented Mr. McKean at the hearing. Mr. McKean represented himself on appeal. The hearing officer was J. Donald Curran.

Suspended

Kenneth R. Mitchell (WSBA No. 17401, admitted 1987), of Tacoma, was suspended for two years effective May 31, 2001, by order of the Supreme Court approving a stipulation. This discipline is based on his conduct during 1998 through 2000, involving lack of diligence, misrepresentation, failure to protect client funds, and failure to cooperate with the discipline process.

Matter 1: In August 1998, Ms. F retained Mr. Mitchell to represent her in a marriage-dissolution action. Approximately one week later, Mr. Mitchell informed Ms. F that her husband had been served with the pleadings and that he had issued subpoenas for financial information. In March 1999, Mr. Mitchell told the client he was waiting for a trial date and that the matter would be finalized soon. On May 13, Ms. F learned that the dissolution had never been filed. Mr. Mitchell never filed the dissolution with the court, nor served the client's husband. He also failed to respond to the client's request that he refund her attorney's fees. Mr. Mitchell failed to cooperate with the disciplinary investigation of this matter.

Matter 2: Mr. and Ms. M retained Mr. Mitchell to defend them in a lawsuit. After the arbitration, the Ms told Mr. Mitchell they wanted to appeal the decision if it was not favorable. When the arbitrator issued his decision, Mr. Mitchell did not inform the clients. In November 1998, the plaintiff's attorney requested that the arbitrator increase the attorney's fees and costs award. Mr. Mitchell did not submit a response to this request, and, on December 23, 1998, the arbitrator increased the amount of attorney's fees. Mr. Mitchell did not inform the Ms of the arbitrator's award. On January 13, 1999, the plaintiff's attorney filed a motion for entry of judgment. Mr. Mitchell did not inform the Ms of the motion, and, on January 22, 1999, the court entered the judgment against them. On April 16, the Ms consulted with another attorney, who negotiated a settlement with the plaintiff's lawyer. Mr. Mitchell failed to cooperate with the disciplinary investigation of this matter.

Matter 3: On April 6, 2000, Mr. D retained Mr. Mitchell to obtain an emergency restraining order. Between April 10 and April 13, Mr. D and/or his wife left several messages at Mr. Mitchell's office, and Mr. Mitchell assured them he would obtain the restraining order by April 14. Mr. Mitchell did not obtain the restraining order or file any papers with the court requesting the order. On April 14, Mr. Mitchell received an order from the Supreme Court suspending him for 60 days effective April 19, 2000. He immediately stopped work on Mr. D's case, but did not inform Mr. D. The Ds continued to leave messages for Mr. Mitchell, but received no response. On April 27, Ms. D received a call from another attorney informing her that Mr. Mitchell had been suspended. Ms. D contacted the court and learned that Mr. Mitchell had never filed the papers seeking the restraining order. On May 2, 2000, Mr. Mitchell sent the Ds a letter notifying them of his suspension. On May 4, Mr. D wrote to Mr. Mitchell and requested a refund of his $750, but Mr. Mitchell did not respond. Mr. Mitchell did not cooperate with the disciplinary investigation of this matter.

Matter 4: In August 1997, Mr. R retained Mr. Mitchell to represent him in a temporary-parenting-plan modification. Mr. Mitchell asked the client to pay $130 for medical records, but never requested the records. Mr. Mitchell prepared the parenting plan and obtained the parties' signatures on September 26, 1997, but never filed the temporary plan with the court.

In February 2000, Mr. R asked Mr. Mitchell to make the parenting plan modifications permanent. Mr. Mitchell prepared a petition for modification and obtained the parties' signatures on March 3, 2000, but never filed it with the court. On April 19, Mr. Mitchell's license to practice law was suspended. Mr. Mitchell did not notify his client of his suspension. Mr. R contacted the court and learned that Mr. Mitchell had not filed either the 1997 or the 2000 modification papers. When the client called Mr. Mitchell's office, he learned of his suspension. Mr. Mitchell assured Mr. R that he had filed the modification papers. Mr. Mitchell did not refund Mr. R's attorney's fees or costs from the 1997 representation, or provide him with an accounting. Mr. Mitchell failed to cooperate with the disciplinary investigation of this matter.

Mr. Mitchell's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters; 1.5, requiring attorneys' fees to be reasonable; 1.14(b)(2) and (3), requiring lawyers to protect client property and maintain records of client funds; 1.14(b)(4), requiring lawyers to promptly deliver funds to the client if requested; 1.15(d), requiring lawyers to take steps to the extent reasonably practicable to protect a client's interests upon withdrawal; 3.2, requiring lawyers to make reasonable efforts to expedite litigation; and 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; and RLDs 2.8, requiring lawyers to cooperate with the disciplinary process; and 8.1, requiring suspended lawyers to notify clients.

Marsha Matsumoto represented the Bar Association. Mr. Mitchell represented himself.

Reprimanded

Janet A. Irons (WSBA No. 12687, admitted 1982), of Bellevue, received a reprimand on September 13, 2002, based on a stipulation approved by the Disciplinary Board. This discipline was based on her conduct during 1998 through 2000, involving lack of diligence, advancing financial assistance to a client, negligent misrepresentation, and failure to cooperate with the disciplinary investigation.

Matter 1: In 1998, Ms. Irons filed a complaint against her client's former employer, asking for past-due sales commissions. Ms. Irons did not timely answer the defendant's discovery requests, and failed to appear at the defendant's motion to compel answers to discovery. The court ordered that Ms. Irons's client provide discovery within 10 days, and imposed $750 in attorney's fees. When Ms. Irons failed to comply with the court order to provide discovery, the court granted the defendant's motion to dismiss the lawsuit with prejudice. Ms. Irons, however, told the clients that the lawsuit was still pending.

You Are Cordially Invited to Attend

The Washington State Bar Association's

50-Year Member Tribute Luncheon

This year, the WSBA will be honoring its 50-year members at a separate event. All members of the legal community are invited to attend.

Thursday
September 25, 2003

The Westin Hotel
Fifth Avenue Room
1900 Fifth Avenue
Seattle

Registration & Reception 11:00 a.m. (no-host bar)

Luncheon/Program 12:00 noon

Name _____ WSBA No. _____

Address _____

Phone _____ E-mail _____

Affiliation/organization _____

Please note the name(s) of those attending and indicate luncheon selection(s).

_____ ❑ chicken ❑ salmon ❑ vegetarian

_____ ❑ chicken ❑ salmon ❑ vegetarian

_____ ❑ chicken ❑ salmon ❑ vegetarian

Cost for the luncheon is $45 per person. To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received no later than September 17, 2003. (Please note that refunds cannot be made after September 17.)

❑ MasterCard ❑ Visa No. _____ Exp. date _____

Name as it appears on card _____

Signature _____

Please send to: **Washington State Bar Association**
50-Year Member Tribute Luncheon
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330
Phone: 800-945-WSBA; Fax: 206-727-8320

TOTAL $ _____

❑ Check here if you require special accommodations. If checked, please explain:

_____

_____

WSBA office use only:

Date _____

Check No. _____

Amount _____

No. MTL903

Matter 2: In June 1998, Ms. Irons agreed to represent a mother in the probate of her daughter's estate. Ms. Irons maintained some of the estate funds in her trust account. In January 2000, Mr. Irons wrote the client a $3,000 check; however, there was only $1,133.60 in the trust account. In February, Ms. Irons paid another estate beneficiary $2,100. The estate had no funds in the trust account at this time. Ms. Irons knowingly advanced her own funds to cover these estate disbursements.

Matter 3: Ms. Irons failed to cooperate with disciplinary counsel's investigation of this matter. The Supreme Court interimly suspended her license to practice law for approximately 28 days. After the suspension, Ms. Irons cooperated with the investigation.

Ms. Irons's conduct violated RPCs 1.1, requiring lawyers to provide competent representation to clients; 1.3, requiring lawyers to diligently represent their clients; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; and 1.8(e), prohibiting lawyers from advancing financial assistance to clients; and RLD 2.8(a) and (b), requiring lawyers to cooperate with disciplinary investigations.

Rebecca Neal represented the Bar Association. Robert Wayne represented Ms. Irons.

Supreme Court Ethics Advisory Committee

Application deadline: August 31, 2003

The WSBA Board of Governors will be nominating one member who is appointed by the Supreme Court to serve a two-year term on the Supreme Court Ethics Advisory Committee commencing November 1, 2003. The incumbent is eligible for reappointment and must also submit a letter of interest. The committee is designated as the body that gives advice with respect to the application of the provisions of the Code of Judicial Conduct to officials of the Judicial Branch, as defined in article 4 of the Washington Constitution, and shall from time to time submit to the Supreme Court recommendations for necessary or advisable changes to the Code of Judicial Conduct (GR 10).

Please submit a letter of interest and résumé to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail barleaders@wsba.org.

Judicial Recommendation Committee Vacancies

The WSBA Judicial Recommendation Committee is currently accepting applications from attorneys and judges seeking consideration for appointment to fill potential appellate-court vacancies. Interested candidates will be interviewed by the committee at its December 5, 2003, meeting. The deadline for receipt of questionnaires by the WSBA office is 5 p.m. on October 15, 2003.

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

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

Judicial Information Systems Committee Seeking Nominations

The WSBA seeks a member interested in being nominated by the chief justice of the Washington State Supreme Court for a three-year term to represent the WSBA on the Judicial Information Systems Committee (JISC). JISC Rule 2 states that the chief justice shall consider for appointment only those individuals who have demonstrated an interest in and commitment to judicial administration and to automation of judicial systems and functions.

The JISC is the policy-level steering committee for the court's automation system. The committee is composed of four members from the appellate court level; four members from the superior court level; four members from the courts of limited jurisdiction level; and three at-large members from outside the judiciary, one of whom is to be a member of the Washington State Bar Association, one of whom is to be a member of the Washington Association of Sheriffs and Police Chiefs, and one of whom is to be a member of the Washington State Association of Prosecuting Attorneys.

Persons wishing to be considered for this nomination should submit a letter of interest with a résumé by August 25, 2003, to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail barleaders@wsba.org.

Notice of Public Hearing: WSBA Resolutions Committee

Following the certification by the Board of Governors at their July 26 board meeting, the resolution shown below has been offered for membership consideration at the WSBA annual business meeting, Thursday, September 11, beginning at 5:30 p.m. at the Bell Harbor International Conference Center, Pier 66, 2211 Alaskan Way, Seattle.

The WSBA Resolutions Committee will conduct a public hearing on the resolution in accordance with article VII of the WSBA bylaws. The public hearing will begin at 1 p.m. on Thursday, September 4, 2003, at the WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330. Proponents and opponents of the resolution are urged to attend the hearing or to present their views in written form, for consideration by the Resolutions Committee, by sending their comments to the WSBA executive director at the above address.

The Resolutions Committee will recommend approval, rejection, or amendment of the resolution, which will then be debated and voted on at the annual meeting. The members of the Resolutions Committee are Mark A. Johnson (chairperson), Paula E. Boggs, Robert M. Boggs, Kenneth H. Davidson, and David C. Reed.

Resolution

RESOLVED: That the Washington State Bar Association condemns the detention of U.S. citizens in the United States without access to counsel and without the right of meaningful judicial review.

Statement in Support of Resolution

Our government has detained indefinitely at least two United States citizens without criminal charge and has denied them access to lawyers. These men have been held incommunicado for over a year. One citizen was arrested in the United States, and both are being held here.

The government's justification is that they are "enemy combatants," as defined by itself. There is no established process by which the prisoners can challenge their designation or their imprisonment. Without access to lawyers, they have no way to seek release.

The American Bar Association Task Force on Enemy Combatants issued a Report analyzing the legal framework for the detention of these men which is available online at www.abanet.org/leadership/recommendations03/109.pdf. It recommended that U.S. citizens and residents detained within the United States because of their designation as "enemy combatants" be given the opportunity for meaningful judicial review and that they not be denied access to counsel.

Although the ABA legal analysis is convincing, it should be unnecessary. Even if there were a law supporting the government's position, it would be the duty of lawyers

admitted to the Bar in the United States to oppose it.

No U.S. citizen should be imprisoned indefinitely by his or her own government and denied the right to a lawyer and meaningful legal redress. It is as simple as that.

It is fundamental to the common law right of habeas corpus. It is fundamental to the principles on which our country was founded and on which our Bill of Rights was based.

The WSBA bylaws state that one of our goals is to "promote an effective legal system, accessible to all." We are to serve as a statewide voice to the public and the branches of government on matters relating to this.

It is our duty to speak out in opposition to this practice.

Notice of Public Meeting: Legal Foundation of Washington

Friday, September 12, 2003

The trustees of the Legal Foundation of Washington will meet on September 12, 2003, at the Foundation's offices, 500 Union St., Ste. 545, Seattle. From 9-9:30 a.m., the public may appear in order to comment on the Foundation's activities. This opportunity is made pursuant to article I, section 1.7, of the Legal Foundation of Washington bylaws.

Bankruptcy Case Law Digest for Washington State—Third Edition

The third edition of the *Bankruptcy Case Law Digest for Washington State* is a two-volume set with a searchable CD, and contains the bankruptcy cases dating from 1996 through 2002, with a linked topical index, case list, code, and rules. Bankruptcy cases included are from the U.S. Supreme Court, the 9th Circuit Court of Appeals, the 9th Circuit Bankruptcy Appellate Panel, the 9th Circuit District Courts, and Washington bankruptcy courts.

Cost for both volumes and the searchable CD is $90. Members of the WSBA Creditor-Debtor Section and the Idaho Commercial Law and Bankruptcy Section receive a $15 discount.

For order information, go to www.wsba.org/lawyers/groups/creditordebtor/bankruptcy_digest.htm.

Washington Legal Ethics Deskbook Available in Fall 2003

Edited by Gail McMonagle, Perkins Coie professional standards counsel, and written by members of the WSBA Rules of Professional Conduct Committee, including the former WSBA chief disciplinary counsel, the *Washington Legal Ethics Deskbook (2003)* provides practical advice on all aspects of client representation, from formation of the attorney-client relationship to withdrawal from employment. The deskbook includes comprehensive coverage of advertising and solicitation (including Internet issues), attorney fees and fee agreements (with sample agreements), multistate practice and collection issues, special ethical concerns in mediation and negotiation, and attorney malpractice and disciplinary procedures, including the new Rules for the Enforcement of Lawyer Conduct (ELCs). The price of the deskbook is $150, plus shipping and handling, and tax. For more information, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail orders@wsba.org.

Important *Resources* Directory Update

Please clip or photocopy this announcement and place it in your *Resources* directory.

The address for the attorneys listed below is incorrect in *Resources*.

Malcolm L. Edwards, WSBA No. 135, edwardsphoto@msn.com
Carl T. Edwards, WSBA No. 23316, cte@seanet.com
Howard M. Goodfriend, WSBA No. 14355, howard@washingtonappeals.com
Evy F. McElmeel, WSBA No. 30866, evy@washingtonappeals.com
Brendan Finucane Patrick, WSBA No. 25648, brendan@washingtonappeals.com
Robert G. Sieh, WSBA No. 6368
Catherine W. Smith, WSBA No. 9542, cate@washingtonappeals.com

Their correct address is:

500 Watermark Tower, 1109 First Avenue
Seattle, WA 98101-2988
Tel: 206-624-0974; Fax: 206-624-0809

Dave Burman to Receive Charles A. Goldmark Distinguished Service Award

The Legal Foundation of Washington will present the 2004 Charles A. Goldmark Distinguished Service Award to David J. Burman at the 18th Annual Goldmark Award Luncheon, to be held Friday, February 20, 2004, at the Red Lion Hotel in Seattle between noon and 1:30 p.m. The luncheon is open to the public.

Mr. Burman, a partner with Perkins Coie, will receive the award in recognition of his *pro bono* representation before the U.S. Supreme Court in *Brown v. Legal Foundation of Washington*. The Court upheld the constitutionality of Washington's IOLTA program. Nationally, IOLTA programs provide over one-third of civil legal-aid funding to the poor.

The Goldmark Award honors the memory of Charles A. Goldmark, Seattle attorney, community leader, and ardent supporter of access to justice, who was serving as the Legal Foundation's president at the time of his death in 1986.

For more information about the Legal Foundation of Washington, the Goldmark Award, or the IOLTA program, visit www.legalfoundation.org.

Annual Awards Dinner and Business Meeting

The Annual Awards Dinner and Business Meeting will be held Thursday, September 11, at Bell Harbor International Conference Center, 2211 Alaskan Way, Seattle. The reception begins at 5:30 p.m. (no-host bar), and the dinner/program begins at 6:30 p.m. Cost for the dinner is $60 per person. All

members of the legal community are invited. The registration form can be found on page 43.

50-Year Member Tribute Luncheon

This year, the WSBA will be honoring its 50-year members at a luncheon on Thursday, September 25, in the Fifth Avenue Room of the Westin Hotel, 1900 Fifth Ave., Seattle. Registration and reception begin at 11 a.m. (no-host bar), and the luncheon and program begin at noon. Cost for the luncheon is $45 per person. All members of the legal community are invited to attend. The registration form can be found on page 52.

Left to right: Don Horowitz, ATJ Technology Bill of Rights Committee chair, as Tevye; J. Richard Manning, WSBA president, as "IENTA"; and Mary McQueen, Administrative Office of the Courts director, as the client.

Fiddler on the Courthouse Roof

At the Eighth Annual Access to Justice Conference June 6-8 in Wenatchee, Tevye (Don Horowitz) and a low-income client (Mary McQueen) sang "Grantmaker, grantmaker, give me a grant" (to the tune of "Matchmaker, Matchmaker") to "IENTA" (Dick Manning) (who represents the IOLTA funds/Legal Foundation of Washington) in hopes of receiving a grant to keep the *pro bono* program alive in "Anatevka," Washington.

"Fiddler on the Courthouse Roof" celebrated the Legal Foundation of Washington's victory in the *Brown v. Legal Foundation of Washington* case regarding IOLTA funds. Katie O'Sullivan, Dave Burman, and Nicholas Gellert, members of the Perkins Coie defense team, also had roles in this production.

Ethics 2003 Committee Meetings

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

Upcoming meetings:
August 13—WSBA office
September 3—WSBA office

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 to $50 a sponsor's filing fee for a Form 1 application for approval of MCLE credit. In addition, a motion was passed to increase to $3 per name the fee for the WSBA's processing of manually submitted CLE attendance, with advance notice to providers that fees were 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.

Upcoming Board of Governors Meetings

September 11-12—Seattle
October 17-18—Portland
December 5-6—Leavenworth

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

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in July 2003 is .96 percent. The maximum allowable interest rate for August 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 website at www.wsba.org/media/publications/barnews/usury.htm.

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 website at www.wsba.org and click "MCLE WEBSITE" in the left navigation bar, or 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.

Website Links from Lawyer Directory

A link to your website can be added to your directory listing, so that 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 for the first year 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/addlink.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. If you haven't already, 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 a.m. to 5 p.m.

The WSBA Store Is Open

The WSBA online store is open. Go to www.wsba.org and click "WSBA Store" in the left navigation bar. Purchase Cutter & Buck polo shirts, twill baseball caps, ballpoint 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 206443-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.

Learn More about Case-Management Software

The WSBA Law Office Management Assistance Program (LOMAP) office maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff are available to provide materials, answer questions, and recommend options. To make an appointment, contact Pete Roberts at 206-727-8237 or peter@wsba.org.

Consumer-Information Pamphlets Available

Provide a valuable service to your clients by offering them consumer-information pamphlets! Published by the WSBA as a public service, these pamphlets educate consumers about their legal rights and responsibilities, answer frequently asked questions, and explain basic aspects of Washington law. The information, of course, is general, and not intended as legal advice or as a substitute for a lawyer's services.

For a complete listing of pamphlets and pricing information, contact the WSBA Service Center at 800-945-WSBA or 206443-WSBA, or go to www.wsba.org/consumer-information.

Note: A special discounted rate is available for qualified nonprofit organizations-- contact the WSBA Service Center for details.

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.

BUSINESS LAW

Purchase and Sale of a Small Business
August 7—Seattle; August 21—Mt. Vernon. 6 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CRIMINAL LAW

Criminal Justice Institute
September 9-10—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ELDER LAW

Elder Law Annual Meeting and CLE
September 19—SeaTac. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

6th Annual Labor and Employment Law Conference
August 21-22—Seattle. 11.25 CLE credits, including 1 ethics. By The Seminar Group; 800-574-4852.

Americans with Disabilities Act Workshop
September 5—Seattle. CLE credits pending. By National Employment Law Institute; 303-861-5600.

ESTATE PLANNING

RPPT/Tax Estate Planning
September 24—Seattle; September 25—Spokane. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ETHICS

Ethics, Professionalism and Civility: The Hard Questions
September 19—Seattle. 3.0 ethics credits pending. By WSBA Professionalism Committee; 800-945-WSBA or 206443-WSBA.

Professionals

GENERAL

2nd Annual Bonding and Insurance and Construction Industry Conference
August 7—Seattle. 2.75 CLE credits. By The Seminar Group; 800-574-4852.

Get the Edge! Negotiation Strategies for Lawyers
September 19—SeaTac. 6.5 CLE credits, including 1.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Transfer Pricing Conference
September 19—Seattle. CLE credits pending. By UW CLE; 800-CLE-UNIV.

INDIAN LAW

16th Annual Indian Law Symposium
September 18-19—Seattle. CLE credits pending. By UW CLE; 800-CLE-UNIV.

INTELLECTUAL PROPERTY

Patent Enforcement and Defense
August 22—Seattle. 5.75 CLE credits. 5.75 CLE credits for Oregon attorneys pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

IP Licensing Agreements
September 10—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LAW PRACTICE MANAGEMENT & TECHNOLOGY

Winning Strategies
September 24—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LITIGATION

Deposition Techniques
August 5—Tacoma; August 6—Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Breakfast with the Judges
September 9, 16, 30—Kent. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Internet Insurance Resources
September 25—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Motions Practice
September 26—Seattle. CLE credits pending. By WSTLA; 206-464-1011.

Production of Documents
September 30—Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FORENSIC TITLE RESEARCH

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John J. Greaney
is available for consultation and referral of plaintiffs' claims of medical or dental malpractice against healthcare providers and hospitals.

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ATTORNEYS' FEE DISPUTES

Michael Caryl

- Attorney-Client
- Attorney-Attorney
- Attorney Liens
- Fee-Related Ethics and Discipline
- Expert Testimony (lodestar/fee division/*quantum meruit*)
- Arbitration, Mediation
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206-623-5890
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Leland G. Ripley,
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866-890-3525
E-mail: leland.ripley@verizon.net

INSURANCE

Richard Gemson,
former adjunct professor of law at UPS and former in-house counsel for North Pacific Insurance Co., is available for consultation, association, or referral in matters involving all types of insurance coverage.

1001 Fourth Ave., Ste. 3278
Seattle, WA 98154
206-467-7075
Fax: 206-342-9650

APPEALS

Philip A. Talmadge
Former justice,
Washington State Supreme Court;
fellow, American Academy of Appellate Lawyers

Anne Watson
Former law clerk,
Washington State Supreme Court

Available for consultation or referral on state and federal briefs and arguments.

TALMADGE LAW GROUP PLLC
18010 Southcenter Parkway
Tukwila, WA 98188-4630
206-574-6661
Fax: 206-575-1397
E-mail: christine@talmadgelg.com

PROBATE TRUSTS ESTATE PLANNING GUARDIANSHIP

Mary Anne Vance,
co-author of the chapters on estate planning and probate in Butterworth's *Washington Civil Practice Deskbook*, is available for referrals of matters, both contested and noncontested.

THE LAW OFFICE OF MARY ANNE VANCE, PS
900 Fourth Avenue, Suite 1111
Seattle, Washington 98164
206-682-2333
E-mail: maryanne@vancelaw.com
www.vancelaw.com

DISCIPLINARY INVESTIGATION and PROCEEDINGS

Patrick C. Sheldon,
former member of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings.

FAIN SHELDON ANDERSON & VANDERHOEF PLLC
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999 Third Ave., Ste. 3610
Seattle, WA 98104
206-749-2371
E-mail: patrick@fsav.com

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Blair & Meeker, LLP

is pleased to announce that

Reba Weiss

has joined the firm.

Ms. Weiss has over 20 years of litigation experience, the last 10 of which have been devoted exclusively to the practice of employment law. She is a frequent speaker at both national and local employment law seminars, including the National Employment Lawyers Association. She is the current co-chair of the Employment Law Section for the Washington State Trial Lawyers Association. Her practice will continue to emphasize employment law and general civil litigation.

2505 Second Avenue, Suite 500
Seattle, Washington 98121-1484
Telephone: 206-204-0300
Fax: 206-204-0301
www.blairandmeeker.com

Forsberg & Umlauf, P.S.

A Litigation Defense Firm

is pleased to announce that

Cascadia A. Goddard

and

Erin Weeks

have joined the firm as associates.

Forsberg & Umlauf is a defense firm practicing in the areas of construction, maritime, professional liability, personal injury, property damage, commercial disputes, insurance coverage, asbestos, product liability, and other litigation-defense matters.

900 Fourth Avenue, Suite 1700
Seattle, Washington 98164
Telephone: 206 689-8500
Fax: 206-689-8501
Email: firm@forsberg-umlauf.com

Karr Tuttle Campbell

is pleased to welcome to its Seattle office

Merrilee A. MacLean

as a shareholder in the
Banking and Insolvency Practice Group

Constance L. Proctor

as a shareholder in the
Real Estate Practice Group

John T. Piper

as of counsel in the
Taxation Practice Group

Karr Tuttle Campbell
1201 Third Avenue, Suite 2900
Seattle, Washington 98101
Telephone: 206-223-1313
Fax: 206 682 7100
www.karrtuttle.com

Miller Nash LLP

is pleased to announce that

Joel S. Summer

has joined the firm as partner in the Seattle office. Mr. Summer, former vice president and general counsel of Univar USA Inc., will emphasize his practice on broad-based business, environmental, regulatory, antitrust, and litigation.

Miller Nash LLP
4400 Two Union Square
601 Union Street
Seattle, Washington 98101-2352
Telephone: 206-622 8484
Fax: 206-622 7485
E-mail: joel.summer@millernash.com
www.millernash.com

HELSELL FETTERMAN LLP

is pleased to announce that

Jeffrey C. Grant

has joined the firm's litigation group as of counsel.

Mr. Grant, formerly of The Grant Law Firm, is a trial lawyer with more than two decades of experience representing people and businesses in civil and criminal litigation. He is an adjunct faculty member of the University of Washington and Seattle University Schools of Law, an instructor for the National Institute of Trial Advocacy, and a member of the American Board of Trial Advocates.

Katherine A. Walter

has been promoted to associate in the firm's construction defect group.

Ms. Walter holds degrees in law, mechanical engineering, marine engineering and naval architecture, mathematics, and chemistry. She is admitted to practice before the U.S. Patent and Trademark Office, registered as a professional engineer (civil) in Washington, certified as a project management professional, and is a commander in the U.S. Naval Reserves.

HELSELL FETTERMAN LLP
1001 Fourth Avenue, Suite 4200
PO Box 21846
Seattle, Washington 98111-3846
Telephone: 206-292-1144
www.helsell.com

Since 1890

The Law Firm of

LAWRENCE & VERSNEL PLLC

is pleased to announce that

Vanessa M. Vanderbrug

has joined the firm as an associate.

Ms. Vanderbrug will concentrate her practice on civil litigation.

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700 Fifth Avenue
Seattle, Washington 98101-5013
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Fax: 206-903-8552

We are pleased to announce the formation of

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practicing public-interest litigation, lobbying, nonprofit law, and immigration. PILG's litigation and lobbying practice serves individuals, nonprofit organizations, and legal advocacy groups in the areas of civil rights, international human rights, discrimination, education, employment and labor, immigration, consumer protection, poverty, and health law. PILG also provides a full range of legal services to nonprofit organizations.

Gwynne L. Skinner
Nancy S. Chupp
Elizabeth A. Fiatlarone, Of Counsel
Karen Mitterer, Of Counsel
George Ferrell, PC, Special Counsel

2118 Eighth Avenue, Suite 106
Seattle, Washington 98121
Telephone: 206 447-0103
www.pilg.org

Your referrals are welcome and appreciated.

Classifieds

Reply to WSBA *Bar News* Box Numbers at:

WSBA *Bar News* Job Code ____
Bar News Classifieds
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330

Positions available are also posted by telephone at

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and online at www.wsba.org/jobs

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Downtown Seattle office-sharing: $150 per month. Also, full-time offices available on 32nd fl., 1001 4th Ave. Plaza. Close to courts. Furnished/unfurnished suites; short-term/long-term lease. Receptionist, legal word processing, telephone answering, fax, law library, legal messenger, and other services. 206-624-9188.

Wells Fargo Center, 32nd fl.: View attorneys' offices. Completely equipped law office, including receptionist, conference room, electronic law library, high-speed DSL access, kitchen. Call Harris, Mericle & Wakayama; 206-621-1818.

Renton downtown office space in small law-office building. Optional secretarial space. Use of copier, fax, phone system, legal messenger, receptionist. Call 425 228-8899.

Downtown Portland—with inexpensive parking: Great location near courthouse on the corner of SW 6th and Clay. Space for one to three attorneys, plus staff. Furnished or unfurnished. Full reception and custom telephone answering, law library with fireplace, conference room, fitness center, shower, closed file storage, all equipment, no hidden costs. $365 to $635. Parking $115. 503 226 3607.

Vashon: Furnished space in established law office in downtown Vashon Island. Good visibility, copier, and library. $350, with space for services and some referrals possible. 206 463-6711.

Sweeping, unobstructed view of Mt. Rainier (Wells Fargo Building, 41st fl., Seattle): Elegant law office near courthouse. Reasonable rates include receptionist, basic messenger service, mail delivery, fax, two conference rooms, law library, fully equipped kitchen. For more information, please call Diane at 206-624-9400.

SEEKING

Retired attorneys sought to aid busy Tacoma solo practitioner gain greater competence in tax and immigration law. Call 253-272-7181 or fax 253 759 3442.

Experienced personal-injury attorney with own book of business seeks full-time position with Puget Sound firm. Long-standing WSTLA Eagle member. Reply to PO Box 1544, Mercer Island, WA 98040; 206-356-5778.

Wanted: A good lawyer who wants to start or expand his/her own practice. Nicely furnished office space with view and ambience, across the street from Southcenter Mall. All yours for reasonable sum plus a good source of overflow business. Our office partner is retiring and the work is here waiting for you. Please respond to Allen Singer, 16400 Southcenter Pkwy., Ste. 407, Seattle, WA 98188; phone 206-575-4440.

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They Did *What*?

by Lindsay Thompson
Bar News Editor

Alice laughed. "There's no use trying," she said: "one *can't* believe impossible things."

"I daresay you haven't had much practice," said the Queen. "When I was your age, I always did it for half-an-hour a day. Why, sometimes, I've believed as many as six impossible things before breakfast."

— Lewis Carroll, *Through the Looking-Glass* (1872)

Most Americans, gay and straight, have probably felt like Alice recently. The Ontario Court of Appeals joined Quebec's and British Columbia's in declaring that a federal law's definition of marriage violated Canada's Charter of Rights and Freedoms. Gay and lesbian couples have married there, some of them American. The U.S. Supreme Court found laws making sex between people of the same gender criminal to be unconstitutional and, in acting, strengthened the privacy rights of all Americans. Wal-Mart, the world's biggest corporation, barred its 1.3 million employees from practicing discrimination on gay and lesbian colleagues.

Justice Antonin Scalia—in a characteristically robust dissent—argued that the Supreme Court usurped the role of voters and elected legislatures in its decision. "Social perceptions of sexual and other morality change over time, and every group has the right to persuade its fellow citizens that its view of such matters is the best. That homosexuals have achieved some success in that enterprise is attested to by the fact that Texas is one of the few remaining states that criminalize private, consensual homosexual acts. But persuading one's fellow citizens is one thing, and imposing one's views in the absence of democratic majority will is something else."

Aside from a few states' reform of sex-crime laws in the early 1970s, however, what caused the number of states criminalizing consensual same-sex conduct to decline is the same thing that led to *Lawrence v. Texas*: good lawyering, state after state. The Supreme Court wasn't sitting in its marble palace, fingers drumming impatiently, waiting for a gay-rights case to act up over. The lawyers who won these cases, and the Canadian marriage cases, played by the rules set by the majority. Just as lawyers worked out a long-term plan in the 1940s to dismantle statutory segregation one lawsuit at a time (and were similarly denounced for overturning the natural order of society), other lawyers developed the legal arguments and brought the appeals that culminated in the Texas decision. They just outlawyered their opponents.

Like the civil rights lawyers, and the lawyers who defended Japanese Americans in the internment cases David Shayne describes in this issue, the lawyers who work on gay-rights litigation are brave. Activism can get you fired. Even among gay-friendly law firms, few make the fact public. When an Illinois firm decided to create and market a practice group for gay people a couple of years ago, managing partners in other firms warned them off: it will cost you business, they said. Firms don't make money on such cases. They're almost always *pro bono*, or funded by donations to groups like the ACLU. Lawyers are a conservative, change-resistant lot. Mentioning gay rights in *Bar News* is one of the few things that will produce even more—and more vehement—letters than mentioning animals rights.

What's remarkable about these events is how many Washington lawyers have had a hand in making the impossible happen. A legislator, WSBA member Peter Francis, wrote the law that repealed this state's sodomy laws 30 years ago. Lawyers with the Northwest Women's Law Center, among them WSBA member Rosemary Daszkiewicz, briefed and argued the appeal that led the Montana Supreme Court to unanimously overturn that state's sodomy laws a decade ago.

Now celebrating its 30th anniversary, the Lambda Legal Defense and Education Fund's board has led and funded the Texas case and other equal-rights cases; among its past and present board members and chairs are WSBA members Steve Davis, Suzanne Thomas, Jamie Pedersen, and Victor Flatt.

Seattle's Pride Foundation has, similarly, played by the rules in the business world. It buys stock in public companies and proposes shareholder resolutions to bring equal employment rights to employees. WSBA member Zack Wright sits on the foundation's board, which is celebrating its success in persuading Wal-Mart to change its policies. Most of us, when we want to see courageous lawyering, settle for watching "To Kill a Mockingbird" again. What's most impressive is that gay and lesbian lawyers who worked on these cases are in many respects strangers to the law they took an oath to uphold. Yet work they do, often under withering attacks from judges, politicians, and other lawyers.

The sky will not fall because of the impossible things happening around us. We're going to thrash it out, pro and con, in the courts, legislatures, the media, and the voting booth. It wasn't the homosexual agenda Justice Scalia says holds sway over America that carved "Equal Justice Under Law" into the portico of his office building. Our job as lawyers, by our own best lights, is to hold the legal system to the standard it has set for itself.

Lindsay Thompson edits Bar News. *His views are his own. E-mail him at tradelaw@thompson-law.com.*

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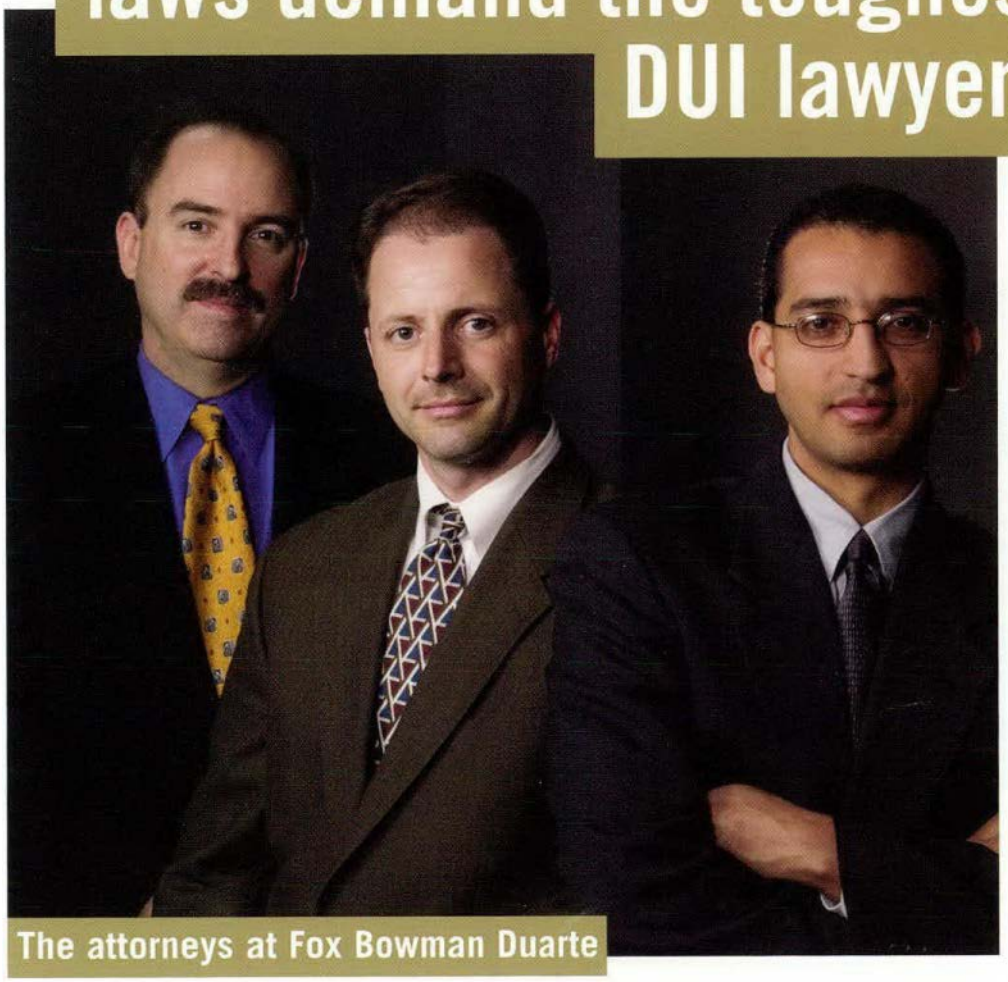

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