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Transformational Law
p. 18

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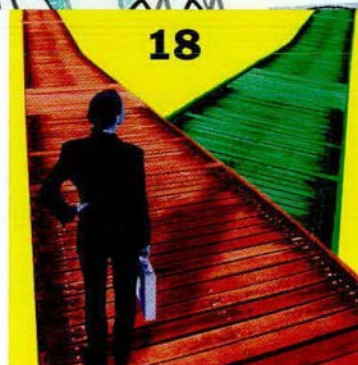


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(not pictured)

Mr. Rigby's modest proposal

James Rigby ("Some thoughts on *pro bono* by lawyers," Letters, *Bar News*, December 2003) hopes to acquire through more fees or service enough "money for justice to purchase justice for everyone." Just maybe the bad image of lawyers, along with the inability of the relatively poor to "access justice," relates to the truth that "justice" can be purchased.

From where I sit, as a now voluntarily non-practicing lawyer, the entire "civil justice system" has forgotten its essential societal purpose — to provide an accessible fair way for disputes to be resolved so that our citizens do not feel compelled to take the law in their own hands when they are wronged. If justice can be purchased, no amount of *pro bono* service and no amount of fees for the "privilege" of practicing law will fix the problem. The added costs are simply used to justify fee increases across the board, leaving more people unable to pay, and therefore in "need of access." This is a spiral that defeats the essential purpose of the system itself, causing more people to lose faith in anything but money, power or violence as a method to solve their problems.

Maybe what we, as lawyers, citizens, politicians, and members of society need to do is to try to make the system less complex so that normal people mostly don't need our expertise to solve their disputes, or if they do, try to make the system work such that our expertise is needed on the merits, not on procedural and strategic ploys. Only then will ordinary citizens view our profession as truly a *helping* profession worthy of public respect. Not only that, but then a professional obligation to take on *pro bono* matters to completion (which is the only way the clients are actually helped) would be both manageable and the funds necessarily to help the most disadvantaged could be spent on issues of substance, not form.

Sonja Peterson
Spokane

I am one of the attorneys without "vision" who fails to recognize as "progress" Mr. Rigby's dream (hallucination) of funding a "Money for Justice" program operated by the WSBA. He suggests those attorneys

unwilling or unable to donate 30 hours of *pro bono* time be forced to contribute their hourly rate to Mr. Rigby's "Money for Justice" fund. He generously caps the hourly rate at \$100/hour (why?). I would like to register my "serious resistance" to his idea.

Mr. Rigby is under the illusion that he knows better than me how I should spend my time and money, all in the pursuit of his notion of justice. But what if my notion of justice is different than Mr. Rigby's or that of the majority of the WSBA? What if

I do not want more of my money spent promoting illegal immigration, needle exchanges, or reproductive rights (abortion)? Are the thought-police going to suspend my license if my *pro bono* clients are not sufficiently indigent or their cause sufficiently "progressive"?

Mr. Rigby also thinks that given enough money, the morally anointed can "purchase justice for everyone." Busybodies have been applying that same reasoning, without success, to this nation's education,



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

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

marketing system he developed six years ago.

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

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

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

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

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

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

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

teen pregnancy, and substance abuse problems for years. I lack Mr. Rigby's confidence that a well-funded WSBA program can buy justice for everyone.

I encourage Mr. Rigby and others of similar persuasion to donate as much of their time and money to whatever causes that appeal to them, but as for me, I would rather let volunteer service remain voluntary.

*Chris Reilly
Juneau, AK*

James Rigby's exhortation is objectionable mainly because (1) it assumes that *pro bono* work is necessarily meritorious, and (2) it is unfair and unworkable for many people — I say most people — who hold law licenses.

Anyone with a four-digit bar number must surely realize by now that bozos and saints are more or less evenly distributed in all walks of life. A client's seeming poverty or professed charitable structure does not guarantee the merit of the client or of

the client's position in a particular legal situation. How, just exactly, can we judge whether our colleague has done something for the good of the public? You and I will quarrel if you claim *pro bono* credit for helping a fringe client. I will be the final arbiter of "fringe," of course. Let's face facts: access to justice is an aspiration bearing its fair share of sentimentality.

Many lawyers occupy themselves in activities and financial strata that do not lend themselves to *pro bono* work. A truly mandatory *pro bono* rule would be observed mainly in the breach. You will hear from licensed military judge advocates, law enforcement agents, corporate lawyers, out-of-state lawyers, out-of-country lawyers, government attorney-advisors, politicians, geezers, brokers, investigators, journalists, two-kids-in-college parents, lawyers struggling financially for various reasons, newly minted lawyers with crushing debt loads, lawyers who think they are sacrificing quite enough already, and all those occupied other than in a lucrative entrepreneurial law practice.

A truly mandatory rule would kill a lot of dolphins in the tuna net. It would be a regulatory quagmire. I say leave it alone.

*Jerry Stimmel
Kirkland*

Having just read James Rigby's proposal for mandatory *pro bono* service or monetary "donations" to a "Money for Justice" fund, I am unable to read the rest of the *Bar News* before responding. While improving access to justice is certainly a worthy ideal, Mr. Rigby's proposal is astonishing. The concept of an attorney being forced, at pain of suspension of his ability to earn his livelihood, to "donate" time or money in such amounts as Mr. Rigby deems fit, should frighten us all.

I do not believe I am being alarmist. Mr. Rigby says it right in his letter, suggesting that the initial "voluntary contributions" be set at \$500 per year, and then "once initial resistance to the idea runs its course, the amount can be steadily increased until there is sufficient money for justice to purchase justice for everyone." What part of this scheme is "voluntary" or a "donation"? The second word is more troubling. Where does it


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stop? How much is enough "to purchase justice for everybody"? *Can* justice be purchased? I thought the aim was *access* to justice.

The problem is not just one for attorneys, and cannot be addressed or solved exclusively by attorneys. Are doctors taxed to support basic medical care? Are plumbers taxed to ensure universal access to indoor plumbing? Justice is a societal benefit, and the cost of ensuring access to those otherwise unable to afford it must be borne by society as a whole.

If those with particular interests, like attorneys, wish to help achieve the goal, great. However, once it becomes a requirement, it is by definition no longer voluntary. It is a tax. Someone else decides how much of your money to take away from you, and how to spend it, not you.

I am not willing to give Mr. Rigby such access to my wallet. However well-intentioned, a limited number of attorneys cannot satisfy the access-to-justice needs of the entire community. The community and its lawmakers must address such concerns in the public forum.

*Gordon Hauschild
Lakewood*

How wonderful of James Rigby to donate my time and my money — even suggest a loss of my bar license — without knowing or understanding the work I perform. I think I can speak for the many attorneys I have worked with for years who gave their services to the local *pro bono* clinic without compensation and without CLE credit or without anything in return. I also know of many attorneys who give to other volunteer efforts and charities.

I am a strong proponent of "giving" to those of us who are less fortunate and to "give" to our communities. I am also a believer in helping with my legal skills as much as possible. People either want to help or not. Giving cannot be forced or mandated. I think that if WSBA were to mandate and accept such recommendations as Mr. Rigby has put forth, I believe that would be the time I would consider giving up my license. The greater risk is that other attorneys, who like me, will also consider giving up being attorneys because the risks and the costs become

too high to participate.

Sorry Mr. Rigby, those who give, give because they want to, whether they are an attorney or not. I don't know what it is like in King County, but here in Snohomish County, I don't think I could name all of the wonderful, giving, incredible attorneys who give constantly both to the legal clinic locally — as well as to their clients by not charging them — and then still have the generosity in their hearts to give to this community as well.

I am grateful to be a part of this legal community.

*Judith R. Hendricks
Everett*

WSBA license fees subject to state law?

I received my 2004 license renewal materials from the Washington State Bar Association in December. In commemoration of this momentous occasion, I would like

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to point out that, while the 2004 licensing fee increase is relatively modest in comparison to prior years, the fee increases imposed by the WSBA in 2001, 2002, and 2003 were in clear violation of state law. Pursuant to action by the Board of Governors on July 31, 1999, the percentage increase in the basic WSBA license fee in each of these three years was eight percent (*Bar News*, September 1999).

RCW 43.135.055 apparently escaped the attention of our Board of Governors:

"No fee may increase in any fiscal year by a percentage in excess of the fiscal growth factor for that fiscal year without prior legislative approval."

The voters of this state enacted this statute in November 1993, as part of Initiative 601, the state expenditure limit. The "fiscal growth factor" referred to in the initiative is defined as a rolling three-year average of state population growth plus inflation (RCW 43.135.025(7)). According to the Governor's Office of Financial Manage-

ment, the fiscal growth factors for 2001, 2002, and 2003 were 2.87, 2.79, and 3.29 percent, respectively. I am not very good with numbers, but I think that an annual fee increase of eight percent in each of these three years is "in excess of the fiscal growth factor" — to quote the statute.

While the statute limiting fee increases contains a few narrow exceptions (for agricultural commodity commissions, for example), the Bar Association is not exempted; the statute applies to all executive, legislative, and judicial entities that are delegated fee-setting authorities. All other state professional licensing programs seeking to increase their fees in excess of the Initiative 601 limit have sought the "prior legislative approval" required by the statute (see, for example, section 221(1), chapter 25, Laws of 2003 1st sp. sess.).

If the state entities regulating doctors, plumbers, and cosmetologists have somehow managed to comply with state law, then it shouldn't be too difficult for the Bar Association to do the same.

Steve Jones
Olympia

Editor's note: *Curious about Mr. Jones's letter, we put the question to WSBA General Counsel Bob Welden, who advised that RCW ch. 43.135 "appears to address only legislative expenditure limits on the Washington State General Fund and revenues to the fund. The Washington State Bar Association receives no funding from the state funds. RCW 43.135.055 applies only to state agencies subject to legislative control. The Legislature does not have authority to set fees for licensing of lawyers. That is within the exclusive authority of the Supreme Court."*

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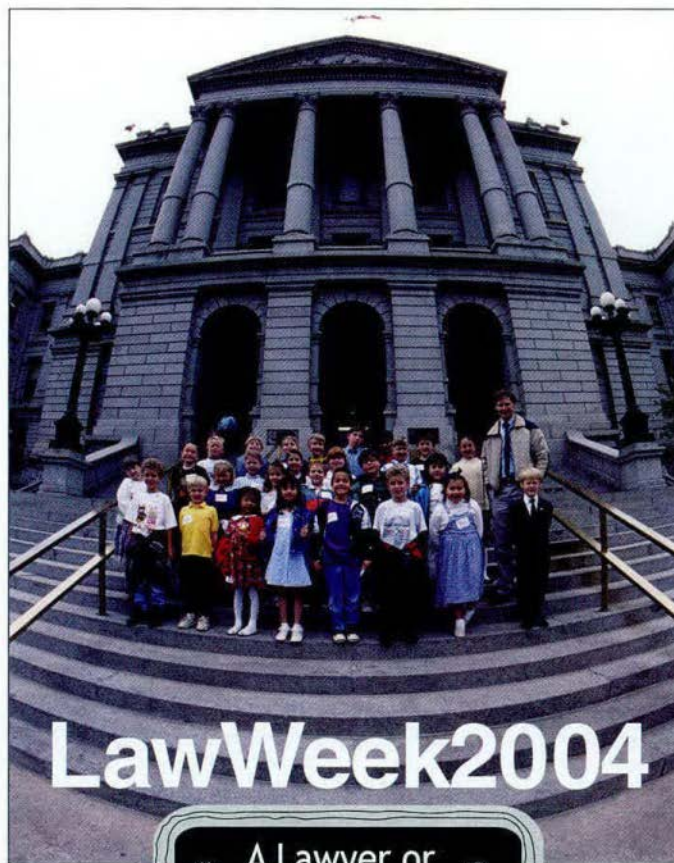
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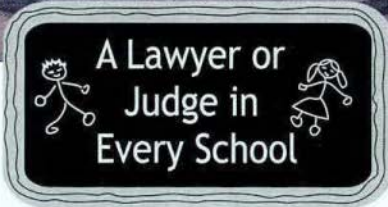
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The Emerging Role of International Human-Rights Law in the Protection of Indigenous Peoples

by Fawn R. Sharp, guest columnist / WSBA Governor At-large

It is estimated that there are at least 5,000 indigenous groups composed of 370 million people living in more than 70 countries on five continents.

As a young child growing up on the Quinault Indian Reservation during the height of the fishing-rights controversies of the 1970s, I envisioned myself someday working to protect our community, way of life, and culture as a tribal attorney. I made that promise to my grandfather one early morning in an old wooden boat as we checked a fishing ground on the Quinault River that had been in my family for generations. But I never, from those early years through the subsequent 25 years, ever imagined my career would take on an international dimension.

Then came the day when I received a simple phone call that would change not only my career but the rest of my life. I was sitting in in my office on the Quinault Reservation, and on the other end of the telephone line was a staffer from the Quinault Nation's Natural Resource Department. She called to find out if I had time to make a spontaneous presentation to a group of visiting Russians who wanted to learn about our legal system. Sure, not a problem. When I arrived at the conference room, I was surprised to see a council of Russian natives, many of whom were tribal elders. About 10 minutes into my presentation, the interpreter began to ask questions on their behalf, and I found myself instantly and passionately connected with complete strangers from a foreign land. We spoke different languages, but our convictions, beliefs, values, concerns, and fears were so akin that no barriers seemed to exist.

Following my meeting with the Russian council, I began an intense mission to reach out to the international community, and learn how to harness and utilize the energy I had gained on that fateful day. I read many articles, studied overseas, and learned about the emerging role of international human-rights law in the protection of indigenous nations. I learned that human rights, as a movement, began to evolve post-World War II in the aftermath of the atrocities that Nazi Germany had inflicted upon the Jewish people. In 1948, the world focused its attention on human-rights violations, and

many countries, including the United States passionately led by Eleanor Roosevelt, adopted the Universal Declaration of Human Rights. The declaration formalized national commitments that it would no longer be acceptable under international law for any country to do whatever it chose to within its own borders, and made it clear that the international community expects countries to act respectfully to all their citizens and act to protect the human rights of all humanity.

Much to my surprise during my research and studies, I found nearly a decade of substantial progress made by thousands of indigenous nations around the world in developing international standards, mechanisms, and protections for our native communities. Beginning in the early '90s, the international community, taking notice of the critical condition of indigenous peoples, some on the verge of extinction, began

to assemble world conferences to begin a dialogue on the plight of indigenous peoples and work to make substantial recommendations to improve their conditions.

One such conference was the Vienna World Confer-

ence on Human Rights held in 1993, wherein participants adopted the Vienna Declaration and Programme of Action. The declaration reaffirmed the international community's commitment to secure the social, political, economic, and cultural well-being of indigenous peoples. It also advanced three major recommendations: 1) the UN General Assembly to declare an International Decade of the World's Indigenous People; 2) the UN to consider establishing a permanent forum for indigenous peoples; and 3) the UN Working Group on Indigenous Peoples to complete a draft declaration on the rights of indigenous people.

All three recommendations were subsequently adopted and successfully achieved. First, the UN General Assembly proclaimed 1995-2004 to be the International Decade for the World's Indigenous People. In its proclamation, the assembly made it a primary goal to strengthen international cooperation to find solutions to the many human-rights, environmental, education and health, cultural, employment, and developmental problems faced by indigenous communities. The assembly also adopted a program of activities for the interna-

... it is now clear to me that we must embrace universal values and fundamental truths, which transcend and recognize no borders, and be prepared to emphasize cooperation and regulated interaction among nations.

tional decade, some of which included: protection of the rights of indigenous peoples while empowering them to make choices that enable them to retain their cultural identity; implementation of the recommendations adopted at the international conferences held during the early '90s; completion and adoption of a draft declaration on the rights of indigenous peoples; and worldwide observance of the International Day of the World's Indigenous People on August 9 of each year.

Second, the UN established a Permanent Forum on Indigenous Issues. The first session of the forum was held on May 12-24, 2002, at the UN Headquarters in New York. Nearly 1,000 representatives of indigenous peoples from around the world attended the forum to review UN activities respecting indigenous peoples and to set a course for the new human-rights body. The forum meets annually for 10 working days and generates an annual report, including recommendations from indigenous peoples who participate and directly represent their own interests at the forum.

Such direct participation echoes a time in 1923 when Deskaheh, an Iroquois chief and statesman, traveled to Geneva to speak to the League of Nations to defend the right of the Iroquois to live under their own laws, on their own land, and under their own faith.

Third, in 1993 the UN Working Group on Indigenous Peoples finished its draft Declaration on the Rights of Indigenous Peoples. The draft declaration, which the working group began to develop in 1985, seeks to protect and preserve indigenous peoples' human rights, self-determination, land, and the diversity of their cultures.

The UN Commission on Human Rights has set the end of the international decade, 2004, as a target for adopting the declaration, and the UN General Assembly has affirmed that adopting the declaration is a major objective of the decade. Once adopted, the declaration will be the most comprehensive international statement in support of indigenous peoples ever developed and will establish collective rights to an unprecedented degree in international hu-

man-rights law. It will be a very exciting and monumental accomplishment indeed.

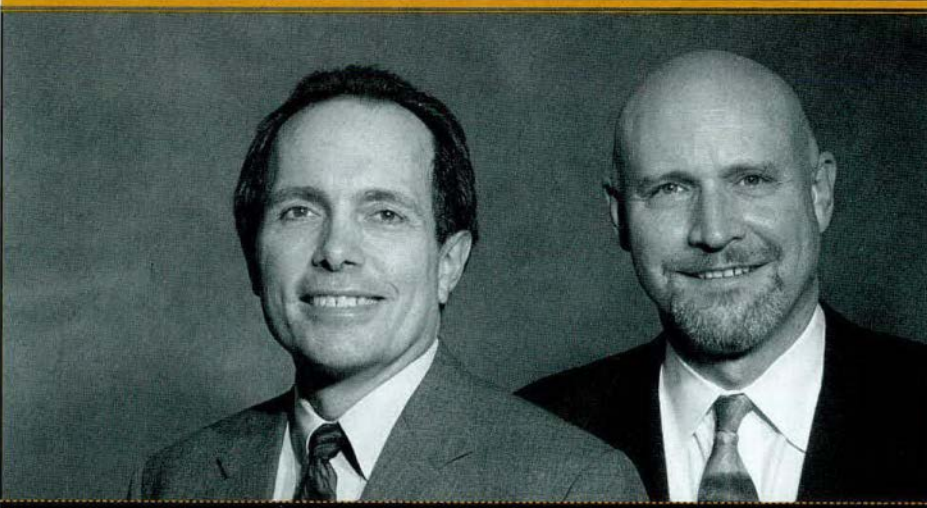
I consider myself very blessed to have answered the call to embark on an international course in my practice. During my studies abroad last summer, I attended classes with students from 38 other countries. I saw, felt, and experienced a rich world composed of a vibrant tapestry of cultural, ethnic, religious, social, and political communities. In the unfolding world of trans-national conflict and our ever-increasing global relationships — whether political, social, or economic — it is now clear to me that we must embrace universal values and fundamental truths, which transcend and recognize no borders, and be prepared to emphasize cooperation and regulated interaction among nations.

We may inquire into the relevancy of the human-rights movement to our own practice or view it with a Thomas Hobbes approach — that politics, especially international politics, is nothing more than a state of perpetual war, so why devote any energy to that cause? But, from my personal experience, it is relevant, and we may realistically advance universal ideals. We must all hold with firm conviction and recognize that the fundamental values of dignity, equality, respect, and security for all people are as critically important to us today as they were 50 years ago, when the Universal Declaration was signed, if we are to achieve peace, freedom, and justice. We must not look upon those values as mere aspirations, but accept our challenge as lawyers to bring meaning to them, whether we work in a large metropolitan city, in a small community, on an Indian reservation, or on the other side of the world. ✍

At the invitation of President Dave Savage, Fawn Sharp eagerly accepted the assignment to be guest columnist for this issue's "President's Corner." Fawn serves as lead counsel for the Quinault Indian Nation — managing comprehensive legal services; providing counsel; and representing the nation at court, tribunal, and administrative hearings. When Dave became president-elect, she succeeded him as an at-large member of the WSBA Board of Governors. Fawn can be reached at fsharp@quinault.org.

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The WSBA Headquarters: Facilitating Facilities Decisions

by Jan Michels, WSBA Executive Director

The Facilities Committee and Board of Governors offer this update on the WSBA's facilities needs for the future, and feel they have been able to address desired improvements within fiscal allocations. Both groups thank members for their input on this issue.

In 2001, then-WSBA President Jan Eric Peterson appointed a Facilities Committee to study the WSBA's facilities options when the current lease at the Fourth and Blanchard building expires at the end of 2006. Brooke Taylor, a third-year governor from Port Angeles at the time, was appointed chair. Speculation at the time was that facilities costs could double by the year 2007. The long lead time was meant to allow sufficient time for the committee to review a possible purchase option, survey member desires, and build possible momentum for co-location with other law-related entities.

In its first year of work, the committee reviewed location options and costs. It became clear that to be easily accessible to most members and retain experienced staff, the WSBA should be located in the downtown Seattle core. In May 2002, the Board of Governors endorsed this threshold recommendation. With that decision, the committee analyzed the ownership option by surveying bar associations around the country and "penciling out" the fiscal requirements and potential benefits of ownership. The committee learned that without the incentive of tax breaks or the existence of a building endowment, there was no clear economic advantage to ownership, even in a 20-year time frame.

A concurrent membership and staff survey, as well as a series of discussions with members at section midyear meetings, helped the committee learn what was important to members and staff. This feedback indicated that easy access, convenient parking, modest image, and reasonable cost were most important to members. Members also like the idea of holding CLE facility rental costs down by incorporating CLE conferencing needs into the WSBA headquarters. It also became clear that members have little interest in building ownership unless it is clearly economically advantageous.

The committee, while not eliminating the ownership op-

tion if fortuitous circumstances arose, moved on to address what members stated they wanted most. By late 2002, the Seattle real estate market had experienced a downturn, and became much friendlier toward lease holders; and, despite the length of time remaining on the current facilities lease, landlords appeared interested in talking to the WSBA about a lease option beginning in 2007.

At this point, the committee recommended, and the Board of Governors approved, the engagement of a lease broker and professional space-planners to begin detailing future space needs. Letters of interest were solicited from downtown landlords. Of paramount importance were easy access and parking, CLE conferencing capacity, modest image and cost, and adequate room for the projected modest staff growth.

Six facilities, including the current facility, that met most

or all of these conditions surfaced in the fall of 2003 and were individually toured, ranked, and evaluated by the Facilities Committee. Space designers did test-fit diagrams to show how the WSBA could best utilize the top three facilities.

The WSBA has two five-year renewal options at the current facility that could be used, but even if it remained in the current building, upgrade and redesign expenditures would be necessary.

Considerations at this point were the conditions desired by members, the quality and maintenance of the building, building management, various additional expenses (including the cost of a move and/or necessary tenant improvements), and suitability of the space for our needs. These factors were weighted and scored to aid the committee in making a recommendation to the Board of Governors.

At the December 2003 Board of Governors meeting, the board approved the committee's recommendation to proceed to a letter(s) of intent. The board also agreed that it would not simply support accepting the lowest bid, but consider a facility with significant advantages despite slightly higher costs. Of note: The costs of most of the facilities under consideration are less than those of the current lease renewal even when the figures for moving and necessary tenant improve-

... the costs of most of the facilities under consideration are less than those of the current lease renewal even when the figures for moving and necessary tenant improvements are included.

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ments are included. In this very favorable circumstance, the WSBA can take advantage of the current dip in lease prices and better address the factors members desire without significantly increasing facilities expenses in the next 10 years.

It is likely the Board of Governors will act on a specific lease recommendation from the Facilities Committee at the scheduled February 26 meeting. ✍

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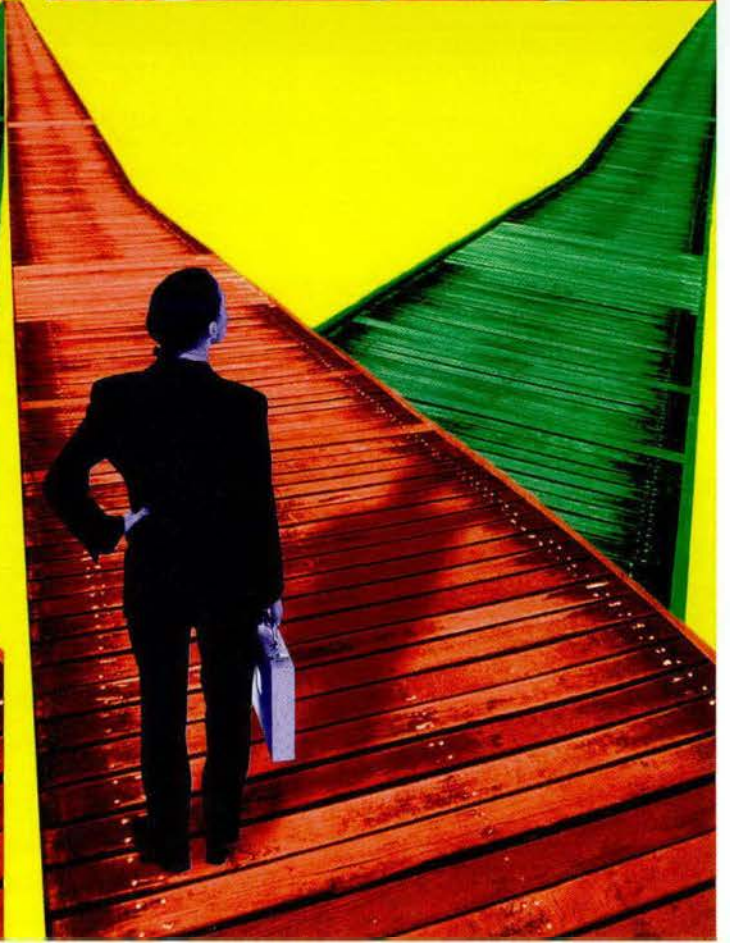
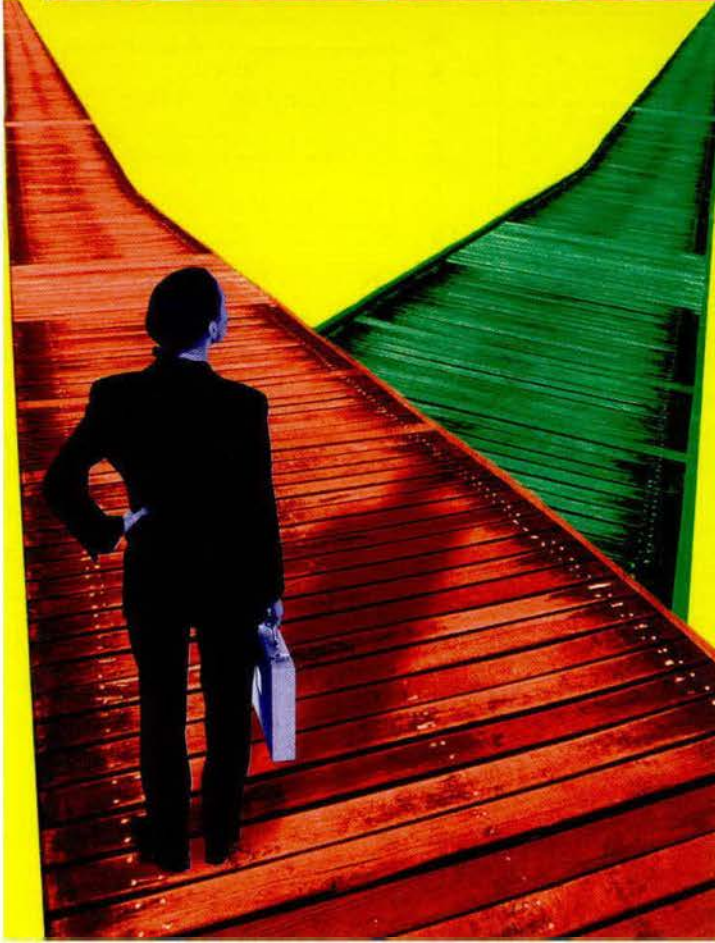
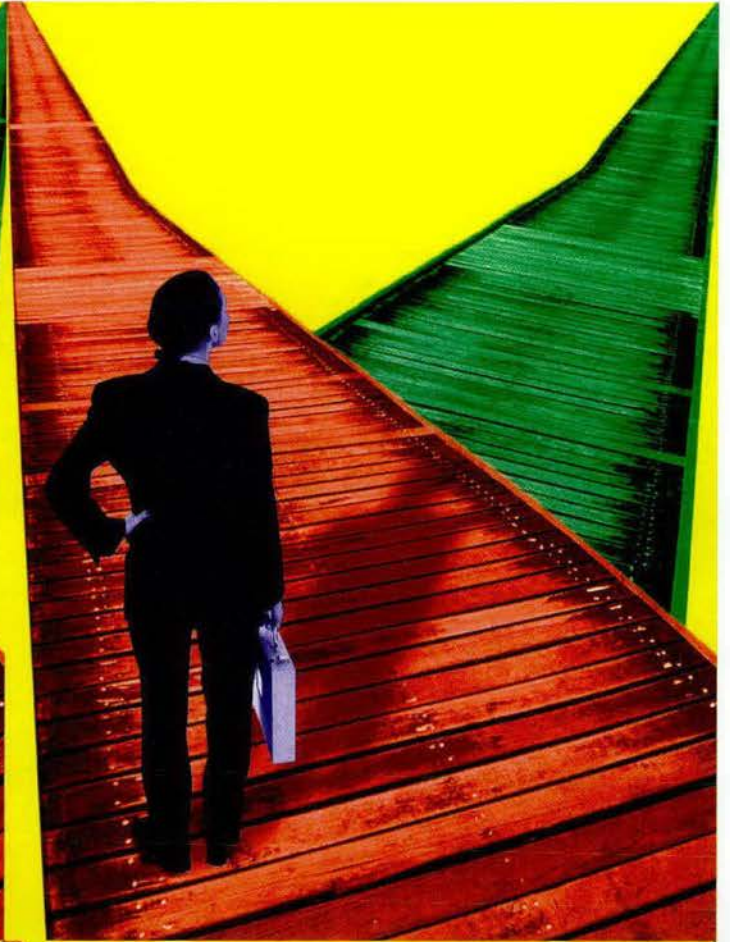
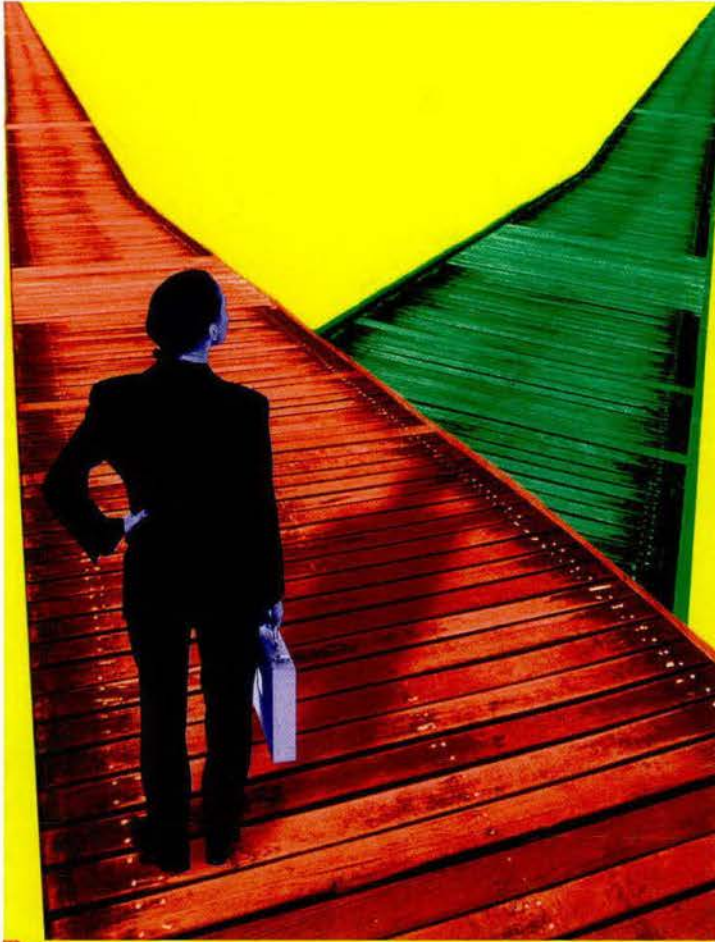
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Transformational Law

New Approaches Expand Choices in Law Practice

by J. Kim Wright, J.D.; Dolly M. Garlo, R.N., J.D., P.C.C.; and Marty Price, J.D.

Having replaced jousting and dueling, the adversarial method has served for centuries as virtually the only method of dispute resolution western societies possess. But as the old saying goes: "If a hammer is your only tool, every problem begins to look like a nail." Because lawyers are seen only as hammers, they tend to attract individuals with sometimes vengeful motives, while large portions of the rest of society are repelled and want to "keep the lawyers out of it," thus reducing the reputation of lawyers in the general field of dispute resolution. Mediators, religious officials, neighborhood organizations, and many others have rushed to serve a public often yearning in many cases for less-adversarial methods of dispute resolution, especially when the parties have an ongoing relationship the adversarial system would tend to damage.

Within the last few years, there has been an explosion of new approaches to practicing law that offer lawyers alternative tools for dispute resolution. While pre-dispute and dispute-avoidance work have long been part of legal practice on the transactional side, these notions have gained firmer footing in the dispute-resolution realm as well, by being more tech savvy, more aware of the backgrounds of the parties, more spiritually aware, and more psychologically educated. All of this reflects the diversity of ever-more informed and sophisticated consumers of legal services.

Besides offering practical benefits to clients, more attention to these new models of practice has also had benefits for the lives and spirits of lawyers, individually and

collectively, as is being documented by *ABA Journal* Associate Editor Steven Keeva's research and writing on lawyers. Although Keeva chronicles many different approaches, what they all seem to have in common is rejecting a strict focus on the "legally relevant facts" to the exclusion of the context, and embracing the client's story and the potential for healing, i.e., restoring the social fabric that has been ripped apart by the dispute. This exciting (and often redemptive) shift for lawyers marks an important arena in which creative thinking and approaches to service can make an important contribution to greatly increased job satisfaction for lawyers.

The new approaches add more cooperative, comprehensive, humanistic, healing, and even spiritual aspects to the traditional forms of law practice being taught and utilized in the profession.

Susan Daicoff, professor at Florida Coastal School of Law, has been instrumental in bringing this shift to the attention of the legal profession and legal education. Daicoff, who is also a psychologist, was researching lawyer personality traits and the high levels of lawyer distress when she discovered many lawyers breaking away from adversarial approaches and creating new ways of practicing law. She noticed that these lawyers expressed higher

satisfaction and fulfillment with the practice of law, and began to study these new approaches. She began to see similarities and a common foundation that she says is a decided shift in approach. Daicoff refers to the overall shift as comprehensive law or transformational law, encompassing the notion of law as a healing profession. Others have coined terms like holistic law, therapeutic jurisprudence, preventive law, restorative justice, law and healing, collaborative law, transformative or transformational law, creative problem-solving, and procedural justice.

Daicoff sees all of the comprehensive law practices as part of an overall evolution akin to medicine's recent embrace of parts of alternative medicine. It began with early mediation and alternative dispute resolution programs that have now been integrated into traditional legal practices. The comprehensive law movement has expanded further from there, and now offers even more practice choices. Originally a math major, Daicoff calls the different legal practice approaches "vectors," a term that indicates both magnitude and direction. While each vector, or legal practice approach, is a bit different from the others, they all have common characteristics. They represent a move away from what is increasingly being considered the negative aspects of the adversarial process: the other-blaming, entitlement-oriented, position-taking, and hostile one-upmanship behaviors in conflict resolution that have become the darlings of the media and sensationalized talk shows. The new approaches add more cooperative, comprehensive, humanistic, healing, and even spiritual aspects to the tra-

ditional forms of law practice being taught and utilized in the profession. The commonality in the new approaches is that they are focused on optimizing human well-being by expressly seeking to eliminate brutal and contentious adversarial approaches to advocacy and problem-solving, as well as to avoid legal problems altogether. Rather than defining problems only as legal concerns (strict legal rights and obligations demarcated by the boundaries of published statutes and judicial opinions), these more comprehensive approaches include humanistic values such as over-

all well-being, relationships, feelings, needs, resources, meaning, values, and goals — an idea that is described by the term “rights plus.”

Each vector has initially developed independently with its own name and focus, often in different practice areas. For example, collaborative law has become a popular tool in family law, and restorative justice is a tool used in criminal law.

By whatever name, each of these approaches offers support for transforming the legal system to serve other important needs besides rights-based litigation of disputes “solved” solely by the transfer of

money, and confirm the notion that other tools are sorely needed in order to solve disputes. The new techniques include the following:

- Utilizing law as a modality for healing and helping, not only for resolving problems;
- Focusing on the future and reconciling relationships — listening, forgiving, completing, and moving on — rather than simply looking to the past and punishing transgressions;
- Viewing legal issues in light of existing or ongoing relationships between the parties and the greater community, for the purpose of improving connections rather than isolating or separating people;
- Including preventive models, proactively identifying risks, and taking actions that will prevent conflict;
- Creating win/win/win solutions where the parties involved, the underlying community, and overarching societal values all benefit;
- Fashioning a better world for all that is healthy, diverse, creative, and respectful of human rights and values;
- Including a humanistic approach to law practice that is sensitive to the needs, values, and highest good of the client, society, and legal practitioners;
- Consciously constructing a law-practice environment where judges, lawyers, and legal staff can grow;
- Believing that legal problems occur within a system that is an organic process which can respond to the needs of clients, society, and lawyers alike; and
- Defining a legal system that is based not only on problem solving, but also on enabling everyone to live and work together in peace.

Note that these new visions in law are not intended to replace traditional practice, nor are they appropriate in every instance. They are appropriate in many instances, but most lawyers are unable to apply them.

Over 95 percent of litigation, often filed simply to preserve legal rights, never makes it to trial and is resolved outside of the courtroom. Settlement, by its very nature, is far more flexible than a courtroom. In a courtroom there might be financial accountability, but there will never be an

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apology or an extended opportunity to explain. Witnesses and parties can only answer the questions the lawyers pose. Thus, the prospect of having more tools for such out-of-court settlements and resolutions is a foundation for these visionary practice developments.

The unhappiness of most lawyers with the practice has by now been so well documented that it need not be repeated here. The inclusiveness of the comprehensive law movement focuses on solutions to this unhappiness by encouraging lawyers to design their own practices to reflect the lawyers' personality types, unique behavioral styles, values, and goals, while being responsive to what works best for each individual client and situation. An entire field of "coaching" has developed to help lawyers do just that.

A recent study concluded that 70 percent of the "winners" in litigation were unhappy in the end. One can safely assume that close to 100 percent of the "losers" in litigation were also unhappy. Given the unhappiness of most lawyers, can we risk moving beyond arbitration and "settlement conference mediation" to try some new approaches? Economics, at least, would suggest that lawyers ignore the unhappiness around them at their own peril. And justice may demand that we hear our clients more fully. And some local rules (as in Snohomish County) may already allow the parties to stipulate to other forms of dispute resolution.

Following are short summaries of some of the models and approaches you can investigate and try:

Therapeutic Jurisprudence (TJ)

Focus: Law's greater social impact and possible support for the healing needed after conflict is over.

TJ is an interdisciplinary perspective that focuses on the law's impact on the emotional and psychological health of the participants in the legal system. The goal is to bring sensitivity into law practice. TJ focuses on listening to clients with an awareness of psychological and emotional issues, including stress, confidence, and trust. TJ also looks at the court system and how it impacts society. It provides a new contextual platform by which to look at the concept of jurisprudence and the underlying purposes of the legal system.

Collaborative Law

Focus: Maintaining productive ongoing relationships between parties.

The founder of collaborative law is Stuart Webb of Minneapolis. Collaborative law was originally a family law model in which the parties agree that their attorneys either withdraw rather than litigate, or that the parties and their attorneys devote their energies for a defined period in order to achieve a collaborative solution prior to litigating. They focus on resolution and problem-solving without the threat of court filings and process. Thus, unlike other forms of alternative dispute resolution in which a lawsuit is filed first and then referred for mediation or arbitration, mutually satisfactory cooperative resolution is the focus of all parties from the outset. Collaborative lawyers work with their clients and each other, volunteer information to aid with resolution, and strive for a collegial atmosphere. Originally applied to divorces, collaborative law is being applied anywhere ongoing relationships are involved, even if the ongoing relationship is the shared custody of children.

Holistic Justice or Holistic Law

Focus: Addressing the bigger picture of individual needs and interests in application of the legal process.

In holistic law, lawyers look inward to identify and pursue their passions — to become whole themselves so that they may help their clients remember how to use the legal process to do this, too. The basic focus in holistic law is looking at the whole picture — the lawyer's role, the client's responsibility, the impact on the community — to find an answer to the situation that benefits the greatest good and promotes healing and completion. Holistic lawyers are often trained in other disciplines, such as healthcare, counseling, or energetic healing, and may use those skills in their legal work as well. The International Alliance of Holistic Lawyers hosts annual conferences where holistic lawyers come together to network, share, and provide support for this approach.

Preventive Law

Focus: Addressing underlying practical concerns — communication, relationships, operating systems — as well as legal issues to avoid costly repeat problems.

Pioneered by Professor Ed Dauer at University of Denver College of Law (UDCL), preventive law refers to the approach in which the parties and their attorneys are proactive in limiting their exposure to litigation. This is the term now recognized to describe "minimiz[ing] the risk of legal disputes and maximiz[ing] professional opportunities [and providing] suggestions for practicing law or business in compliance with the law so that individuals and corporations can best use their resources and capitalize on their profits," states the website for *The Preventive Law Reporter*, a quarterly UDCL publication dedicated to increasing the awareness and practice of preventive law.

The need of the legal profession to support the growth of this approach has not escaped the notice of law schools. Founded originally at the UDCL in 1986, the National Center for Preventive Law is now housed at California Western School of Law (CWSL). CWSL is also home to the Louis M. Brown Program in Preventive Law. The late Louis Brown's work on preventive law dating back to the 1950s, is based on the premise that clients are better served by investing resources in consultation and planning, rather than relying on litigation as the primary means of addressing legal problems. This theory recognizes that while litigation is sometimes necessary, the fact that one ends up in an adversarial proceeding may be evidence of a lack of planning or communication. By applying foresight, lawyers may limit the frequency and scope of future legal problems. For example, in a corporate setting, a legal department focused on preventive law would put its attention on training and educating managers to predict and prevent conflicts among employees and with others outside the company.

Creative Problem-Solving (CPS)

Focus: Approaching legal problems and disputes with resources and resolutions aimed at creating a wholly new outcome.

Also based at CWSL, this approach encourages lawyers to use the broadest array of creative problem-solving techniques to achieve better results for their clients. The law school teaches the kinds of creative-thinking processes that are often taught in progressive business schools. It encourages lawyers to be

trained in creative thinking and to have many different tools — in addition to litigation — at their disposal. CPS seeks many points of view and examines problems for their relational impacts at all levels: individual, institutional, societal, and international. CPS seeks to develop solution systems based upon what is learned about a problem, rather than what is habitually done. It is a caring approach that seeks transformative solutions to redefine problems, expand resources, and facilitate enhanced relationships between the parties. Legal educational programs that include such

notions and techniques set a standard emphasizing the development of broader approaches to legal professional services. Awareness of this development can be used to evaluate legal education or continuing education options for lawyers seeking to expand and enhance their skills in practicing law.

Restorative Justice (RJ)

Focus: Repairing the harms resulting from crime to all affected parties — allowing victims to move from anger to forgiveness, perpetrators to be involved in making the repair, and communities to reunite.

With more than 1,000 programs in North America; more than 2,000 in Europe, Australia, and New Zealand; and initiatives underway in Central and South America, Asia, and Africa, RJ has emerged as a social movement for justice reform. Almost every U.S. state is implementing RJ at state, regional, and/or local levels, and a growing number of states have officially adopted RJ principles and policies. The American Bar Association has issued a formal endorsement and guidelines for application of RJ programs and principles.

Our traditional system of punitive/retributive justice asks three questions: who did it, what laws were broken, and what should be done to punish (or in some cases, treat) the offender? Instead of viewing crime primarily as a violation of law requiring punishment, RJ emphasizes one fundamental fact — crime harms people, communities, and relationships. A restorative-justice inquiry poses three very different questions. First, what harm resulted from the crime? Second, what needs to be done to “make it right” or repair the harm? Third, who is responsible for the repair?

Accepting punishment under criminal laws is passive and requires no responsibility or affirmative acts from the offender. An RJ approach holds the offender accountable by facilitating and enforcing reparative agreements, including restitution. RJ recognizes that we must give offenders the opportunity to right their wrongs and redeem themselves, in their own eyes and in the eyes of the community. Victims and the community must have the opportunity to take active roles in the resolution of crime. RJ views our crime problem as a community matter that can never be adequately addressed by delegating the sole responsibility to police, courts, and correctional systems. RJ is not any one program, but rather, a different paradigm for understanding and responding to issues of crime and justice. It takes many forms, such as bringing offenders face to face with the victims of their crimes, with the assistance of a trained mediator or facilitator, often a community volunteer. Victim participation is always voluntary, and offender participation is voluntary in most programs. The success stories are many.

In mediation/dialogue, crime is personalized as offenders learn the human consequences of their actions, and victims have the opportunity to speak their minds

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and their feelings to the one who most ought to hear them, contributing to the victim's healing. Victims get answers to haunting questions that only the offender can answer. The most commonly asked questions are: Why did you do this to me? Was this my fault? Could I have prevented this? Were you stalking or watching me? Victims commonly report a new peace of mind, even when the answers to their questions are worse than they had feared.

Offenders take meaningful responsibility for their actions by mediating a restitution agreement with the victim to restore the victims' losses in whatever ways possible. Restitution may be monetary or symbolic; it may consist of work for the victim, meaningful community service or other actions that contribute to a sense of justice between the victim, others affected by the crime, and the offender.

The Victim-Offender Mediation (VOM) program and the Victim-Offender Reconciliation program (VORP) have been mediating meaningful justice between crime victims and offenders for about 30 years, and are supported by a substantial body of research. Remarkably consistent statistics from a cross-section of the North American programs show that about two-thirds of the cases referred to programs result in a face-to-face mediation. More than 95 percent of the cases result in a written restitution agreement. More than 90 percent of those restitution agreements are completed within one year. In contrast, the rate of payment of court-ordered restitution is typically only from 20 to 30 percent. Research has shown that juvenile offenders who participate in VOM/VORP subsequently commit fewer and less-serious offenses than their counterparts in the traditional juvenile justice system.

Most VOM/VORP programs limit their work to property offenses or offenses of lesser violence committed by juveniles. The fast-growing trend is to expand the application to adult offenders and crimes of severe violence, including homicides. In juvenile offenses and in minor crimes committed by adults, RJ processes may be substituted for, or supplement, court action. In crimes of severe violence, RJ has seldom been a substitute for prosecution; RJ processes have been used to create more meaningful sentencing for offenders and their victims.

VOM/VORP is not appropriate for ev-

ery crime, every victim, or every offender. Individual, preliminary meetings between mediator and victim, and mediator and offender, are essential for careful screening and assessment according to established criteria. Even if not appropriate for mediation/dialogue, the resolution of most crimes can benefit from some application of RJ principles.

New Approaches to Mediation

Focus: Expanding the facilitation of parties fashioning their own dispute resolution to include their own personal learning and development.

As mediation has become more accepted and institutionalized, new approaches have arisen, many tailored to the organization or system in which they are employed. While the success of a typical mediation process is measured by whether settlement is reached, transformative mediation often has broader goals. At least three distinct approaches to transformative mediation are in wide use, all of which contrast themselves at least somewhat with mediation when used simply in place of a settlement conference.

The first approach to transformative mediation is based upon a book by Robert

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A. Baruch Bush and Joseph P. Folger called *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*. This form of transformative mediation is a process whereby the parties in conflict can change the quality of their conflict interaction. The focus is not only on resolution, but provides conscious emphasis on transforming the interaction from negative and destructive to positive and constructive. Practitioners use the complementary models of empowerment and recognition. In this model, the focus is on revealing and understanding the un-

derlying dynamics of the conflict, to both resolve the presenting issue and prevent future similar ones.

Gary Friedman and Jack Himmelstein, co-founders and co-directors of The Center for Mediation in Law, teach another transformative mediation model dedicated to integrating mediative principles into the practice of law and the resolution of legal disputes, with a focus on empowering the people involved. Their model is described as the "Understanding Model." In it, the goal is to reach deeper levels of values and meaning, and to attain the means to

more lasting and healing resolutions generally not even addressed in adversarial proceedings. Such approaches often have the power to heal even profound social wounds. Successes have been reported by some even in death-penalty cases, where family members of the victim meet the death-row inmate.

Attorney Barbara Ashley Phillips, author of *The Mediation Field Guide*, has still another distinctive approach that focuses on the "inner aspects" of conflict resolution. She is director of the North American Institute for Conflict Resolution.

Problem-Solving Courts

Focus: Expanding legal remedies with practical real-life focused, future-development-oriented solutions.

Problem-solving courts include drug-treatment, domestic-violence, homeless, drunk-driving, and mental-illness courts. They address societal issues that are larger than any individual case. For example, the drug-treatment court is designed to interrupt the cycle of substance abuse. Using this process, defendants identified as addicted enter a structured recovery program with built-in incentives for success. There are now over a thousand drug-treatment courts in the United States.

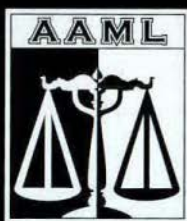
Community Lawyering or Community-Oriented Lawyering

Focus: Including the source of problems for corrective action planning involving members of affected communities, rather than just punitive measures, particularly in government-regulated circumstances.

Community lawyering is a movement where the lawyers, especially those in government, public interest, and similar settings, work together to address the underlying problems that result in clients being in court, as well as to promote the welfare of the community. Community lawyering includes:

- Using the law proactively to assist in community problem solving on crime reduction, quality-of-life issues, and economic development.
- Making "the system" work to meet community needs.

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Community lawyers take on projects that get to the source of recurring cases in the court system. Housing issues are one example. For example, instead of litigating one tenant issue after another, a community lawyer might work to create standards for rental units. Community lawyering projects involve ways of practicing law by attorneys who take a direct working interest in the peace and safety of particular places, and work to generate outcomes the community values, in addition to winning cases. Community-oriented lawyers work in a wide variety of settings, such as prosecutors, police departments, municipal attorneys, non-profits, private firms, criminal defenders, judges, and law-school clinics.

Peacemaking

Focus: Healing conflict in a broader sense that enhances the overall well being of all involved — clients, attorneys, local to multi-national communities, human consciousness as a whole.

This approach centers on the peaceful resolution of disputes. Many lawyers consider themselves to be peacemakers, sometimes even in the murder-prevention business with very emotional clients. Lawyers can express their value as peacemakers in many ways. Some have actually created organizations dealing with international conflict. An example is Ambassador John McDonald — a lawyer, diplomat, former international civil servant, development expert, and peace-builder. Concerned about world social, economic, and ethnic problems, he spent 20 years of his career in Western Europe and the Middle East and worked for 16 years on United Nations economic and social affairs. His current work is as chairman and co-founder of the Institute for MultiTrack Diplomacy.

Others seek to heal and bring peace at a more personal, energetic level like attorney Jill Dahlquist and psychotherapist Johanna Halgren, facilitators of Group Peace Process (GPP). GPP utilizes various energy healing techniques to create a group energy in which conflicts can be transcended. Conflicted relation-

ships between spouses, parents/children, business associates, attorneys, litigating parties, etc. can be transformed so that the highest and best interests of all the parties in the group can be manifested. The legacy of past conflicts can be healed and people can gain a greater sense of inner peace that can then be reflected into the outside world.

Sharif M. Abdullah, J.D., has written and spoken on campaigns for expanding the consciousness for peace, as the founder and director of Commonway Institute and the Common Society Movement. His most recent project involves

helping to bring peace to Sri Lanka, ending a long-term war.

Contemplative Practice

Focus: Enhancing the inclusion of spiritual and other values and meaning in approaches to the practice of law.

Lawyers often seek relief from personal stress through meditation and then discover that meditation leads to further growth. The Center for Contemplative Mind in Society has a program focused on law. Through contemplative law retreats, they have addressed questions



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and ideas from contemplative and legal perspectives, including the nature of winning and losing, the role of compassion in adversarial situations, truth and "right speech," Socratic and contemplative methods of inquiry, action and non-action, separation and connection, and listening. Many lawyers are integrating their spiritual and religious practices into their legal life. Pioneered by Steven Keeva's book *Transforming Practices, Finding Joy and Satisfaction in the Legal Life*, this approach to law allows for the inclusion of the lawyer's spiritual values, as well as those of the

client. Keeva's book looks at several different approaches based upon values and life purpose, viewing the practice of law as a "ministry" focused on healing, service, mindfulness, contemplation, and listening.

The Project on Integrating Spirituality, Law and Politics

Focus: Expanding transformational law principles into the political arena.

The project is a group of lawyers and legal educators committed to the integration of spirituality and politics, and the

incorporation of a spiritual-political understanding into American legal culture. The national conference on the Politics of Meaning, held in 1996 in Washington, D.C., drew 1,800 participants committed to a new spiritual-political vision of social transformation. Growing out of that conference, a law task force has had monthly conference-call meetings, held annual retreats, made presentations, and organized several events around the country. Members of the task force have written and spoken widely on the need for legal culture to transform itself to address the social alienation — those distortions in human relationship resulting from living in an isolated, individualistic, and materialistic culture blind to the communal longings of the human soul — that is at the heart of much social conflict. The project is hosted by New College of California, where its leader, Peter Gabel, teaches public-interest law as well as lectures on culture, ecology, and sustainable community. The mission of the task force is to seek to transform legal culture, within the United States and internationally, so that law can become a vehicle for creating a loving and caring world.

Legal Counseling

Focus: Enhancing the role of lawyer as confidant, educator, co-planner, advisor, and counselor from a more inclusive perspective than just legal issues.

This is a relatively new approach being developed by Eva van Loon, a lawyer working on an advanced counseling degree. Van Loon has noted that many clients are not even clear enough about their goals to choose their lawyer or to make decisions through the process. Van Loon's program trains lawyers and others to help clients identify their plan of action so they may choose the appropriate lawyer and then pursue the appropriate course of action in their legal dispute. The approach incorporates into law practice notions of informed consent as they are applied in the medical context.

Coaching

Focus: Helping lawyers utilize their best skills, talents, and interests, and helping them work with clients to expand client choices in legal issues.

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Many lawyers have found practice support by hiring a coach; other lawyers find they are suited to the role of being a coach. At times, lawyers hire coaches to work with their clients. A professional coach in this context is a trained professional who assists clients in creating their futures and designing plans to achieve those futures. A coach is a personal partner who works with clients and helps them make their own decisions and take actions consistent with their commitments. This coaching perspective may enhance the delivery or pursuit of legal services for some clients. A coach assumes that the client has the answers and knows what there is to do, but may need some guidance in discovering those answers and then implementing them for effective long-term change. Coaching skills include deep, committed listening; intuition; and inquiry. Some lawyers who apply coaching skills with their clients may also take on unbundling services, assisting *pro se* litigants, and coaching divorce clients. Some lawyers are discovering that they enjoy coaching other lawyers to find greater fulfillment in their lives and the practice of law. There are now many coaching schools and training programs. Coach U, Inc., one of the first coach-training programs in the world, sponsors a special-interest group of coaches who work with lawyers.

Conclusion

Creative lawyering requires overcoming resistance to change and skepticism about new ideas. As this article and others in this issue of *Bar News* demonstrate, there is a world of alternatives to a one-size-fits-all practice. No one of the transformational alternatives we describe will suit every situation, but they may bear trying out. Lawyers and their clients might each end up happier and more satisfied than they were when suiting up in armor was the only choice.

J. Kim Wright, J.D., coaches lawyers and is a peacemaker in relationships with Healers of Conflict. She is the founder and chairman of the board of Renaissance Lawyer Society, a nonprofit organization of leaders in the new paradigm of law practice. Prior to relocating to Oregon in 2000, she practiced holistic family law in North Carolina. She is a frequent contributor to legal periodicals and speaks on the

topic of visionary law. She can be reached at kim@jkimwright.com.

Dolly M. Garlo, R.N., J.D., P.C.C., is a founding member of the Renaissance Lawyer Society board of directors. Licensed to practice law in Utah and Texas, she founded her own law firm in Austin, Texas. Garlo Ward, P.C., a general civil practice with a focus on legal services for health-care professionals and facilities involved in governmental regulatory disputes, with an emphasis on preventive law and client legal education. She also built and currently operates a business-development and personal-effectiveness coaching, con-

sulting, and training company called Thrive!! Inc. Contact her at dmgarlo@allthrive.com.

Marty Price, J.D., has over 25 years of mediation experience. He is the founder of the VORP Information and Resource Center. He offers trainings in restorative justice and has been internationally recognized for his work in victim-offender mediation in crimes of severe violence. He is currently a mediator and counselor for Healers of Conflicts. He can be reached at martyprice@vorp.com.

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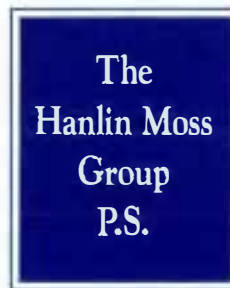
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Center for Restorative Justice and Peace-making: <http://ssw.che.umn.edu/rjp>
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North American Institute for Conflict Resolution: www.crtraining.org
The Preventive Law Reporter: www.law.du.edu/plr
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Study of Conflict Transformation at Hofstra School of Law: www.hofstra.edu/law/lisct
Thrive!! Inc.: www.allthrive.com
Transforming Practices (Steven Keeva): www.transformingpractices.com
Victim-Offender Reconciliation Program (VORP) Information and Resource Center: www.vorp.com
Victim Offender Mediation Association: www.voma.org
VORP Information and Resource Center: www.vorp.com

Print Resources

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Transcending: Reflections of Crime Victims, Howard Zehr (Herald Press, 2001)
Transforming Practices, Finding Joy and Satisfaction in the Legal Life, Steven Keeva (Contemporary Books, 1999)

Collaborative Law Reaches Out

by Stefani Quane and Rachel Felbeck

Pauline Tesler, author of the book *Collaborative Law*, says collaboration has reached a turning point: In the U.S. and Canada, some now consider collaborative law a mainstream divorce-resolution process. Collaborative law is currently practiced in at least 26 states, Canada, England, Ireland, and Australia.

Collaborative law's origins

For those of you new to the concept, collaborative law is a term coined in 1990 by Minnesota attorney and mediator Stu Webb. Collaborative law describes a dispute-resolution process in which clients and their counsel contractually agree that the collaborative lawyers will *not* go to court. This agreement aims to maximize the attorneys' creative dispute-resolution incentives. If the process fails and the parties choose to go to court, the parties must retain new counsel and new experts. According to Tesler, this non-

Since its inception, collaborative law has taken off as a new form of alternative dispute resolution.

litigation contract is collaborative law's key defining element. Other guiding principles include timely, full disclosure of relevant information and direct client involvement in negotiations. During negotiations, collaborative attorneys advocate for their clients' interests, not positions, and use non-adversarial, constructive advocacy methods.

Stu Webb began practicing collaborative law because of his frustration with aspects of divorce litigation. After years of practicing adversarial litigation, he concluded that few felt positive about trial outcomes — not the clients, not the



judge, not even the attorneys. In addition, for Webb, the hostility between counsel seemed to escalate over the years. As a result, he sent 10 letters to fellow family law attorneys requesting they explore together a more amiable and constructive case-resolution method. Four responded, and a new conflict-resolution method was born.

In the early years, there was no attorney-withdrawal requirement. Webb added the withdrawal requirement after observing negative client consequences when he litigated a case for which he had been the collaborative lawyer.

Since its inception, collaborative law has taken off as a new form of alternative dispute resolution. It has become extremely popular and effective in many areas in North America. For example, in Medicine Hat, Alberta, the family law bar had the unique opportunity to implement a complete collaborative system. There were 20 family law lawyers in the area, and 19 attended the training and

became excited about the process (the 20th lawyer was apparently in the hospital at the time and unable to attend the training session). As a result of the nearly complete training and acceptance by the family law bar, the attorneys in Medicine Hat were able to introduce the process to all litigants engaged in family law litigation in that area. Because every family law practitioner encouraged clients to implement collaborative law as a standard form of divorce resolution when appropriate, the Medicine Hat attorneys were able to eliminate the weekly motions calendar from the court system due to the lack of litigated cases.

Collaborative benefits

Collaborative resolution emphasizes maximized client involvement. This direct involvement often results in higher client satisfaction with the process and outcomes. The attorney advocates for the client by empowering the client to express and advocate for his interests in a non-

adversarial manner. The attorney ensures the client's interests are understood and addressed where appropriate. It is the clients, however, that together create a solution which works for each party for final resolution of the conflict.

Removing adversarial tactics tends to result in more efficient and productive negotiations. Some collaborative lawyers believe removing positional argument also generates better financial and emotional outcome. However, removing adversarial argument does not mean parties eliminate conflict or disagreement. Rather, conflict and dis-

agreement are acknowledged, expressed where appropriate, and addressed if they are obstructing resolution. Clients can benefit from collaborative law's acknowledgment of their emotional involvement in the issues.

In family law cases, and other cases where there is a continuing relationship or need for the parties to interact (about children or other issues), collaborative law is generally a cost-effective and time-saving process which often keeps intact previously existing relationships. Attorneys guide their clients through the conflict in a manner that allows for the par-

ties to restore or continue, where appropriate, working relationships.

Collaborative law and law schools

The collaborative law movement has become such an accepted part of the legal practice in many jurisdictions that it is now being taught in several law schools. Last fall, for the first time at any law school, a full semester in collaborative law was taught at the University of British Columbia. Other law schools will soon follow suit, including the University of Santa Clara, U.C. Berkeley, Harvard, University of South Florida, and University of Miami. Seattle University's Melinda Branscomb is addressing how collaborative law relates to mediation in her negotiation/mediation course this spring.

Collaborative law also attracted the attention of researchers interested in the efficiency of this model of conflict resolution. Professor Dr. Julie MacFarlane at the University of Windsor (Ontario, Canada) is conducting the first full research study of collaborative law. She reported on her preliminary findings at the International Academy of Collaborative Professionals (IACP) Conference in Vancouver. Her research project included following 135 divorces in four cities — Vancouver, Medicine Hat, San Francisco, and Minneapolis — where she surveyed and interviewed the families and their lawyers throughout the management of their cases. Families self-selected by agreeing to serve as case studies. Her final analysis should be complete later this year.

Legislative efforts

Texas is the first state to implement its own statutory scheme promoting collaborative law in divorces and in suits affecting parent-child relationships. According to Norma Trusch, incoming president of the IACP, the best part about the Texas collaborative development was the willingness of an enthusiastic group of converts to make large commitments of money and time to the development of the movement. They spent a lot of early energy getting the statutes passed, and once that occurred, the movement took a huge leap forward. Because the collaborative law statutes were enacted by the Legislature, the State Bar of Texas began sponsoring continuing legal education programs to explain the

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process. This led to the development of the Collaborative Law Institute of Texas, a statewide organization which has produced a first-rate website (www.collablawtexas.com) and provides training throughout the state. The Collaborative Law Institute of Texas has also formed committees to draft uniform protocols and forms, and is planning an annual networking and educational retreat. Several other states are also considering adopting statutory schemes to promote collaborative law.

The collaborative law movement has become such an accepted part of the legal practice in many jurisdictions that it is now being taught in several law schools. Last fall, for the first time at any law school, a full semester in collaborative law was taught at the University of British Columbia.

Other jurisdictions are looking toward modifying local court rules to include separate tracks for cases identified as collaborative cases. In these jurisdictions, the courts do not set trial dates, impose discovery deadlines, or require compliance with scheduling orders. They have requirements to provide the court with progress updates, but otherwise the parties are free to explore collaborative resolution without court intervention.

Collaborative law and the RPCs

One question that nearly always arises in a frank and open discussion of collaborative law is the relationship between collaborative law and the Rules of Professional Conduct. Often, attorneys inquire whether it will be "ethical" to be collaborative even if their client is fully consenting and making an informed decision. The reverse is an even more compelling question: Is it ethical for lawyers to be adversarial if their clients would rather they collaborate intelligently? And where does this word "zealous" come from when it is found

nowhere in the RPCs?

RPC 1.2(c) allows a lawyer to "limit the objectives of the representation if the client consents after consultation." Thus, as part of a fee service agreement, there is no ethical violation so long as it is clearly agreed upon between the attorney and client that the attorney will represent him only in a collaborative-law context. The fee agreement should clearly spell out that the client understands and agrees that he will be required to seek litigation counsel if the collaborative process does not succeed, and that the collaborative attorney will

withdraw if the case goes to litigation. Further, the collaborative agreement signed by both attorneys and the parties should clearly define that the scope of representation will be limited to the parties proceeding under the collaborative process. Further, RPC 2.1 explains the lawyers' valid role as an advisor.

An attorney in a collaborative context can help the parties look at all sides of an issue to arrive at resolution that is acceptable to both parties. This role as advisor is no different than the role an attorney assumes when he assists a client during a mediation or settlement

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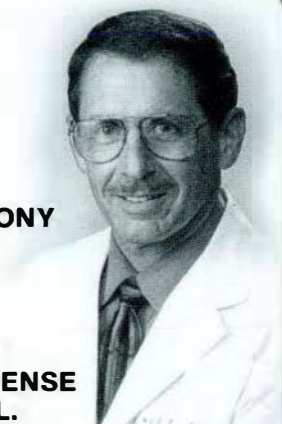
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conference. The attorney in any alternative dispute resolution method gives his client legal advice based on the law, his experience in the local judicial bar, his experience with resolution trends, and whatever other factors may bear weight to assist the client in reaching final resolution of the issue in dispute without resorting to a trial or a hearing on the merits.

Finally, many curious attorneys recognize the risk of undertaking a process that mandates "radical transparency" and full disclosure as part of the contractual agreement. There may be concern that one of the parties is using the process as an easy discovery tool and never intends to operate under the good-faith principles outlined in the agreement. RPC 3.4 mandates that attorneys shall not "destroy, alter or conceal documents with potential evidentiary value and shall not counsel or assist another person to do so." Similarly, the participation agreement signed by the parties and their attorneys mandates full disclosure and good-faith dealings throughout the process.

In any scenario where an attorney is aware that a party is concealing assets

or evidence, that attorney has an ethical obligation to work with the client to prevent that situation from occurring and to take steps to remedy it if the client has already engaged in that type of activity. If he is unable to convince the client to not breach the contract, the participation agreement normally includes a procedure with remedies for resolution. Ultimately, of course, any attorney has a right to terminate his services based upon violations of the agreement or possible violations of RPC 3.4. The attorney's withdrawal does not necessarily violate attorney/client privilege, since no disclosure as to why the attorney is withdrawing is ever required.

The attorney's role in a collaborative context naturally focuses more on the attorney as a counselor or advisor. The attorneys can assist the clients on analyzing each of the legal issues present, discussing the facts, and brainstorming on creative solutions that can be directly tied to resolution to meet both parties' needs. The attorney is thus liberated from costly and often emotionally destructive litigation tactics, motion filings, detailed discovery procedures, etc.,

and can focus his time and energy on being able to use his skills and expertise to resolve conflicts, instead of increasing or creating conflicts.

Collaborative law's limitations

Collaboration does not work for every lawyer or every situation, nor is it intended to. In some cases, lawyers need to develop new skills and sensitivity when dealing with heightened emotions and communication difficulties. Many attorneys find that mediation training, which includes active-listening skills and redirection techniques, is helpful in assisting the clients during difficult parts of the four-way collaborative meetings.

Sometimes cases don't settle easily, particularly if the lawyers lack the skill and verbal finesse required to assist more difficult cases or clients to settlement. Further, there are always cases and clients for whom the collaborative model will not work. On the other hand, practical experience has shown that actual savings can occur in the collaborative process that makes funds available to bring in other needed professionals, such as financial planners or parenting investigators.

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Where to get training

For many years, the only way for a Washington lawyer to get training in collaborative law was to leave the state for a two- or three-day intensive training program. Now, the WSBA is offering a one-day CLE in Seattle on March 5. NW Collaborative Law hosts monthly free CLEs in Bellevue or Seattle, and plans to offer longer one-day CLEs on the interdisciplinary aspect of collaborative law, collaboration for the nonlawyer, communication skills for the collaborative lawyer, and another one or two full-day CLEs with an experienced out-of-state facilitator. Collaborative law issues will also be presented at the NW Annual ADR Conference May 7-8 and other CLEs throughout the state this year.

If you like to travel, there are many CLEs offered across the country (see www.collabgroup.com for a list of upcoming training events). Attorneys interested in starting collaborative groups in their areas can also work like Stu Webb — identify opposing counsel who might be open to a collaborative approach in an appropriate case and propose this model to them. Model stipulations, and in some cases local rules, are available to allow litigants to opt in to collaborative law via stipulations that define the process.

Conclusion

Civil litigation has a new tool for dispute resolution. Collaborative law is an exciting, innovative method that is here to stay. In the appropriate case, or with the appropriate clients, this model can bring peace and control back to parties in conflict. For attorneys, working within the collaborative model can bring a renewed sense of satisfaction and enjoyment back to the practice of law. Welcome to the new model! 🐼

Stefani Quane (the Lawlady) and Rachel Felbeck — in the collaborative style — are co-presidents of Washington's first collaborative law group: NW Collaborative Law. This organization introduces, promotes, and teaches collaborative law to lawyers and the public. It is an open group bringing the collaborative model to all areas of legal practice. Contact Stefani at 206-932-9699 and Rachel at 425-453-9818, or visit their website at www.nwcollaborativedivorce.com for more information.

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Respecting Lawyers

by Paul Lehto

A 1980s study by the American Judicature Society found that fully 70 percent of all *winning* litigants were not satisfied with the process. Presumably, something like 100 percent of the losers were not satisfied with the process, either. With numbers like these, is it any wonder that lawyers (who are so closely associated with the adversarial system) have reputation problems?

Full funding of the legal process, with more judges and shorter dockets, will not fundamentally transform the public's poor opinion of the adversarial process. Even if we justly create more "winners" in the litigation game, or reduce delays incrementally, we can still expect something like 70 percent of the winners and 100 percent of the losers to be dissatisfied with the process.

Still, as a wit once quipped, "Criticizing lawyers for litigation is like criticizing middlelinebackers for hitting people." This resonates with most lawyers' sense that our colleagues (except possibly opposing counsel) are good, talented people, not the greedy, dishonest villains lawyers are made out to be. But with opposing counsel we are thrust into an adversarial relationship — thus, opposing counsel is the exception that proves the rule that it is the adversarial system that is troubling so many of us.

So should we blame the public for not suitably distinguishing between systemic problems and the faults that can fairly be said to be owned by lawyers? Perhaps, but it is also true that lawyers are in a unique position to influence and change the nature of the way disputes are resolved in our society, so we cannot escape all responsibility.

Some will be quick to cite the noble history of the adversarial process and its many contributions to society, especially in the creation and enforcement of individual rights and liberties. Yet regardless of whether you think the adversarial sys-



tem will always be with us, or whether you see a day when progress brings us better ways of resolving all disputes, the historical successes of the adversarial system do not justify its one-size-fits-all *monopoly* on dispute resolution. As Wright, Garlo, and Price state in their article in this issue, "If a hammer is your only tool, every problem starts to look like a nail."

But physicians, who still enjoy much higher public-approval ratings than lawyers, still use "hammers." They have their "adversarial" methods of attacking cancers and bugs. But they have no such one-size-fits-all approach. Their overall goal is to heal their clients, and to restore them to their prior position of health or maximize their future health. Isn't that the same general insight as legally "making the client whole"?

Even though doctors listen to their pa-

tients to heal the body, and psychologists listen to their patients to heal the mind, and ministers listen to their congregants to heal the soul, lawyers seem to listen only for the legally relevant facts needed in order to kick someone's ass. Are we making our clients whole this way, or is the adversarial system speaking more strongly than our ethical call to make our clients whole again?

The parallelism above points to the idea that the purpose of all professions is really to heal, and, further, that the purpose of lawyers is specifically to heal conflict. Lest your cynicism make you think the healing metaphor is too limited, doctors know that even when amputation is required, healing is still the appropriate metaphor. Thus, where there is permanent change in the form of divorce, there is much healing to be done even if we have

participated in effectuating the divorce. In most cases, the divorced people will still need to have a productive economic or parenting relationship.

The public may be ahead of us. Amid the headlines in the December 6, 2003 *Seattle Times* was the photograph of an African-American victim of a drunk driver (who was pregnant when almost killed) publicly forgiving the defendant at his sentencing. In the victim's arms was the baby (in her mother's womb at the time of the accident), who was saved only by a miracle of surgery. This forgiveness was met with what the *Times* called "torrents of tears" from the defendant.

While this remarkable story had many compelling elements, one that was missed was the sense of freedom from further suffering, anger, and regret that the act of forgiveness gives to the victim. Forgiveness, then, is in no way properly understood as primarily an act of charity toward the guilty. Consequently, when properly pursued, there is a tremendous service opportunity when lawyers help to free their clients from what can be a lifelong prison of anger over a loss that can't be undone, and there is tremendous job satisfaction poten-

tial for the lawyer as well. Many of the lawyers we would all consider great do a fair bit of this creative work already. But much more can be done.

All of this is fully within current ethical and moral constructs of lawyering. Lawyers are fiduciaries. As such, black-letter law provides that as fiduciaries, they have a duty of honesty, a duty of care, a duty of loyalty, and a duty to act in the best interests of their clients. And what is an unconflicted act of honesty, caring, and loyalty, but an act of professional love? Thus, one of the many forms of selfless love is the fundamental moral

call of lawyers for their clients: we sometimes have to do things even though it is not in our own best interests.

Professional love requires more than just the adversarial system with mediation settlement conferences added on. Rather, the focus of this issue is to identify emerging ADR (Appropriate Dispute Resolution) as it provides lawyers with more opportunities to serve their varied clients well, and to be the dispute-resolution geniuses and problem-solvers the public has always dreamed we would be.

This is most topical. The WSBA's long-range plan has one of its nine points de-

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voted to identifying and exploring emerging ADR. Local leaders like Stella Rabaut and others have been laying ground work, and offering coaching and related services for some time. The *ABA Journal* (December 2003) also features an article by President Dennis Archer on restorative justice and other themes. Archer quotes the Reverend Dr. Martin Luther King Jr., who simply defined justice (with slight variations from time to time) as "love correcting that which revolts against love." Or, if you remember your high school algebra rules of substitution and you prefer a bit more complexity, justice is "duty, loyalty, and caring correcting that which revolts against duty, loyalty, and caring."

The public, bless their souls, for all their occasional misconceptions about the system, still fundamentally believe that when they petition their courts for a redress of grievances (by filing a lawsuit, *pro se* or otherwise) that duty, loyalty, and caring require something other than the treatment they've received recently. Rather than effectuating an extralegal self-help remedy, their innocence and even vulnerability in believing that the court system would somehow correct the deviations from duty, loyalty, and caring that they've experienced is matched only by the intensity of their hatred for the system and every lawyer in it, as their hopes are dashed on the rocks of an adversarial system so fundamentally inflexible that essentially the only skill it has is transferring money from one pocket to another, with no one quite able to explain, or even really willing to listen to, their story. Heck, your own lawyer will quickly shut you up if you do anything but answer the questions the lawyers ask you for reasons apparent only to the lawyers. Is this a system any litigant should be satisfied with?

Whether or not you believe that a dispute resolution profession based on professional love (duty, loyalty, and caring) could give birth to many different and workable tools of dispute resolution that would yield broad consumer choice in dispute resolution, it is nevertheless clear that this route stands a much better chance of restoring lawyers to their positions of historical respect than declaring that every dispute should be resolved solely by litigation, and if the litigation doesn't involve enough money,

then implicitly declaring that it is not worthy of the respect or the time of even a single lawyer or judge. This is the "realism" of the adversarial process. A more intelligent system would have lawyers appointed as special masters to resolve consumer disputes, who could often reach an arbitrator's decision for the cost of simply retaining a lawyer who knows he's bound for litigation. Because we still claim a form of effective monopoly, we need to care a whole lot more about people's experiences in the process.

And so let me conclude by suggesting that it would be a great time to be a lawyer

if we could all (in spirit) say at the beginning of a new case, "Let's all sit down in the circle of love, because if we don't, I'm going to be forced to kick your ass!" At least then we could say we have tried, and we would have a moral permit of sorts to engage in the very adversarial system the public tells us they don't like, even when they win. ✍

Paul R. Lehto is an Everett business litigation and consumer-protection lawyer who retired from the WSBA Board of Governors in 2003. He can be reached at paul@lehtopenfield.com.

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Appellate Practice Tips: The Supreme Court Visits Bellingham

by Elizabeth Li

The Washington State Supreme Court heard oral arguments in Bellingham on November 16, 2003, at Western Washington University. The day before oral arguments, the Court presented a free one-hour CLE on appellate practice. A reception followed, providing an opportunity for members of the local communities to chat informally with the justices.

Justice Barbara Madsen led the CLE. She mentioned several Supreme Court "hot off the press" issues, but the one that stands out addresses the recovery of attorneys' fees. Specifically, the Supreme Court will award attorneys' fees only if the request is made in the opening brief or the response. Requests raised for the first time in the reply brief are too late. Requests made in the Court of Appeals will be considered as a continuing request to the Supreme Court. Rules of Appellate Procedure 18.1 has been amended to reflect the change.

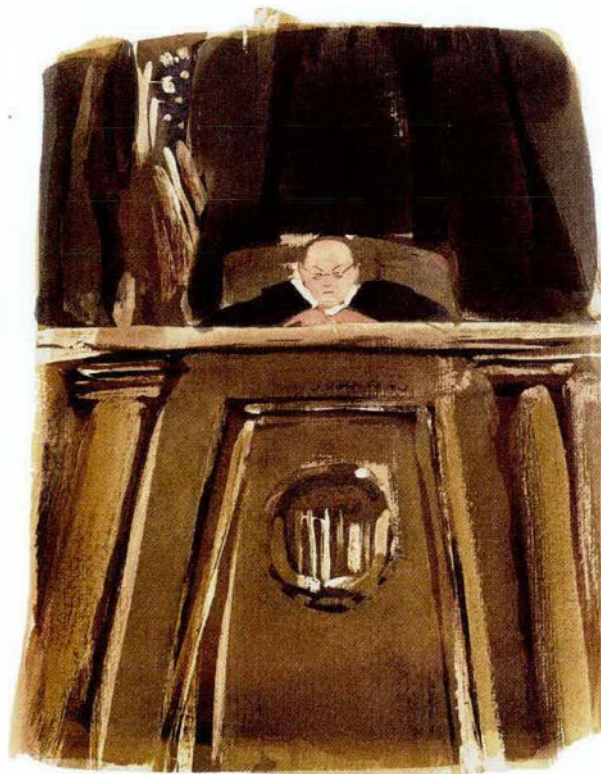
Here's a summary of *Tips on Appellate Practice* from each justice:

Chief Justice Gerry Alexander: No petty or sarcastic language. You can only get away with "rectally submitted" as a typo *once*.

Justice Charles Johnson: Narrow your focus to the reason(s) why you are before the Court. Remember the reasons why the Court decided to hear your case.

Justice Barbara Madsen: Provide cites for

arguments. Address *all* opposing arguments. Be specific about requested relief. Provide the language for the rule you want the Court to adopt. Explain what the court below did and why, since it is



not always clear on review. Look for *amicus* in areas requiring expertise. Don't fudge facts.

Justice Richard Sanders: Discuss relevant text in your brief, since eight of the nine justices have only the briefs. If you do not quote the actual text in your brief, attach a copy of the relevant text as an addendum to brief. Read and think about the governing rule/text to clarify misconceptions.

Justice Faith Ireland: Listen to the Court's comments. Don't get derailed by grilling questions; answer the questions, then segue to your next argument. If you can't segue, it is perfectly acceptable to respond with, "Your Honor, I just can't give you a better answer." Don't maintain eye contact with a justice who has already grilled you with five questions in a row. Don't interrupt a justice.

Justice Tom Chambers: Never tell Justice Ireland she missed the point! Write good briefs, because oral arguments rarely persuade a change in opinion. State facts at the beginning and then integrate key facts into law during your argument. Justices have already read four versions of facts before oral argument, so don't waste time reciting facts, but do integrate key facts into oral argument.

Justice Bobbe Bridge: Be flexible enough during oral argument to answer the question asked now, not later. Learn to recognize a softball question.

Justice Susan Owens: The best oral arguments are like conversations.

Justice Mary Fairhurst: Make it easy for the Court — provide a roadmap using headings, paragraphs, and the same terminology throughout.

Elizabeth Li is the 2003-2006 Northwest District trustee for the WSBA Young Lawyers Division (WYLD). She practices immigration law in Bellingham and can be reached at 360.392.3990 or eli@elizabethli.com.

The Board's Work

by Lindsay Thompson

Leavenworth, December 5-6, 2003

Call me slow. Call me a dimwit. After 16 years of traveling all over Washington to attend Board of Governors' meetings, this month it finally hit me: *It's time to scale back the BOG road show.*

Outreach to members would be a fine thing if any of them showed up when the BOG and their camp followers arrive. Almost no one ever does. This has been the case for years. The road show has gotten so big, with all the liaisons and staff who attend, that the number of towns the BOG can meet in has steadily dwindled. And if the WSBA actually enforced its policy against meeting in places that discriminate, there'd be fewer still.

All this notwithstanding, 40 or so people, nearly all of whom live in the Seattle area, decamped over the pass to Leavenworth in the midst of a gale that left 160,000 people without electricity. We gathered at Sleeping Lady, a winterized and gussied-up former summer camp so painfully earnest, even the pencils and their leads are recycled, and even ground under repair is signposted as "Natural Landscape in Therapy." There was one authentic touch to the place, though — a library filled with books people stopped reading 50 years ago (any Thomas B. Costain fans among ye?).

Of course it snowed, so we slogged through the dark and dripping trees, on paths cleared by snowplow-golf carts, from meeting hall to rooms to dining hall and back again. Three lawyers were yarded out to this Rousseauvian wilderness to get their Hobbesian reprimands, then sent back whence they came (*memo to self: write an article about why doing reprimands in person is a dumb, outdated, and gratuitously petty tradition long overdue for repeal*).

After some preliminaries, the BOG took up a court rule to make lawyers report their business e-mail addresses. Some fretted that this appeared to require members who don't have e-mail to go out and get it (nah); others wondered if the WSBA would sell their e-mails to vendors, thus increasing already bountiful helpings of spam every day. After some to-ing and fro-ing and

digressions into members' views of telephone solicitors, the BOG voted to allow the collection of members' business e-mail addresses, with the reminder that any member can opt out of any information about them being sold to third parties.

The Board also made some appointments, but as is generally the case this was an unedifying process dominated by some members' concern that a judge recommended for a seat on the Legal Foundation of Washington Board hadn't sent in a résumé and so, having not said "Simon Says" in the right order, shouldn't be considered. In the end they let the judge be considered, and even recommended the jurist for the job.



Five years after I called for it, the WSBA will set up websites for each member of the BOG to communicate with their constituents. The BOG was told it is an easy change to the WSBA website.

Poor **David Swartling**, chair of the Court Rules Committee, had to bring back proposed amendments to CrR 4.6 and 4.11, dealing with procedures for defense lawyers to interview witnesses in criminal cases. As I reported last summer, this is a cats versus dogs issue. Victim-rights groups and prosecutors have one view, defense attorneys another. They talk past each other for long periods of time and posture indignantly. The BOG, as an institution, dislikes this sort of issue. It requires taking sides.

So last summer the BOG sent this back

to the committee to do something else with the amendments. Get the sides to agree; solve the Israeli-Palestinian question; decide if flag acted out of choice or a bad upbringing — that sort of task.

So Swartling brought the BOG a revised draft, and, knowing almost nothing about the topic, they set about one of their favorite tasks — group editing. We had members moving to send the version the Supreme Court had already sent back, back to the Supreme Court; sending the Court a slightly different version the Rules Committee had rejected; and sending the rules back to the committee to add a sort of Miranda Warning, only to have another member move to reconsider the matter the next day.

Then came proposed General Rule 31, a sort of appellate *dictat* about how people's privacy interest in court data will be defined. The judge advancing this top-downish rule sent the BOG a memo, in advance of a personal appearance, more or less demanding that it be passed, *instantly*, and no group editing, either. But the court embassy didn't arrive till after the entire meeting broke up, and in the meantime members of the BOG, the Rules Committee, and liaisons found a raft of deficiencies in it, and sent it to the Rules Committee to make some sense of.

Steve Crossland, a rarity in that he lives near Leavenworth, came over to update the BOG on the work of the Practice of Law Board. He chairs it. **Don Horowitz** and **Scott Smith** presented the Access to Justice Technology Principles (formerly called the Technology Bill of Rights) court rule that is intended to guide courts and counties to best practices in making the courts more accessible, not less, through websites and other gizmos. After some debate about whether this rule would impose an unfunded mandate on counties already strangling the court system to spit out more revenue rather than doing justice, it was sent on to the Supreme Court for the glacial ministrations of its rules committee.

Judge **Mary Kay Becker** of the Court of Appeals briefed the BOG on the newly published civil needs assessment conducted by a Supreme Court commission. Available online at www.courts.wa.gov/

newsinfo/CivilLegalNeeds%20093003.pdf, it quantifies how many poor people there are in Washington who don't have access to adequate legal services. I call on critics of legal services funding to read it and then write to *Bar News* about how they propose to solve the problem consistent with conservative principles, as I did last May (writing in, as one reader did, to say, "let's pretend it's 1967 again and there's no legal services program at all," doesn't count, unless you explain how local bars can meet the vastly increased need gratis, and in their spare time).

The BOG also voted to recommend that the next Legislature increase the court-filing fee to help fund legal services. It died in the last session, but in the meantime funding for legal services has been so reduced that it can be said to serve the poor in Washington about as well as the lifeboats on *Titanic* served the 1,495 of 2,200 who were unable to get in one.

Speaking of legislation, **Michael Olver** brought the BOG a bill to allow creation of a confidential court repository for original wills, to prevent the problem of where wills end up when lawyers holding them retire. This is a wholly sensible bill and the BOG unanimously voted to support it.

Another lawyer brought forth what were described as technical amendments to the cooperative association laws, but as his presentation proceeded, via telephone, it became increasingly apparent the proposals were essentially a private-interest bill for a client of his, and a big one at that. The only thing that would have made the presentation any brassier would have been making it in person. The BOG tabled the matter until January.

There was a bill to clean up some technical points (real ones) in the probate filings laws; that got the BOG's OK, as did a bill to clean up and make uniform state law on receiverships. **Marc Barecca** and **Jim Austin** did a masterful job explaining why this is needed, and how it will work. The BOG voted to support it.

A bill to amend state law to deal with the double taxation of damage awards was also approved.

Michael Carrico is a lawyer whose word you can go to the bank on, and I say that having listened to his presentations

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Child Abuse Cases

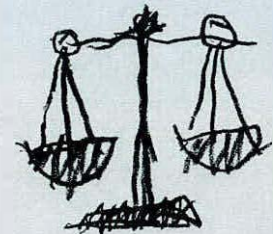
I work on them every day.

Child abuse litigation is tough. But it's a little less tough if you do it daily.

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New postings include...

Promises Stop Lying Better Than Stories Do, Study Finds

Congratulations to our Shareholder
Thomas V. Dulcich

on being elected to the
American College of Trial Lawyers.

Fellowship in the American College of Trial Lawyers is limited to experienced lawyers who have a minimum of 15 years of trial experience. Mr. Dulcich focuses his practice in Oregon and Washington on employment law, business and securities litigation, and products liability.

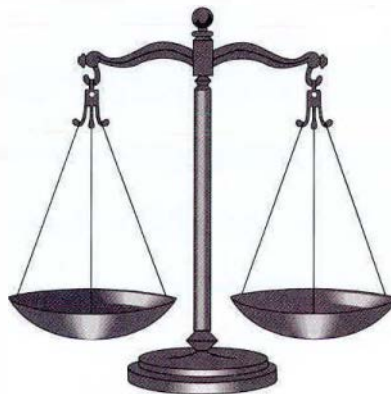


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to the BOG since the days when we both had dark hair. He brought the BOG a bill to fix a federal tax issue where inheritances of widows and family would be taxed absent legislation. The BOG wisely went with his recommendation and voted to support the bill.

Tort reform is back. This subject would be a lot more interesting if both sides — defense and plaintiff lawyers — just announced at the top of the billing their financial interests and stopped trying to dress up their arguments in grand policy terms. The BOG decided it wasn't time to act yet and put the matter over to January.

Steve Rovig, another Seattle lawyer, drove to Leavenworth to present a proposal for inviting law firms to subscribe to some commitments to make the legal profession more diverse. No action required yet, although having been peripherally involved with the matter, I can advise readers it will be a good start on retiring the WSBA's unofficial name, the "White, Straight Bar Association."

A reader whom I respect very much wrote me recently, suggesting I was hard on the BOG in my account of the September 2003 meeting. I take her points seriously. At the same time, this report is the only member-wide, critical voice the BOG gets, or the members of our association read. Having been a longtime observer of BOG action, then a member of the BOG myself, I try to be fair when they get things right, and no more critical than necessary when I think they get things wrong. I should note that another reader wrote the president recently that all of *Bar Nave*s is just a mouthpiece for bar leadership. One evaluation more or less cancels out the other, but I welcome all comments and have been wrong enough times in my life that changing my mind is easy when a good case is made for doing so.

The road show moves to Olympia for January and a visit with the Supreme Court. I'm outta here.

The Board's Work is an unofficial report on meetings and actions of the WSBA's elected governing body. Official minutes, containing matters not covered here, are kept by the WSBA executive director. WSBA members are welcome to attend and speak at all board meetings.

Lawyers' Fund for Client Protection

The Lawyers' Fund for Client Protection Committee meets quarterly to review applications for gifts from the fund. The committee is authorized to make gifts of up to \$10,000 to eligible applicants. On applications for more than \$10,000 the committee makes recommendations to the Board of Governors, who are the fund's trustees. At their meeting on November 21, 2003, the committee took the following actions:

Jeffrey R. Bunch (WSBA No. 21790; Spokane; disbarred): Bunch represented the applicant in an industrial insurance claim. A permanent partial disability award of \$8,235.96 was paid to Bunch on behalf of the client. Bunch was entitled to 30 percent as his fee. He never paid or accounted to the applicant for the balance of \$5,765.19. An audit of Bunch's trust account showed that when he should have held these funds in his trust account, his account balance was zero. The committee approved payment of \$5,765.19 to the applicant.

Gregory E. Grahn (WSBA No. 20312; Lakewood; disbarred): Grahn represented the applicant for several years in child custody and support matters. After an adverse ruling in 2001, he advised her to file an appeal. He required payment of \$1,500 to pay the costs of transcripts. The applicant made payments totaling \$400. She then learned that Grahn had been disbarred. He never refunded the \$400 nor provided any accounting for the funds. The committee approved payment of \$400 to the applicant.

Trenidad Hernandez (WSBA No. 25849; Federal Way and Yakima; disbarred): The committee previously approved four applications concerning Hernandez. At this meeting, the committee reviewed two additional applications. In the first, Hernandez settled a traffic-accident claim for \$11,550. He gave the applicant an accounting that showed payment of a subrogated medical claim of \$1,960.62. Hernandez never made that payment or accounted for the funds. The committee approved payment of \$1,960.62 to the applicant.

In the second, the applicant paid Hernandez \$500 for representation on a DUI charge. Hernandez repeatedly failed to appear at court. After the applicant discharged Hernandez, he never refunded the unearned fee or accounted for its use. The committee approved payment of \$500 to the applicant.

Todd H. Hutchinson (WSBA No. 14389; Vancouver; disbarred): In the first matter, the applicant paid Hutchinson \$650 to represent her in an eviction matter. Hutchinson accepted the fee four days after he had been suspended from practice. A week later — one day before a hearing was scheduled — the applicant was informed by Hutchinson of his suspension. She never heard from him again. The committee approved payment of \$650 to the applicant.

In the second matter, the applicant paid Hutchinson \$500 to arrange joint custody of his son. After Hutchinson did nothing for six months, the applicant discharged him and requested a refund. In a deposition taken by disciplinary counsel, Hutchinson acknowledged he owed \$500 to the applicant, and showed counsel a check he said he was mailing to the applicant that day. He never did so or made any refund. The committee approved payment of \$500 to the applicant.

Reginald Johnson (WSBA No. 26726; Tacoma; disbarred): The applicant hired Johnson to file a Chapter 7 bankruptcy proceeding. He made two payments: one for \$250 and a second for \$225, which Johnson accepted three months after he was disbarred. Johnson never filed a bankruptcy petition and never returned the funds. The committee approved payment of \$475 to the applicant.

Richard Kyaw (WSBA No. 21312; Tacoma; disbarred): The committee previously approved six applications concerning Kyaw. Three more were approved at this meeting. In the first, the applicant hired Kyaw to probate the estate of his sister. Kyaw distributed the estate assets and said that he was withholding \$13,727.14 to pay a subrogated claim to the state of Washington.

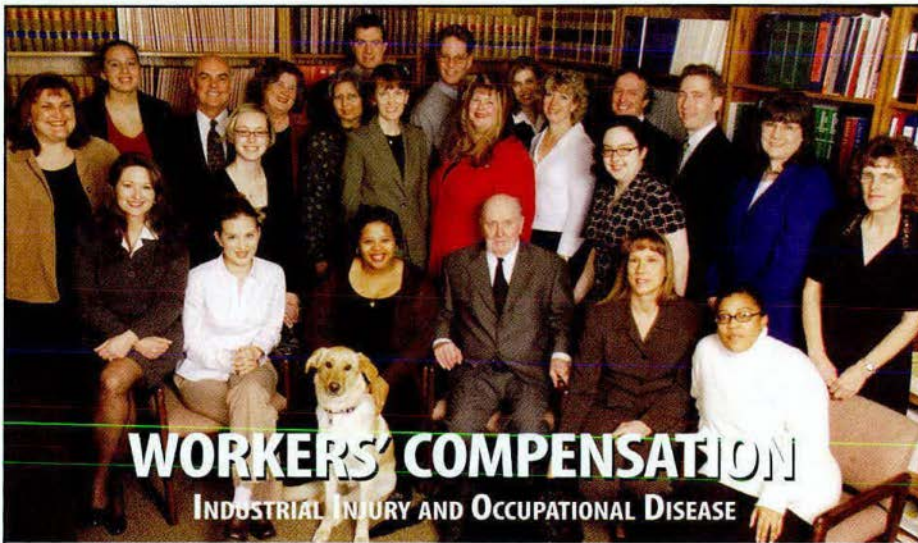
In fact, there was no subrogated claim and Kyaw never accounted for these funds. The committee recommended payment of \$13,727.14 to the applicant, subject to approval by the Board of Governors.

In the second, the applicant hired Kyaw to represent him on criminal charges. During the representation, the applicant paid Kyaw \$2,500 in order to hire a detective. Investigation disclosed that the payment to the detective totaled \$195. The committee previously approved payment of \$700 to the applicant. They approved an additional payment of \$1,555 at this meeting.

In the third, the applicant paid Kyaw \$1,000 to probate her mother's estate. The applicant was deployed to the Balkans, and when she returned on leave she discovered that Kyaw had done nothing. He promised to send her pleadings to sign. She went back to the Balkans the next day and when she returned again she could not locate Kyaw. Kyaw never accounted for the applicant's funds. The committee approved payment of \$1,000.

Anna-Mari Sarkanen (WSBA No. 8984; Seattle; suspended for nonpayment of dues): Sarkanen represented the applicant on criminal charges. After his conviction was affirmed on appeal in the state courts, she recommended that he pursue an appeal in federal court. The applicant paid Sarkanen \$8,000 for the federal case. For several months, Sarkanen told the applicant that she was waiting for the state court to issue a mandate. The applicant then found that Sarkanen had closed her office. He contacted the WSBA and learned she was suspended. He contacted the court and learned that the mandate had been issued three years previous. Sarkanen never provided any accounting for the applicant's funds, and did not respond to the fund investigation of this matter. The committee approved payment of \$8,000 to the applicant.

Kenneth P. Schmidt (WSBA No. 14677; Yakima; disbarred): Schmidt represented the applicant on claims against the Department of Labor and Industries. Schmidt established a trust and set up



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several bank accounts for the benefit of the applicant. After Schmidt failed to respond to the applicant's request for an accounting, the applicant obtained a new lawyer and Schmidt was removed as trustee. An investigation by the WSBA Office of Disciplinary Counsel accounted for all of the applicant's funds except for \$400 in proceeds from one Department of Labor and Industries payment. The committee approved payment of \$400.

Other business: The committee reviewed 13 additional applications that were denied for lack of evidence of dishonest conduct, or as fee disputes, or claims for malpractice. Two applications were dismissed, as restitution had been made, and two were continued to the next meeting.

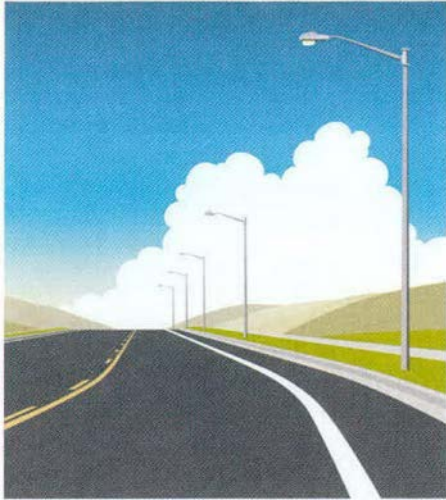
Restitution: The fund seeks restitution from the lawyers who cause payments from the fund. Because in most cases those lawyers have no assets, the chief avenue of restitution is through court-ordered restitution in criminal cases. Prosecuting attorneys cooperate with the fund in getting the fund listed in restitution orders. As of November 2003, seven lawyers were making regular restitution payments to the fund.

Thank you's: The purpose of the Lawyers' Fund for Client Protection is to assist persons who have been the victims of dishonest lawyers. Although the fund cannot fully compensate a person for the harm incurred by a dishonest lawyer, the fund receives notes of appreciation to the lawyers of the state of Washington:

I want to thank the Lawyers' Fund for Client Protection for approving my application. This action goes a long way towards restoring my faith in our judicial system.

Dear WSBA, thank you so much for your help in this case.

The committee chair is Seattle attorney Wilda Heard. WSBA General Counsel Robert Welden is staff liaison to the committee.



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

Cowlitz County Report

by Our Local Correspondent (please send news and information to csbanews@hotmail.com).

The final After Hours of 2003 was held at the law offices of **Steve Pond**, **Paul Boesch**, and **Kevin Rahn**. Partygoers were shocked at the cleanliness of Steve Pond's office, noting that it was the first time they had seen the floor in years. **Odine Husemoen** was there and was really happy. Surprising, because Paul Roesch was in charge of serving the drinks but didn't return from his depo until 30 minutes shy of closing time. That didn't stop Bar President **Michael Evans** from donning a lampshade — although he claims it was because of his happiness upon learning that **Spike Evans** is due in June.

The building that houses the law office was once a bank. It has a vault with 18-inch steel walls with reinforced concrete. Apparently **Mick Frey** and **Tierra Busby** could use such a setup. Tierra heard something outside their home at around 2:00

a.m. While Mick waited safely and securely inside the home, Tierra ventured outside to confront the wrongdoer. The bad guy emerged from their garage with an axe in his hand. Tierra's overwhelming stature and presence were too much for the burglar, and he dropped the axe and fled on foot.

Dennis Maher has an M.A. in international relations. Dennis also won the professionalism award this year as voted by his peers. The award was presented at the annual bar Christmas party. Approximately 100 people attended the affair. The Salvation Army was the recipient of the corresponding food drive. **Wayne Purcell** and his wife, Joyce, were also recognized. Wayne is considered the patriarch of the local bar association. **John Hays** continued his winning ways. He was awarded a door prize for the fifth year in a row.

Steve Pond was a lucky winner of a magnificent snowman lamp. It reminded all of us of the "major award" lamp from *A Christmas Story*. Ah, what an heirloom.

Tierra Busby discretely ate her salmon while the other seven people seated at her table consumed the flesh of a fellow mammal — a.k.a. New York steak. **Jamie Imboden** was recognized by the Cowlitz-Wahkiakum Legal Aid Program as the volunteer of the year for his tireless efforts in assisting the downtrodden and powerless. He even took a *pro hono* case to jury trial. Legal Aid also recognized **Wes Johnson** for his efforts as a Legal Aid board member since its inception.

Ian Northrip was the proud winner of a set of assorted highlighters.

Judiciary Report

by Lindsay Thompson

Governor **Gary Locke** appointed two veteran county prosecutors to new judgeships in eastern Washington in December. **Margaret Sowards**, a senior deputy prosecutor and a member of the Ellensburg City Council, was appointed to the Kittitas County Superior Court. She graduated from the University of Puget Sound School of Law and was admitted to the Bar in 1993. Before coming to Kittitas County, she worked for the Seattle city attorney and the Pierce County prosecutor. The post pays \$121,972 a year. Sowards will have to stand

for election next fall.

Governor Locke also appointed **Carrie Runge** to the Benton-Franklin Counties Superior Court. Runge spent 17 years with the Benton County prosecutor's office, rising to chief deputy prosecutor for Benton County when she received her appointment. Runge received her bachelor's degree in psychology and a secondary education certificate from the University of Washington. She graduated from the University of Puget Sound School of Law.

The King County District Court building in Shoreline, north of Seattle, was renamed the **Robert A. Wacker Memorial Building** in ceremonies held in December. Wacker served 28 years on the district court bench before his death last April 1, two weeks after being diagnosed with cancer. Wacker was one of the longest-seated judges in King County and served as presiding judge of the county's district court in 1976 and 1977. The Metropolitan King County Council unanimously approved an ordinance for the name change in late July.

Seattle attorney **James Robart**, who successfully challenged the constitutionality of Washington's \$30-car-tab initiative in 2000, was nominated by President Bush to become a U.S. District Court judge for the Western District of Washington in December. If confirmed, Robart will succeed Judge **Thomas Zilly**, who is taking senior status after 16 years on the bench. Zilly has said he will continue to carry about 80 percent of his full-time caseload as a senior judge. Robart, 56 years old, spent his career with Lane Powell Spears Lubersky, where he was managing partner when nominated. He holds degrees from Whitman College and Georgetown University School of Law. A bipartisan committee chaired by Seattle attorney **Jenny Durkan** chose Robart.

King County Report

by Jim Varnell

Highlights of 2003

In 2003, being for the first time in years, terms and/or sanctions were not ordered against **David Koopmans**. Of course this is understandable, given the fact that "Koops" is too busy serving as law firm managing partner to litigate

much these days.

The nomadic **Clem Barnes** stayed with the same law firm for one calendar year.

For the 15th consecutive year **Dave Gossard's** gross income was substantially less than that of his son, **Stone Gossard**, of the band Pearl Jam.

William Leedom answered a set of interrogatories and produced requested documents after only two motions to compel discovery, obviously reflecting the fact that Bill is going soft.

Mike Hunsinger's criminal law practice income was down, as he only had to defend half of the UW football team for various transgressions.

On the CLE front

John Strait spent only half of his allotted time in a recent seminar marketing his services, with the remaining time used for talking down (as usual) to seminar participants ("are you still with me?").

The Washington State Trial Lawyers Association presented a speaker at a seminar who had actually tried a case in the past five years, a rarity. Of course, the speaker's experience was limited to representing a defendant on a jay-walking case in Algona Municipal Court.

Rob Aronson resigned his position as UW Athletics Department faculty representative and now teams with a recently fired UW football coach offering lectures on successful wagering for the NCAA "March Madness" basketball tournament.

Office Moves

James A. "Big Jim" Tupper Jr. has joined Mentor Law. **Michael S. Wampold** is a new partner at Peterson Young Putra. **Kathy Feldman** is a new partner at Ater Wynne. At Graham & Dunn, **Margarita I. Morrow** is a new associate and **Stacey A. Walters** is of counsel. **Debora Juarez** is of counsel at Williams, Kastner & Gibbs. **Maggie Peterson** is a new associate at Cozen O'Connor. **Esther C. Bartfeld** has joined Hillis Clark Martin & Peterson as an associate. **Dubs Ari Tanner Herschlip** is now with Dubuar, Lirhus & Engel. **Lish Whitson** has joined Stokes Lawrence as a shareholder. **Stephanie Henderson** is a new associate at Carney Badley Spellman.

New associates in Seattle law firms in-

clude the following: At Miller Nash are **John Chung, Adele Conover, and Adam Hughes;** **Brian W. Esler** is of counsel; at Short Cressman & Burgess — **Beth M. Prieve, Michael R. Parker, M.D., and Janet S. Kim;** at Riddell Williams — **Wendy Lyon, Mona McPhee, Richard Ross, and Skylar Sherwood;** **Michelle Kurtz Peterson** at Lane Powell Spears Lubersky; and **Bernadette Bulacan** and **Wendy Kearns** at Leary Franke Droppert. **Toni Y. Davis** is with Bullivant Houser Bailey. **Mark K. Funke** has opened a solo office in Seattle, as has **Brendan Patrick.**

Honors

Michael J. Robinson-Dorn was appointed to direct the Kathy and Steve Berman Environmental Law Clinic at the University of Washington School of Law, as announced by professor **William Rodgers Jr.** Professor Rodgers is best known for his 1971 in-class demonstration of the fall-back jump shot of Dick "Skull" Barnett of the N.Y. Knicks.

Michael H. Runyan is now a fellow of the American College of Trial Lawyers. **Marcia K. Fujimoto** and **Wendy S. Goffe** were elected fellows of the American College of Trusts and Estate Counsel. **Douglas J. Smart** was appointed to the National Board of Regents for the American College of Mortgage Attorneys. **Carl P. Gilmore** has been appointed to the foundation of the Federal Bar Association. **Clifford Webster** was elected president of the State Capital Global Law Firm Group.

Seattle University Law School Dean **Rudolph C. Hasel** received an Honorary Doctorate of Law from the Far Eastern National University in eastern Russia.

Oregon Report

Portland lawyer **Timothy E. Miller** has been named 2003-2004 president of the Lawyer-Pilots Bar Association, a nonprofit organization founded over 35 years ago. It has 1,100 active members — judges, attorneys, law students, and others from around the world who hold an airman certificate or who have an interest in aviation safety and law. Miller concentrates his practice in aviation accident litigation, FAA enforcement matters, products liability, gen-

eral insurance defense, and insurance coverage. He holds a private pilot certificate, airplane single-engine land and sea, is instrument rated, and flies an A36 Bonanza.

Whatcom County Report

by Mick Moynihan

By the time this article appears in print, another annual grand opening of Erickson, Knudsen, Williams and McLean will be history, Brett & Daugert will have hosted the annual Christmas party, and the rest of us will be about our mundane tasks.

Just prior to the end of the year, we swore in a whole slew of new attorneys, and **Dominique Zervas-Foley** probably achieved the plum of the lot by being employed with Langabeer, Tull and Lee.

Tanisha Canzater and **Mary Neil** will be working with the Lummi Indian Nation; **Deborah Frederick** and **Anna Gigliotti** will be employed by Whatcom County — Deborah with the public defender and Anna with the prosecutor.

Lynette Korb, Tejpal Hansra, Laura Riquelme, Amir Showrai, Ziad Youssef, and Jag Dhillon are either looking for or will be opening offices in the county. A quick reading of those names tells what was obvious to us that this is a very diverse cultural group.

William Belanger is setting up office in Blaine, practicing with **Roger Ellingson**, and **Frank Belden**, after all those years of study, etc., will be heading off to Iraq for the next one and a half years.

Both **Judge Nichols** and I have let it be known that we will be retiring next year, and, so far, at least five attorneys have expressed strong interest in our jobs. That should pump a lot of money into the local economy. More to follow.

Yakima County Report

by Our Local Correspondent

In November, **Timothy J. Carlson, Donald A. Boyd, and Roger Bailey**, formerly of Halverson Applegate, formed a new law firm, Carlson, Boyd and Bailey, PLLC, together with two associates, **Paul H. Williams** and **Joshua J. Busey**. They will serve Central and Eastern Washington emphasizing business, real estate, agri-

cultural law, debtor/creditor relations, and bankruptcy.

In Memoriam

Remembering our colleagues and friends

Warren Doolittle

Spokane native was a Seattle civic activist
Time magazine called Warren Doolittle one of Seattle's "100 Newsmakers of Tomorrow" in 1953, and he stayed busy and involved in his community for the next half century.

Doolittle studied at UW before winning a scholarship to Columbia Law School and a commission in the Navy in 1941. He spent the war training naval aviation cadets, and left the service as a lieutenant commander. After the war he married his law school fiancée, a Barnard College faculty member, and they moved to Seattle. Doolittle joined the old Seattle firm of Schweppe, Doolittle, Krug, Tausend & Beezer. He spent his career there, retiring in 1979 during the firm's centenary. Active as a Mason and a considerable trombonist, he enjoyed a long retirement. Survivors include two children and eight grandchildren.

Warren Akin Doolittle was born in Seattle April 26, 1917, and died there December 2, 2003, aged 86.

Joel Haggard

Longtime Seattle land use attorney

A born debater who became a nuclear engineer and then a lawyer, Joel Haggard had a "catalog-type" mind where every politician and regulation he needed to remember had its place. Born in Portland and raised in Seattle, he held degrees from Notre Dame, University of Oklahoma, and UW School of Law. He settled in Magnolia in a home with a view of the Sound, and lived there the rest of his life.

Haggard built a practice representing land developers, and could almost always point out a project he'd had a hand in as he drove round the Seattle area. He was also active in the Catholic Church and civic matters, serving on the Seattle Symphony Board. President Ford appointed him to the Columbia River Interstate Compact Commission, and every president since reappointed him.

Survivors include his wife, three chil-

dren, and two sisters.

Joel Edward Haggard died December 6, 2003, in Seattle, aged 64.

John Mucklestone

Former pro tem judge cared for his injured spouse and ran his firm

John Mucklestone's wife, Patricia, was badly injured in a 1986 car accident. He spent the rest of his life caring for her, even keeping her WSBA fees current for the day she could return to practice.

Born in Seattle, Mucklestone grew up in California and served in the Army in World War II. He served as a company commander in the 11th Airborne Division. After the war, he got his undergraduate and law degrees at UW.

Admitted to practice in 1952, Mucklestone fell in love with Patricia Shanahan, then secretary-treasurer of the WSBA. They married in 1956 and opened Mucklestone & Mucklestone in Seattle.

Survivors include his wife, two children, a brother, and 10 grandchildren.

John Presley Mucklestone died December 2, 2003, in Seattle, aged 78.

David Trachtenberg

Construction lawyer practiced in several states

Portland native David Trachtenberg graduated from Willamette University and Lewis & Clark Law School, and then joined Kobin & Meyer, a long-established construction law firm in Portland. He later moved to Seattle and the firm of Groff Murphy Trachtenberg & Everard. Admitted to practice in Washington, Alaska, and Oregon, Trachtenberg was a frequent speaker on construction law, insurance, and bond matters.

After a seven-year courtship, Trachtenberg proposed to his wife, Diane, in front of Van Gogh's painting *Starry Night*. They married in 2001. She survives him, as do a son, daughter, and stepson.

David Robert Trachtenberg collapsed and died September 2, 2003, while on his morning walk. He was 50 years old.

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

Christopher M. Cason (WSBA No. 28459, admitted 1998), of Seattle, was disbarred effective March 26, 2003, by order of the Supreme Court following a default hearing. This discipline was based on his conduct in 2001 and 2002 involving making unauthorized personal charges on his employer's credit card or other firm accounts, and criminal conduct prior to admission to the Bar.

In 1991, prior to admission to the Washington State Bar Association, Mr. Cason was convicted of felony Misapplication of Bank Funds, a violation of 18 USC § 656.

Between July and August 2001, Mr. Cason made \$463.87 in unauthorized personal charges on his employer's credit card. Mr. Cason was employed as an associate at a law firm (the firm). In August 2001, the firm cancelled the credit card and accepted Mr. Cason's explanation that his unauthorized charges were inadvertent. The firm obtained a replacement credit card. Between October and December 2001, Mr. Cason made \$1,530.43 in unauthorized personal charges to the firm's replacement credit card.

In early December 2001, Mr. Cason started working at a different law firm. During his employment there, he incurred approximately \$12,589.25 in Lexis-Nexis charges using his prior employer's password. He also incurred \$1,800 in LexisNexis fees that were unrelated to his current employment. Mr. Cason also opened an unauthorized account with a computer company and purchased a flat-screen monitor. He also applied for an unauthorized account in

the firm's name with Amazon.com.

Mr. Cason's conduct violated RPCs 8.4(b), prohibiting committing a criminal act involving dishonesty, trustworthiness, or fitness as a lawyer in other respects [felony of Misapplication of Bank Funds]; and 8.4(c), prohibiting conduct involving dishonesty, deceit, fraud, or misrepresentation; and RLDs 1.1(i), prohibiting committing an act involving moral turpitude, dishonesty, or corruption; and 1.1(p), prohibiting conduct demonstrating unfitness to practice law.

Christine Gray represented the Bar Association. Mr. Cason represented himself. Kelly Fletcher was the hearing officer.

Disbarred

Steven L. Cobb (WSBA No. 21926, admitted 1992), of Edmonds, was disbarred effective March 10, 2003, by order of the Supreme Court approving a stipulation. This discipline was based on his conduct from 1996 through 2002 involving lack of diligence and misrepresentation in three real estate matters.

Matter 1: In February 1997, Mr. Cobb agreed to represent two brothers in a real estate dispute. Mr. Cobb told the clients that he had filed the complaint in August 2000, that opposing counsel had accepted service, and that the trial date was set for January 2001. None of these statements was true. Mr. Cobb completed the complaint in March 2001 and the client filed it with the court. The case was set for trial in October 2001. Mr. Cobb failed to appear for the readiness hearing or file pre-trial witness and exhibit lists. On October 23, 2001, Mr. Cobb filed a notice of withdrawal and requested that the court continue the trial date. The court directed Mr. Cobb to show cause why he should not be sanctioned. Mr. Cobb failed to appear for the show-cause hearing, and the court imposed sanctions of \$6,013. Mr. Cobb also failed to cooperate with the disciplinary investigation in this matter.

Matter 2: In February 1996, Mr. Cobb agreed to represent clients whose property had been damaged in a landslide. The clients obtained a \$124,000 damage appraisal and wanted to rescind their purchase. During the next four or five years, Mr. Cobb told the clients that he had filed a com-

plaint and was conducting discovery, and that a trial date was set. None of this was true. The clients filed a lawsuit against Mr. Cobb and obtained a \$156,893 judgment against him. At the time of the hearing, the judgment had not been satisfied. Mr. Cobb failed to cooperate with the disciplinary investigation of this matter.

Matter 3: In 1998, Mr. Cobb agreed to represent a client in a real-estate dispute. Over the next few years, Mr. Cobb told the client that the opposing party was delaying the matter, when, in reality, Mr. Cobb had not taken any action. In September 2001, Mr. Cobb told the client that he had obtained a default judgment. In fact, Mr. Cobb had not filed the complaint or obtained a judgment. Mr. Cobb provided the client with pleadings that included a non-existent cause number and a forged signature of a judge or commissioner.

Mr. Cobb's conduct violated RPCs 1.3 and 3.2, requiring lawyers to diligently represent clients and expedite clients' litigation; 1.4, requiring lawyers to keep clients reasonably informed of the status of their matters; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; and RLD 1.1(a), prohibiting acts involving disregard for the rule of law.

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

Disbarred

Gregory E. Grahn (WSBA No. 20312, admitted 1991), of Lakewood, was disbarred effective April 16, 2003, by order of the Supreme Court following a stipulation. This discipline was based on his conduct in 2001 in a child-support matter, and failing to comply with duties on suspension of his license to practice law.

Matter 1: In 2001, Ms. K retained Mr. Grahn to represent her in a petition to increase her child-support payments. Mr. Grahn filed the petition on March 9, 2001, and the court set a June 21, 2001, trial date. Prior to trial, Mr. Grahn filed a child-support worksheet, but he did not file the required financial declaration, tax returns, or pay stubs. Mr. Grahn also failed to attend the trial, even though the clerk called him twice. The court then set child support at the lower amount proposed by the

opposing party. Mr. Grahn failed to cooperate with the Office of Disciplinary Counsel's investigation of this matter.

Matter 2: From July 1999 through September 1999, Mr. Grahn's license to practice law was suspended for failure to comply with continuing legal education (CLE) requirements. Mr. Grahn continued to practice law during this license suspension. On October 1, 2001, Mr. Grahn was suspended by the Supreme Court after stipulating to ethical violations, including practicing during the CLE suspension and filing to notify his clients of the earlier suspension. Mr. Grahn did not notify all of his clients and opposing counsel of his October suspension. Mr. Grahn also continued to practice law through his paralegal during this suspension. Mr. Grahn failed to cooperate with the Office of Disciplinary Counsel's investigation of this matter.

Mr. Grahn's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 8.4(d), prohibiting conduct prejudicial to the administration of justice; 1.15(a)(1), requiring lawyers to withdraw from representation if continuing results in an RPC violation; and 5.5, prohibiting practicing law where doing so violates the RPCs; and RLDs 8.2, prohibiting suspended lawyers from acting as a lawyer for another after the effective date of the suspension; 8.1(a), imposing duties on suspended lawyers; 8.3, requiring lawyers to notify their clients and opposing counsel of an inability to act and file a notice of compliance; and 2.8, requiring lawyers to fully and diligently cooperate with the Office of Disciplinary Counsel's investigation.

Anne Seidel represented the Bar Association. Mr. Grahn represented himself.

Disbarred

Robert Kuvara (WSBA No. 3603, admitted 1963), of Kent, was disbarred effective April 24, 2003, by order of the Supreme Court, following a hearing. This discipline was based on his conduct from 1990 through 1999 involving a deed of trust. For more information, see *In re Kuvara*, 149 Wn.2d 237, 66 P.3d 1057 (2003).

In 1982, Mr. Kuvara agreed to probate the estate of Mr. H, a police officer killed in

the line of duty. The estate contained a piece of real property in California. Mr. Kuvara contacted California lawyers, but the property was never actually transferred to the widow, Ms. H.

In 1990, Ms. H sold the property to her sister-in-law. Ms. H and the purchaser asked Mr. Kuvara to provide documentation of the transfer, but he did not respond to these requests.

In January 1998, Ms. H went to Mr. Kuvara's office to sign the documents to formally transfer the property to her sister-in-law. When Ms. H arrived a quit-claim deed was prepared, listing Mr. H as the grantor. Ms. H signed her dead husband's name to the deed. Mr. Kuvara notarized the signature. The deed was recorded in March 1999.

In early 1999, the sister-in-law received an offer to purchase the property and contacted an escrow agent. The agent found the deed and knew it was a forgery because Mr. H had died 16 years before the deed was signed. Ms. H and the sister contacted Mr. Kuvara about the false signature, but he failed to respond. The sale of the property was finally completed in November 1999.

Mr. Kuvara's conduct violated RPCs 8.4(b), prohibiting committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects (by violating RCW 9A.60.020 [forgery], RCW 9A.60.050 [false certification], RCW 42.44.106 [notarial misconduct], and RCW 9A.76.175 [false statement by public servant]); 8.4(c), prohibiting engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 8.4(d), prohibiting conduct prejudicial to the administration of justice.

Kathy A. Cochran and Joanne Abelson represented the Bar Association. Leland Ripley represented Mr. Kuvara. Marc Silverman was the hearing officer.

Disbarred

Richard Kyaw (WSBA No. 21312, admitted 1991), of Tacoma, was disbarred effective June 9, 2003, by order of the Supreme Court, following a stipulation. This discipline was based on his conduct while representing clients in personal-injury, child-

support, bankruptcy, and civil-litigation matters between 1996 and 2002. Mr. Kyaw did not admit this conduct, but stipulated that the Bar Association would be able to prove these facts.

Matter 1: In 1996, Mr. Kyaw agreed to represent a minor in a personal-injury matter. Mr. Kyaw agreed to accept a contingent fee, but did not reduce the agreement to writing. Mr. Kyaw did not obtain the treating doctor's records or the police report of the accident. In 1997, Mr. Kyaw told the client's father that he was negotiating with the insurance company, but he did not contact the insurance company until November 1998. In December 1998, Mr. Kyaw was informed by the insurance company that it determined it had no liability in 1996, and denied the client's claim. Mr. Kyaw did not tell the client or his father that the claim had been denied in 1998 or 1999. Mr. Kyaw told the client not to contact the doctor directly, that Mr. Kyaw would handle the bills. The insurance company asked Mr. Kyaw to send all of the client's medical bills, but he did not respond to this letter. Mr. Kyaw then falsely told the doctor's office manager that the doctor had agreed to write off the client's bill. During the investigation of this matter, Mr. Kyaw intentionally fabricated letters with the intent to deceive the Bar Association.

Matter 2: In January 2002, Mr. Kyaw agreed to represent a client in a child-support-modification matter. In March 2002, Mr. Kyaw discussed draft pleading with his client and the client asked for changes. The client was not able to contact Mr. Kyaw after this time.

Matter 3: In March 2002, Mr. Kyaw agreed to represent a client in a bankruptcy matter. The bankruptcy plan was confirmed, but Mr. Kyaw failed to file the final decree with the bankruptcy court. He also failed to challenge a \$550 per-month late fee assessed by the client's mortgage company. Mr. Kyaw did not respond to the client's phone calls or letters.

Matter 4: In May 2000, Mr. Kyaw agreed to represent clients in a dispute with their neighbors. Mr. Kyaw agreed to file a complaint and to seek a temporary restraining order. Mr. Kyaw sent the cli-

ents an order of default that appeared to have been entered in their case in July 2000. In late 2001 or early 2002, the clients retained substitute counsel because they were unable to contact Mr. Kyaw. The clients learned that no order of default had been entered and that their case had been dismissed in February 2001.

Mr. Kyaw's conduct violated RPCs 1.5(c), requiring contingent fee agreements to be in writing; 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; 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; 8.4(d), prohibiting conduct prejudicial to the administration of justice; and 8.4(f), requiring lawyers to fully and promptly cooperate with disciplinary investigations.

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

Disbarred

Harold E. Norwood Jr. (WSBA No. 19268, admitted 1989), of Lacey, was disbarred effective May 13, 2003, by order of the Supreme Court, following a hearing. This discipline was based on his criminal conduct in 2001 and 2002.

On April 9, 2002, Mr. Norwood pleaded guilty to the Unlawful Manufacture of a Controlled Substance — Marijuana. He agreed to complete in-patient drug treatment in return for dismissal of two other counts. Mr. Norwood entered treatment in April 2002, and was then formally sentenced.

In May 2002, Mr. Norwood was arrested on suspicion of possession of a controlled substance (methamphetamine) with intent to manufacture. Mr. Norwood was charged and pleaded guilty to this offense.

Mr. Norwood's conduct violated RPC 8.4(b), prohibiting committing criminal acts that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and RLDs 1.1(a), prohibiting acts of moral turpitude; and 1.1(c), prohibiting violations of the oath of attorney.

Randy Beitel represented the Bar Association. James Dixon represented Mr. Norwood. George S. Lundin was the hearing officer.

Resigned in Lieu of Disbarment

Mark A. Quigley (WSBA No. 9380, admitted 1979), of Everett, resigned his membership in the Bar Association in lieu of disbarment, effective January 13, 2003. This discipline was based on his assisting the unauthorized practice of law during 1990 through 2002, and misleading the Bar Association during the investigation. Mr. Quigley stipulated that Disciplinary Counsel could prove these facts, without admitting to misconduct. (*Mark A. Quigley is to be distinguished from Mark Thomas Quigley of Tacoma.*)

In 1990, Mr. Quigley formed a business relationship with I.A., a Washington corporation. Mr. Quigley referred personal-injury clients to I.A. I.A. provided legal services to these clients in exchange for a percentage of the attorney's contingent fee. I.A. did not employ any lawyers, and Mr. Quigley did not adequately supervise I.A.'s employees.

In early 1998, Mr. Quigley formed a business relationship with a second Washington corporation. The corporation agreed to expand Mr. Quigley's practice in the Russian community and provide legal services to these clients. The corporation did not employ any lawyers, and Mr. Quigley did not adequately supervise the corporation's employees. Mr. Quigley allowed the corporation employees to imply that they were lawyers. Mr. Quigley had no contact with many of the clients. He split his legal fees with the corporation. Between March 1998 and late 2001, Mr. Quigley paid the corporation over \$1,250,000 for its services to hundreds of clients. During the Bar Association deposition in this matter, Mr. Quigley stated falsely that he had not shared fees with the corporation.

Mr. Quigley's conduct violated RPCs 5.3(b), requiring lawyers with direct supervisory authority over nonlawyers to make reasonable efforts to ensure that the nonlawyers' conduct conforms to the lawyer's ethical obligations; 5.4(a), prohibiting lawyers from sharing legal fees

with nonlawyers; 5.5(b), prohibiting assisting persons who are not members of the Bar Association in the unauthorized practice of law; 1.4, requiring lawyers to keep their clients informed of the status of their matters; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; and 8.4(d), prohibiting conduct prejudicial to the administration of justice.

Kevin Bank represented the Bar Association. Leland Ripley represented Mr. Quigley.

Suspended

Norman W. Cohen (WSBA No. 373, admitted 1965), of Seattle, was suspended for six months, by order of the Supreme Court, effective June 7, 2003. For more information, see *In re Cohen*, 149 Wn.2d 323, 67 P.3d 1086 (2003). This discipline was based on his conduct in an employment-law matter during 1994.

In 1993, Mr. Cohen agreed to represent clients in an employment matter. In February 1994, the defendant filed a summary judgment motion. Mr. Cohen did not make any effort to respond to the motion until at or near the time the response was due. Mr. Cohen asked for additional time to respond and/or a continuance of the trial date. The court ordered Mr. Cohen to either take a voluntary nonsuit or request a continuance with \$1,000 in costs. The court order stated that the suit would be dismissed on March 7 if Mr. Cohen had not taken one of the options by that date. Mr. Cohen mailed a letter to the court on March 2 stating he was tendering the costs, but did not pay them until March 10. The court dismissed the lawsuit. In April 1994, Mr. Cohen filed a notice of appeal.

In March 1994, Mr. Cohen sent a bill to the clients, but did not tell the clients that their case had been dismissed. In April, the clients paid \$11,982.25. The Court of Appeals affirmed the dismissal. After this decision, Mr. Cohen billed the clients an additional \$3,000 for the appeal.

Mr. Cohen's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4(a), requiring lawyers to keep clients reasonably informed

of the status of their matters; 1.4(b), requiring lawyers to explain matters to clients to the extent necessary to make reasonable decisions; and 1.5, requiring lawyers' fees to be reasonable.

Robert F. Greer and Anne Seidel represented the Bar Association. Kurt Bulmer represented Mr. Cohen. Donald Logerwell was the hearing officer.

Suspended

Forrest L. Dexter (WSBA No. 16537, admitted 1986), formerly of Veradale, was suspended for two years, effective March 27, 2003, by order of the Supreme Court, following a hearing. This discipline was based on his false statements and prejudicial conduct in 1998 during and after a deposition.

Mr. Dexter represented Mr. M. In July 1998, Mr. Dexter sued Mr. M for failing to abide by a contingent-fee agreement. Mr. M's counsel, Ms. A, scheduled Mr. Dexter's deposition. In response to a question about his residence address, Mr. Dexter stated: "None of your business. I do all my work from my office and as you instructed your client to answer yesterday, it's none of your business where I live — and as far as having sex with you, forget it. I'm not interested."

Ms. A responded: "Mr. Dexter, please do not pose any personal comments to me of that kind. This is a deposition. Could you please, restrict it to the questions asked?" Mr. Dexter answered: "I was just responding to your request and I refuse to have sex with you under any circumstances."

Following the deposition, Mr. Dexter wrote the following in a letter to Ms. A: "Your attempt to expose yourself by spreading your legs from time to time during the deposition on Tuesday, January 12, 1999 does not impress me. It disgusts me. Please keep your legs together whenever in my presence. I consider it unprofessional and sexual harassment." Mr. Dexter made similar false statements to opposing counsel.

Ms. A filed a motion to withdraw from the case. Mr. Dexter objected to the withdrawal. In his objection to the withdrawal, Mr. Dexter told the court that Ms. A had offered him sexual favors in

return for settling the case and alleged that she had exposed herself to him during the deposition. Mr. Dexter's allegations were false. The court allowed Ms. A to withdraw and granted a continuance.

Mr. Dexter's conduct violated RPCs 4.1(a), prohibiting knowingly making a false statement of fact or law to a third person; 4.4, prohibiting lawyers from using means that have no substantial purpose other than to embarrass, delay, or burden a third person; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; and 8.4(d), prohibiting conduct prejudicial to the administration of justice.

Joseph C. Klein and Anthony Butler represented the Bar Association. Mr. Dexter represented himself. Terence M. Ryan was the hearing officer.

Suspended

Nelson C. Fraley II (WSBA No. 26742, admitted 1997), of Lakewood, was suspended for three years, effective June 25, 2003, by order of the Supreme Court, approving a stipulation. This discipline was based on his conduct in 2001 involving an attempt to unlawfully structure a currency transaction.

Mr. Fraley was an associate at a law firm. In 2000, a client of the firm and an undercover detective entered into a money-laundering agreement. The client told the detective that Mr. Fraley could draft the legal documents to facilitate the money-laundering scheme. In December 2000, the client asked Mr. Fraley to hold \$9,000 in his trust account. Mr. Fraley believed this money was to set up a joint venture between the detective and the client. In late December, Mr. Fraley deposited \$8,000 of the client's money into the firm trust account. In February 2001, Mr. Fraley drafted a trust agreement for the client and the detective to sign. Mr. Fraley also counseled the client and the detective to structure their transactions so that the amount deposited each time would be less than \$10,000, to circumvent the financial institution's obligation to generate currency transaction reports. In April 2002, the court accepted Mr. Fraley's guilty

plea to one count of Attempting to Structure a Currency Transaction, in violation of United States Code §5324(a)(3).

Mr. Fraley's conduct violated RPC 8.4(b), prohibiting commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

Sachia Stonefeld Powell represented the Bar Association. Michael E. Schwartz represented Mr. Fraley.

Suspended

Michele J. Levine (WSBA No. 8261, admitted 1978), of Seattle, was suspended for six months, effective April 10, 2003, by order of the Supreme Court, following a stipulation. This discipline was based on her conduct in 2000 in a real estate matter. Ms. Levine did not admit this conduct, but stipulated that the Association could prove these facts.

In December 1999, Ms. Levine married Mr. S. In February 2000, Mr. S left the marriage and returned to Canada. In August 2000, Ms. Levine entered into a purchase-and-sale agreement for her house, which was her separate property. The title company told Ms. Levine that Mr. S had to sign a quit-claim deed before the sale could close. In September 2000, Ms. Levine signed Mr. S's name on the quit-claim deed without his permission and then notarized his signature.

Ms. Levine's conduct violated RPCs 8.4(b), prohibiting committing a criminal act that reflects adversely on the lawyer's honesty (RCW 9A.60.020 [forgery], and 9A.60.050 [false certification]); and 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation.

Sachia Stonefeld Powell represented the Bar Association. David Allen represented Ms. Levine.

Suspended

Douglas A. Schafer (WSBA No. 8652, admitted 1978), of Tacoma, was suspended for six months, effective April 17, 2003, by order of the Supreme Court, following a hearing. Mr. Schafer has returned to active status. This discipline was based on his conduct during 1996 and 1998 disclosing a client's secrets and confidences. For fur-

ther information, see *In re Schafer*, 149 Wn.2d 148.66 P.3d 1036 (2003).

In August 1992, Mr. Schafer agreed to form a corporation for a client. The purpose of the corporation was to purchase a bowling alley from an estate. During a conversation, the client told Mr. Schafer that Mr. X, the personal representative of the estate, had been "milking" the estate for four years. The client also told Mr. Schafer that Mr. X was giving the client a "good deal" on the bowling alley and that he would repay Mr. X "down the road."

Three years later, Mr. Schafer represented a client in a case before Mr. X, who had become a judge. In December 1995, Mr. X ruled against Mr. Schafer's client, imposing sanction. On that same day, Mr. Schafer started investigating Mr. X's role in the H estate. On February 1, 1996, the client terminated Mr. Schafer's representation and told Mr. Schafer he had "no authority to disclose any privileged information, relating to your prior representation of me." The client retained new counsel, who wrote to Mr. Schafer that any disclosure regarding Mr. X would be in violation of RPC 1.6.

During February 1996, Mr. Schafer prepared a document which revealed his conversations with his client. He met with and provided this document and others to the Pierce County Prosecutor's Office, Federal Bureau of Investigation, Internal Revenue Service, *Seattle Times*, *Seattle Post-Intelligencer*, *The News Tribune*, and two other local newspapers. In April 1996, Mr. Schafer attached documents disclosing his client's statements to court pleadings without asking the court to protect their confidentiality.

In July 1999, Mr. X was removed from judicial office. The Court found that Mr. Schafer could have made his allegations against Mr. X without revealing his client's secrets and confidences.

Mr. Schafer's conduct violated RPC 1.6(a), prohibiting lawyers from revealing a client's secrets or confidences unless the client consents after consultation.

Christine Gray represented the Bar Association. Shawn Newman, Donald H. Mullins, and Douglas Schafer represented Mr. Schafer. Lawrence R. Mills was the hearing officer.

Reprimanded

George A. Kolin (WSBA No. 22529, admitted 1993), of Washougal, received a reprimand in May 2003, following a hearing. This discipline is based on his conduct in 1999 in a criminal matter involving a client facing deportation.

In 1999, a client retained Mr. Kolin to represent her son. The son was a Russian citizen and had pled guilty to four criminal offenses. The client did not want her son to be deported and asked Mr. Kolin for an opinion about the likelihood of getting the charges reduced. Mr. Kolin charged the client \$6,000. The client paid \$3,200. Mr. Kolin signed an affidavit and wrote a letter to the prosecutor asking to amend two of the charges to which the son pled guilty. Mr. Kolin did not tell the client that it was unlikely that the prosecutor would agree to reduce the felony charges to misdemeanors prior to writing the letter. The prosecutor did not agree to reduce the charges. In May 2000, the son was deported. The hearing officer found that the reasonable value of Mr. Kolin's work was \$1,000.

Mr. Kolin's conduct violated RPCs 1.5(a), requiring lawyers' fees to be reasonable; 1.2(a), requiring lawyers to abide by the client's decisions concerning the objectives of the representation; and 1.1, requiring lawyers to provide competent representation.

Tracy Calabrese represented the Bar Association. Mr. Kolin represented himself. James Danielson was the hearing officer.

Reprimanded

Julian J. Nuxoll (WSBA No. 3506, admitted 1965), of Bellevue, received a reprimand in April 2003, following a hearing. This discipline is based on his conduct in a personal-injury matter in 1991 through 1992.

In 1991, Mr. Nuxoll agreed to represent a client in several personal-injury matters involving two separate auto accidents, a surgery, and an insurance issue. In March 1991, Mr. Nuxoll filed a lawsuit joining all four matters. Mr. Nuxoll did not effectuate service of process on Mr. C, one of the defendants. Mr. C filed a motion to dismiss, and Mr. Nuxoll did

not file a response. The court dismissed all claims against Mr. C. In December 1992, Mr. Nuxoll settled the lawsuit against the remaining defendants.

In August 1992, Mr. Nuxoll filed a second lawsuit against Mr. C. The statute of limitations on the client's claim would expire in September 1992. Mr. Nuxoll learned that there were two possible defendants, a father and son. Mr. Nuxoll had the father served, but did not attempt to serve the son. In December 1992, the court dismissed the lawsuit based on failure to serve the correct defendant within the statute of limitations period.

Mr. Nuxoll's conduct violated RPCs 1.1, requiring lawyers to provide competent representation to clients; and 1.3, requiring lawyers to diligently represent clients.

Kevin Bank represented the Bar Association. Mr. Nuxoll represented himself. Moses F. Garcia was the hearing officer.

Reprimanded

Dennis K. Pflug (WSBA No. 11930, admitted 1981), of Seattle, received a reprimand on April 11, 2003, following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in the 1990s involving a boundary-line dispute.

In 1987, Mr. Pflug represented three clients in a boundary-line dispute. In October 1990, a written settlement agreement was circulated among the parties. Mr. Pflug's letter to his clients indicated that all of the defendants had already signed the agreement. In fact, two of the five defendants had not yet signed. The final survey was completed in 1991, and Mr. Pflug made minor modifications to the agreement and circulated it for signature. Counsel for one of the defendants asked Mr. Pflug to make certain that the executed agreement and quitclaim deeds were properly recorded to finalize the case. Mr. Pflug sent the new agreement to the defendants, but the same defendants who did not sign the first time delayed again. In May 1992, the court dismissed the lawsuit for lack of prosecution. Mr. Pflug's clients believed that the case settled when they

signed the original (1990) settlement agreement. In 1999, the clients realized the settlement had not been finalized and that the dispute was not resolved.

Mr. Pflug's conduct violated RPCs 1.1, requiring lawyers to provide competent representation; 1.3 and 3.2, requiring lawyers to provide diligent representation; 1.4(a), requiring lawyers to keep clients reasonably informed of the status of their matters; and 1.4(b), requiring lawyers to explain matters to clients to the extent necessary to allow the clients to make informed decisions about the representation.

Kevin Bank represented the Bar Association. Mr. Pflug represented himself.

Censured

James L. Gress (WSBA No. 25731, admitted 1996), of Portland, OR, received a censure on April 21, 2003, following a stipulation approved by the Disciplinary Board. This discipline is based on his conduct in a workers' compensation matter in 1999.

In 1999, Mr. Gress represented a construction company in a workers' compensation matter. Mr. Gress took the employee's deposition and obtained his tax returns. During the deposition, the employee testified that he had done some work for a homeowner and had not declared the income on his federal tax return. Immediately after the deposition, Mr. Gress told opposing counsel that Mr. Gress would notify the IRS of the employee's failure to report income if the employee did not settle the case. Neither counsel discussed a settlement amount during this conversation. On October 28, 1999, the employee's counsel notified Mr. Gress that his client was not interested in settling the case. On November 2, 1999, Mr. Gress instructed his legal assistant to contact the IRS, which she did on November 16, 1999. The matter ultimately settled.

Mr. Gress's conduct violated RPC 8.4(d), prohibiting lawyers from engaging in conduct prejudicial to the administration of justice.

Becky Neal and Jonathan Burke represented the Bar Association. Christopher Hardman represented Mr. Gress.

2004 Notice of Board of Governors Election

Deadline: March 1, 2004

Four positions on the WSBA Board of Governors will be up for election this year. These are the governors representing the 2nd, 4th, 7th-Central,* and 9th Congressional Districts. These positions are currently held by Jon E. Ostlund (2nd District), Robert M. Boggs (4th District), Carl J. Carlson (7th-Central District), and Bryce H. Dille (9th District).

The WSBA Bylaws provide that any member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of governor from the congressional district (or geographical region within the 7th Congressional District) in which such member is entitled to vote. Nominations are made by filing a statement of interest and a biographical statement of no more than 100 words.

Generally, members are entitled to vote in the congressional district in which the member resides. All active out-of-state WSBA members are eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 5(e), or, if specifically designated to the executive director, within the district of their primary Washington practice.

Nomination forms are available from the Office of the Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; 206-727-8244; and the WSBA website at www.wsba.org/info/bog/2004+nomination+forms.htm. The WSBA executive director must receive nomination forms by 5 p.m. March 1, 2004. The Board of Governors determines the official dates of the election. Ballots are mailed April 15 and counted approximately May 15.

Note: The biographical statements of nominated candidates will be published in the April issue of *Bar News*.

* *The 7th Congressional District is divided into three sub-districts — East, Central, and West. These subdistricts are distinguished by zip codes, and each subdistrict has one elected governor. For the coming year, the central subdistrict (zip codes 98101, 98102, 98103, 98104, 98104, 98108, 98109, 98111, 98112, 98114, 98124, 98134, 98138, 98148, 98154, 98158, 98161, 98164, 98166, 98168, 98174, 98181, 98184, 98188, and 98191) will elect a new governor.*

Call for Applications for One of Two Board of Governors At-Large Seats

Deadline: March 1, 2004

To increase member representation on the Board of Governors, the WSBA Bylaws provide for two at-large seats. The full text of the bylaws can be reviewed at www.wsba.org/bylaws. One of those seats is up for election to a three-year term commencing at the close of the annual meeting in September 2004.

Persons interested in filling an at-large position should submit a letter of application. The deadline for receipt of applications at the WSBA office is March 1, 2004. The Board of Governors will elect the at-large governor at their meeting on June 11, 2004. The application should include a statement addressing how the applicant believes he or she meets the intent specified in Article III, Section M. There is no intent

that these seats are dedicated to or rotationally filled by any one element of diversity or group of members.

(Excerpt from the WSBA Amended Bylaws, Article III, Section M)

M. ELECTION OF AT-LARGE GOVERNORS. *Any active member of the Bar, except a member previously elected to the Board of Governors, may apply for the office of At-Large Governor. Filing of applications shall be in accordance with Section C of this Article, except that any candidate who has run for and failed to win a Congressional District position in that election year may supplement his or her application to run for an at-large position within 7 calendar days of the announcement of the election results.*

At the regularly scheduled June meeting of the Board of Governors following the regular election of Governors from Congressional Districts, or at a special meeting called for that purpose, the Board of Governors shall elect additional Governors from the active membership at-large. Election may be by a secret written ballot. There shall be two at-large Governor positions to be filled with persons who, in the Board's sole discretion, have the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented in governance, or who represent some of the diverse elements of the public of the State of Washington, to the end that the Board of Governors will be a more diverse and representative body than the results of the election of Governors based solely on Congressional districts may allow. Under-representation and diversity may be based upon the discretionary determination of the Board of Governors at the time of the election of any at-large Governor to include, but not be limited to, age, race, sex, geography, areas and types of practice, and years of membership, provided that no single factor shall be determinative.

Members interested in the at-large position on the Board of Governors should submit a letter of application and résumé to the Office of the Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; oed@wsba.org.

WSBA Presidential Search

Deadline: May 15, 2004

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2005-2006. Pursuant to Article IV (A)(2) of the WSBA Bylaws, the primary place of business of candidates for president for 2005-2006 must be Western Washington (outside King County). The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2005-2006 WSBA president will be accepted through May 15, 2004, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than five or more than 10 references. The Presidential Search Committee and the Board of Governors will consider endorsement letters received by May 30, 2004. Applications and endorsement letters should be sent to the WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Confidential interviews with the Presidential Search Committee will be conducted May 17-31, 2004, at the WSBA office. Direct contact with the governors is also encouraged. All candidates will have an interview with the full Board of Governors in open session at the June meeting. Following the interviews, the board will select the president.

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

The commitment begins in June 2004 following selection. A one-year term as president-elect will begin at the Annual Business Meeting in September 2004. The president-elect is expected to attend the two-day board meetings held approximately every six weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2005, at the WSBA Annual Business Meeting, the president-elect will assume the position of president. During their service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time will need to be devoted to communication by letter, e-mail, and telephone in connection with these responsibilities.

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

Presidential Search Committee: Robert Boggs, Chair; David Savage, President; Andrea Brenneke; Bryce Dille; Randolph Gordon; Fawn Malvini.

WSBA-CLE Publications Announces New Edition of Best-Selling Community Property Deskbook

WSBA-CLE Publications proudly presents the new *Washington Community Property Deskbook*, 3d ed. 2003. Important new substantive developments include the law of "meretricious relationships," community property agreements, and stock options. Treatment of federal preemption is reorganized and rewritten to make it more coherent and useful than ever. The editors have also added a section dealing with the relationship between community property and intellectual property — a growing body of law in other jurisdictions which Washington practitioners need to take into account. This edition is edited by professors Tom Andrews and Karen Boxx of the University of Washington, and professors Ann Murphy and Gary Randall of Gonzaga University School of Law. To order a copy of this best-selling resource, visit the WSBA online store at www.store.yahoo.com/wsbastore or call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

WSBA-CLE December Bookstore — Thank You to Members

WSBA-CLE extends a hearty thanks to our members for making the 2003 CLE December Bookstore a big success — we look forward to serving you again. Watch for our annual Sum-

mer Sale event next. As always, be sure to check out the online calendar at www.wsba.org/cle/seminars all year long for our latest live seminars.

YMCA Mock Trial Program Seeks Volunteers

The YMCA Youth and Government Mock Trial program allows high-school students to participate in a "true-to-life" courtroom drama. Each team of attorneys and witnesses prepares the case for trial before a real judge in an actual courtroom. A "jury" of attorneys rates teams for their presentation, while the presiding judge rules on the motions, objections, and, ultimately, the merits. Participants develop critical-thinking and analytical skills, learn the art of oral advocacy, and gain respect for the role of law and the judiciary.

The state championship competitions will be held Friday, March 26, through Sunday, March 28, 2004, at the Thurston County Courthouse in Olympia. Volunteer attorney raters and judges are needed. To volunteer, please contact Kelley Flynn at 360-357-3475 or wamocktrial@earthlink.net. See www.youthandgovernment.org for more details.

2004 Licensing

Licensing packets were mailed December 10, 2003. The packet includes your license fee invoice, trust account declaration form and, if applicable, the MCI.E certification form. If you have not received your licensing packet by now, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org. Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the licensing packet.

If you are mailing your forms and payment: The return envelopes for your forms and payments have instructions on the reverse side for improvement in processing and ease of use. Please review them carefully before mailing your forms and payment.

If you are paying your fees online: To pay your fees online, go to <http://pro.wsba.org>, click on the "Member" tab, then click on "Member Login," and sign in with your WSBA bar number and password. Prompts will lead you through the process to pay your 2004 license fees by MasterCard or Visa. Note that you do not need to return the A2 form if you pay online, but there may be other forms in the packet that you need to complete and return to the WSBA. If you wish to take the Keller deduction, you must mail your payment; the online system is not yet able to handle the Keller deduction.

Reminder notice: A reminder notice will be sent in mid-February to those members who have not paid their 2004 license fees.

Payment deadline: Please note that if your payment is post-marked or delivered in person to the WSBA office later than March 1, 2004, a 20 percent penalty will be assessed and a pre-suspension notice will be mailed. If your payment is post-marked after April 1, 2004, a 50 percent penalty will be assessed.

Important note about paying your fees: If either your license fee or, for active members, the Lawyers' Fund for Client Protection assessment remains unpaid two months after the mailing of the pre-suspension notice, the delinquency will be

certified to the Supreme Court, which will enter an Order of Suspension from the practice of law.

More information: For more information, please see the WSBA website at www.wsba.org/lawyers/licensing/annual/licensing.htm. If you need assistance, the WSBA Service Center is available to help you Monday through Friday, 8:00 a.m. to 5:00 p.m., at 800-945-WSBA or 206-443-WSBA, or by e-mail at questions@wsba.org.

MCLE Certification for Group 3 Due February 2 — Automatic Extensions Given Until May 1 to Complete Credits

The deadline for MCLE Reporting Group 3 (2001-2003) members to return the Continuing Legal Education Certification (C2) forms to the WSBA is February 2. Members in Group 3 include active members who were admitted to the WSBA from 1984 to 1990, or in 1993, 1996, or 1999. Members admitted in 2002 are also in Group 3 but are not due to report until 2006.

If you are in Group 3 and did not receive a license packet or a C2 form, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org. It is your responsibility to ensure that you receive your license packet and C2 form.

If you are a Group 3 member, the following should have been completed by December 31, 2003 to meet the MCLE credit requirements for 2001-2003:

- At least 45 total credits of WSBA-approved CLE activities, which must include:
- A minimum of 30 live credits
- A minimum six ethics credits

If you were unable to complete the credit requirements by December 31, you have an automatic extension until May 1, 2004. You do not need to apply for this extension.

If you did not meet the MCLE credit requirement by December 31 and/or if you do not return your C2 form by March 1 (the end of the grace period allowed after the February 2 due date), you will be assessed a late fee. The assessed fee will be \$150 for the first reporting period in which you have not met the MCLE credit/C2 requirements. The late fee increases by \$300 for each consecutive reporting period in which MCLE requirements are not met.

To make reporting easy, all courses listed in your online roster at <http://pro.wsba.org> as of November 1 were pre-printed on the back of your C2 form. You will need to list any additional WSBA-approved courses you have taken. (Course pre-approval for WSBA continuing legal education certification is an APR 11 regulation.) Include the WSBA activity ID number for each course you list. In addition, be sure that you write the date(s) that you listened to/viewed audio/visual courses on the C2 form.

To look up an activity ID number for a course or to apply for course approval, you can use the MCLE system at <http://pro.wsba.org>. After logging into the MCLE system site, click on the "Member" tab and then select "Member Login." The online instructions will lead you through the process of creating a confidential password and beginning to use the system. Online help is available to assist you. If you have questions, contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org.

Emeritus Status for Lawyers

Are you paying for your active WSBA license but not practicing much these days? Are you thinking about changing your status to inactive for a reduced licensing fee? Consider the WSBA emeritus status. Emeritus is a limited license to practice with the same low licensing fee as inactive *without* the mandatory MCLE requirements. For more information please contact Sharlene Steele, WSBA access to justice liaison, at 206-727-8262 or sharlene@wsba.org.

New Child-Advocacy Information Resources

The Child Advocacy Clinic of the University of Washington School of Law announces the launch of two websites: Child Advocacy Central (www.childadcentral.org) and Foster Youth Central (www.fycentral.org). The goal of these resources is to provide legal information about the child-welfare system and to make community resources available to people who need them most. For more information, contact Sean R. Murphy, marketing and web project coordinator, at srmurphy@u.washington.edu or 206-543-3434.

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 with your e-mail address. Contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org. Representatives are available Monday through Friday, 8 a.m. to 5 p.m.

"Random Acts of Professionalism" Program

The WSBA Professionalism Committee has created a way for lawyers and judges to recognize their colleagues who have conducted themselves in a professional manner consistent with the Creed of Professionalism. Through the "Random Acts of Professionalism" Program, lawyers and judges may nominate their colleagues to receive the award. Nominating a lawyer or judge for the award is very easy — simply send his or her name, along with a brief description of why you are nominating the person, to Judy Berrett, staff liaison to the Professionalism Committee, at judithb@wsba.org, or fax to 206-727-8319. That's all there is to it! The nominated person will receive a letter, a certificate, and a copy of the WSBA Creed of Professionalism.

Third-Party Liability Information

If your client is involved in a personal-injury case and has received or is receiving medical assistance payments for medical care, you are required to contact the Department of Social and Health Services (DSHS). RCW 43.20B.060 places a lien against any settlement or judgment your client receives from a third party who is responsible for your client's injuries in order to reimburse the medical bills that have been paid by medical assistance. Before settling your client's claim with the third party and/or the third-party insurance company, please contact the COB Casualty Unit of DSHS, by phone at 800-562-6136 or by mail at PO Box 45561, Olympia, WA 98504-5561, to

supply the information that DSHS requires; or visit <http://fortress.wa.gov/dshs/maa/ltpr>. Pursuant to RCW 43.20B.070, failure to pay any lien imposed by DSHS on any settlement or judgment obtained by your client can subject you to personal liability for any funds improperly distributed.

Establishment of New Armed Forces Section Awaiting Board of Governors Approval

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

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

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

Upcoming Board of Governors Meetings

February 27-28 — Seattle

April 2-3 — Seattle

May 14-15 — Ocean Shores

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 January 2003 was .939 percent. The maximum allowable interest rate for February 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.

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 list of pamphlets and pricing information, contact the WSBA Service Center at 800-945-WSBA or 206-443-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.

Website Links from Online 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.

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 206-443-WSBA.

- Polo shirt (pewter or white, size I. or XI.) — \$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.

Law Week 2004

Law Week is an exciting opportunity for lawyers and judges to bring public legal education into the classroom. Each year, Law Week provides an enriching experience to youth through positive interactions with lawyers and judges. Law Week 2004 will take place the week of April 26. To learn more about the program or to participate, visit www.lawweek.org, or contact Allison Parker at 206-239-2117 or lawweek@wsba.org.

2004 Bar Leaders and Access to Justice Conference

The ninth annual Access to Justice Conference will be held in conjunction with the WSBA Bar Leaders Conference June 11-13 at the Yakima Convention Center. Registration brochures will be mailed in April. For more information, or to confirm that you are on the conference mailing list, contact Sharlene Steele at 206-727-8262 or sharlene@wsba.org (Access to Justice Conference); or Desiree Ogden at 206-733-5931 or desireeo@wsba.org (Bar Leaders Conference).

ABA Techshow

The ABA Techshow will be held March 25-27 at the Sheraton Chicago Hotel & Towers. Register before February 26 to receive a \$100 early-bird discount. For more information, call 800-285-2221, or see www.abanet.org/techshow.

Resources on Sale for Half Price

The 2003-2004 *Resources* membership directory is now on sale for half price: \$9 — WSBA members (\$9.79 in WA) and \$18 — non-WSBA members (\$19.85 in WA).

To order *Resources*, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or mail a request to WSBA Order Processing, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330. Payment may be made by check (payable to WSBA), MasterCard, or Visa, and must accompany your order. *Note:* The 2004-2005 edition will be available in the spring.

Use Resources to Your Advantage

Would you like your name and/or firm listed under your area of practice in the yellow pages of the 2004-2005 edition of the WSBA's *Resources* annual directory? *Resources* is used by thousands of lawyers, and the yellow pages are a valuable one-stop resource for all your legal-service needs. Find consultants, paralegals, contract attorneys, business appraisers, and more. The cost of a listing, which may include firm name, individual's name, address, phone, fax, e-mail, and website, is \$35.

To reserve your yellowpage listing in the 2004-2005 *Resources* directory, complete this form, enclose a \$35 check payable to the WSBA, and mail by February 28 to Washington State Bar Association, *Resources* Yellow Pages, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330. If you wish to be listed under more than one category, the cost is \$35 for each listing. For more information, contact Kathy Henning at 206-733-5932 or kathyh@wsba.org.

Firm/Individual Name: _____

Address: _____

City/State/ZIP: _____

Phone: _____

Fax: _____

E-mail: _____

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Category: _____

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Stacia Lay

has become an associate of the firm.

Ms. Lay will practice in the areas of civil litigation, intellectual property, and media law.

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Edmund P. Allen

formerly of the King County Prosecutor's Office and the Kent City Attorney's Office has, effective 2003, joined

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Bennett J. Hansen

has become a partner,

and is pleased to congratulate
two of our associate attorneys

Lori K. O'Tool

and

Angela R. Bagby

on their awards as "Rising Stars 2004"
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formerly with the Washington Protection and Advocacy System and the Defender Association of Seattle/King County

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is pleased to announce that

Nicole D. Tedrow

and

Patrick B. Reddy

have joined us as associates in our Seattle office, practicing with Michael H. Weier, Sherry L. Davies, and Renee M. Bliss in the representation of employers in workers' compensation litigation.

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Fax: 206-622-5902

MCNAUL EBEL NAWROT HELGREN & VANCE PLLC

is pleased to announce that

T. Dennis George

has joined our firm as Of Counsel

From 1999 until joining our firm, Mr. George served as Senior Vice President, Corporate Affairs and General Counsel of Dendreon Corporation, a Seattle-based public biotechnology company.

From 1966 until his service at Dendreon, Mr. George practiced law in Seattle. He was a founder and senior partner of his law firm and served as president of the Federal Bar Association of the Western District of Washington.

Mr. George's practice will emphasize representation of companies and individuals, including corporate directors and officers, in litigation, business transactions, investigations, and compliance matters, including matters relating to biotechnology. He is also available to serve as mediator.

Mr. George may be reached at 206-389-9386 or via e-mail at dgeorge@mcnaul.com

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Philip A. Talmadge,
former justice,

Washington State Supreme Court;
fellow, American Academy of
Appellate Lawyers

Anne Watson,

former law clerk,
Washington State Supreme Court

Emmelyn Hart-Biberfeld,
former law clerk,

Washington State Supreme Court;
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Margaret K. Dore

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

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

Passed CPA exam in 1982

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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.

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Seattle, WA 98154

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Calendar

Please check with providers to verify approved CLE credits.

To announce a seminar, please send information to:

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

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

Animal Law

2nd Annual Animal Law Conference (Super CLE Day)

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

Business Law

24th Annual Northwest Securities Institute

February 27 & 28 — Seattle. 9.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Insurance Today: How to Navigate Placement, Claims and Other Rough Waters — and Stay Dry

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

Creditor/Debtor

Advanced Collections (Super CLE Day)

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

Criminal Law/Family Law

The Darker Side of Divorce

February 27 — Seattle. 6 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Employment Law

Mastering Governmental Benefits

February 18 — Seattle. 6.5 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

11th Annual Employment Law Institute (Super CLE Day)

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

Environmental and Land Use Law

Environmental and Land Use Law (Super CLE Day)

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

Indian Law

Eastern Washington Indian Law Conference

March 26 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

General

Collaborative Law Symposium

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

Transfer Pricing Valuation Institute Workshop

March 26 — Seattle. CLE credits pending. By UW-CLE; 800-CLE-UNIV.

Law Office Management

How Not to Commit Malpractice with Your Computer (Super CLE Day)
March 12 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Law and Business EXPO Exhibit Hall (Super CLE Day)

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

Litigation

Significant Civil Procedure Concerns

February 17 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Cybersleuthing and Discovery

February 24 — Seattle. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Beyond Eye Contact: Persuasion Skills for the Courtroom Plus Persuasive Presentation for Transactional Lawyers

March 3 — Seattle. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

David Ball on Damages

March 11 — Seattle. 6 CLE credits. By WSTLA; 206-464-1011.

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:

206-727-8261

and online at www.wsba.org/jobs.

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Professional Office Suites of Boise: Executive and virtual office suites available starting at \$245 per month! Instant telephone and high-speed Internet access; full administrative support services; receptionist/answering services; fully furnished executive suites; conference room access; and much more! Contact POS of Boise at

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Rates: *WSBA members:* \$40/first 25 words; \$0.50 each additional word. *Nonmembers:* \$50/first 25 words; \$1 each additional word. Blind-box number service: \$12 (responses will be forwarded). Advance payment required; we regret that we are unable to bill for classified ads. Payment may be made by check (payable to WSBA), MasterCard, or Visa.

Deadline: Text and payment must be received (not postmarked) by the first day of each month for the issue following, e.g., March 1 for the April issue. No cancellations after deadline. Mail to: WSBA Bar News Classifieds, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Qualifying experience for positions available: State and federal law allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., "5-10 years").

Questions? Please contact Amy O'Donnell at 206-727-8213 or amy@wsba.org.

208-947-5895 or officeinfo@officeidaho.com; or visit www.officeidaho.com.

Downtown Seattle office-sharing: \$150 per month. Also, full-time offices available on 32nd fl., 1001 4th Avenue 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.

Downtown Seattle: Office (Logan Building — 5th/Union) for one attorney (no staff). Approximately 14x12; large windows; A/C. Receptionist, conference room, fax, and copier. \$850/month; first month free. Contact David Roth at 206-447-8665.

Downtown Seattle: 1000 2nd Avenue Building, very attractive space, sweeping Elliott Bay views, one or two offices, bathed in light. Standard amenities. E-mail manager@mcgeelaw.net.

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Staff attorney with private law firm, in Seattle office, representing American Indian tribes, Alaskan Native and tribal organizations. Bar admission, three years' experience, academic excellence, leadership qualities, and editing and social skills required. Client services include: litigation, advice, negotiation, research, and lobbying. Travel required. Salary DOE. Send letter, résumé, and writing sample to Ann Bernheisel; Morisset, Schlosser, Jozwiak & McGaw; 801 2nd Ave., Ste. 1115, Seattle, WA 98104.

Stoel Rives LLP is seeking an attorney to join its real estate practice group in Seattle. The ideal candidate is a real estate transactions lawyer with at least three years' experience in commercial lending, real estate purchase and sales, commercial leasing, and project development. Please send a cover letter and résumé to Michael R. Gotham, Lawyer Recruiting and Professional Development Director, Stoel Rives LLP, 600 University St., Ste. 3600, Seattle, WA 98101-3197. www.stoel.com. EOE.

Tacoma law firm seeks traffic attorney. Before applying, please first determine if you have the necessary qualifications, including a minimum of two years' experience as an attorney handling traffic and/or criminal law matters. Must be willing to travel to various courts in Western Washington and have reliable transportation. Salary DOQ. Benefit package. Please submit résumé to Vicki Edling, fax 253-922-2802 or e-mail lawfirm@llrwa.com.

Litigation associate: Downtown litigation firm with regional practice involving professional liability defense, complex liti-

gation, coverage and general liability defense seeks litigation associate with at least two years' experience for its Seattle office. Good working environment and interesting cases. Strong academic credentials required. Mail résumé to Hiring Coordinator, Abbott, Davis, Rothwell, Mullin & Earle, 701 5th Ave., Ste. 2850, Seattle, WA 98104.

Forsberg & Umlauf PS, a defense civil litigation mid-sized Seattle law firm, seeks an attorney with a minimum of three years' experience in insurance-coverage defense. Developed writing skills are required. Send résumé to 900 4th Ave, Ste. 1700, Seattle WA 98164.

Stoel Rives LLP is seeking an attorney to join its employee benefits practice group in Seattle. The ideal candidate has at least three years' sophisticated employee-benefits experience. Please send a cover letter and résumé to Michael R. Gotham, Lawyer Recruiting and Professional Development Director, Stoel Rives LLP, 600 University St., Ste. 3600, Seattle, WA 98101-3197. www.stoel.com. EOE.

Legal assistant — Redmond, WA: The legal assistant is responsible for supporting the attorneys in the legal department by handling administrative duties and preparing various reports. Responsibilities include: typing forms, coding and processing invoices, ordering and maintaining office supplies, preparing and assembling meeting binders, scanning and cleaning up scanned documents, drafting cover letters and other correspondence, making travel arrangements, arranging and scheduling meetings, processing and updating reports, and assisting with discovery and document production. Requirements: at least two years' experience as an administrative assistant/legal assistant in a law office environment. Certificate or degree in office administration. Experience with document-retention and document-management systems. Experience with discovery and document production. Knowledge of MS Word, Excel, Access, and Outlook. Internet/legal research and WordPerfect experience. Must keep legal department information strictly confidential. Ability to create and organize filing systems and act as departmental records custodian. Understand company's billing code process. Personable; work well with people inside

and outside of the department. Excellent verbal and written communication skills. Reliable and punctual. Work in order of priority, and under stress. Handle multiple tasks simultaneously. Detail oriented, accurate, and thorough. Send résumé to legaljobs@trendwest.com.

Land use and environmental law attorney: Snohomish County Prosecuting Attorney — Civil Division. The Civil Division of the Snohomish County Prosecuting Attorney's office seeks a land use attorney with an interest in advising clients in areas relating to land use and environmental regulation, including zoning, State Environmental Policy Act compliance, Growth Management Act compliance, and Endangered Species Act compliance. Experience with the Land Use Petition Act, land use damages claims, and administrative hearings board experience is desired, as well as excellent writing and oral communication skills. Experience in computer-aided research and word processing is extremely desirable. Salary dependent upon qualifications. Generous fringe benefits and leave package. To apply, please submit a letter of interest, résumé, writing sample, and references to Millie Judge, Senior Deputy Prosecuting Attorney, Civil Division, Snohomish County Prosecuting Attorney's Office, 2918 Colby Ave., Ste. 203, Everett, WA 98201. Position open until filled. Snohomish County is an equal opportunity employer.

Small Kitsap County AV-rated firm hiring associate. Experience preferred, but not required. Please send résumé to Bruce Buskirk, 3473 NW Lowell, Ste. 200, Silverdale, WA 98383; or e-mail to bbuskirk@buskirklaw.com.

Bellingham firm with active insurance defense, commercial, and municipal litigation practice seeks associate. Experience preferred, but not required. Must be a member of the WSBA. Great quality of life and competitive salary. Send résumé to Jeff Brown, Roy & Simmons PS, 114 W. Magnolia, Ste. 201, Bellingham, WA 98225.

Chmelik Sitkin & Davis PS is a well-established, eight-attorney business, municipal, real estate, and land use firm in Bellingham. We represent a wide variety of business clients, port districts, fire dis-

tricts, cities, and other municipal governments throughout Northwest Washington. We are seeking an attorney with at least three years' experience in business and transactional law. The ideal candidate will have demonstrated success in law school, solid experience, and the desire to work in a collegial environment in an expanding law practice. The firm provides a competitive salary and excellent benefits in an ideal location with an opportunity to develop a successful practice. Please send résumé, references, and a cover letter to Chmelik Sitkin & Davis PS, Attn. Linda Sahlin, 1500 Railroad Ave., Bellingham, WA 98225.

Seattle: Nine-attorney firm, AV-rated, with general civil practice and areas of emphasis within firm, seeks associate attorney with at least two years' litigation and trial experience. Potential long-term opportunity to develop litigation/personal injury practice for firm. Please send résumé to WSBA, *Bar News* Job Code 638, 2101 4th Ave., Ste. 400, Seattle, WA 98121-2330.

Associate attorney — employee benefits: Downtown Portland solo practitioner (AV-rated and listed in *The Best Lawyers in America*), with busy, established practice focusing on employee benefits and executive compensation, seeks associate with at least two years' relevant experience. Clients include public and private corporations, associations, and tax-exempt organizations. Varied practice covers retirement plans, health plans, fringe-benefit plans, executive agreements, investment-management issues, benefits in mergers and acquisitions, due-diligence examinations, and contract negotiations. Ability to communicate technical issues to clients in plain, everyday language is a must. Competitive salary and benefits. Send résumé and a writing sample demonstrating analytical and communication skills to Vincent P. Cacciottoli, 121 SW Morrison St., Ste. 1010, Portland, OR 97204.

ERISA attorney: Employee Benefits Institute of America Inc., Shoreline, WA (www.ebia.com). With nine other employee benefits attorneys in our editorial group, you will help write and edit our reference manuals, the *EBIA Weekly*, and other publications. You will also present a few seminars, and help with subscriber

inquiries and general business matters. You must have at least six years' experience in a major law firm (or a boutique employee benefits law firm) as a full-time ERISA attorney representing employers and administrators. You'll need an entrepreneurial spirit and top academic credentials. We have a team of talented and caring people working on challenging and important issues in a laid-back environment. Wear blue jeans to work, experience life without billable hours, and enjoy meaningful time off. Part-time work a possibility. Competitive salary and benefits, and flexible hours. Send a cover letter and résumé to editor 2004@ebia.com.

Two attorneys needed with at least two years' experience for medium-sized, downtown Portland, OR, insurance defense law firm. Experience needed in either defending tort injury litigation or litigation of construction disputes. Both positions will be located in our Portland office, but will work on cases in SW Washington, Washington bar membership required. Oregon bar membership a plus. Competitive salary and benefits, team-oriented atmosphere. Please send cover letter, résumé, and class standing to Managing Partner, Smith Freed & Eberhard PC, 1001 SW 5th Ave, 17th Fl., Portland, OR 97204. For more information, visit www.smithfreed.com.

Full-time corporate attorney needed for very busy international law firm. Must be licensed Russian attorney, and have or be eligible for WA license as attorney or foreign law consultant. Salary DOE. Harris & Moure PLLC, 720 Olive Way, Ste. 1000, Seattle, WA 98101.

Will Search

Seeking a will dated later than October 11, 1982, of William Gordon Janssen, formerly of Dryden, Chelan County, who passed away on December 2, 2003; please contact attorney Ann T. Wilson at ann@atwlegal.com or 206-625-0990.

Barbara Shaman: Family looking for her last will and testament. Born August 4, 1946, died October 26, 2003 in Seattle, WA. Anyone having information, please contact Barbara Wechsler, Attorney, 206-725-4230.

Searching for any last will and testament or codicil of Ruth Naomi Dawson, who died on April 28, 2001 in King County, WA. Anyone having information concerning any such document is requested to contact John H. Hertog, 520 Pike St., Ste. 1350, Seattle, WA 98101-4023, 206-587-6556.

Seeking

Attorney in busy one-attorney office on South Whidbey wishes to retire and pass the practice on to a successor. Willing to have a transition period. Real estate, personal injury, and probate. Please reply to WSBA Bar News Code 639, 2101 4th Ave., Ste. 400, Seattle, WA 98121.

Services

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

Forensic document examiner: Retired from the Eugene Police Department. Trained by the U.S. Secret Service and U.S. Postal Inspection Service. Court-qualified in state and federal courts. Contact Jim Green at 888-485-0832.

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Contract attorney: All aspects of litigation and appeals, including research. Former name partner in small litigation firm. 11-plus years' experience. Have conducted numerous civil jury trials, including complex litigation. Reasonable rates; variable per type of work. Pete Fabish, 206-545-4818.

Real estate expert witness: Property management-brokerage-construction/consulting services. 30 years' experience. Paul Cahill, 206-909-2675; paul@cahillco.com; www.cahillco.com.

Miscellaneous

Spring Break in Hawaii: Rent two-bedroom, two-bath unit in 5-Star Kona Coast Resort, Big Island; golf; volcano; 4/3-4/10; \$950; patcran@transedg.com; 509-534-0205.

Crescent Bar Condo: Sleeps four. Newly remodeled. Great Columbia River waterskiing. Golf. Heated pool/spa. 425-222-7011, 425-222-7912, or fawcett@nwlink.com.



Change and decay, change and decay . . .

by Lindsay Thompson, *Bar News* Editor

Change is inevitable. In a progressive country change is constant.

— Benjamin Disraeli (1867)

The country's moral values, far from changing, seem to remain unnaturally constant.

— Joe Orton, *The Good and Faithful Servant* (1967)

This issue of *Bar News* is about change. Complain about it all you like: I remember when fax machines, the struck jury method, and ADR were denounced by Washington lawyers as instruments of the devil in the 1980s. All are routine now.

Change will be a recurring theme in coming issues of *Bar News*. It's happening all around us. As usual, as a profession, we are behind the curve. We resist it. We fight it. I recall the lawyer at the Millennium Bar Convention who wondered — in a seminar on diversity — why “Mexicans” who move here don't just learn English, become productive and forelock-tugging members of the community, and not cause trouble — the way they did when he was a lad in eastern Washington.

When former BOG member Paul Lehto proposed this issue on transformative law, I jumped at the chance to do it. These articles, and more we didn't have room for but will run in the future, represent what's just over the horizon — the shape of things to come. While litigation has its place — after 153 trials, all over Washington, I know it does — we need to stop treating everything, as one author suggests, as though it's a nail and all we have is a hammer.

Shabby practice by lawyers goes on all the time in this state. Judges impose more rules all the time. Look at how the volume of local rules has assumed a life of its own — hundreds of pages of ways to hometown your opponent, and we're no better off.

To no small extent, the problem is one of judges letting lawyers do pretty much what they want without fear of consequences. One lawyer, plaintiffing a case against my client, missed every deadline in King County's minutiae-

driven case schedule, then wheeled in three days before trial to ask for a continuance. The judge's bailiff, in a spontaneous moment, said, “You should ask the judge to dismiss the complaint. This is outrageous. She won't like this a bit.”

From your mouth to the bench's ears, I thought. I moved to dismiss. The judge refused. I could write a whole series of columns on idiot stunts I've seen lawyers pull, and I may yet. But I digress. Suffice it to say, in every court there's a judge presiding. If the way we do litigation needs to change, let the courts force it. Whack lawyers' pocketbooks, and they will change for the better.

Beyond that, however, is the inescapable fact that the legal profession in Washington and everywhere else is getting more and more insulated from most of the population — those whom we took an uninspired, antiquated, badly

in-need-of-revision (with that revision languishing in the glacial fastnesses of the Supreme Court's Rules Committee) oath to serve.

Bar News recently ran an article on how few Hispanic lawyers there are compared to the burgeoning Hispanic population

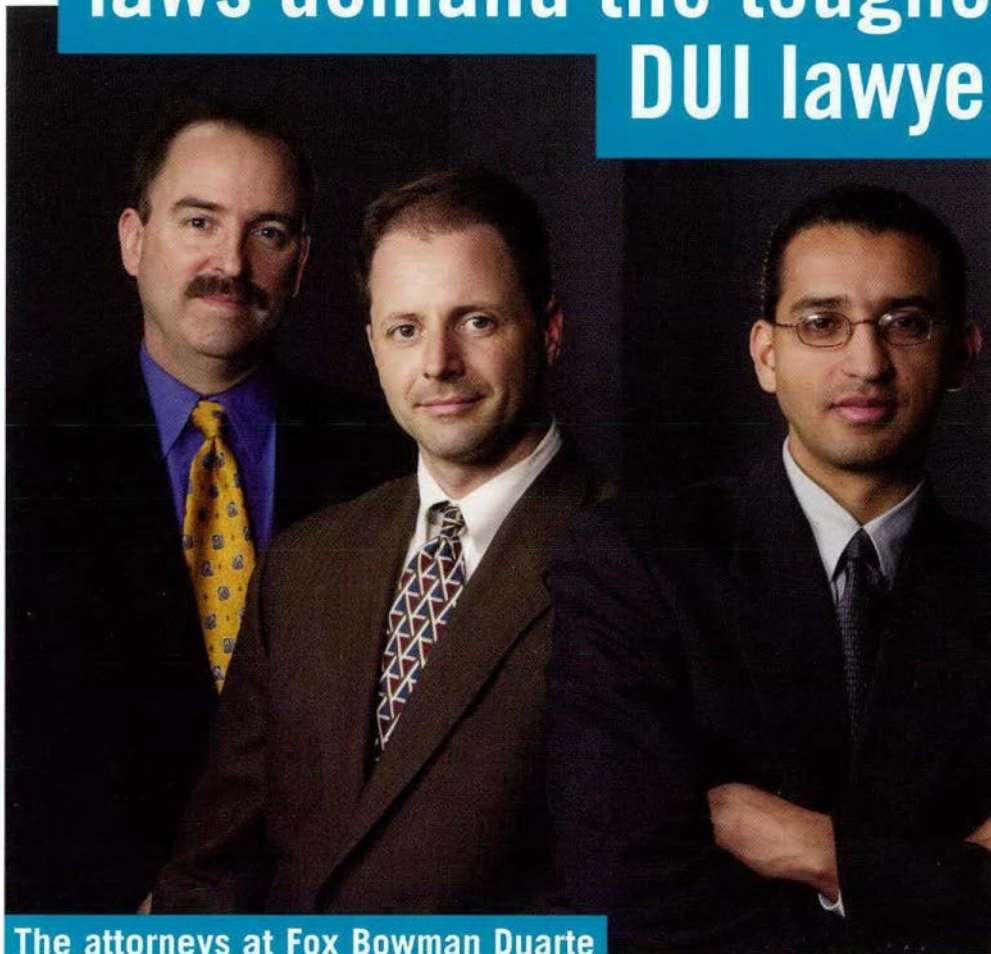
of our state. We ran an issue on Indian law a year ago — about how it affects most counties in Washington, yet we require no knowledge of it on our bar exam. We'll be running articles in the future on gay rights — the new third rail of American politics and law. While Washington residents go to neighboring British Columbia to get married, the WSBA is standing with its fingers in its ears, eyes closed, singing, “la, la, la, la.”

Alvin Toffler's *Future Shock*, a novelty 30 years ago, has come to roost amid us. Change — rapid, radical, and immediate — is the order of the day. You can get used to it or be overwhelmed by it. *Bar News* is committed to helping identify coming change and how we address it. As Alva Long used to say, think of us as the dead horse in the living room no one wants to talk about. We will shout until we are heard. Attention must be paid. ✍

Lindsay Thompson practices law on Salmon Bay in Seattle. He can be contacted at tradelaw@thompson-law.com.

Change — rapid, radical, and immediate — is the order of the day. You can get used to it or be overwhelmed by it. *Bar News* is committed to helping identify coming change and how we address it.

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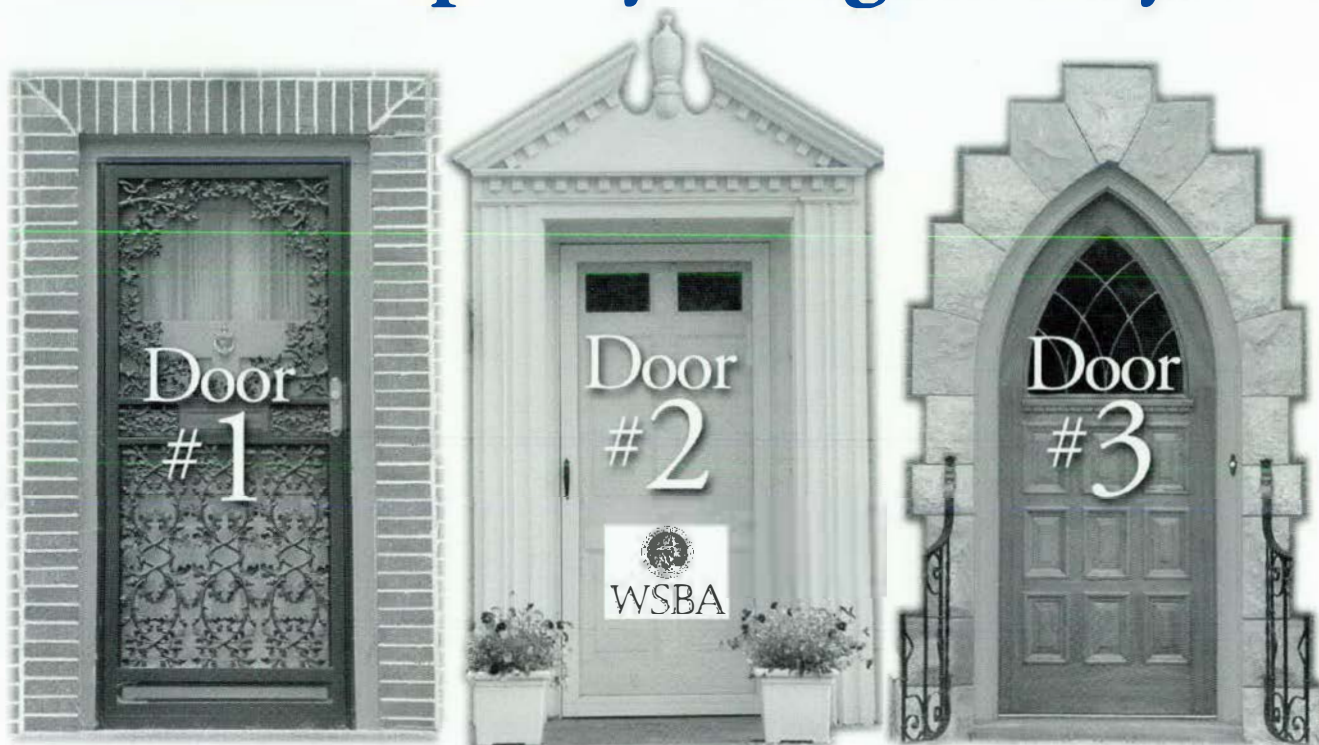
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