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Bar News

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The Art of Storytelling
p. 21

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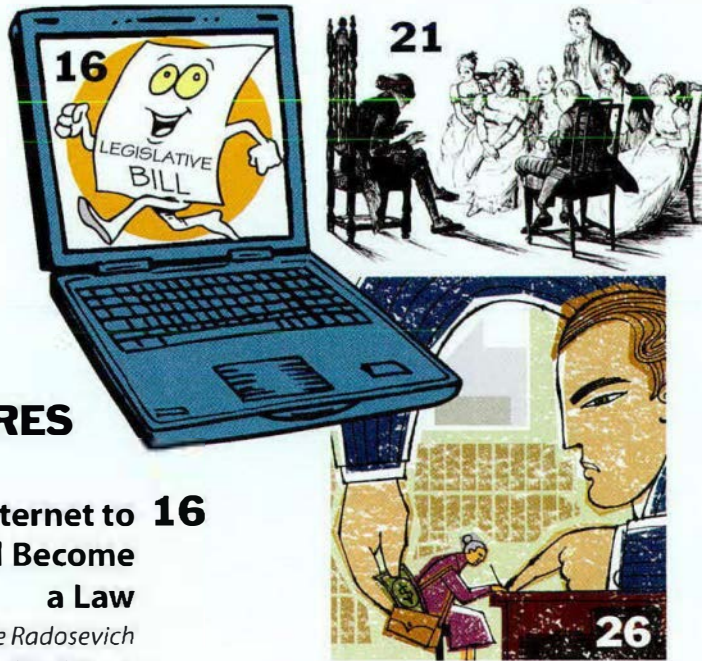
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(not pictured)

Serial referring misleads people

I agree, in major part, with Jeff Tolman's assertion that "bad clients and bad cases are the cancers in our practices" ("How to Say 'No,'" January 2004). I have often commented to younger lawyers that I never lost a minute's sleep over a case or client that I declined.

I don't, however, agree with his proposed solution — referral to others, presumably friends and colleagues. What does he tell his colleagues about the referrals that he makes? That they had "unreachable expectations," "quibbled about fees," or "argued with everything he said"? Would his colleagues accept his referrals under those conditions or simply pass the problem on until someone less experienced or sophisticated gets stuck with the "cancer"?

The better solution, for both client and colleagues, is to be candid even if it means risking the loss of future business. As professionals we have a duty to give good and honest advice whether our clients, or proposed clients, want to hear it or not. Some people need to be told, in clear and sometimes forceful terms, that their case is not worth pursuing and that it is in their own best interests to move on. We cannot shirk that responsibility by passing it on, full disclosure or not, to other lawyers.

*Don Logerwell
Seattle*

Bar News: Neither anti-Christian nor propaganda

The editor was taken severely to task in the January issue for a supposed liberal and anti-Christian bias. That issue's letters selection should reassure conservatives that their views will also be printed no matter how reactionary or offensive they might be. The desire to silence dissent and the assumption of the posture of victim are two common techniques used today by those who resent any significant questioning of current policies in America. When these techniques fail a fall-back position is that the forum or the timing is inappropriate for criticism. Fortunately *Bar News* has decided not to be

intimidated by petulant accusations nor by apocalyptic rhetoric of moral collapse. To critique the legality of the war on Iraq and the moral questions it poses is not anti-Christian. Pope John Paul II is among those who have pointed out the failure of our invasion to meet the criteria of the just war doctrine. To finally recognize the inappropriateness and lack of a significant government interest in enforcing private sexual morality for a sizable minority of our citizens does not augur

moral collapse of all standards for sexual behavior. I can also assure the writer who questioned my own critique of the present administration's methods of assuring our nation's security that my statements were neither false nor hasty. A letter to the editor is by its nature an incomplete statement of the case and must be conclusory. I suggest that enforcing a policy of irrelevance and canceling of subscriptions will only reduce *Bar News* to examining narrow questions and technical matters.



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

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

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

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

marketing system he developed six years ago.

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

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

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

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

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

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

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

Bar News should be applauded for taking the broader view.

In our democracy with its preference for laws over personalities, social and political questions can never be foreign nor should they be to a publication seeking relevance to a diverse bar membership. It is not outside the law to critique wars that ignore the traditional understanding of the sovereignty of nations and our treaty obligations. It is not anti-Christian to reserve the separation between Church and State. And when the law progresses and the stigma of criminality is removed from private lives and older decisions are overruled the entire Bar and not merely its Gay and Lesbian members may approve. When even the Chief Justice of the U.S. Supreme Court feels it necessary to protest against the pressures imposed on an independent judiciary by the Justice Department, the Washington State Bar and its news publication may take note of the disturbing nature of the current administration which calls into question under its vague emergency powers so

many of our traditional values and ideals as a democracy. Many nations have observed with dismay the self-serving rhetoric of our supposed war to terminate evil in its present incarnation of terrorism. If we are forced periodically to examine behind our messianic claims the erosion of traditional safeguards and to examine our actions as a nation this is to truly serve the rule of law and not to be blinded by a facile patriotism. That *Bar News* may be of service to this end is to fulfill its highest function. When we show that we need not be caught up only in service to our clients but to the wider implications of the rule of law this may be passion but need not be prejudice.

*Thomas Mengert
Keyport*

Maybe not so much discrimination, after all

As a Japanese-American immigrant who has lived during my working life in Japan

and eight states, I appreciate President Savage's dedication to "opening our profession to all persons regardless of race, creed, color, sex," etc. ("President's Corner," January 2004). He concluded by asking for members of the Bar to weigh in on how that will be done.

In the spirit of that invitation, I would like to comment on the table of statistical comparisons in his article. I was confused as to the meaning of the fact that 34 percent of the Bar membership is under age 40, while 59 percent of Washington's citizens are in that age category. Since the Bar requires that its members graduate first from an accredited law school, they are generally at least age 25 before admission, while many people attend law school after several years of work in another profession (I was a computer software designer). Since attorneys often continue to practice well past the normal retirement age, 34 percent under age 40 (15 years after admission) seems about right, if an average career spans ages 25 to 70 (45 years).

With regard to women being only 32 percent of the Bar membership, we need to recognize that, as noted above, the Bar is made up of attorneys who graduated from law school as long as 45 years ago, in 1959! Certainly the number of woman law students was much smaller then. When I graduated 25 years ago, my class was about 35 percent female (although over 50 percent of the Law Review students were women). Today many law school classes are at or above 50 percent female. As we older attorneys retire, our replacement cohorts will be increasingly female.

Another factor is that bar membership is voluntary, and many professional women choose to devote several years, especially before their children start school, to concentrate on educating and training those children at a level of excellence that is far greater than could be provided in a typical daycare situation. As expressed by one such professional mother, Ph.D. economist Jennifer Roback Morse, "I also learned that being a mother is the most important thing I will ever do." While these two reasons may not account for all of the 18 percent discrepancy between

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female presence in the active Bar and the population, they are certainly major factors.

As to "persons of color" forming 10 percent of the Bar while they constitute 18 percent of the State population, there are complex factors affecting this difference as well. The slow demographic progress of the Bar membership dilutes the impact of more recent immigration to Washington of people of non-European ancestry, especially because such immigrants are of ten young adults and children. Second- and third-generation immigrants achieve at and above the average of European Americans. During the heyday of Japanese immigration, before federal law cut it off in 1923, almost all of the Japanese immigrants were farmers and common laborers. But the culture of hard work and respect for learning that they brought with them overcame the strong prejudice engendered by World War II and years of confinement in the internment camps, resulting in an ethnic group with rates of professional education and success comparable in every way to European Americans.

The hard work and success of second- and third-generation Hispanic Americans is obscured by the background of new immigrants who are still working on farms and unskilled jobs, but whose children and grandchildren have great potential.

African Americans include many impressive individuals and solid families with strong values. Their success is similarly obscured by the extent of cultural impoverishment for many others, with single-mother households handicapped in providing safe, healthy homes for young children, and the added burden of a youth culture that denigrates academic success as "acting white" and glorifies criminal gang activity. Bringing the African American representation in the Bar to levels comparable to that in the population will require us to overcome the basic challenges of poor education, criminal records, and lack of financial means for post-high school education, let alone law school.

My conclusion is that the statistics cited do not demonstrate any widespread prejudice among members of the Bar to-

ward women or minority ethnic groups. Those of us who graduated from high school after the passage of the 1964 Civil Rights Act are so self-conscious about the subject of improper discrimination that I think it highly unlikely that any of our contemporaries would even unconsciously manifest prejudice. Rather, the goal of making the Bar comparable to the population as a whole, so that every person who is qualified, and is prepared to make the considerable effort, can become an

attorney in Washington, is much more dependent on wrestling with the difficult problems of language barriers, poverty, high rates of single-parent homes, cultural prejudice against education, and the lack of financial means for seven years of costly post-high school education. These are not issues facing only the Bar, but rather our entire society.

We cannot make "instant lawyers" out of people who have not overcome their personal challenges, however great, and

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prepared themselves for the profession. The Bar cannot by itself mitigate those barriers, but we can certainly join with all other Americans to make the long-term effort to overcome them.

*Raymond Takashi Swenson
Lt. Colonel, USAF (Retired)
Idaho Falls, ID*

Editing made writer look silly

My letter to the editor appeared in the January *Bar News*. However, it was edited in a way that significantly modified the substance of the letter.

In my letter, I quoted from your column relative to your implication that there is an inconsistency between the Commandments and (among other things) (1) the death penalty, (2) wartime service, and (3) the occasional coveting of your neighbor's ox and/or wife. In my letter, I addressed all three of these so-called "inconsistencies." But my comments about the death penalty were

deleted from the letter that was published, leaving in only the comments about wartime service and coveting. This editing, at the very least, made it appear that, although I listed "the death penalty" as an inconsistency noted by you, I had no comment about that inconsistency (when, in fact, I did). It would have been better, if you were going to delete the comment I made about the death penalty, to also delete the initial reference to it included in the quote from your column.

But apart from the fact that you made me look a bit silly by your editing, I am interested in knowing the justification for deleting my death-penalty comment. That was one of the more important points that I was making, since this idea that there is a conflict between the death penalty and the Commandments is fairly widespread. As I pointed out in my unedited letter, the Commandment states: "You shall not murder." (Exodus 20:13, NIV). But God never prohibited the "state" (a nation or people group acting corporately) from carrying out capital

punishment for certain crimes, nor from killing others when the "state" itself deemed it militarily necessary. Thus, the "state," acting in its corporate capacity, does not "murder." Only individuals commit murder. This has been properly understood for thousands of years and has also been part of the law for thousands of years. There is no inconsistency between the Commandment and the death penalty. Confusion about these truths is a fairly recent phenomenon. Your editing of my comment thus significantly altered the sense of the letter.

I do not mind editing which corrects errors, or clarifies the writing. But when the editing deletes a major point, then I think some explanation of why the editing occurred is appropriate. I would appreciate your response.

*James A. Winterstein
Olympia*

Editor Lindsay Thompson responds: *I edit letters mainly for greater brevity; sometimes I nip and tuck for greater clarity; other times I edit bits that seem digressions from the writer's purpose. I edited Mr. Winterstein's letter to make it a bit shorter; not to make him look silly. Edits are never intended to sacrifice the writer's meaning, but, ultimately, the success of the result is in the eye of the beholder. When Mr. Winterstein sent me this letter, I offered to print it to allay any misperceptions arising from his January letter, and he kindly agreed to let me do so.*




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The Value of an Organization

The value of any organization is directly proportional to the interest and contribution of its members.

by David Savage, WSBA President

Each spring, three or four elective seats become available on the Board of Governors, and a president-elect is selected by the Board.

Although it is not yet a "trend," fewer and fewer nominations are received for the congressional-district elective seats. Unfortunately, when the 7th-East Congressional District seat was ripe for election in 2002, no nominations were submitted. As a result, the Board solicited applications from which to select a governor. Ironically, 27 applications were received. The fact that there was significant interest in the position by *application*, rather than *election*, suggests there may be one or more aspects of the elective process that chill interest in considering service as a governor. Happily, the relative wealth of applications suggests there is no lack of interest in the work of the Board.

Similarly, there have been significant numbers of applications for the at-large positions. The at-large positions and the Young Lawyers Division (YLD) seat (this governor is selected by the Board from nominations made by the YLD Board of Trustees) were added in 2001. Indeed, the WSBA has had a virtual embarrassment of riches in the number and quality of the applicants for these appointed seats. This again suggests that the process of getting to the Board may have more to do with attracting capable volunteers than with the assessment that the Board's work is irrelevant to the membership.

Article III.M of the WSBA bylaws, which provides for the two at-large seats, is designed to bring governors to the Board who: "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."

I, together with Governor Hinojos-Fall, got to the Board via bylaw M. We both had reservations about this avenue of

access. Frankly, had there not been two positions, I would not have applied, because while geographic (read small-town/rural) balance is important, I believe it is relatively less so than bringing diversity in age, race, and sex to the Board. (One need only look at the composition of the Board for the last 25 years to appreciate the accuracy of this remark.) I know Governor Hinojos-Fall, like many other persons of color, was concerned that the creation of an at-large position would institutionalize tokenism rather than bring real diversity to the Board. Happily (and I speak with Governor Hinojos-Fall's permission), we both have found our apprehensions allayed by this Board's commitment to diversity.

Because achieving diversity requires a "maximum investment," I believe that a relatively simple modification in the elective process can remove the barriers that have stood in the way of the election of lawyers from small towns. The Fourth Congressional District, for instance, which encompasses Yakima and Wenatchee, utilizes an informal gentlemen's agreement whereby one locality defers to the other so that there is a balance in elective opportunity. The Second District also utilizes this system — by custom it rotates its Board seat among Snohomish, Whatcom, and Skagit Counties. I understand that this is also the case in the Third District, with rotation between the Olympia area and the Vancouver area.

A companion governance issue is the method by which we identify and select our president. In June of each year, the Board selects a president-elect from among applicants for the position. The person selected serves one year as president-elect and then takes office as president following the annual meeting in September.

Increasingly, there are relatively few applicants for president-elect. Indeed, in some years there has been only one. Although this is not necessarily related, presidents are being drawn more often from the ranks of active Board members. This is a recent phenomenon. Historically, WSBA presidents, though often persons with prior Board experience, were not elected by the Boards with whom they served. Some of the criticisms of this change are that electing from the Board creates a partial-term governor, yields a president with less than a full three years of Board experience, and creates the appearance of an "insider" advantage. While these criticisms can be answered (a WSBA president must first

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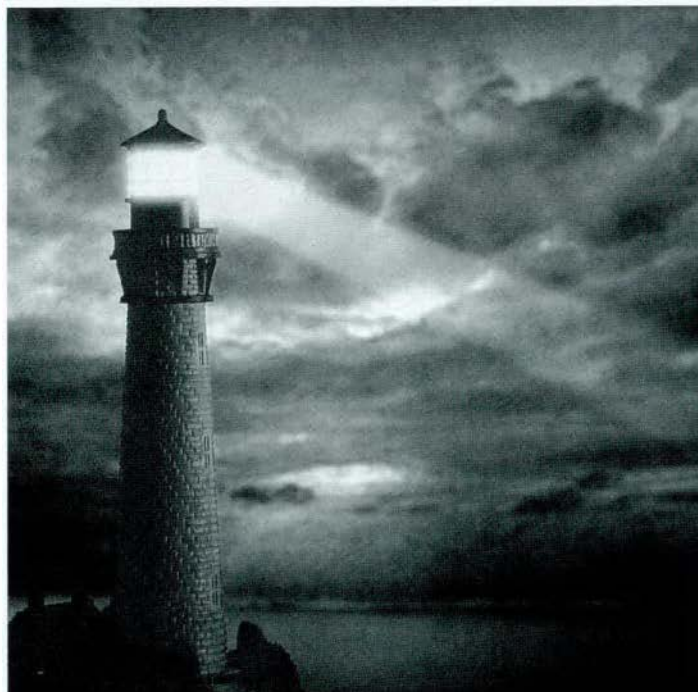
serve a year as president-elect, selection by the Board from among its own may enhance collegiality and effectiveness, and governor vacancies create additional service opportunities), it is unlikely there is a single correct solution/answer. Ideally, the Board should have several well-qualified candidates from whom to choose a president-elect.

These issues and concerns motivated me to constitute the President and Governor Selection Review Task Force. This task force is chaired by James Macpherson of Bainbridge Island. He is joined by Lucy Isaki, a past governor, of Seattle; Michael Pontarolo of Spokane, in his first year with the Board of Governors; Zulema Hinojos-Fall, a third-year governor-at-large, from Seattle; and Stephen DeForest of Seattle, a past WSBA president. The task force's charge is to review and suggest, as necessary, modifications to the method by which we identify and select our presidents and governors, including, at minimum, consideration of whether there should be: (1) criteria for presidential applicants; (2) a process for recruiting presidential applicants, at-large

governors, and replacement governors; and (3) an institutionalized geographic rotation within congressional districts dominated by one or more metropolitan centers, so that small-town and rural practitioners are able to be viable governor candidates. The task force expects to report back to the Board of Governors before the 2004 annual meeting in September. Any suggested changes will require Board approval and will not be implemented before 2005.

Jim Macpherson and I invite your input. You may contact Jim at jim@koptamacpherson.com, and my e-mail is savage2@imsblaw.com. I hope this will serve in some small way to motivate some among you to consider service with the Board of Governors. The job is time-consuming, some of it is mundane, and it is purely volunteer work, but I guarantee you will find few if any presidents or governors who regret their service, and none will deny that it enhanced their lives personally and professionally. ✍

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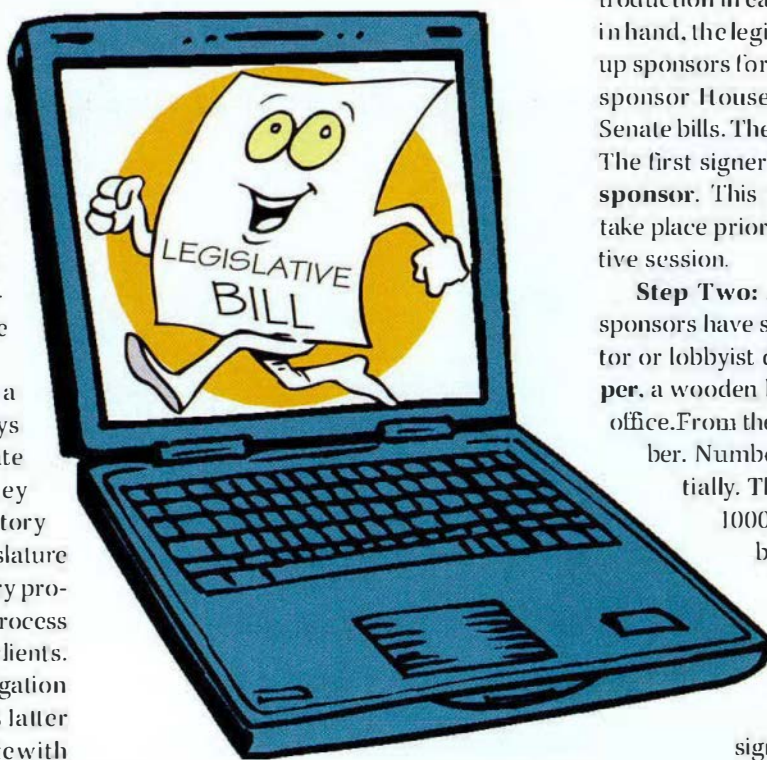
by Michele Radosevich and Gail Stone

You probably had to learn how a bill becomes a law in a social studies class once. If you never had any further experience with the legislative process, chances are all you know is that a bill has to go through both the House and the Senate, and be signed by the executive, in order to become law. How standing committees, amendments, substitute bills, and conference committees figure into the process is probably a little hazy.

This lack of knowledge may be a detriment to your clients. Attorneys can and should be able to navigate the legislative process so that (1) they can competently use legislative history to ascertain the intent of the Legislature with regard to a particular statutory provision, and (2) they can use the process prospectively to obtain results for clients. Attorneys more accustomed to litigation than legislation often overlook this latter use, but clarifying an existing statute with a small amendment can be much faster and less expensive than litigation.

No matter how you plan on using the legislative process, however, you need to become familiar with it. You can do this without ever leaving your desk. Since 1997, the Legislature has maintained its records electronically and posted them on its website, www.leg.wa.gov. By using this tool, you can follow current or prior legislation electronically without ever setting foot in Olympia. Because the Legislature has automated its own records rather than rewriting them in lay terms,

you will need some basic vocabulary and understanding of the process to get a complete picture of what is going on. What follows is a primer on how a bill



becomes a law in Washington and how to find that information on the Legislature's website.

Step One: Pre-Introduction. All legislation begins in the Code Reviser's office. Whether the initial proposal is a polished product of one of the WSBA's sections or an idea a legislator jotted on the back of a napkin, it is reviewed and put in proper form for consideration by the Legislature. This process is confidential and often involves multiple drafts. Once the bill's proponent (usually a legis-

lator or lobbyist) is satisfied with the draft, he or she asks that the bill be finalized as a House bill, a Senate bill, or as **companion bills**, which are identical drafts for introduction in each house. With final draft in hand, the legislator or lobbyist can line up sponsors for the bill. House members sponsor House bills; Senate members, Senate bills. They do so by signing the bill. The first signer is considered the **prime sponsor**. This part of the process may take place prior to the start of the legislative session.

Step Two: Introduction. Once the sponsors have signed the bill, the legislator or lobbyist drops the bill in the **hopper**, a wooden box in the Code Reviser's office. From there, the bill is given a number. Numbers are assigned sequentially. The House begins with HB 1000 in the first year of each biennium and the Senate begins with SB 5000.

The new bills are sent to leadership staff in each house to propose tentative committee assignments. Staff must act quickly, because the assignment is made during that day's session, as the bill is *read the first time*. **First reading** (and for that matter second and third readings) is a somewhat anachronistic term, dating from the days long before instant printing meant that every legislator had copies of every bill. These days, only the first and last sentences of the bill are read aloud. When the bill is read the first time in open session, it is truly "introduced" to the public. At this point, you can begin tracking the bill on the web. From the Legislature's homepage (www.leg.wa).

gov), choose "Bill Info." There you can type in the bill's number (or use the topical index to locate the number). This takes you to the bill history. At this stage, you can learn who sponsored the bill, when it was read the first time, and what committee it is in. You can also obtain a copy of the bill in either PDF or "regular" format. Unless you need to alter your copy of the bill (e.g., to propose amendments), the PDF file is far easier to read.

Step Three: Committee Consideration in House of Origin. The Washington Legislature meets for only 105 days in the first year of the biennium — i.e., odd-numbered years — and 60 days in the second. 2004 is a 60-day session. In order to keep the process moving quickly enough to deal with this deadline, the Legislature has devised strict timelines for action. These are called **cutoffs**. In the 105-day session, each house of the Legislature devotes approximately the first 50 days to committee hearings in a bill's house of origin. Thus, Senate bills are heard in Senate committees and House bills in House committees. If a bill is not reported out of its committee by the first cutoff, it is dead and will not normally receive further consideration. Thus, if the bill you are watching is going to pass, it normally will be scheduled for hearing early in the session. The hearing calendar is available electronically by clicking on "Legislative Info" rather than "Bill Info" and then choosing "Calendars." Hearing dates are published on Thursdays for the following week. Some of the hearings are televised by TVW, and audio for all hearings is available on TVW's website (www.tvw.org). Audio recordings of past hearings are available from TVW and from the committee staff of the committee in which the hearing was held.

As more bills are heard, the committee hearing calendar displays when **executive session** is scheduled on a bill. Contrary to what the name might connote, executive session is a public meeting of the committee where committee members bring up and consider amendments to bills, and where a vote is taken to send the bill out of committee for further consideration. If the committee in the house of origin adopts amendments, it is the practice to incorporate them within the text of the bill to create a **substitute bill**. The bill number does not

change, but the letter "S" is added upfront, to create SHB 1000 or SSB 5000. At this stage, the text of the substitute becomes available on the bill history page of the legislative website.

After first reading and referral to committee, the next date noted in the bill history is the date on which the committee took executive action. The entry indicates whether a substitute was adopted and whether the committee recommended that the bill "*do pass*." Normally, all the bills voted on receive a **do pass recommendation**, because the committee chair will not schedule bills that lack committee support. Committee staff prepares a bill report, summarizing hearing testimony for and against the bill, and the main provisions of the bill as it emerged from committee, and showing the roll-call vote of the committee members. This is available in PDF format on the bill history page.

When bills emerge from standing committees, they normally go to the Rules Committee. However, if bills have a substantial fiscal impact, they will be referred to the House Appropriations Committee or Senate Ways and Means Committee for an examination of the bill's costs before being sent to the Rules Committee. If you are interested in the fiscal impact of a bill, you can go to the Office of Financial Management's website (www.ofm.wa.gov), where you can access the fiscal notes that the agency prepares for bills.

If the bill needs to stop in one of the fiscal committees, the committee may have only days in which to act on the bill. The cutoff date for the fiscal committees is normally three to five days after the subject area committee cutoff. Many bills die in one of the fiscal committees, either because of time or because the bill's price tag is higher than a majority of the committee can support.

Step Four: Rules Committees. The sole function of the Rules Committees ("Rules") is scheduling bills for action by the entire house. The committees meet frequently, usually scheduling no more than a couple days ahead. Although bills receive no substantive scrutiny in Rules, an enormous number of bills pile up here at the time of the first cutoff. Thus, it is inevitable that some bills are never scheduled for floor action, and die in Rules. The bill history shows when Rules places a bill

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on the calendar. It says the bill was placed on **second reading**, a term of art explained below.

Step Five: Floor Consideration. Once a bill is on the calendar, leadership controls the flow of bills. Only about 10 days are allotted for consideration of bills on the floor before the second cutoff acts to kill bills that have not passed that point. Leadership has evolved a number of strategies for moving bills as quickly as possible. Some days are devoted to non-controversial bills. Some bills are placed together in thematic packages. Controversial bills are rarely scheduled until

leadership has done a vote count and knows that the bill has sufficient votes for passage. Bills are not taken up in the order in which they appear on the official calendar—that document is simply a list of available bills. Supplemental **flash calendars** may be printed, showing which bills from the formal calendar will be considered next.

When a bill is taken up from the calendar, it is given second reading. Second reading is the stage for consideration of amendments from the floor. The committee's substitute bill is taken up first and normally adopted; then amendments to

the substitute bill are considered. The amendments are taken up in the order in which they occur in the bill. The text of all amendments offered on the floor is available on the bill history page. The bill history page shows whether any amendments were adopted, but you have to look at the text of each amendment to see whether a particular amendment was adopted. The PDF version of the amendment shows in the upper right of the first page whether an amendment was adopted.

After the last amendment has been disposed of, the leadership asks that the rules be suspended so that the bill may be given its **third reading**. Third reading is the time for speeches for and against the bill, and the final vote. Historically, bills were never voted up or down on the same day they were amended, probably because the amendments were not readily available. Today, second and third readings nearly always occur one right after the other, but because the rules do not provide for this kind of speed, a minority may object to the procedure and force the bill to be laid over for 24 hours.

The vote on final passage requires a constitutional majority — 50 votes in the House and 25 in the Senate. Nearly all other actions require only a majority of those present and voting.

The bill history page reflects the dates for second and third readings, and the roll-call vote on final passage. If a significant number of floor amendments to the substitute are adopted, the bill is **engrossed** and the amendments incorporated within the text of the bill. If this is done, the letter E is added to the bill reference, e.g., ESHB 1000. There may also be a new bill report reflecting the changes made on the floor.

Step Six: On to the Other House. As bills pass the house of origin, they are sent across the rotunda to the other house, where they are read the first time and referred to committee. However, no further action is taken until the second cutoff, which occurs on or about the 65th day of a 105-day session. At this point, the bills that have not passed the house of origin are dead for the rest of the session.

Step Seven: Committee Again. The second cutoff marks the beginning of another committee work period devoted to bills that started in the opposite house. This period is substantially shorter than

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the first committee work period (in a long session, 20 days instead of 50), and hearings are often shorter. This probably does not adversely affect the quality of the committee's consideration, however, because the committee has often seen very similar proposals from members of its own house during the first committee work period.

Hearings and executive sessions are held just as they were during the first committee work period. The difference is that substitute bills are not used. Instead, when a committee in the second house wants to make substantial changes to a bill from the other house, a **striking amendment** is used. The amendment literally says that all the text following the words "be it enacted" is stricken and replaced with the second committee's preferred version of the bill. There is no special notation in the bill history for a striking amendment like there is for a substitute bill, so you need to look at the text of the amendment adopted by the committee to see if it indeed strikes the whole bill.

The committee's action is recorded just as it was during the earlier floor period, and the bill moves either to a fiscal committee or straight to Rules. A new bill report is prepared to reflect the bill as it emerged from committee. The third cutoff brings the committee work period to an end and kills any bills that have not yet emerged from committee in the second house.

Step Eight: Rules Again. By this point in time, the number of bills under active consideration has shrunk considerably. Although the number of bills is smaller, so is the time in which to take them up, so the pressure on the Rules Committee is much the same as before.

Step Nine: Final Passage in the Second House. Floor action in the second house involves the same steps as in the first. A bill must be taken from the calendar to the floor for second and third readings. The second house has about 10 days to complete this process before the final cutoff kills any bills that have not yet passed.

At this point, it becomes apparent that there are two kinds of bills — those with amendments by the second house and those without. For the latter, the process is suddenly over. If the second house passes the same numbered bill in the

same form that the first house did, the bill moves smoothly to the Governor's desk. If the second house passes the same numbered bill but makes any changes to the work of the first house, the process is far from over.

Step Ten: Reconciliation. Under the cutoff system, approximately one week is devoted to reconciling the differing versions of bills that have passed both houses. Reconciliation may or may not involve a **conference committee**. The simplest method is for the bill to go back to the house of origin for **concurrence** in the other house's amendments. If the

amendments are relatively minor, this may be easily accomplished. The second house concurs in the amendments and votes once more on final passage as amended.

It also may be possible for the proponents of the bill in the two houses to agree that some of the second house's amendments are okay, but not others. This may be done by concurring in less than all the amendments, but asking the other house to **recede** from its position as to others of its amendments. Along with the votes on the amendments, each house votes again on final passage as amended. When

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both houses have passed exactly the same bill, the process is complete.

Many times, however, the bill cannot be compromised by accepting one amendment but not another. Particularly, when the second house uses a striking amendment, it may not even be procedurally possible to vote individually on each of the changes. Then, the Legislature uses conference committees to work out a compromise version of the bill.

Conference committees are a frustrating part of the legislative process for legislators, lobbyists, and the public. They meet privately, so it is difficult to track

what they are doing. They typically comprise six members — three from each house, four members of the majority, and two of the minority — so the power is concentrated in only a few people. If they are granted the powers of **free conference**, as they normally are, they can entirely rewrite the bill. And once the conference report emerges from the committee, the rest of the Legislature must vote for it or against it — they can no longer offer amendments.

With all these disadvantages, conference committees continue to be used frequently — because they work. A small

number of legislators, meeting without press or lobbyists, can often reach agreements that elude larger groups of legislators or legislators under pressure from some special interest or another.

Both houses take up the conference report in quick succession. A vote is taken to adopt the conference report, effectively substituting the conference version of the bill for earlier ones. Then, each house votes again on final passage, once again requiring a constitutional majority. A final bill report is prepared to summarize the bill in the form in which it finally passed.

Sine Die. On or about midnight on the 105th day of a long session or the 60th day of a short session, the Legislature must constitutionally end its session by adjourning *sine die*, literally, “without a day” — that is, indefinitely. The bills that have passed go the Governor, who has a little over three weeks in which to analyze the bills and decide whether to sign, veto, or partially veto each one.

What happens to the rest of the bills? In the first year of the biennium, the odd-numbered year, the bills that never passed the first house remain right where they stopped and may be advanced in the following session. The bill history will normally note: “By resolution, reintroduced and retained in present status.” The bills that have passed the first house, but not the second, are returned to the Rules Committee in the house of origin, where they have third-reading status. If the original proponents of the bill want to try again in the following session to pass it, they do not need to go through the committee process in the house of origin or even the floor-amendment process. Assuming the proponents have retained the votes for their version of the bill, they need only put the bill to a floor vote and send it along to the second house.

In the second year of the biennium, *sine die* effectively kills all bills that have not yet passed both houses. The proponents can bring back the same idea in the following session, but it will have a new bill number and they will have to start the process all over again. ☞

Michelle Radosevich chairs the WSBA's Legislative Committee and practices in Seattle. Gail Stone is the WSBA's director of legislative affairs in Olympia.

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The Art of Storytelling

by Paul N. Luvera

Why Storytelling?

Recently, literature about trial skills has been full of articles about lawyers becoming storytellers in court. None of us needs to be reminded that the way to capture a listener's attention — either a child or an adult — is through storytelling. It is not just Native American culture that traditionally was oral. Alex Haley, in *Roots*, reviewed the African oral tradition, which has many similarities to the Native American. Scripture is replete with examples of storytelling as the chief means of communicating. We were brought up with storytelling by our parents, in the books we read, on old radio programs, and by television and movies. All mankind's history has involved storytelling. How many times have we heard someone say: "Did I ever tell you about the time...?" Throughout history, we have communicated our heritage by telling stories and singing songs. While today we may not tell stories sitting cross-legged in front of a fire or seated around the kitchen table, we pass on our visions and ideas from generation to generation through written stories, radio, television, movies — all with storytelling.

Parables as examples of storytelling

Why are stories so compelling? The parables of Jesus in Scripture are excellent examples of storytelling. One important aspect of parables is that they communicate a message concretely. It is difficult to grasp abstract ideas. If you are going to teach people about things they don't understand you need to begin with things they do understand. Most people think in pictures. Parables turn messages into pictures people can see and understand.

Parables begin with things people understand from their own experience, and the objective is to lead them to things they



need to understand. Parables enable people to discover the message for themselves. They all contain this question: What does this mean to you? The impact on people hearing a parable is immediate, because it is spoken, not read. The message flashes upon a person right away. Some things are best left to be discovered, and creative storytelling allows you to create that possibility for the listener. Parables usually have only one point to make. The messages are simple, and easily understood. All great parables begin from the here-and-now in order to get to the there-and-then.

Effects on the listener

Some therapists believe that listeners routinely enter a trance-like state when listening to a well-told story. This has been explained as listeners being mesmerized by the unfolding story. People suspend outside awareness and concerns as they focus on the story. This allows them to be touched at the deepest level, resulting in emotional responses, even tears. That is why storytelling is such a powerful tool.

Storytelling simplifies and focuses.

When people receive random, unstructured information, they become anxious and soon stop listening completely. This happens when information does not tell us what we want or need to know. Henry David Thoreau said it takes two people to speak the truth — one to speak and another to hear. What counts is not so much what is said, but rather what is heard.

Words alone play a minor role in communication. What actually is said accounts for only eight percent of the impact. Our vocal message (inflection, resonance, tone, etc.) accounts for 37 percent. The most significant impact on the listener is nonverbal, which accounts for 55 percent. Keep in mind that storytelling is a complete package.

Storytelling as a trial technique

Gerry Spence emphasizes storytelling at the Spence Trial College. He has argued that the most important trial technique is to transfer one's case into a story, because people are used to storytelling and because it is an effective technique of persuasion. He says to feature your client's story in all aspects of the case: jury selection, opening, direct, cross, and closing.

Repeating your client's story will help to persuade the jury.

In an article published in the *American Bar Association Journal* (April 1986), Spence wrote: "Of course it is all storytelling — nothing more. It is the experience of the tribe around the fire, the primordial genes excited, listening, the shivers racing up your back to the place where the scalp is made, and then the breathless climax, and the sadness and the tears with the dying of the embers, and the silence.... The jury wants to hear a story. They're hard wired for it."

Albert Einstein rightly observed,

"Imagination is more important than knowledge." Since a trial is a war of impression, not logic, successful trial lawyers must become masterful storytellers who engage jurors on a visceral level with the magic of storytelling. It is at that level that people decide all important issues and reach opinions.

The how-to's of storytelling

The beginning

The beginning is important because of the need to capture attention and to take full advantage of the short time when everyone is paying attention to what you are

saying. The storyteller should engage listeners immediately. Their attention span is short — we should not waste their precious time or fail to tell the story itself in concise form right away. The first 30 seconds should capture attention, and the first two or three minutes are the precious time we have their undivided attention — after that they may begin to drift off. In Tom Wolfe's *Bonfire of the Vanities*, he describes how, after a prosecutor's voice has droned on for awhile, even the sloppiest housekeepers on the jury find themselves wondering why the city would allow the windows in the courtroom to get so filthy. People quickly lose concentration and begin thinking about other things. Only a well-told story with a compelling beginning can overcome this.

The well-known principle of primacy also dictates the need for a good beginning. People tend to retain those things they hear first. They are slow to change their views from what they hear and believe first. If you can express the essence of your case in the first three minutes, you will take full advantage of primacy.

Keep in mind principles of persuasion. We know that positives are more convincing than negatives.

Point of view in storytelling is critical. The question is this: From whose point of view are you going to tell the story? The story should always start with the defendant's conduct — studies show that to achieve the most impact you should start here. If you start with the plaintiff's conduct, the listener's question why the plaintiff did or failed to do something to avoid what happened.

But that doesn't fully answer the question of point of view. For example, you can start the story through the perspective of one view and then switch to another perspective. You can describe a patient's apprehension about going to the hospital for surgery, and switch to the doctor's thoughts and actions, continuing until the two intersect. Fiction writers do this often, and it keeps the interest of the listener to see what will happen when the two points come together.

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The middle

The middle of your story should employ techniques such as themes, rhetorical questions, analogies, and demonstrations. Keep in mind principles of persuasion. We know that positives are more convincing than negatives. Parallelism is another device. For example, trust between doctor and patient, and trust between pastor and church member. Make the client's story come alive. Tell it in a conversational way. Avoid legal terms and big words. Make it human — don't talk about "the plaintiff," but rather "Joe Smith." The story should not be told in the manner of an actor delivering lines from Hamlet, but in an informal, friendly fashion.

Avoid unnecessary or irrelevant detail, and information that is not essential to the story. We generally give too much information. It's as though we don't know what's important from what is not, so out of fear that we might leave something out we include every detail. A good story requires only enough detail to make it interesting. The trick is in deciding which details capture interest, entertain, and inform, and which are simply boring. Be vivid and accurate. Choose words that paint a picture for the listener.

Certainly other devices to enhance the story should be used. A theme is very important and should be woven into the story. To find statements to support themes, you can search proverbs, song lyrics, poems, or even nursery rhymes. Song lyrics are a particularly good source — people are familiar with a song's words and identify easily with a song's mood and message. Poems are powerful because they are often stories in themselves. Proverbs resonate with people, because they ring with truth.

Use everyday examples to explain difficult concepts. In defending against a toxic tort case where causation was a major issue, the defense lawyer had the problem of communicating what one part per trillion meant. Busch Stadium in St. Louis was familiar to all the jurors and had 50,000 seats. The lawyer said to the jury: "If you had one ticket and sat in one seat in Busch stadium, you would be one part per 50,000. So what is one part per trillion? Well, one part per trillion would be you if you had one seat in 20 million Busch Stadiums.

That's one part per trillion."

One technique of storytelling involves the rule of three. Much has been written about this concept: that we tend to think and remember lists of three. It's been suggested that exhibit charts should list only three items. Studies show that even when the actual number is more than three, we tend to remember only three. For example, Winston Churchill, in his first speech as prime minister of Great Britain, told his Cabinet that he had nothing to offer but "blood, toil, tears and sweat." Yet the collection of his World War II speeches is titled *Blood, Sweat and*

Tears — Churchill's publisher understood the rule of three — and it is that series of three, not the series of four, that most of us remember.

Another technique is the use of mnemonic devices such as acronyms. Louisiana trial lawyer Russ Herman gives the example of "POP" — "preventable, obvious, and predictable" — a theme that can be repeated throughout your story and the trial.

Mesmerize your listeners. A well-told story engages the senses, the emotions, and the intellect of the jurors. Make the characters in your story come alive by

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incorporating the techniques of master storytellers: use different tones of voice to demonstrate the different characters, exaggerate your gestures, use expressive body language, and pause to create drama and suspense. Do not simply tell the audience that there was a "loud noise" or an "awful smell." Describe the frightening shattering of glass, the squeal of the tires, the violent shredding of metal. Describe the acrid smell of burning rubber and chemicals. Make it real and tell it with sincerity. The jury will resent acting, but will enjoy hearing the truth in story form.

The conclusion

The conclusion should be dramatic and powerful. Connect it to your opening if you can, and reiterate the point of your story as a call to action to your client's case. Some examples come to mind. In 1911, Clarence Darrow went to Los Angeles to defend the McNamara brothers, who were accused of dynamiting the *Los Angeles Times* newspaper building during a labor strike. Darrow entered a guilty plea to save them from electrocution. After the trial, Darrow was charged with attempting to bribe a juror. He was then tried, and the famous Earl Rogers defended him.

After a three-month trial, Darrow made the final argument on his own behalf. After a lengthy and emotional appeal, he concluded by telling the jury: "I have friends through the length and breadth of the land, and these are the poor and the weak and the helpless to whose cause I have given voice. If you should convict me there will be people to applaud the act. But if in your judgment and your wisdom and your humanity you believe me innocent and return a verdict of not guilty in this case, I know that tens of thousands of the weak and the poor and the helpless throughout the world will give thanks to this jury for saving liberty and my name." During this dramatic conclusion the judge and several jurors wept. It took the jury only 34 minutes to find him not guilty.

A powerful and well-worded conclusion stays with the listener. Reverend Martin Luther King used this conclusion to his speech delivered on the steps of the Lincoln Memorial on August 23, 1963:

"In a sense we have come to our Nation's Capital to cash a check. When the architects of our great republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir.

"This note was promise that all men, yes, black men as well as white men, would be guaranteed the inalienable rights of life, liberty, and pursuit of happiness.

"It is obvious today that America has defaulted on this promissory note insofar as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check; a check that has come back marked 'insufficient funds.'

"But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. So we have come to cash this check, a check that will give us upon demand the riches of freedom and security of justice."

Here we have classic examples of powerful conclusions from master storytellers. As trial-lawyer storytellers, we can learn from examples like these.

The six maxims of persuasion

Storytelling is a return to our roots, the basic way in which we should communi-

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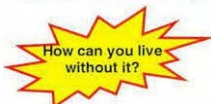
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cate if we want to persuade. Russ Herman is a gifted storyteller who has lectured extensively on the subject. He is fond of referring to what he calls "Cicero's six maxims of persuasion":

1. *Understand that what reaches the mind moves the heart:* Passion, as well as reason, must be used.
2. *Understand motives to understand human behavior:* The defendant's bad motive is an essential part of persuasion and should come first in the storytelling.
3. *Move from the particulars of a case to a universal truth:* This important step empowers the jury to take specific action. Demonstrate by the story that the case has more important consequences than just those facing the parties before the jury. The social importance of taking action is an important element in the story.
4. *Draw the audience into the story:* Tell the story in the present tense as if the jury were watching the events unfold in front of them rather than hearing a narrative of something long past. Engage the audience as participants in the story.
5. *Expose the flaw in the opponent's position:* Done properly, the conclusion results in a vote for your client. Herman cites the example of Johnny Cochran's "If the glove won't fit, you must acquit" argument, which allowed the jury to ignore all other evidence if they agreed, and conclude that a not-guilty verdict was the proper result.
6. *Communicate your passion and logic in words the listener will understand:* Communication is what listeners hear and understand, not what you say. Talk in terms they understand.

The basics

The basic steps are these: First, set the stage. The story should have a clear and engaging opening. This includes introducing the characters as well as the background needed to understand the story. Next, state the problem — the catalyst that sets everything in motion. Then, tell the story. The sequence of events should be told in a way that is easy for the listener to follow. Every good story has a hero and an adversary — sketch it out for the listener. You will need to answer the

question, what happened? Tell your story through a combination of words, sounds, and images. Words should be descriptive. Use body language where appropriate. Always end with a powerful and dramatic conclusion that stays with the listener.

Fundamentals include the usual skills of a trial lawyer. Speak with enough volume so people can hear. Employ nonverbal devices with your face, body, and gestures. Keep good eye contact by avoiding "grazing"; instead, fix on individuals, each for a short time. Keep the proper distance from the listeners, and do not invade their zone of privacy. Be relaxed,

comfortable, and confident. Pace is very important. Talking too fast is a common result of nervousness. Slow the pace of your storytelling and remember the importance of pauses. Silence is a powerful tool in storytelling.

Learning to be a good storyteller should be the goal of every trial lawyer who strives for excellence. 🐼

Paul Luvera practices in Seattle and Mount Vernon, and is a longtime Bar News contributor.

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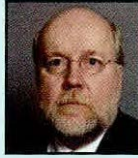
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An Unholy Alliance: Nonlawyers Who Mass-Market Trusts, and the Lawyers Who Assist Them

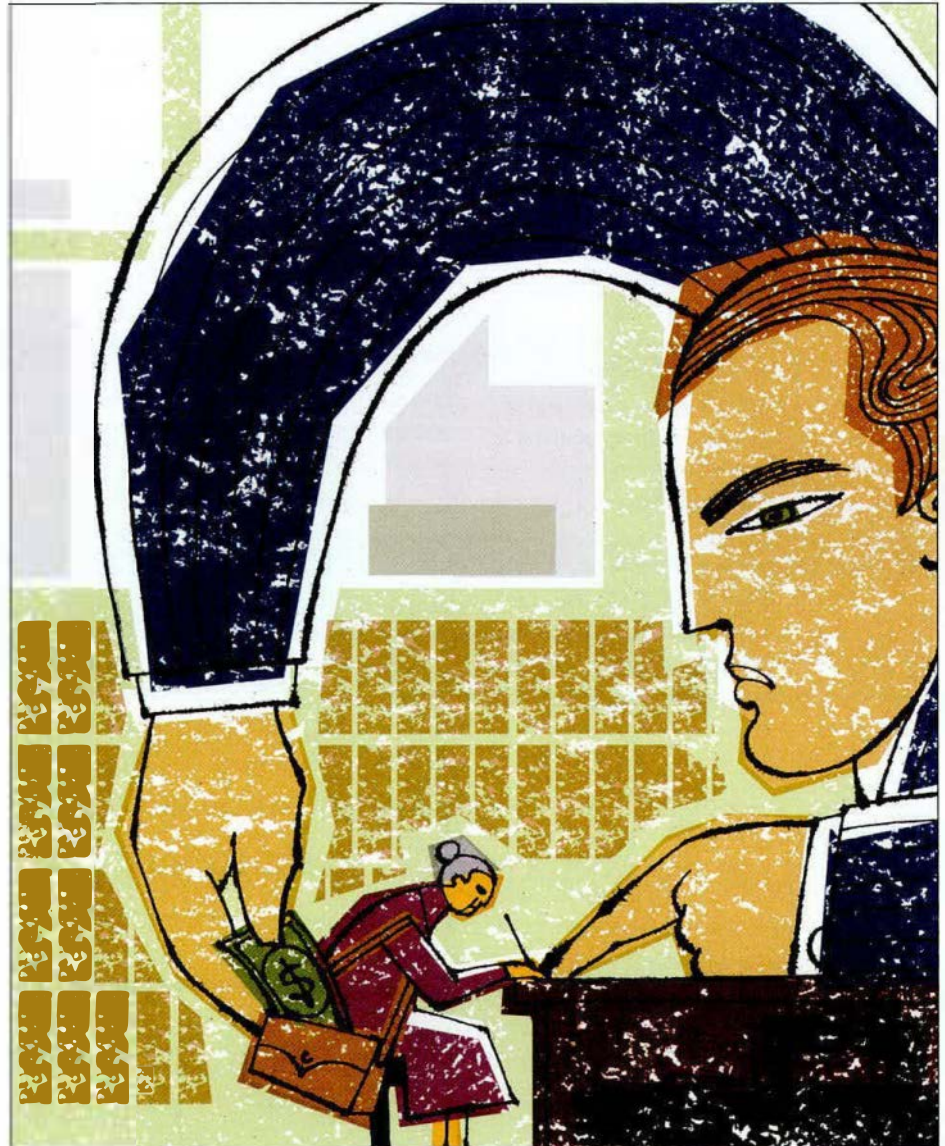
by Kevin Bank and Cheryl Kringle

As the population ages, scam artists are increasingly targeting seniors. Unfortunately, some of the scammers are right in our own backyard, and some Washington lawyers are aiding them, whether willingly or unwittingly. In the past several years, the Bar Association has become increasingly active in disciplining lawyers who affiliate with nonlawyers in schemes that “sell” seniors legal products like living trusts and charitable remainder trusts (CRTs).

Living trusts and CRTs are legitimate estate-planning tools for some people, and many estate-planning professionals properly refer clients to licensed lawyers to assist clients in utilizing these tools. However, an entire industry has developed in which “estate planning” companies with reliable-sounding names like “Senior Financial Planning Services” or “Secure Benefits Group” use licensed insurance agents (or simply sales persons) to sell trusts to elderly consumers, whether or not the buyers understand or need them. The lawyers affiliated with these companies typically “review” the trusts and get paid a set fee for doing so. Unfortunately, these lawyers rarely provide appropriate legal advice or evaluation of the client’s circumstances to determine whether the trusts are appropriate for the client.

The typical living-trust scam

In living-trust scams, or living trust mills, as they are often called, the aim is to sell the most living trusts with the least amount of effort. Frequently, the purpose of the living-trust sale is to obtain asset information from the purchaser in order to facilitate sales of other products, such



as annuities or long-term-care policies. The estate-planning company, financial planner, or insurance company may identify potential clients through advertising, telemarketing, or word-of-mouth referrals by customers. They frequently hold free seminars aimed at attracting senior citizens, and use this opportunity to col-

lect names of seniors to target. The companies set up initial appointments by telephone. The initial appointments are usually held in the client’s home.

The sales agents are carefully trained to sell the trust document, which in some cases also comes with membership in a dubious prepaid legal plan that may ac-

tually be nothing more than a lawyer referral service. The agents frequently regale the purchaser with inaccurate and unrepresentative horror stories about the probate process and the salesperson's allegedly traumatic experiences with probating the estate of a relative. The aim is to convince the purchaser that probate will be lengthy and that a significant portion of the estate will be consumed by lawyers. In fact, although probate costs and procedures can vary from state to state, Washington's are among the least expensive and most streamlined in the country.¹ The scammers are very successful in tapping into widespread misconceptions about the cost and complexity of probate in Washington.

In living-trust scams, or living trust mills . . . , the aim is to sell the most living trusts with the least amount of effort.

After the agent makes the sale, the agent and purchaser jointly complete a "living trust application" that contains detailed information about the purchaser's assets. In conjunction with the application, the purchaser is often persuaded to sign several releases and waivers (for example, a release permitting the salesperson to share the information collected with an affiliated insurance company). The agent then collects a check for an amount from \$900 to \$5,000, often based on the determination by the sales agent of how much the purchaser would be willing or able to pay — the sales agent is paid a commission on the sale. The check is usually made payable to the estate-planning company, although in some cases a second check is written to the lawyer who will "prepare" the trust.

The estate-planning company then fills in the blanks with the information gathered from the client on a trust template and, if a lawyer is involved in the trust mill, the document may then be sent to the lawyer "for review." When the lawyer completes his "review," the document is typically returned to the estate-planning company for insertion in a profes-

sional-looking binder of documents containing the living trust, pour-over will, and durable power of attorney. Unfortunately, since the legal documents are based on templates, they are a one-size-fits-all product, and will not necessarily bring about the client's desired result. The document binder is then delivered to the client by an insurance agent affiliated with the estate-planning company, who is also a certified notary.

The client is often unfamiliar with the lawyer involved until this delivery visit — among the documents usually delivered by the insurance agent is a letter or

acknowledgement from the lawyer congratulating the client on the purchase of the trust and, in some cases, disclaiming liability for any claims against the lawyer for an invalid trust, will, or power of attorney. If the lawyer has made an effort to contact the purchaser personally, it is generally through a phone call where the lawyer either congratulates the person on his or her decision to purchase a trust, or simply confirms information from the application provided by the estate-planning sales agent.

The delivery visit presents a gold mine of opportunities for the insurance agent.

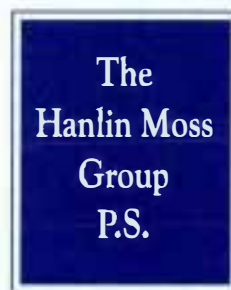
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With a thorough knowledge of the purchaser's assets, and an established relationship with the client, the agent is in a powerful position to suggest alternative investments, such as the insurance company's annuity products. The purchaser is often persuaded to sell existing investments, even if this means incurring significant penalties and taxes, to buy the insurance agent's products. This delivery visit presents another opportunity for the agent to earn commissions.

The role of the lawyer

There are a variety of ways that lawyers

become involved in living-trust mills. In some instances, the lawyer accepts exclusive referrals from a financial advisor, who obtains the clients and then splits fees with the lawyer. In other instances, lawyers may respond to a classified ad or be approached by a representative of the estate-planning company, who describes the tremendous potential for the lawyer if he or she agrees to be the referral lawyer for that company. The lawyer may be asked to attend a seminar where the estate-planning company makes a slick presentation to prospective clients. The lawyer's attendance at the seminar is de-

signed to demonstrate the company's professionalism to prospective clients, while at the same time demonstrating to the lawyer the opportunity for obtaining new clients.

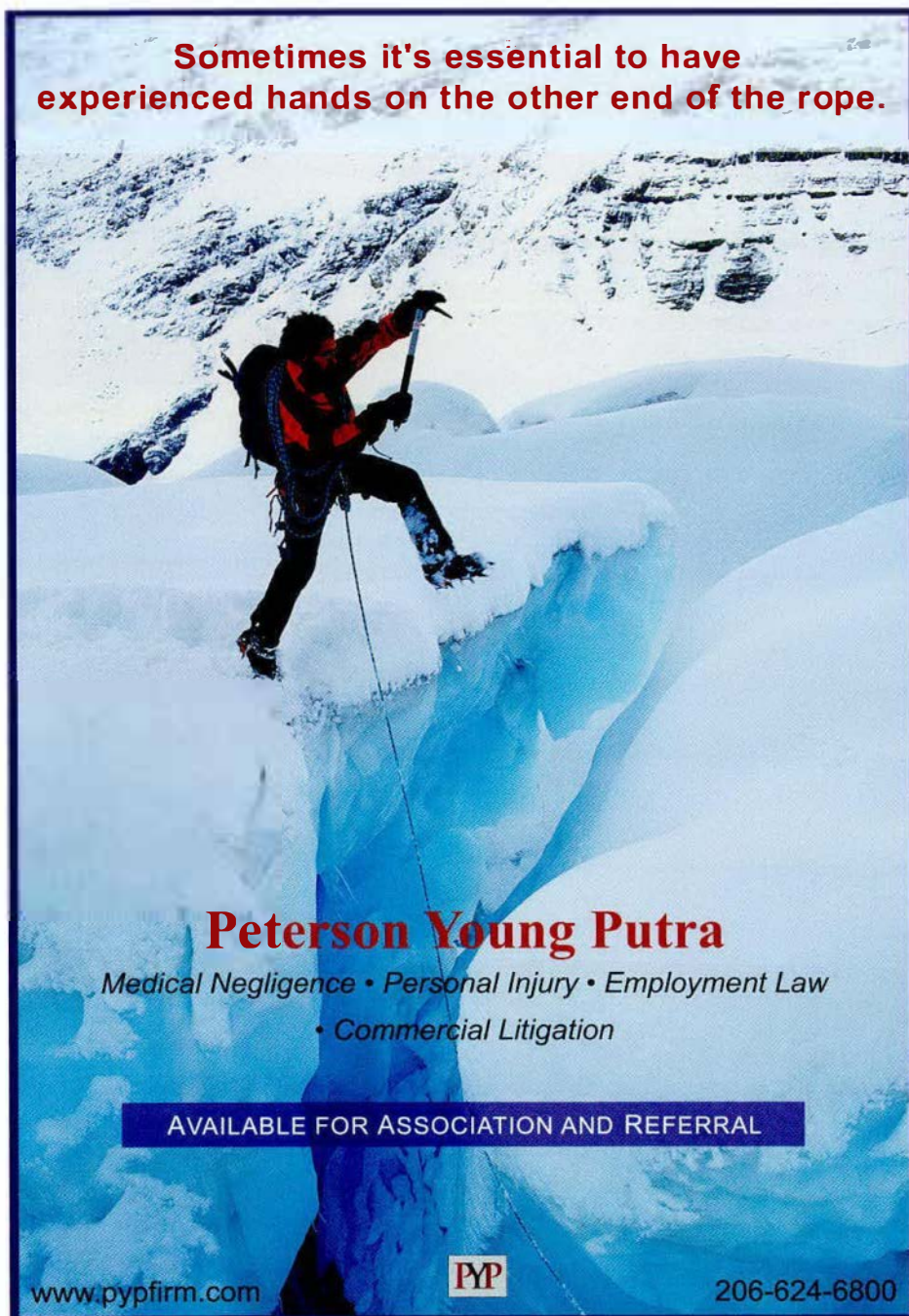
Once the lawyer is on board with the company, the lawyer is usually told that all he has to do is review the application for appropriateness and make brief contact with the clients in exchange for a share of the total fee. The lawyer's share of the fee may range from \$100 to \$500. Although this amount may appear fairly modest, the true living-trust mill is a volume business, and the lawyer does a minimal amount of work for the fee. This arrangement can sound very attractive to lawyers who are looking for a steady source of income. The estate-planning company may represent to the lawyer that its business model "is approved by AARP" or "has been reviewed to make sure it does not violate the Rules of Professional Conduct." Of course, a lawyer may not rely on representations made by the estate-planning company and must independently determine whether participation in the business model complies with the Washington Rules of Professional Conduct (RPCs).

Lawyers participating in trust mills can violate numerous Rules of Professional Conduct

A lawyer who participates in a living-trust mill walks into an ethical minefield. Although it may be tempting for a lawyer to try to rationalize that the particular arrangement proposed by the financial advisor or estate-planning company avoids ethical problems, it is unlikely to be the case. Among the many violations of the RPCs that are potentially involved are:

Conflict of interest (RPCs 1.7 and 1.8)


Whether or not a lawyer-client relationship exists between the estate-planning company and the lawyer (in most cases the relationship is more akin to an ongoing business relationship), the lawyer will more than likely be found to have established a lawyer-client relationship with the trust purchaser. The lawyer is usually identified in the documentation provided to the purchaser as the preparer of the documents, and in some instances, does have a brief telephone conversation or



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meeting with the client. The lawyer's financial interest in having the estate-planning company obtain and refer clients to him is likely to conflict with his duty to provide independent and disinterested advice to his estate-planning client. This conflict can violate RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer's responsibility to another client, a third person, or the lawyer's own interests, and where the company pays the lawyer's fee; and RPC 1.8(f), prohibiting lawyers from accepting compensation for representing a client from one other than the client unless the client consents and there is no interference with the lawyer's independence.

In a reciprocal discipline case from Oregon, the Washington Supreme Court approved a 60-day suspension for a lawyer who was employed in an estate-planning "company" as an associate and, later, as corporate counsel. The lawyer simultaneously represented the company's customers who had bought living trusts from the company through its nonlawyer sales agents.² In his stipulation to discipline, Mr. Lofton admitted that his own financial and business interests could have affected the exercise of his professional judgment on behalf of clients and that he had engaged in conflicts of interest.

Aiding in the unauthorized practice of law (RPC 5.5(b))

In affiliating with estate-planning companies owned by nonlawyers who send out salespersons or insurance agents to purchasers' homes to sell living trusts, lawyers may violate RPC 5.5(b), prohibiting aiding nonlawyers in the unauthorized practice of law. Although the trust-mill lawyers and salespersons often contend that the sales/insurance agent is simply gathering information, testimony from the victims of the mills belies that claim. What the agents invariably do in practice is provide self-interested legal advice to convince potential purchasers that the living trust is the best option for their needs.³

In a recent case resolved by stipulation to a two-year suspension, lawyer Michael J. Scaringi stipulated to assisting a California estate-planning company, and so-called "paralegals" hired and trained by the estate-planning company, in the un-

authorized practice of law. Mr. Scaringi acknowledged that he was aware that neither he nor any other licensed Washington lawyer was present "when the client received advice regarding estate planning from the paralegal, signed the engagement letter, and made the payment for the living trust."⁴

Lack of diligence and communication (RPCs 1.3 and 1.4)

Lawyers who become involved in living-trust mills are very likely to run afoul of their fundamental duty to represent diligently and communicate with the clients

whose living-trust documents the lawyers review and/or prepare. The lawyer's review is usually nothing more than filling in the blanks on preprinted forms, with no or minimal communication with the client. In many cases, the clients already have wills and other estate-planning documents, but the lawyer rarely engages enough with the client to find that out, let alone to make a determination whether replacing the will with a trust is in the best interests of the client.⁵

Multiple violations of the duty of diligence can result in serious consequences. Under the *American Bar Association Stan-*

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ards for Imposing Lawyer Sanctions that guidebar discipline cases in Washington, disbarment is the presumptive sanction for a lawyer's knowing failure to perform services for a client when that failure causes "serious or potentially serious injury." Disbarment is also the presumptive sanction for a "pattern of neglect" that causes serious or potentially serious injury to clients.⁶ Of course, the presumptive sanction depends on the specific facts and is not always the sanction that is ultimately imposed. Under the *ABA Standards*, many factors are taken into account, including aggravating and mitigat-

ing factors such as prior discipline, motive, degree of remorse, and whether the lawyer pays timely restitution to clients.⁷

Other potential RPC violations

Depending on the terms of the lawyer's agreement with the estate-planning company, a lawyer involved in a living-trust mill can also violate the RPC by sharing fees with nonlawyers (RPC 5.4(a)) as well as by failing to supervise nonlawyer assistants (RPC 5.3(b) and 5.3(c)).⁸ RPC 7.3 can be implicated if the lawyer solicits clients through third persons, and violations of RPC 7.1 can occur if the lawyer is in-

involved in disseminating false or misleading advertising regarding the advantages of purchasing living trusts.⁹

Lawyers who participate in trust mills can violate the Consumer Protection Act

The Consumer Protection Act, RCW 19.86.020 (CPA), prohibits unfair and deceptive acts or practices in the conduct of trade or commerce. The CPA can be enforced by private individuals, or by the attorney general.¹⁰ In recent years, living-trust marketing firms have come under heavy attack by state attorneys general across the nation.¹¹

The Washington Supreme Court has held that the CPA applies to entrepreneurial or commercial aspects of the legal profession.¹² "Entrepreneurial aspects" are those activities relating to how the price of legal services is determined, billed, and collected or how a lawyer obtains, retains, and dismisses clients.¹³

Under the CPA, an act or practice is considered deceptive if it has a tendency or capacity to deceive a substantial portion of the general public.¹⁴ A lawyer may violate the CPA by assisting sales people in making misrepresentations in the advertising or sale of trust documents. For example, if a lawyer prepares literature that misrepresents the probate process in Washington as unduly costly or burdensome, and that literature has the potential to mislead consumers into purchasing a trust document not suited to that individual, a CPA action may be brought against the lawyer. A lawyer involved with a trust mill may also violate the CPA by misrepresenting his involvement and deceiving consumers into believing a lawyer is substantially involved in preparing the trust and providing legal advice on the appropriateness of the trust for that specific consumer.

The unauthorized practice of law is a violation of the CPA.¹⁵ When an attorney assists in the unauthorized practice of law by participating in a trust-mill scheme, a facade of credibility and legality is created.¹⁶ Assistance in the unauthorized practice of law in this context is therefore a deceptive act violating the CPA. This is especially true if a consumer is harmed by receiving incorrect legal advice as a result of the unauthorized practice of law.

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or is induced to make decisions about the disposition of his or her estate based on false or misleading information about Washington's probate system. The consumer may also be harmed by purchasing a trust document provided by the trust-mill company that is not appropriate for a Washington state consumer, such as when a template is used without due consideration for Washington laws. Even if the document is appropriate in general for a Washington consumer, the template may not fit the needs of the specific consumer, who is unlikely to realize the shortcomings of the trust document due to the inability of the average consumer to understand the legal ramifications of a trust document.

The Washington Attorney General, through the Consumer Protection Division, has taken action to deter the trust-mill industry through education, coordination with other agencies, and litigation. Recently, the Attorney General filed suit against Senior Estates Legal Services, Asset Preservation, Inc., Neil Adkins, and C. John Cannon, alleging violations of the CPA through the unauthorized practice of law and misrepresentations in the sales of trust documents.¹⁷

When the Attorney General brings an action for a violation of the Consumer Protection Act, she is authorized to seek injunctions, restitution for consumers, and costs and fees, including reasonable attorney's fees, incurred in pursuing the action.¹⁸ In a private action for violations of the CPA, a consumer can ask for injunctions, costs and fees, including reasonable attorney's fees, and treble damages in an amount not to exceed \$10,000.¹⁹ Additionally, RCW 19.86.140 authorizes a civil penalty of up to \$2,000 per violation for every person who engages in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.

Charitable remainder trusts — a new frontier?

A recent case may indicate that the estate-planning companies are becoming even bolder in their sales pitches — in addition to living trusts, they are now trying to sell consumers CRTs through in-home sales. The injury to clients who purchase CRTs without fully understanding the consequences can be enormous.

CRTs involve earmarking a portion of the person's estate to a charitable entity, with the principal of the earmarked amount not being accessible during the person's lifetime. In other words, the person who establishes a CRT is bidding farewell to the principal forever and cannot use it in the event of an emergency. A recently filed Bar Association complaint against a lawyer alleges that the lawyer affiliated himself with insurance agents who sold CRTs to seniors, and "reviewed" the applications for the CRT and CRT instrument. The complaint alleges that the lawyer never had any direct communication

with the clients to determine whether they understood the consequences of purchasing the CRT, specifically, that significant portions of their estate would be left to charity rather than family members, and that significant amounts of their total assets would not be accessible to them during their lifetimes.²⁰

Ethical lawyers can help stop the spread of trust-mill activity in Washington state

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agent from a trust mill, she is often told that the probate system benefits only lawyers or that lawyers discourage use of trusts because lawyers are afraid of losing the income generated by probate. The prospective client is regularly told that purchasing the trust document offered by the company will save her money, although she is not told that she most likely could obtain a living trust or a simple will that would involve minimal probate expenses directly from a licensed lawyer for the same or a lower cost.

Lawyers who engage in marketing strategies that encourage consumers to "avoid the horrors of probate" or similar messages feed into the misconceptions that allow the trust-mill industry to thrive. Consumers need rational, comprehensive information about the Washington probate system, and about the benefits and costs of using trusts or wills (or a combination of both) to allow them to make educated decisions regarding their estate planning. Lawyers can play a role by taking the time to educate clients about their options and by correcting misperceptions regarding probate in Washington.

Lawyers can also protect consumers

from the trust-mill industry by notifying appropriate agencies of unfair and deceptive business practices. Estate-planning lawyers are often the first to become aware of trust-mill activity, when a client either asks for a review of a document produced by a trust mill, or queries the lawyer about whether he or she should purchase a trust from an estate-planning company. A lawyer who is aware of potential trust-mill activity may report the individual or organization to the Consumer Protection Division of the Attorney General's Office; the WSBA Office of Disciplinary Counsel (complaints against lawyers involved in trust mills); or the WSBA Practice of Law Board (complaints about nonlawyers engaging in estate planning).

A lawyer who is approached by a trust mill offering an opportunity that sounds too good to be true should remember the old axiom — if it sounds too good to be true, it probably is. By analyzing business offers from financial advisors or estate-planning companies in the context of the RPCs and the CPA, a lawyer can avoid becoming involved in a venture that may be unethical and illegal. More importantly, the lawyer can protect consumers and clients from unscrupulous scammers who seek to exploit them. ✍


Kevin Bank has been a disciplinary counsel at the Washington State Bar Association since 1999, and prior to that, worked as a consumer-protection attorney for the Federal Trade Commission. The opinions expressed in this article are the author's and are not official or unofficial positions of the WSBA.

Cheryl Kringle is an assistant attorney general for the Washington State Attorney General's Consumer Protection Division. The author expresses her own opinions in this article, not the opinions of the attorney general.

¹ See Michael D. Carrico, *When Revocable Living Trusts are Appropriate for Your Clients*, WSBA CLE materials for "Living Trusts: The Consumer Controversy," Sept. 25, 1992, at 1-6, 1-8.

² See *In re Thomas D. Lofton*, Order Imposing Reciprocal Discipline, 317/871, March 10, 1998.

³ See Washington General Court Rule 24 (defining practice of law as "giving advice or




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counsel to others as to their legal rights and responsibilities" and/or "selection, drafting, or completion of legal documents . . . which affect the legal rights of an entity or person").

¹ See Order Approving Stipulation to Suspension in *In re Michael J. Scaringi*, 443/527, June 10, 2003. See also *Columbus Bar Ass'n v. Fishman*, 781 N.E.2d 204 (Ohio 2002) (one-year suspension imposed on lawyer who participated in living-trust mill; lawyer violated Ohio discipline rule prohibiting aiding unauthorized practice of law by allowing insurance agents to explain legal principles of wills and trusts to clients in a manner that directed the clients to choose the trust option).

⁵ See, e.g., *In re Scaringi*, *supra* n. 4 (by failing to review necessary documents and consult with his clients regarding estate-planning options, the lawyer violated RPC 1.3 (duty to act with reasonable diligence in representing clients), and RPC 1.4 (duty to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation)).

⁶ See *ABA Standards*, stds. 4.41(b) and 4.41(c) (1991 & supp. 1992). See also *In re Anshell*, 149 Wn.2d 484, 508, 69 P.3d 844 (2003) (presumptive sanction for lawyer who knowingly and negligently failed to perform services for client that resulted in serious injury is disbarment).

⁷ See *ABA Standards*, stds. 9.2-9.4.

⁸ See, e.g., *In re Scaringi*, *supra* n. 4.

⁹ See Deric J. Barnes, *Attorney Association with Living Trust Marketing Firms: Examining the Legal Issues*, 51 S.C.L. Rev. 1003 (2000).

¹⁰ RCW 19.86.080.

¹¹ See Barnes, *supra* n. 9.

¹² *Short v. Demopolis*, 103 Wn. 2d 52, 70, 691 P.2d 163 (1984).

¹³ *Id.* at 60-61.

¹⁴ *Id.* at 70.

¹⁵ *Bowers v. Transamerica Title Ins. Co.*, 100 Wn. 2d 581, 591-592, 675 P.2d 193 (1983).

¹⁶ *Cincinnati Bar Ass'n v. Kathman*, 748 N.E. 2d 1091, 1096 (Ohio 2001) (citing *People v. Cassidy*, 884 P. 2d 309, 311 (Colo. 1994)).

¹⁷ *State v. Senior Estates Legal Services, Inc.*, No. 03-2-33476-6SEA (King Co. Super. Ct., filed Aug. 13, 2003).

¹⁸ RCW 19.86.080.

¹⁹ RCW 19.86.090.

²⁰ See Formal Complaint in WSBA Public No. 03#00091 (filed October 20, 2003).

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Preserving Mediation's Greatest Attribute: Simplicity

by Fred R. Butterworth

These comments are not based on elaborate study, statistics, or scholarly research. They are based on personal observations.

As a form of maintaining civility, and keeping the sword in the scabbard, mediation has been with us for centuries. Families use it, churches use it, nations use it, and, most recently, lawyers have discovered it. Our courts have acknowledged the process as a useful method of clearing court calendars. Because of the nature of our legal system, with its universal feeling that every wrong must be corrected, the justice system suffers from a real case of overuse. Pressure on the justice system threatens the traditional methods of resolving disputes and legal issues in general.

Arbitration, in its various forms, has been one answer to the need for relief in the courts. Arbitration is itself a more traditional way of resolving legal matters: depositions, testimony under oath,

other discovery, court rules, trial advocacy, winners and losers. The decision is made based on the facts and evidence presented in a hearing. Appeals are sometimes a part of this process. Arbitrators are mobile, and not subject to a crowded court calendar and the availability of judges or courtrooms. Lawyers can be more selective in the choice of an arbitrator, and cases are resolved more rapidly. Make no mistake though — arbitration is a part of the court system, its rules, and its foibles. We lawyers know that, and we prepare cases under the rigors of court rules. The advantages are numerous and account for the popularity of arbitration to resolve disputes.

So where does mediation fit into the scheme? Begin with the simple fact that mediation is not a traditional part of the legal system. As lawyers, we have historically done well without mediation as an important part of our means of resolving disputes and representing our clients. However, as I noted earlier, the legal community has come to place much greater emphasis on mediation and has

more or less accepted the process as "ours." Mediation can be conducted almost anywhere. There's no need for a formal setting, no need for a particular format, no discovery, no testimony, no one under oath. All mediation needs is a valid dispute, people interested in resolving the dispute, and a neutral third party to direct these efforts. Mediation is at its most useful and compelling when it is simple, easy, time efficient, inexpensive, and prompt.

The threat to mediation — and I believe it to be a genuine one — is the legal profession's effort to make it just like the traditional methods of resolving disputes, a part of the complex legal system

Mediation is at its most useful and compelling when it is simple, easy, time efficient, inexpensive, and prompt.

that gave rise to mediation's usefulness. In other words, we're in danger of "loving it to death" and making it so complicated and legalistic that it no longer serves its purpose. The list of do's and don'ts that now surround mediation is becoming very intimidating indeed — special ethics rules, conflicts of interest, suits against mediators, the demand for mediators to testify in court — the list goes on and on. While it is important to have guidelines to protect the neutrality and fairness that should be associated with practicing alternative dispute resolution, we should seek to reach these standards in a simple, commonsense way without smothering this wonderfully simple process of mediation.

I often attend meetings and seminars that are crammed with the do's and don'ts of mediation. Every conceivable



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complication, legal trap, and rule is explained. Presenting these materials at such gatherings has become a cottage industry. At one particular meeting, after attending several sessions and being overwhelmed, I began to feel concern over the future of mediation as a viable process. So I asked a question: "Whatever happened to the idea that mediation became popular because it was easy, quick, relatively inexpensive, and not hampered by all of the traditional trappings of trial and arbitration?" The answer? "The question is not relevant or germane. Let's move on."

I have written this as a cry in the wilderness and a warning. Mediation is a wonderful and successful way to resolve disputes. But I hope that we, the legal profession, will not make it impossible to use by encumbering it with so many legal obstacles that it loses its effectiveness. Please, let's keep it simple. ✍

Fred Butterworth has over 40 years of experience as a lawyer and 13 years of experience as an arbitrator, mediator, and special master. He is with JAMS (www.jamsadr.com) in Seattle.

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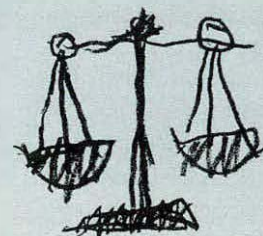
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To Be or Not to Be . . . Coached: A Profile of Coach Irene Leonard



Irene Leonard

by Mar Sulaika Ochs

"My goal is to transform the practice of law one lawyer at a time," lawyer, and coach for lawyers, Irene Leonard says.

"Thirty years ago," says Leonard, "lawyers had prestige, respect, and power. While lawyers will always have power, transforming the practice is more about respect."

Leonard became a coach just five and a half years ago, after 18 years as a real estate and business attorney. Now she is Washington's only International Coach Federation member coaching lawyers.

"I didn't give up law because I didn't like law," she says. "I was pulled toward becoming a coach because I had always pushed friends to take steps to improve their careers and I like to help people. That's also why I became a lawyer."

Irene Leonard could best be described as "a man in a size-four dress." That makes her laugh. Law is, after all, one of those solid bastions of our alpha male society. That some of this country's best lawyers are female hasn't yet transformed the profession from its patriarchal mode.

Irene Leonard can handle that.

"I work with incredibly satisfied people who realize they can have more, and I coach them to get there," she says. "They already have some success; they simply want more success. You have to be willing to be uncomfortable."

Try and tell a "bad lawyer joke" to Irene Leonard and see what happens. She'll probably laugh, but will also quickly add, "I hold my clients as creative, resourceful, and whole. That reflects my belief about the legal profession as well."

"That doesn't mean there aren't lawyers who don't communicate well, or lawyers who are not good lawyers. But those lawyers need not reflect badly on the profession as a whole. Lawyers are like any other group of people. There are good

ones and not so good ones."

Leonard's clients range across Washington and North America. "One of my clients typifies the profession," she tells me. "It's hard for him to say, 'I can't deliver the document to you on Monday.' I coach him so that he sees that the relationship with his client is more important. If he can't meet the deadline, he immediately calls the client. Most clients will understand if you just tell them what is going on. Then, they are happy to pay the bill!"

Does this work, or does this sound like, well, mumbo-jumbo?

Not to Simon Brownlie, a Bellingham lawyer and Leonard client who, when asked, had no hesitations about admitting he used a coach. He credits his work with Leonard over 18 months with growing his practice from one to three partners.

Originally a South African lawyer, Brownlie was determined in 2001 to build a successful practice in a new country.

"I saw the United States as the Big Sell. So when I signed up for a CLE in a teleconference she was giving, I knew as a foreigner I had entrenched beliefs and preconceived ideas. She forced me to confront those."

Coaching for Change tip # 21: Consider your limiting beliefs

Take some time to think about your beliefs regarding your practice that limit or stop you from achieving more. If you stop and really think them through, you may realize that you can do what you have not been doing. Expand your comfort zone.

The following are some common practice-limiting beliefs: That is not professional; It is easier to do this myself; I can't ask for favors; They might say no; I don't want to brag; I don't know how.

As he muses about the changes he has

Editor's note: Members have told us, in a variety of ways, they'd like to see more about members in Bar News. After all, it's a member magazine. So this month we're rolling out a new, occasional feature about interesting WSBA members, more or less randomly chosen. We're interpreting "interesting" from soup to nuts — it can be something about a lawyer's life, practice, or whatever you, as a reader, find of interest or worthy of note, and believe readers will as well. We encourage members to give us ideas. Better yet, send us the stories. From 750 to 1,000 words is a good place to land. Send your suggestions or stories to me at tradelaw@thompson-law.com. How often we run the feature will be determined by how many ideas we get for stories.



This month we start off with a piece on Irene Leonard, who, after a long and successful lawyering career, became a coach, which I gather is a sort of fengshui advisor for careers. Writer Mar Sulaika Ochs lets Leonard — and some of her clients — explain her business niche.

made to improve his law practice, Brownlie adds, "I wanted to return to something in more of a traditional role as a lawyer — an advisor, a counselor. There is a way of listening to people which is not practiced enough."

To practice that in himself, Brownlie, with Leonard's coaching, was forced to confront what didn't work for him anymore.

Citing Leonard's book, *Creating the Practice You Want*, Brownlie adds, "I know now I can create my own destiny as a lawyer."

"Technically, Simon is a very good lawyer; he knows how to draft an excellent agreement, and he's efficient," says Leonard.

I know that as a lawyer, it is not comfortable for us to ask for help. We have limiting beliefs

"By the time lawyers hire a coach, they have already made some unconscious decision for change. Because they have put their mind to changing their practice and then they focus on doing that, they begin to do things differently. Coaching is about structure — the structure to take action on a plan. That is one of the reasons it works. By working with me, I hold that structure for clients. Their insight is part of structure."

For Seattle's Camille Taylor Ralston, who wanted to become a "rainmaker" and elevate her practice to larger real estate transactions, working with Leonard means her "source" / book of business has more than doubled.

"She helped me think up, consider, and try out new ideas to realize my goals. She taught me how to quantify goals to measure success. Through persistent follow-up on Leonard's part, she made me try approaches with which I was *not* comfortable. For example, I was not comfortable calling up clients I hadn't worked for in a while — to shoot the breeze, find out what they were doing, and solicit work."

Coaching for Change tip # 20:

Get comfortable with self-promotion

People who thrive in business are the ones who naturally market themselves to the right people in the right way. Self-marketing does not have to be an onerous process if your marketing components are designed based on who you are. Know Yourself. What are your values? What are you passionate about? How do you operate? What are your strengths and weaknesses?

At first, Ralston, a partner at Montgomery Purdue Blankinship & Austin PLLC, wasn't sure she wanted to be identified for this article. She laughed and said, "that's because I think of my work with Irene as my 'secret weapon!'"

Successfully developing the marketing aspect has now garnered her recognition at that firm for bringing in business. "I was really not comfortable asking clients and other people, like brokers, to send me referrals. Through working with Irene, I started making all kinds of calls, and, gosh, it really worked, and people gave me transactions to work on and referrals that I would not otherwise have had."

Coaching for Change tip # 5: Defeat procrastination by following the theory, "Just Start!"

There is a distinction between "Just Do It" and "Just Start." If you have some matter on your desk that has been requiring your attention and you are ignoring it for whatever reason, pick up the file or the phone or whatever and just start on the matter

"I started my Law Practice Tips two years ago because I wanted to give something back, as well as create a marketing tool," Leonard says. "That is an approach to marketing I work on with my clients — to make it easy to come up with marketing techniques. I pay attention to what is going on with my clients and come up with a tip related to what is going on in their practice."

The tips became a way of thinking, and a way to transform that practice of law she is keen about.

"I don't like the football or sports analogy applied to coaching. It's not me. But if it is the image that works for people,

then think of Tiger Woods. He is at the top of his game — and he has a coach. He's not afraid to ask for help — and look at how successful he is!"

But how does coaching make Tiger Woods better at what he does?

"He just *is* better. We don't really know how it works, we just know it does."

But if we can deduce the impact on coaching through the stories of a couple of lawyers, can we conclude what the impact is on the whole profession?

"It's one lawyer at a time," she says, and smiles.

"Even at the beginning of my business I knew I wanted to work with lawyers, having been one. But I also knew I would have to be very good to coach lawyers. So when my own coach said to me over three years ago, 'What you really want to do is transform the business of law, Irene, I was not surprised exactly — but it was a breakthrough in my own visions and values.'

"Now," she continues, "I have a new client, a Detroit lawyer who specifically chose me to help him build his practice. He told me that if I could build a successful coaching practice then I was the coach to help him build a successful law practice."

Anyone who doubts the role of coaching in any business — never mind coaching in the legal profession — has only to look at the statistics by the International Coaching Federation. Five years ago, there were 2,000 members — now there are more than 6,000, and that number is growing. Somebody knows something about making something work.

"I know that as a lawyer, it is not comfortable for us to ask for help. We have limiting beliefs: *I should know how to do this.* I am finding more and more lawyers who do ask because it works."

Her eyes shine as she states, matter of factly, "When two people come together with common goals, magic happens. What I want to happen next for me as a coach is to work with an already successful law firm to see them have even more of that success — and magic." ✍

Mar Sulaika Ochs is a Seattle freelance writer. Irene Leonard's coaching work is featured on her website, www.coachingforchange.com.

The Benefits of Membership: What Can the WSBA Do for You?

by Carl J. Carlson and Other Members of
the WSBA Member Benefits Task Force

If you're like most Washington lawyers, you would be hard pressed to name many (or any) of the benefits and services the WSBA provides to you — despite the best efforts of the WSBA to publicize its programs in *Bar News* and on its website. There's nothing special about the WSBA in this regard. Think about the other associations you belong to, like the ABA or the American Automobile Association. They each provide a host of programs, discounts, and other bells-and-whistle benefits that most people never use.

Why don't people use association benefits more? Most likely because they can't keep track of what benefits are available. But, even when they do look, the offerings often aren't very useful in the member's day-to-day life.

The WSBA's benefits and services for its members — that's you, gentle reader — are different: they are not bells-and-whistles. The WSBA offers very practical programs that can greatly help a practicing attorney in his or her business and daily life. And, as if that weren't enough to put you on the edge of your seat while reading this, those benefits can all be readily located via the WSBA website (www.wsba.org). So you don't have to remember what they are.

A task force has been working! It has been a priority for recent Boards of Governors to increase the WSBA's usefulness to its members. As part of that effort, in May 2000, the BOG created a Member Benefits Task Force, chaired by Dale Carlisle of Tacoma. Spokane's Joe Nappi has since assumed the chair and has led the task force for the past two years. The task force expects that it will complete its work in 2004.

The BOG charged the task force to review the member benefits the WSBA pro-

vides, review what benefits other state bar associations provide, and investigate additional insurance and other programs that might be of value to Washington lawyers.

This article aims to highlight some of the newer benefits and services which the WSBA now provides to Washington lawyers, and to remind WSBA members of other programs that have been around for a longer time. We'll start with the newer programs:

Medical insurance. The task force gathered information from other states, conducted a survey of WSBA members, and reviewed earlier member surveys. The greatest unmet member need clearly was for medical insurance. Individual medical-insurance policies are not only expensive, but they can be hard to get, especially for attorneys or family members with histories of illness, or for attorneys in more rural areas.

The WSBA offers very practical programs that can greatly help a practicing attorney in his or her business and daily life.

Group medical-insurance policies for statewide populations aren't all that easy to get, either. The task force solicited all the major medical-insurance providers for proposals, and received proposals from two providers. On the task force's recommendation, the BOG in May 2002 contracted with Group Health¹ to provide a group medical-insurance plan to WSBA members and their families. That plan offers the alternative of either an HMO or a point-of-service plan. Importantly for many Washington lawyers, a "group" can

consist of a solo practitioner. Members can review the insurance coverage and benefits available, and get a rate quote, online (go to www.wsba.org, click on the "For Lawyers" tab, then scroll down the right bar to "Health Insurance").

Dental insurance. The new group medical-insurance program includes an option for dental insurance. The dental insurance is available, however, only to groups of three or more.

Long-term-care insurance. The Board of Governors in May 2003 approved a contract for Marsh Affinity Group to design and provide a long-term-care insurance program recommended by the task force. More than one insurance carrier will offer insurance under this program. WSBA members will receive some pricing benefit from being part of a larger group program. This insurance offering is so new that details are not yet available on the WSBA's website (they will be soon). In the meantime, you can get information and an application by calling Deborah Wade or Pam Blake at 800-552-7200.

Automobile insurance. In January the board approved a new member benefit — a sponsored automotive-insurance program through GEICO. Details will follow as they are developed.

Help for the small office: Law Office Management Assistance Program (LOMAP). The WSBA has for several years (predating the task force) offered LOMAP, aimed particularly at solo and small-firm practitioners. LOMAP offers a wealth of resources and expertise on law-office management. At the WSBA office, attorneys can review and borrow materials from a library of law-office-management books, and view a multitude of software programs in action (Abacus Law, Amicus Attorney, TABS III, Practice Master, and others).

LOMAP is also a low-cost consulting service. A LOMAP consultant can work with attorneys onsite or by telephone

consultation, to provide general "preventive maintenance" reviews; consultation on specific problems, systems, or procedures; reference materials for office and practice setup; and referrals to outside specialized consultants and vendors.

For more information on LOMAP, contact Pete Roberts at peter@wsba.org or 206-727-8237.

More help for the small office: "Law Office in a Box." Working with the task force, LOMAP has assembled, and now offers for sale, a complete package of software sufficient to set up a solo practitioner's law office. (See the article by Pete Roberts on p. 39 of the December 2003 issue of *Bar News* for a detailed description of the Law Office in a Box program.)

Help for the newer lawyer: Lawyer-to-Lawyer Program. The Lawyer-to-Lawyer Program fosters professionalism among members of the WSBA by helping newer lawyers learn the basics of "lawyering" from more experienced legal practitioners, and bridging the gap between law school and law practice. For more information, contact Pete Roberts, at peter@wsba.org or 206-727-8237.

WSBA credit union. In 2002, at the task force's recommendation, the Board of Governors approved the merger of the WSBA Credit Union with Credit Union Northwest (www.cunw.org), providing members with access to more outlets and ATM machines. All WSBA members and their employees are eligible to join Credit Union Northwest, which offers a variety of financial services, including checking and savings accounts, consumer loans, MasterCard, and IRAs.

Malpractice insurance. The WSBA has for many years sponsored a Lawyers' Professional Liability Insurance Program for members. Marsh & Associates² serves as the WSBA's broker for that insurance, and administers the program.

In 2002, the existing malpractice insurance carrier withdrew from the market. The task force worked with Marsh & Associates to locate and negotiate new coverage. The WSBA was able to work with the new carrier, Liberty Insurance Underwriters, Inc. (a Liberty Mutual company, rated "A, Excellent" by

A.M. Best Co.), to tailor a policy form with excellent terms. You can see a copy of the policy itself, and can complete an application for insurance, online (go to www.wsba.org, click on the "For Lawyers" tab, then scroll down the right bar to "Health Insurance").

Help with daily ethical issues. The WSBA provides two immediate sources of help with ethical questions that you might encounter. WSBA Professional Responsibility Counsel members answer the Ethics Hot Line weekdays during regular business hours, to discuss ethical issues with attorneys. If you need help thinking through an ethical question, call 206-727-8284 or 800-945-WSBA, ext. 8284.

The WSBA has recently added to its website all the WSBA's formal and informal ethics opinions (both published and unpublished) dating back to 1984. (Thanks, WSBA Professional Responsibility Counsel attorney Chris Sutton!) To access those opinions, go to www.wsba.org/lawyers/ethics/about.htm. The ethics opinions are word-searchable, and contain discussions on a multitude of ethical questions that attorneys confront on a daily basis.

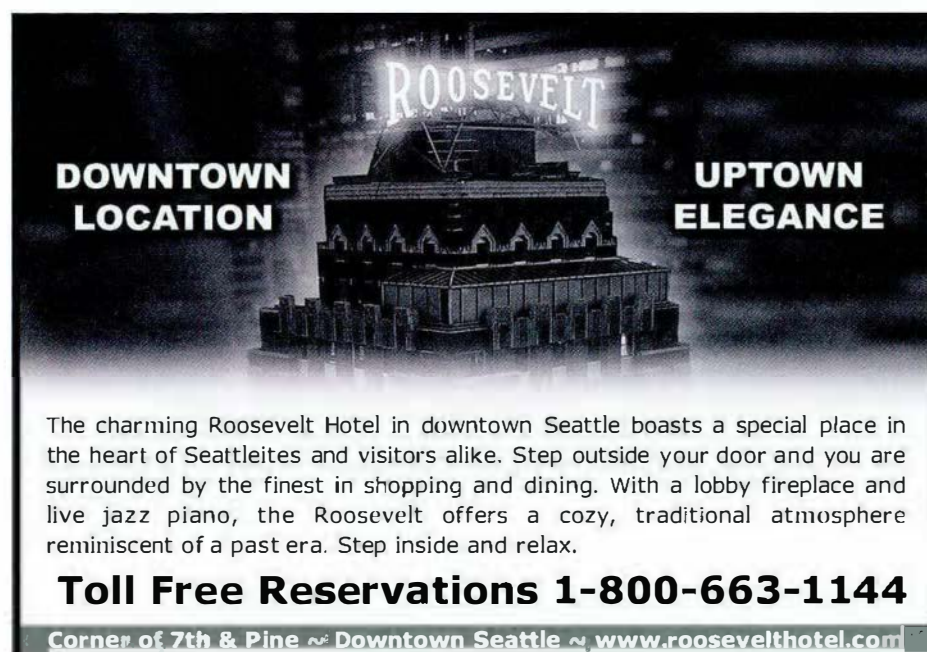
Lawyers' Assistance Program (LAP). No discussion of WSBA services would be complete without praising the Lawyers' Assistance Program. LAP on-staff counselors at the WSBA provide confidential

assistance with mental/emotional, drug, alcohol, family, health, and other personal problems. The extended staff includes LAP-trained peer counselors, lawyers who are available to support their colleagues through difficult times. LAP organizes or can direct attorneys to support groups and other groups of special interest to lawyers. LAP also offers a lending library of books, and newsletters on topics that include mental health, law practice, substance abuse, and other health issues. ✍

Carl Carlson is the 7th-Central District member of the WSBA Board of Governors and practices in Seattle. The other members of the Member Benefits Task Force are Joe Nappi (Spokane), Dale Carlisle (Tacoma), Alayne Pettyjohn (Seattle), WSBA President David Savage (Pullman), Jane Savard (Seattle), Anne Spangler (Tacoma), Glen Warren (Yakima), and Barbara Harper (WSBA staff).

¹ In the few areas of the state not served by Group Health, the WSBA's group medical insurance is provided by in-network providers from Virginia Mason and Everett Clinic. Unfortunately, the WSBA cannot offer its plan in Clark County.

² Formerly Seabury & Smith, which may be a more familiar name to many WSBA members.



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The Board's Work

by Lindsay Thompson

Olympia, January 7-8, 2004

Since pretty much forever the BOG has gone to Olympia for its January meeting. It's when the Legislature convenes, after all. When I started with *Bar News* in 1988, then-Governor Booth Gardner used to come over every year for a visit.

That tradition withered away, either because Governor Gardner stopped or because his successor, Governor Lowry, didn't start; I can't recall. Over time, January in Olympia has become the time for meeting with the Supreme Court and the Government Lawyers Bar Association.

This year a freak snowstorm in western Washington made travel problematic at best. President Dave Savage needed something like 15 hours to get from Pullman to Olympia; I just stayed home. But thanks to my crack investigative skills (calling up Executive Director Jan Michels and asking for a copy of her minutes) you get a report anyway.

Here, as they say on the BBC World Service, are the main points:

1. The nonprofit corporations bill that looked so snarky in December looked better in January. It was pulled off table status. After a brief discussion, the BOG voted to sponsor it in the Legislature, 11-0.

2. Four bills treating jury service were considered. One would eliminate drivers' license records from jury source lists. One would create a service exemption for caregivers. One would separate jury pools for King County's two courthouses. One would define jury terms. None having reached their final draft form, the BOG took no formal action, but concern was expressed that dividing King County's jury pool might create racial or economic disparities.
3. The BOG held a brief debate on double taxation and attorney liens; they voted to be against double taxation of jury awards without supporting any of several competing bills specifically.
4. Tort-reform legislation continues to evolve. Nothing to act on yet, so they didn't.
5. The MCLE Board proposed giving CLE credit for judging law school moot court competitions; the BOG said OK.
6. The mother-of-all cats-versus-dogs debates — interviewing witnesses in criminal cases — came back. The BOG tweaked the language of proposed rules some more and voted to pass on revision of CrR 4.11 to the Supreme Court. The amendment of CrR 4.7 was deferred until July, because the Court

Rules Committee felt a new approach to the subject needed devising.

7. The BOG approved a recommendation for a rule change on unpublished appellate opinions, which these days seem to outnumber published ones, and yet you can read them online even though they aren't published ... you get the idea.
8. The BOG told the Rules Committee to work on civil discovery rules next in their cycle of revision and updating, but not to be bound by our traditional tracking of federal court rules when it comes to laydowns of discovery early in a case. CR 37 conferences and discovery disputes remain a favorite member contact sport.
9. The WSBA's Member Benefits Task Force recommended sponsoring GEICO's car insurance plan. The BOG agreed, and you can get the gecko for 8 percent less than TV viewers.
10. The WSBA's Legal Services to the Armed Forces Committee persuaded the BOG to ask the MCLE Board to exempt active-duty military lawyers who are also WSBA members from meeting CLE requirements. Additionally, the BOG approved a bylaw amendment that allows active-duty military lawyers to waive WSBA license fees and remain active members for up to five years.

Next stops on the road show: Seattle, February 27-28; Seattle Southcenter, April 2-3; Ocean Shores, May 14-15; Yakima, June 11; Coeur d'Alene, July 30-31; and Seattle, September 16-17. Meetings are open to members except for an hour's executive session at the start of each meeting. Y'all come. And as Alice Roosevelt Longworth used to say, "If you haven't got anything good to say about anyone, come and sit by me." 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.



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Addressing a Troubling Increase in Attorney Requests to the MCLE Board

by Terri W. Malolepsy

I have recently retired from two three-year terms on the Mandatory CLE (MCLE) Board for the Washington State Bar Association. Serving on the board for six years has given me the opportunity to work with many dedicated people, and has especially given me a greater appreciation for how hard the staff at the WSBA works to the Bar's benefit. My experience has also raised some serious concerns in my own mind about the professional and personal stresses that faceso many members of our Bar. The MCLE Board has asked me to express those concerns to the members on their behalf.

The problem

The MCLE Board meets periodically to review requests by attorneys regarding compliance with the MCLE regulations. In 2003, the MCLE Board saw a staggering increase in attorney requests for CLE exemptions of varying types, waivers of fees, and other policy questions directed to the board. For example, in 2002, the board had *five* board meetings that each lasted approximately four hours, while in 2003, we had *eight* board meetings, each lasting approximately six hours! The increase in number and length of MCLE Board meetings reflects the huge increase in attorney requests to the board.

This increase in numbers of Bar members contacting the MCLE Board regarding their inability to timely meet the CLE requirements or to pay the fees connected with late reporting has been of great concern to the MCLE Board. It indicates to the board that more and more Bar members are having increasing difficulty in maintaining the minimum MCLE requirements to keep their licenses to practice law active, and many appear to be in trouble professionally and/or personally.

The board has learned from hundreds of letters that a large number of Bar members are out of work, or having trouble finding work, are working part-time, are

sick, or are taking care of sick spouses and elderly parents or children. These stresses appear to be affecting our ability to give our best representation to our clients. The board is concerned that members of the Bar do not know where to go for help and are not aware that the Bar has resources that can offer help to them.

In response to these concerns, the board met with Barbara Harper, director of the Lawyer Services Department, and Pete Roberts, from the Law Office Management Assistance Program. The board discussed with them ways in which it could respond to those Bar members who might need help without compromising the attorneys' confidentiality.

The WSBA offers help

We learned from them that help is available. The Lawyers' Assistance Program and the Law Office Management Assistance Program, through the Lawyer Services Department, offer individual counseling, drug and alcohol counseling, law-office management, fee arbitration, mediation services, and ethics hotline consultations. The services are provided on a sliding fee schedule that ranges from

free to \$99 per hour. No lawyer will be turned away for inability to pay. Confidentiality is strictly maintained.

Because all information that is reviewed by the MCLE Board is confidential, the board cannot refer members directly to the Lawyer Services Department; however, the board has decided to send all members who have contacted the MCLE Board regarding their MCLE compliance an informational letter regarding the services that are available through the WSBA Lawyer Services Department.

The board also recognizes that in today's difficult economic climate, some members are having trouble paying for CLE credits. The MCLE Board is committed to providing members with as much information as possible regarding low-cost or no-cost CLE opportunities, and is exploring ways with the WSBA CLE Department to develop such a list. *EW*

Terri W. Malolepsy is an assistant attorney general for the Washington Attorney General's Office. She can be reached at terrim@atg.wa.gov.

Contact the Law Office Management Assistance Program (LOMAP) at 206-727-8237 or peter@wsba.org. The Lawyers' Assistance Program (LAP) can be reached at 206-727-8268. All calls are confidential.

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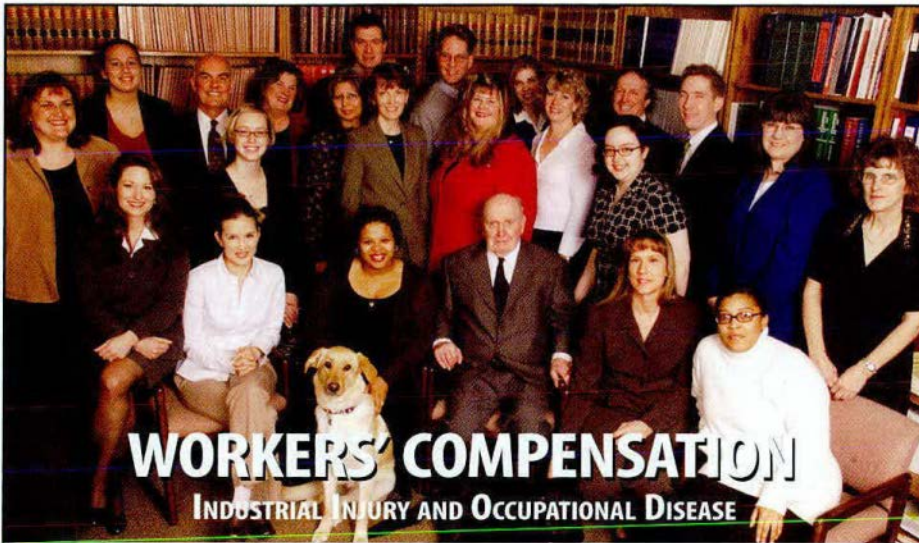
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Date of first use: Dec. 31, 2003

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

Congratulations to **Jamie Imboden** and his wife, **Shannon**, on the arrival of their son, **Noah James**. Jamie is again playing for the Shamrock Softball team. Last year the team took first place in the state of Washington in the National Softball Association (the team did not have sufficient funding to participate in nationals). Jamie is also taking over the Castle Rock municipal prosecutor duties from **Craig McReary**, and just in time. For the first time in years, Castle Rock is about to have a jury trial. **Dennis Ott** is opposing counsel.

The local bar presented a CLE in mid-January entitled Judges' Evidentiary Pet Peeves. It drew one of the largest turnouts to date for a local CLE (approximately 35 attendees). Superior Court Judges **Steve Warning** and **Jim Stonier** described what makes them peeved on the bench, while Judge **Jill Johanson** seemed peeved that Judge **Jim Warne**, rather than she, was lying on a sunny beach in Mexico.

Defense attorney **John Hays** and Prosecuting Attorney **Sue Baur** were featured in a newspaper article reporting on overcrowded courts, while Judge Warne said, "You think the courts are overcrowded? You should see the beaches!"

Dainen Penta recently left Cowlitz County Title Company and has hung up his own shingle for a general practice emphasizing bankruptcy, taxation, trusts and estates. Dainen states that he'd love to handle any of the local bar's research, writing, contract, project, and overflow work. Dainen can be found at 880 11th Avenue, Suite 103, Longview, WA 98632; phone: 360-414-9292, fax: 360-423-7170; e-mail: dnplaw@earthlink.net.

The bar association is sad to announce the closing of the venerable staple of the local trial lawyer's lunch diet . . . Charlie's

Restaurant. For years, Charlie's has shared a parking lot with the Cowlitz County Hall of Justice. The *CWBA News* will be accepting nominations for a new home for frozen cucumbers, \$2 slices of cheese, and laminated menus featuring Dennis Ott.

Information for the May issue must be received by March 15 at CWBAnews@hotmail.com.

Judiciary Report

by Lindsay Thompson

King County Superior Court Presiding Judge **Richard D. Eadie** has been elected president of the National Conference of Metropolitan Courts, an independent charitable, educational, and research organization founded in 1963 by Supreme Court Justice **Tom Clark**. It is made up of presiding judges and court administrators of major trial courts in the nation's largest metropolitan areas, and seeks to promote the effective administration of justice. The NCMP will hold its annual conference in Seattle, September 29-October 4.

Governor **Gary Locke** has appointed Snohomish County District Court Judge **Stephen Dwyer** to complete the Superior Court term of Judge **Joseph Thibodeau**, who has retired. Dwyer has served as a district court judge since 1994. In 2001, WSTLA named him its Judge of the Year; in 2002 he won the WSBA's Outstanding Judge Award.

Seattle Municipal Court's judges have elected their executive committee for 2004: Judge **Fred Bonner**, presiding; Judge **Ron Mamiya**, acting presiding; Judge **Jean Rietschel**, past presiding; and **Yolande Williams**, court administrator.

Court of Appeals Judge **Karen Seinfeld** has announced her retirement, effective May 1. After 12 years, Seinfeld said the demands of the job take so much time there is little time for any personal activities or interests, but that she had enjoyed the privilege of helping shape the law for future generations. Prior to joining Division II in 1992, Seinfeld was a Pierce County Superior Court judge, a Division II commissioner, a Pierce County deputy prosecutor, and an attorney for the county council. She was the first woman to serve as a commissioner in the Tacoma-based court.

Kitsap County Report

by Ione George

Kitsap County Bar Association has chosen its officers and directors for 2004. They are: president, **Ione George**; vice president, **Ron Anderson**; secretary, **Jeff Jahns**; treasurer, **Ed Wolfe**; trustees: **Kathy Schultz** (last year's president), **Christian Franz**, **Greg Wall**, and **Alyse Collins**.

Pierce County Report

Laura L. Weselmann is a partner in Tacoma's Harlowe & Hitt LLP firm, effective January 1, 2004.

Spokane County Report

Prosser native **Marletta Giles-Ward** has joined Kirkpatrick & Startzel, PS, a Spokane firm. She holds undergrad and law degrees from Gonzaga University, has previously worked in the Attorney General's Office and with another Spokane firm, and practices in the areas of criminal law and insurance defense.

Washington Association of Prosecuting Attorneys Report

Walla Walla County Prosecuting Attorney **James I. Nagle** has been elected president of the Washington Association of Prosecuting Attorneys. Other newly elected officers are: Kitsap County Prosecuting Attorney **Russell D. Hauge**, vice president; Lincoln County Prosecuting Attorney **Ronald B. Shepherd**, secretary; San Juan County Prosecuting Attorney **Randall K. Gaylord**, treasurer. These terms began January 1, 2004.

Thurston County Report

by Fred D. Gentry

TCBA's annual Christmas luncheon was held December 5, 2003, at the Olympia Golf & Country Club. For the last 10 years, under the able leadership of **Frank "Santa Claus" Groundwater**, TCBA members have donated money (\$2,100 this time) and have volunteered time to shop for 21 needy families for Christmas. Kudos to Frank for leading us. **Rob "Alan Jackson" Hill** provided entertainment.

Jeanne Sockle did it the hard way (by clerking for **Frank Morris**) — congrats to Jeanne for passing the summer bar exam and becoming one of the new TCBA rook-

ies. She will join Frank in his practice. Other new Thurston County lawyers include **Dario de la Rosa**, **Steven N. Driggers**, **Alicia A. Kinney**, **Jamie I. Richardson**, **Justice Joy R. Rillera**, **Thaddeus D. Sikes**, **Joshua D. Smdt**, **Michael J. Urbaitis**, and **Annette Mikow**. Each was introduced to Judge **Daniel J. Berschauer** by TCBA president **Cecelia Clynych** at a swearing-in ceremony.

The Morgan Hill Annual Christmas Bash took place December 19 at the Jacob Schmidt Mansion. As usual, it was a smashing success, with no significant injuries or arrests.

Whatcom County Report

by Mick Moynihan

Old lawyers never die. They go to work for **Jake Smith**. At this time, **Lynn Seelye**, an old classmate of Jake's, and **Bob Burks**, who is just plain old, are practicing in Lynden. Actually, Bob Burks said that he will keep practicing until Washington State beats Washington in the Apple Cup. He won't be retiring anytime soon.

Karen Funston and **Phil Buri** have set up practice in **Richard Kimberly's** former office. After changing the ownership and décor, they hope to hire a secretary. Their practice will be generally business related.

And, continuing the exodus from the Bellingham mega-firms (a mega-firm in Bellingham is an office with more than four lawyers), **Jennifer Willner** will be doing labor and employment law in the Crown Plaza, and **Heather Wolf** expects to make a living with Brownlie & Evans in the Bellingham Towers.

Gene Moses, after many years at the Crown Plaza, has located just above Sheenan's Irish Pub for convenience. Sharing space with Gene is **Hugh Lewis**, who is recovering nicely from surgery. And **Leon Henley** was commenting how large his house seemed and how quiet it was now that the last of his kids had gone off to seek fame and fortune.

Judge **Theresa Pouley** of the Lummi Tribal Court is now well situated in the new Tribal Courthouse, complete with two brand-new courtrooms and sufficient office space for the entire staff, including the Drug Court.

I have seen **Drew Pettus** and **Bill**

Johnston regularly at Gold's Gym. They are both staying in shape and following a planned regimen. On the other hand, **Matt Peach** thinks that all he needs to do to stay in shape is keep paying his monthly dues.

In Memoriam

Remembering our colleagues and friends

J. Pauline Corthell

A woman lawyer when there weren't many, Pauline Corthell (formerly Nightingale) joined the WSBA in 1959 after graduating from Whitman College and the University of Chicago School of Law. Her daughter, Noel Nightingale, remembered her as a longtime Bar member and matriarch to a large extended family of brothers, sisters, nieces, and nephews.

Pauline Corthell was born March 25, 1934, and died December 19, 2003, aged 69.

Charles B. Jackson

Lindsay Thompson remembers a friend

Charles Jackson came to the law after a career as an editor in the publishing field and as a teacher. In 1980 he received a graduate degree from Oregon State University; his law degree came three years later from the University of Oregon. He joined John Linde's law office in Friday Harbor in 1987, and practiced there for the rest of his life.

Charles died of complications following heart surgery January 7 in Seattle. In Friday Harbor, Judge Stewart Andrew announced his death from the bench. The news shocked his friends in the tight-knit community; the surgery had been expected to be routine.

At one time or another, Charles served on the San Juan County Commission; was president of the San Juan County Bar Association; and served as counsel to the Port of Friday Harbor. Port Director Steve Simpson told *The San Juan Journal* that Jackson, with whom he lunched once a month, "was always kind of like the English professor — very meticulous. When I'd send him an ordinance to review I felt like I was submitting a paper. It would come back with everything but the grade, full of red marks. But I appreciated his style and caution. He taught me to read

contracts line by line, which I don't like doing."

His colleague John Linde called Charles "a gentle person" who was "as honest as the day is long." One story friends tell is that when his and neighboring lawyer Tony Vivenzio's home were among those vandalized by some teenagers, Jackson and Vivenzio represented them and helped them make amends to their victims.

I met Charles when he joined the WSBA's Editorial Advisory Board in the mid-90s. He brought his professional skills to bear on *Bar News* immediately. His service was so exceptional he was appointed chair of the board in 1994 and 1995. He had a quiet, unruffled demeanor that was enormously valuable during long stretches when *Bar News* had few allies and some one — WSBA administration, senior staff, or Board of Governors members — was always circling the magazine looking to get control of it.

We talked frequently after he left the EAB and, later, when I left *Bar News*. We talked about cases we were handling, and the joys of research — mastering the sixth sense of finding the case not digested in the obvious place, and savoring the juggling of facts and law to make a creative legal argument. But above all we loved talking about *Bar News*, writing, and editing. Last fall I thought I had just about talked him into writing the Around the State Report for San Juan County. He said he had some things to get done first. I guess his operation was one of them. I will miss him. I hope one of his friends in the local bar will pick up the county report in his memory. He was a *Bar News* man to his toes.

His high-school sweetheart and wife, Phyllis; five daughters; and a number of grandchildren survive Charles Jackson. He was 67 years old.

John P. Mucklestone

William G. Suttell of Mercer Island provided the following remembrance:

December 2, 2003, I woke to some very sad news. My daughters informed me their Grandpa John P. Mucklestone had passed away.

John was a WSBA member for over 50 years. Most of that time he practiced in

what he called a "mom and pop" operation with his wife, Patricia Mucklestone. Fresh out of law school, I practiced with them for a few years. I learned a lot about the practice of law and a lot about John.

John loved being a lawyer. His clients didn't just have a cause of action; they had a cause, which John would fight for to the best of his ability. I remember one particular client whose case went on for years. It seemed John made a weekly trek from Seattle to Bellingham for the Whatcom County motions calendar every Friday for this client. The case went from Superior Court to the Court of Appeals and back to both again. At one point the client gave John a gold pen engraved, "Never Say Die." It ended up the only fee the client paid, but John took solace and pride in a job well done, and never felt cheated.

He also loved trying a case. He loved the drama of examination and cross-examination, the theatrics of trial. He would try a case any chance he had. Once he agreed to help out a fellow lawyer defending a client who had once been sued by Chevron in federal district court. The other attorney failed to do any discovery, and the discovery deadline passed. He came to John two weeks before trial. A large and well-prepared firm, of course, represented Chevron. Armed with only what his client gave him, John tried the case for a week and won. The verdict was upheld on appeal.

John taught me a lot of practical things about the law. He taught me to treat all the people at the courthouse respectfully. I learned professional courtesy is a two-way street. Excusing or extending a deadline for another attorney is a favor you will need to ask in the future.

I learned to listen to the judge during oral argument and if it seemed to be going my way, to just shut up and sit down.

In a close case, I learned that if the judge rules in your favor on a motion and the other side keeps arguing, thank the judge and leave the courtroom ASAP before the judge's mind changes.

These are just a few of my memories of my friend John. He is survived by his wife, Patricia — a lawyer — and four children, three of whom are lawyers: Johnny, Jeannie, and Jimmy. I want to thank them for hav-

ing shared their father with me. They, and the Bar, have suffered a great loss.

**Mr. Mucklestone's obituary appeared last month in Bar News; this remembrance was provided later by a friend of Mr. Mucklestone's. Also, because of incomplete information, Bar News failed to mention all of Mr. Mucklestone's children in last month's obituary. They are correctly identified above.*

Walter J. Robinson Jr.

Yakima lawyer built one of eastern Washington's largest firms

Walter Robinson was born on a ranch and wheat farm in southeast Washington. At WSU he was elected to Phi Beta Kappa; he received his law degree from UW in 1935. As was the case for so many lawyers of his era, World War II intervened and he spent five years in the Army. Returning to Yakima, he practiced there for 53 years, serving as a deputy prosecutor and legislative counsel in Olympia. He and John Gavin formed a law partnership in Yakima in 1947, and they worked together for the next 45 years. Robinson became a noted probate and estates lawyer, and was a member of the American College of Probate Counsel, now the College of Trust and Estate Counsel.

Robinson had a hand in every civic arena in Yakima at one time or another, and the city council honored him on his 90th birthday for his long service. He and his wife, Kay, adored travel and managed to visit six continents.

Survivors include his wife of 66 years, Kathryn Boston Robinson; three children; six grandchildren; a brother; and two sisters.

Walter Jesse Robinson Jr. was born in Pomeroy May 15, 1911, and died in Yakima December 2, 2003, aged 92.

Michael J. Welch

Friends and colleagues of Mike Welch presented the following remembrance

After a courageous six-month fight with thyroid cancer, Mike Welch, age 58, passed away peacefully on December 1, 2003, surrounded by his family.

His wife, Pam, and his three children, Amy, Katie, and Michael, survive Mike. He

is also survived by his parents, John and Bernice Welch; his siblings, Pat, Mary Mastro, Marty, Terry, Tim, Dick, and Tom; his stepsons, Kelly, Kyle, and Justin Bland; and his granddaughter, Taylor Bland. Also surviving him are numerous aunts, uncles, cousins, nieces, and nephews.

Mike was born on July 24, 1945, in Seattle, to Irish-Catholic parents. He was the first of eight children, seven boys and one girl. He attended St. Therese Grade School, O'Dea High School (1963), Seattle University (*Magna Cum Laude*, 1967), and the University of Washington School of Law (1970).

He went to work as an assistant attorney general for Slade Gorton in 1971, handling workers' compensation cases for the Department of Labor and Industries. He provided advice to the department, tried cases before the Board of Industrial Insurance Appeals, and also handled appeals in almost every superior court in the state. In 1976, he entered private practice in Tacoma. In 1978, he associated with Dave Condon, and founded Welch & Condon, where he would practice for the next 25 years, emphasizing workers' compensation, social security disability, and personal-injury cases.

Mike was also very active in WSTLA, serving as chair of its Workers' Comp Section; he sat on the WSTLA Board of Governors for many years; he was the WSTLA vice president legislative, a founding Eagle member, and a contributor to the WSTLA Amicus Foundation. He dedicated many years of service to LAW PAC and FORUM. In recognition of Mike's work on behalf of injured workers, and in light of the significant effort necessary from those involved in the system to work toward changes, legislative and otherwise, to better the plight of the injured worker, WSTLA has announced the creation of a new award named after Mike to be awarded to those persons who exhibit that level of extraordinary energy, effort, and commitment, long epitomized by Mike, in helping to protect and improve the workers' compensation system for injured workers.

Mike was, above all, a good and decent person who loved people and valued relationships. He was a caring son, a role model for his younger brothers and sister, an in-

involved and focused dad, a quality lawyer dedicated to the welfare of his clients, and a generous and loyal friend. He touched many during his life who will always remember his strong character and integrity, his infectious sense of humor, and his gregarious laugh. Mike will be missed by many of us. His memory will be within us forever.

Alton S. White Jr.

WSBA member Barbara Ralphs presented the following remembrance of her husband

After service in the U.S. Army, Alton White was a Realtor for over 30 years, and headed the Realty Department at Tacoma Community College. He practiced law until shortly before his death from multiple cancers. His wife, attorney Barbara Ralphs, practiced in the same building as he did in Renton, in a separate practice. Having retired in 2002, she has relocated to Chelan, where she and her husband summered for many years. White was noted for his excellent sense of humor, love of life, religious faith, and interest in astrology.

Survivors include his wife, two children, one grandchild, and one great-grandchild; and his wife's five children and grandchildren.

Alton Sanford White Jr. died in Renton September 14, 2003, aged 76.

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

Judge **Thomas J. Majhan**, Jefferson County Superior Court, Port Townsend, admitted May 13, 1977, died January 18, 2004.

Jacqueline Newcomb, Spokane, admitted November 20, 1990, died January 1, 2004.

Theodore E. Ripley Jr., Port Angeles, admitted March 6, 1967, died January 9, 2004.

De'Wayne Taylor, Bremerton, admitted June 19, 2000, died December 31, 2003.

Roger Lee Williams, Renton, admitted September 27, 1957, died January 9, 2004.

Disciplinary Notices

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

Grosvenor Anschell (WSBA No. 9756, admitted 1954), of Bellevue, was disbarred effective May 29, 2003, by order of the Supreme Court following a default hearing. This discipline was based on his conduct in 1993 through 1997 involving immigration and escrow matters. For additional information, please see *In re Anschell*, 149 Wn.2d 484, 69 P.3d 844 (2003).

Matter 1: In 1993, Mr. Anschell agreed to represent Mr. D in his request for a grant of immunity from the I.N.S. Mr. D had married and then divorced, but continued to live with Ms. B, a citizen of the Philippines. Mr. D then obtained an alien fiancée visa for Ms. B's niece, and they were subsequently married. Mr. D then divorced the niece and wanted a grant of immunity to report the niece to the I.N.S. Mr. Anschell wrote a letter to the I.N.S. requesting the grant of immunity.

In 1995, the I.N.S. issued notice of intent to rescind the niece's permanent-residence status based on a fraudulent marriage. The niece then retained Mr. Anschell to represent her in the rescission case. Mr. Anschell did not discuss this conflict of interest with either of his clients. Mr. Anschell did not respond to the I.N.S. rescission notice, and the I.N.S. rescinded the niece's status and terminated her right to be employed in the U.S. A year after the decision, Mr. Anschell prepared documents to adjust the niece's status. In these documents, Mr. Anschell answered no to questions asking whether the niece had ever procured a visa by fraud or had ever been the subject of immigration proceedings. When Mr. D learned that Mr. Anschell represented the niece, he filed a grievance with the WSBA. Mr. Anschell told the WSBA he would withdraw, but did not do

so. Mr. Anschell requested, and the court ordered, that the niece be voluntarily deported. He then waived the niece's right to appeal.

Matter 2: In 1996, Mr. Anschell agreed to act as the closing escrow agent for two residential property transactions. The first sale closed in February 1996, but the second was delayed when the seller died. In June 1996, the parties signed the documents for the second sale and Mr. Anschell completed the HUD-1 Settlement Statement (statement). The statement did not include a \$20 disbursement Mr. Anschell had made the day prior to sending the statement to the lender. On June 20, 1996, Mr. Anschell received the loan proceeds and a check from the purchasers. Mr. Anschell did not deposit the purchasers' check into his trust account until July 3, 1996. Although Mr. Anschell was aware of the disbursement amounts by June 20, he made the payments between June 20 and August 19. He paid off the first mortgage on July 29, increasing the pay-off amount. Mr. Anschell prepared the final HUD-1 form more than a year after the sale closed, and the form was not accurate. As of August 1996, Mr. Anschell had not paid the title and mortgage-insurance premiums. In December 1997, Mr. Anschell deposited \$300 of his own funds into the trust account to make the premium payments.

Matter 3: On March 24, 1997, while in court for another matter, Mr. B asked Mr. Anschell to represent him. Mr. Anschell agreed, filed a notice of appearance, and obtained an order allowing a brief to be filed on April 28. The forms Mr. Anschell filed contained the client's address. Mr. Anschell did not contact his client or file the brief. In June 1997, the court ordered the client deported. Mr. Anschell received a copy of this decision, but did not send it to his client. The I.N.S. went to the address on the forms and took the client into custody. The client retained new counsel and unsuccessfully attempted to re-open the deportation proceedings. Mr. Anschell did not promptly or fully cooperate with the Office of Disciplinary Counsel's investigation.

Mr. Anschell's conduct violated RPCs 1.9, prohibiting lawyers from represent-

ing a person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the lawyer's former client; 1.3, requiring lawyers to diligently represent clients; 4.1(a), prohibiting lawyers from making false statements of fact or law to third parties; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; 1.4, requiring lawyers to keep their clients reasonably informed of the status of their matters; and 1.14, requiring lawyers to protect client funds; and RLD 2.8(a), requiring lawyers to cooperate with disciplinary investigations.

Fred Tausend, Jason Holtman, and Jean McElroy represented the Bar Association. Mr. Anschell represented himself. Thomas J. Greenan was the hearing officer.

Suspended

Thomas J. Brothers (WSBA No. 9653, admitted 1980), of Lynnwood, was suspended for one year and reprimanded, effective June 12, 2003, by order of the Supreme Court following a hearing. This discipline was based on his conduct in an estate matter in 1996.

In 1994, Mr. Brothers prepared a living trust for Ms. H. In 1996, Mr. Brothers created an irrevocable living trust for the client, naming one of her two sons as the trustee and leaving all of the property to him. In 1996, Ms. H decided to sell her home. Mr. Brothers discovered that in 1990, Ms. H had conveyed her home to another living trust created earlier by another lawyer. Ms. H wanted the home transferred from the earlier trust to the 1996 trust. On July 2, 1996, Mr. Brothers and the trustee entered into a fee agreement for the property transfer. The written fee agreement stated that the fee would be one-third of the value of the house for "all necessary legal services to clear title." Mr. Brothers's paralegal prepared a quitclaim deed and a request for distribution of \$36,663. The client signed these documents. On July 29, 1996, Mr. Brothers deposited the \$36,663 into his trust account and then distributed the fee to himself and his paralegal. At this same time, Mr. Brothers charged other clients \$50 to prepare quitclaim deeds. Just after

the disciplinary hearing, Mr. Brothers sent the trustee a full refund with interest.

Mr. Brothers's conduct violated RPCs 1.5, requiring lawyers' fees to be reasonable.

Henry Jameson and Randy Beitel represented the Bar Association. Leland G. Ripley represented Mr. Brothers. Thomas J. Greenan was the hearing officer.

Suspended

John L. McKean (WSBA No.13294, admitted 1983), of Moses Lake, was suspended for six months by order of the Supreme Court following a hearing, effective March 26, 2003. Mr. McKean returned to active status on September 29, 2003. For additional information, please see *In re McKean*, 148 Wn.2d 849, 64 P.3d 1226 (2003). This discipline is based on his business transaction with his client and failure to properly administer his trust account in 1997.

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

In November 1997, realizing that he would be unable to recoup the "loan" of estate funds, Mr. McKean borrowed

\$23,000 and reimbursed the estate account. The clients retained new counsel, who contacted the Bar Association. The Bar Association auditor found that Mr. McKean's trust account had errors, missing records, and at times a negative balance. Mr. McKean also used his trust account as his general business account for approximately two weeks.

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

Philip E. Cutler represented the Bar Association at hearing. Douglas Ende represented the Bar Association on appeal. Leland Ripley represented Mr. McKean at the hearing. Mr. McKean represented himself on appeal. J. Donald Curran was the hearing officer.

Reprimanded

I. Luke Kim (WSBA No. 28330, admitted 1998), of California, received a reprimand on July 25, 2003, following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in 2002 during an arbitration hearing.

In March 2002, Mr. Kim represented clients in an arbitration hearing. One of the issues in the hearing was whether Mr. Kim had been present during a meeting with an insurance adjuster. Mr. Kim testified at the hearing about this meeting.

Mr. Kim subpoenaed Mr. G to testify at the arbitration. When Mr. G arrived, Mr. Kim had a private conversation with him. Following this private conversation, Mr. Kim told the arbitrator and opposing counsel that Mr. G had received an emergency call and had to leave without testi-

fying. This statement was not true. The opposing party called Mr. G and learned that there was no emergency call. Mr. G returned to the hearing and testified that Mr. Kim had told him to leave. Mr. Kim admitted his conduct and made an apology.

Mr. Kim's conduct violated RPCs 3.3(a), prohibiting knowingly making a false statement of fact to the tribunal; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; and 3.7, prohibiting lawyers from testifying in proceedings in which they represent a party.

Christine Gray represented the Bar Association. Mr. Kim represented himself.

WSBA Service Center

800-945-WSBA
206-443-WSBA

E-mail: questions@wsba.org

Representatives are available to assist you from 8 a.m. to 5 p.m. PST, Monday through Friday.

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 five to 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 as 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, WSBA president; Andrea Brennecke; Bryce Dille; Randolph Gordon; and Fawn Sharp.

Board for Court Education*Deadline: May 21, 2004*

The WSBA Board of Governors will be nominating one WSBA member who will be appointed by the Supreme Court to serve a three-year term on the Board for Court Education. The three-year term will commence July 1, 2004 and continue through June 30, 2007. A written expression of interest and a résumé are also required in the event that the incumbent elects to seek reappointment.

The Board for Court Education was established by Supreme Court order, and is charged to identify the educational needs of trial court judges and court personnel, to coordinate educational programs and services, and to recommend programs and budget to meet the educational needs of the Washington judiciary. It is a 15-member board that meets four times a year. For additional information, visit www.courts.wa.gov/programs_orgs/pos_bce.

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

Commission on Judicial Conduct*Deadline: April 23, 2004*

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a four-year term on the Commission on Judicial Conduct. Two positions are available: one as a member and one as an alternate. A written expression of interest and a résumé are also required in the event that the incumbents elect to seek reappointment.

The goal of the commission is to maintain confidence and integrity in the judicial system by seeking to preserve both judicial independence and public accountability. The public interest requires a fair and reasonable process to address judicial misconduct or disability, separate from the judicial appeals system that allows individual litigants to appeal legal errors. The commission reviews new complaints, discusses the progress of investigations, and takes action to resolve complaints. The commission consists of 11 members who serve four-year terms — six nonlawyer citizens, three judges, and two lawyers. The lawyers must be admitted to the practice of law in Washington and are selected by the WSBA. The four-year terms will commence June 16, 2004. Please submit a letter of interest and résumé to WSBA Bar Leaders Division, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or barleaders@wsba.org.

Washington Pattern Jury Instruction Committee*Deadline: May 21, 2004*

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a four-year term on the Washington Pattern Jury Instruction Committee. There is one position available. The four-year term will commence July 16, 2004. A written expression of

interest and résumé are also required in the event that the incumbent elects to seek reappointment.

Committee members review, discuss and vote upon instructions in the civil or criminal area as drafted by subcommittees or staff. The committee meets monthly in Seattle on Saturday for three to four hours (except July and August), and requires a considerable time commitment. It is a large committee with more than 30 members, composed of judges and lawyers, including two WSBA representatives.

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

WYLD President-Elect 2004-2005 Elections

Deadline: June 1, 2004

Young lawyers interested in serving as president-elect of the WYLD are invited to submit a statement of eligibility and qualifications for this position. The president-elect automatically succeeds to the position of the WYLD president upon completion of a one-year term commencing October 1, 2004. The president-elect shall be selected by a majority of the WYLD Board of Trustees from among those persons who are selected by the Nominating Committee or who file for office. The election of president-elect shall be conducted at the last regular meeting of the Board prior to the WSBA annual meeting.

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

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

To Apply. Individuals intending to stand for election must send the following: (1) a cover letter describing yourself, your practice, and why you feel you are a strong candidate for the position; (2) no fewer than three but no more than five letters of recommendation from attorneys in your district; and (3) a current résumé.

Send application materials to Lisa Harper, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; lisak@wsba.org; fax: 206-727-8319.

WYLD Trustee Elections

Deadline: June 1, 2004

Young lawyers interested in serving on the WYLD Board of Trustees are invited to submit a statement of eligibility and qualifications for the following Trustee District positions:

- *King District* — representing King County

- *Southwest District* — representing Clark, Cowlitz, Pacific, Skamania, and Wahkiakum Counties
- *Snohomish District* — representing Snohomish County
- *Greater Spokane District* — representing Lincoln, Pend Oreille, Spokane, and Stevens Counties

Eligibility. To be eligible for one of these positions, a candidate must reside or have his or her principal place of business in the district he or she wishes to represent *and* must be a member of the WYLD for at least the first two full years of the position. Elected trustees will serve a three-year term commencing October 1, 2004.

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

To Apply. Individuals intending to stand for election must send the following: (1) a cover letter describing yourself, your practice, and why you feel you are a strong candidate for the position; (2) no fewer than three but no more than five letters of recommendation from attorneys in your district; and (3) a current résumé.

Send application materials to Lisa Harper, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; lisak@wsba.org; fax: 206-727-8319.

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 a 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 rule 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.

2004-2005 WSBA Committee Application for Committee, Board, and Panel Appointments

Appointment application forms have been mailed to all active WSBA members. The WSBA Board of Governors makes appointments based on these forms. Current members interested in reappointment must submit an application each year. Please visit <http://pro.wsba.org/forms/committeepref.asp> to submit your application online. All applications must be received by March 31, 2004. Please direct questions to barleaders@wsba.org.

2004 WSBA Award Nominations Sought

Each year, members of the Washington State Bar Association are asked to identify those members of our profession and the public who deserve the legal profession's recognition and thanks.

Nominations are sought for the following awards:

Award of Merit. First given in 1957, this is the WSBA's highest honor. The Award of Merit is most often given for long-term service to the Bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is awarded to individuals only — both lawyers and nonlawyers.

Professionalism Award. This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism in the practice of law. "Professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

Angelo Petrus Award for Lawyers in Public Service. Named in honor of the late Angelo R. Petrus, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors, this award is given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public.

Outstanding Judge Award. This award is presented for outstanding service to the bench and for special contribution to the legal profession at any level of the court.

Pro Bono Award. This award is presented to a lawyer, nonlawyer, law firm, or local bar association for outstanding efforts in providing *pro bono* services. This award is based on cumulative efforts, as opposed to a lawyer's or group's *pro bono* hours or financial contribution.

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

Excellence in Diversity Award. This award is made to a lawyer, law firm, or law-related group that has made a significant contribution to diversity in the legal profession's employment of ethnic minorities, women, and disabled persons.

Outstanding Elected Official Award. This award is presented to an elected official for outstanding service, with special contributions to the legal profession. It is awarded to an individual who has demonstrated a commitment to justice beyond the usual call of duty.

Excellence in Legal Journalism Award. This award recognizes that describing the context, facts, and players involved in the legal system with fairness and sensitivity requires intelligence, knowledge, dedication, and skill. This award is given to the journalist and his or her organization that has set the standard for relevance, clarity, accuracy, and understanding in reporting.

Award Presentation: It is important to note that presentation of any WSBA awards is made only when there are truly deserving recipients. Some years, no award is given in some categories.

Nomination Submissions: If you know of someone who fits

the criteria set forth above, please visit www.wsba.org/barleadershomepage.htm, and complete and submit the nomination form. Self-nominations will not be accepted. *Please note that the completed nomination form must accompany each nomination to be considered.*

The deadline for *Pro Bono* Award nominations is April 16, 2004. The deadline for all other nominations is April 30, 2004.

Please send nominations to: WSBA, Attn: Annual Awards, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; fax: 206-727-8319; e-mail: oed@wsba.org

The awards will be presented at the WSBA Annual Awards Dinner in Seattle September 16, 2004, with the following exceptions: The *Pro Bono* Award will be presented at the Access to Justice Conference in Yakima on June 12; and the Outstanding Judge Award will be presented at the Washington Judicial Conference in September.

WSBA Member Honored by American Bar Association for Stellar Career in Law-Related Education

Seattle attorney and educator Margaret Fisher was recognized by the American Bar Association during its 2004 National Law-Related Education Leadership Seminar held in Philadelphia in January. At the meeting, Ms. Fisher was awarded the prestigious Isidore Starr Award for Excellence in Law-Related Education. Mr. Starr, also a Seattle resident, is known nationally as "the father of law-related education." Both Ms. Fisher and Mr. Starr are members of the Council on Public Legal Education, which is housed at the Washington State Bar Association.

Ms. Fisher has worked in the field of law-related education for over 25 years. She has developed nationally used materials, including an award-winning Youth Court Volunteer Training Curriculum and teaching materials for corrections and mental health facilities. In Washington, she serves as the state's Youth for Justice coordinator, teaches Street Law at the Seattle University School of Law, and works on domestic-violence education programs for the Administrative Office of the Courts. Additionally, she has created a model partnership between the Council on Public Legal Education and the Washington Judges Foundation to increase the number of youth courts in the state and involve judges in high-school classrooms as volunteer instructors.

Equal Justice Programs Moving Under One Roof

Three equal justice programs ... one address ... working together to make equal justice a reality: **Legal Foundation of Washington; Equal Justice Coalition; and Legal Aid for Washington Fund.** The new address as of March 22, 2004, will be: 1325 Fourth Ave., Ste. 1335, Seattle, WA 98101-



Margaret Fisher receives honor from Isidore Starr

2509. Phone and fax numbers will remain the same: LFW: Phone: 206-624-2536; fax: 206-382-3396; EJC: Phone: 206-447-8168; fax: 206-382-3396; LAW Fund: Phone: 206-623-5261; fax: 206-623-5701.

2004 License Fee Packets

Licensing packets were mailed December 10, 2003. The packet includes your license fee invoice, trust account declaration form and, if applicable, the MCLE certification form. If you have not yet received your licensing packet, please call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org to request a duplicate. Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the licensing packet. Active members *must* complete, sign and return a Trust Account Declaration and, if applicable, an MCLE Certification. There are other forms included in the packet that you may wish to complete and return, such as updating your contact information, reporting *pro bono* hours, and requesting a web link from the WSBA attorney directory to your website (payment required).

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. The white envelope should be used for returning your licensing form (A2) with a check payment. The blue envelope should be used for your licensing form when making a payment by credit card. Also use the blue envelope for mailing the Trust Account Declaration, MCLE Certification, and any voluntary forms.

If you are paying your fees online. To pay your fees online, go to <http://pro.wsba.org>, click on the "Member" tab, 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 active members *must* complete and return a Trust Account Declaration and, if applicable, an MCLE Certification. Other forms included in the licensing packet are voluntary and need to be returned only if you need to update contact information, choose to report *pro bono* hours, or request a link from the WSBA attorney directory to your website (payment required). If you wish to take the Keller deduction, you must mail your payment (check or credit-card information); the online system is not yet able to handle the Keller deduction.

Trust Account Declaration. The Trust Account Declaration included in your licensing packet *must* be completed by all active members regardless of whether you have a trust account. Failure to file this form can result in disciplinary action.

Payment deadline. Please note that if your payment is postmarked or delivered in person to the WSBA offices later than March 1, 2004, a 20 percent penalty will be assessed. If your payment is postmarked or delivered in person to the WSBA offices after April 1, 2004, a 50 percent penalty will be assessed.

Presuspension notice. A presuspension notice will be sent in mid-March to those members who have not paid their 2004 license fees. If you receive a presuspension notice and have already sent in your payment, you can verify receipt by the WSBA 10 days after you sent the payment. You can check online at <http://pro.wsba.org> or contact the WSBA Service Center at 206-443-WSBA (9722), 800-945-WSBA (9722), or questions@wsba.org.

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 presuspension notice, the WSBA Bylaws require the Washington State Bar to certify the delinquency to the Supreme Court, which will enter an Order of Suspension from the practice of law.

Contact information. Now is the ideal time to check that the WSBA has your correct contact information in its database. APR 13.b states address updates shall be provided to the WSBA within 10 days after the change. You can go to the online lawyer directory on the WSBA website at <http://pro.wsba.org> to check your listing. If your contact information has changed, please complete and return the Contact Information Change form included in the licensing packet to the address shown on the form or by fax to 206-727-8319, or e-mail the changes to questions@wsba.org.

More information. For more information, see the WSBA website at www.wsba.org/lawyers/licensing/annual/licensing.htm. The WSBA Service Center is also available to assist you Monday through Friday, 8 a.m. to 5 p.m., at 800-945-WSBA (9722), 206-443-WSBA (9722), or by e-mail at questions@wsba.org.

Lawyers' Assistance Program (LAP) WSBA Senior Lawyers Group Meetings

Please join us for stimulating discussions, enrichment, and social activities in community with other attorneys of a certain age. There is no cost. We meet the third Thursday of every month from 4-5:30 p.m. at a WSBA 4th-floor conference room, 2101 Fourth Ave. (Belltown area) in Seattle. The group is friendly and informal, led by LAP staff member Jennifer Favell, Ph.D. Our schedule for the next four months is:

- *March 18:* Book discussion, a little bit different
- *April 15:* Share a travel adventure (slides, photos, maps, scrapbooks, foods)
- *May 20:* Fun and healthy take-er-easy fitness (led by Swedish Medical Center pros)
- *June 17:* "Writing your way in; drawing your way out" (led by a retired Shoreline Community College professor)

Please join us! For further information, contact Jennifer Favell, 206-727-8267, or just show up.

MCLE Certification for Group 3 (2001-2003) — Automatic Extensions to Complete Credits Given Until May 1, 2004

MCLE Reporting Group 3 members should have completed all the credits for the 2001-2003 reporting period by De-

ember 31, 2003. Members in Group 3 include active members who were admitted to the WSBA in 1984 through 1990, or in 1993, 1996, or 1999. (Members admitted in 2002 are also in Group 3 but will not be due to report until 2006.) The credit requirements for the period are: At least 45 total credits of WSBA approved CLE activities, which must include a minimum of 30 live credits and a minimum six ethics credits. *If you were unable to complete the credit requirements by December 31, 2003, 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, 2003, and/or if you do not return your C2 affidavit by March 1, 2004 (the end of the grace period allowed after the February 1 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 reporting requirements on time. 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 side of your C2 affidavit. You must list any additional WSBA-approved courses you have taken. (Course pre-approval for WSBA continuing legal education certification is an APR 11 regulation.) Be sure to include the WSBA Activity ID number for each course you list. In addition, be sure to write the date(s) on the C2 affidavit that you listened to or viewed audio/visual courses, as well as the original recording date.

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 about the MCLE system or MCLE requirements, or if you need a C2 affidavit, contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org.

MCLE System Enhancements Improve Member Service

Enhancements were made to the MCLE system in December, 2003 to make the system easier to use and to provide more information about a member's compliance status. Some of the new features include the following:

- You can view the date that your C2 affidavit was received at the WSBA.
- Your roster now shows the total ethics credits (live and A/V) earned to date and the total general credits earned.
- You can add courses to be taken in the future to your roster. Each future-dated course will be added with no credits. After the course has been completed, you can edit the credits to show the number of credits earned.

- Credits are counted by the amount of time present for course instruction. Breaks do not count in the calculation of credits.
- Most sponsors submit attendance for members, so you usually only need to submit a Form 1 for more specialized, nonlocal courses.
- The system will catch duplicate course entries in your roster. This feature ensures that your course listings and total credits are correctly reported.
- You can record the date(s) that each audio-visual program was viewed or listened to.
- There is an updated and improved online help file. You can access it from your MCLE system homepage in the "Help" section by clicking "View online help."

These are just some of the new features. Watch for more improvements to be added in the coming months.

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 that 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.

Notice to WSBA Members on Active Military Duty

At its January 2004 meeting, the Board of Governors approved a bylaw amendment that allows all active WSBA members who are on active duty in the military to waive WSBA license fees and remain active members for up to five years. (WSBA members on active duty whose WSBA membership status is anything other than active must still pay the annual WSBA license fees.) If you are currently an active member on active military duty, please 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 on changing your status, please contact

Sharlene Steele, WSBA access to justice liaison, at 206-727-8262 or sharlene@wsba.org.

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.luce@ilrwa.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/lawyertolawyer.htm.

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).

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.

ABA Techshow

The ABA Techshow will be held March 25-27 at the Sheraton Chicago Hotel and Towers. For more information, call 800-285-2221, or see www.abanet.org/techshow.

Upcoming Board of Governors Meetings

April 2-3 — Seattle (Southcenter)

May 14-15 — Ocean Shores

June 11 — Yakima

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 February 2004 was 1.023 percent. The maximum allowable interest rate for March 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.

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 L or XL) — \$56
- Baseball cap (stone) — \$24
- Ballpoint pen — \$12
- Luggage tag — \$7

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

Learn More about Case-Management Software

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

Resources on Sale for Half Price

The 2003-2004 *Resources* membership directory is now on sale for half price: \$9.00 — WSBA members (\$9.79 in WA) and \$18.00 — 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.

WSBA CLE's Newest Feature Launched on the WSBA Online Store

Check out the new link on the WSBA Online Store homepage (<http://store.yahoo.com/wsbastore>): **WSBA-CLE's Featured Product of the Month**. Each month, a newly published audio seminar and coursebook or solo coursebook will be selected for special promotion at a discount of 20 percent off the regular price. Be sure to visit the online seminar calendar at www.wsba.org/cle/seminars to view all upcoming live seminars, too.

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. A toll-free number may be listed in addition to a general number. If you wish to be listed under more than one category, the cost is \$35 for each listing.

To reserve your yellow-page listing in the 2004-2005 *Resources* directory, complete this form, enclose a \$35 check payable to the WSBA, and mail by March 5 to Washington State Bar Association, *Resources* Yellow Pages, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

For more information, contact Kathy Henning at 206-733-5932 or kathyh@wsba.org.

Firm/Individual Name: _____

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formerly with Gordon, Thomas, Honeywell, et al.

has joined the firm as Of Counsel

&

Gregory E. Jackson

has joined the firm as an Associate.

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and wishes him and associate Annalie Faddis continued success.

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BENNETT BIGELOW & LEEDOM, P.S.

is pleased to announce that

Lisa Dobson Gould

has become a Shareholder of the firm effective January 1, 2004.

Lisa graduated with honors from the University of Washington Law School, Order of the Coif and Order of the Barristers, in 1999. Lisa was also the executive articles editor of the *Washington Law Review*. In 1990 she received her B.A. degree from Pomona College, with honors. Prior to attending law school, she worked for several years as an analyst with the U.S. General Accounting Office, evaluating federal programs, including Medicare. Her practice focuses on regulatory matters, and Medicare and Medicaid reimbursement.

Lisa has been with Bennett Bigelow & Leedom, P.S. since 1999.

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is pleased to announce that

Patrick F. Hussey

has become a Shareholder with the firm.

Mr. Hussey will continue his practice in the fields of Bankruptcy, Insolvency, Creditor/Debtor & Commercial Transactions.

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425-252-5161

phussey@andersonhunterlaw.com

HELSELL FETTERMAN LLP

is pleased to announce that

Darla J. Goodwin

has been promoted to partner.

Ms. Goodwin practices family law with a focus on complex property and financial issues.

Larry Setchell

has been promoted to partner.

Mr. Setchell's practice focuses on complex products liability, environmental and business litigation.

Joshua A. Whited

has joined the firm's land use group as an associate.

Bruce E. Cyra

has joined the firm's construction defect group as an associate.

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is pleased to announce that

Rebekah O'Hara

has joined the firm as an associate.

Ms. O'Hara is a graduate of Gonzaga University Law School, with an LL.M. in Intellectual Property Law & Policy from the University of Washington.

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is pleased to announce that

Lana M. Floyd

Kyle D. Netterfield

Nathaniel L. Taylor

Kristen K. Waggoner

have joined the firm as members, and that

Charity R. Osborn

has joined the firm as an associate.

| | |
|----------------------|---------------------|
| Chi-Doo Li | Kristen K. Waggoner |
| Michael R. McKinstry | Lana M. Floyd |
| Jan P. Olson | A. Chad Allred |
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are available for referral, consultation, or association on all issues relating to appeals and the appellate process.

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E-mail: mschein@rlma.com

APPEALS

Philip A. Talmadge,

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

Anne Watson,

former law clerk,
Washington State Supreme Court

Emmelyn Hart-Biberfeld,

former law clerk,
Washington State Supreme Court;
invited member, the Order of
Barristers

Available for consultation
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Fax: 206-575-1397

E-mail: christine@talmadgelg.com

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www.metzlaw.net

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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. 7.25 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Business Law

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

March 5 — Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Business Law Section Midyear in Conjunction with Spring Meeting of ABA Section on Business Law

April 1 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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Estate Planning

Trust and Estate Litigation

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Ethics

The Essentials of Washington Civil Procedure and Ethics

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General

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Northwest Transportation Strategies Conference

March 18 — Seattle. 7 CLE credits. By The Seminar Group; 800-574-4852.

Presentation Skills for Attorneys Conference

March 24 — Seattle. 3 CLE credits. By The Seminar Group; 800-574-4852.

Transfer Pricing Valuation Institute Workshop

March 26 — Seattle. CLE credits

pending. By UW-CLE; 800-UNIV-CLE.

Science and Pseudoscience in Clinical Psychology and the Courtroom

April 17 — Seattle. CLE credits pending. By UW-CLE; 800-UNIV-CLE.

Protecting Client Confidences (morning session)

April 30 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Trust Accounts (afternoon session)

April 30 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Client Confidences/Trust Accounts

April 30 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Indian Law

Eastern Washington Indian Law Conference

April 2 — Spokane. CLE credits pending. By UW-CLE; 800-UNIV-CLE.

Intellectual Property Law

Annual Intellectual Property Institute

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

Law Practice Management

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Law and Business EXPO Exhibit Hall (Super CLE Day)

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Litigation

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David Ball on Damages


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

Auto Cases: The Road to Success

April 9 — CLE credits pending. By WSTLA; 206-464-1011.

Jury Bias

April 23 — Tacoma. CLE credits pending. By WSTLA; 206-464-1011.



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Gandhi was right. Civilized law practice would be a good idea.

by Lindsay Thompson, Bar News Editor

There is only one thing in the world worse than being talked about, and that is not being talked about.

— Oscar Wilde, *The Picture of Dorian Gray* (1891)

I got mail about last month's thoughts on changing how law is practiced. One judge said she's thinking of making it required reading for lawyers appearing in her court. A lawyer friend sent me this e-mail:

"[Y]our editorial at the close of the Feb. issue ['Change and decay, change and decay . . .] resonated with me, particularly your comments about the responsibility of the bench in bringing litigation nonsense to an end. Well, you've said it much better than I have. When I talk about it, it sounds petulant. The closest analogy (metaphor?) I've been able to come up with is that social science blather sometimes known as 'broken window syndrome' (one bit of graffiti begets more . . .). One bit of bad acting that isn't called out (say, refusing to file an answer until the motion for default is noted) brings on more of the same (say, an answer larded out with boilerplate denials 'for lack of information . . .') leading to even more (such as the ever-popular string of bogus affirmative defenses including 'failure to state a claim upon which relief can be granted'). Yeah. Right.

"And when it comes to moving for complete answers to discovery, the metaphorical 'slum' is in full bloom, encouraging the under-supervised, institutional defense associate to file boilerplate objections (even to the stock CRLJ questions of 'ID the liability witnesses, damage witnesses and expert witnesses and produce the policy').

"In fairness to anybody who thinks I only throw rocks at defense attorneys, I've spent three weeks in trial co-defending a matter that had no business in court at all, courtesy of a jurist who didn't think he had any authority to compel any response or any place in discouraging such conduct (other than his low final judgment, entered a mere six months after the trial was over). Dave Barry has an expression: 'I am not making this up.'

"Yes, I'd say it's the bench who will have the most say in the matter. Until it becomes more expensive to break the rules than follow them, more costly and painful to be an a**hole than to be cooperative, publicly embarrassing to conduct business under the Jolly Roger flag, it will continue.

And thrive. And it will be harder and harder to explain to a potential client why 'self-help' in the form of a pipe to the knees of the tormentor is a bad idea."

I've seen, and heard about, lawyers whose antics left me wondering if we should revive shunning, making good on our laughed-at oath to avoid offensive personalities.

I'm not talking about the kind of assertive lawyering we all have to do sometimes to move a case along. And I cut some slack for lawyers who are slow getting things done. Sometimes the best of us get jammed.

What I'm talking about are lawyers who give the name "human being" a bad name.

One lawyer spent months in depositions just being insulting, and when he had a conflict he sent a colleague to come and be rude for him. Once, on the record, he bet another lawyer in the case was dishonorably discharged from the service (wrong).

Why would a lawyer call a CR 37 conference to discuss a discovery problem, then spend the conference insulting opposing counsel, not letting him answer the questions he was barking out?

I'm surprised how often senior lawyers insult young lawyers openly, accusing them — when they don't roll over because the older lawyers say to — of not having sufficient experience to understand the law; or telling them, condescendingly, that they have case decisions that support their view of a case but that they won't tell what they say or where they are.

It's interesting, too, when lawyers let their biases slip. One told me barring lawyers from discriminating based on sexual orientation would turn the WSBA into a referee for "the bruised feelings of a bunch of Martha Stewarts." (Then he marched off, in a suit that would have embarrassed Howard Dean — and a baseball cap. Martha would have been *speechless*.)

Got any good stories about lawyers so dreadful you were sure their bodies had been taken over by space aliens? Send them in. We'll run a selection (names probably omitted). ✉

Lindsay Thompson's Calvinist conscience makes sure he remembers he is a deeply flawed individual, not to mention every screw-up he has ever made in and out of the law (not to mention the e-mail he gets from readers). Add your two cents' worth at tradelaw@thompson-law.com.

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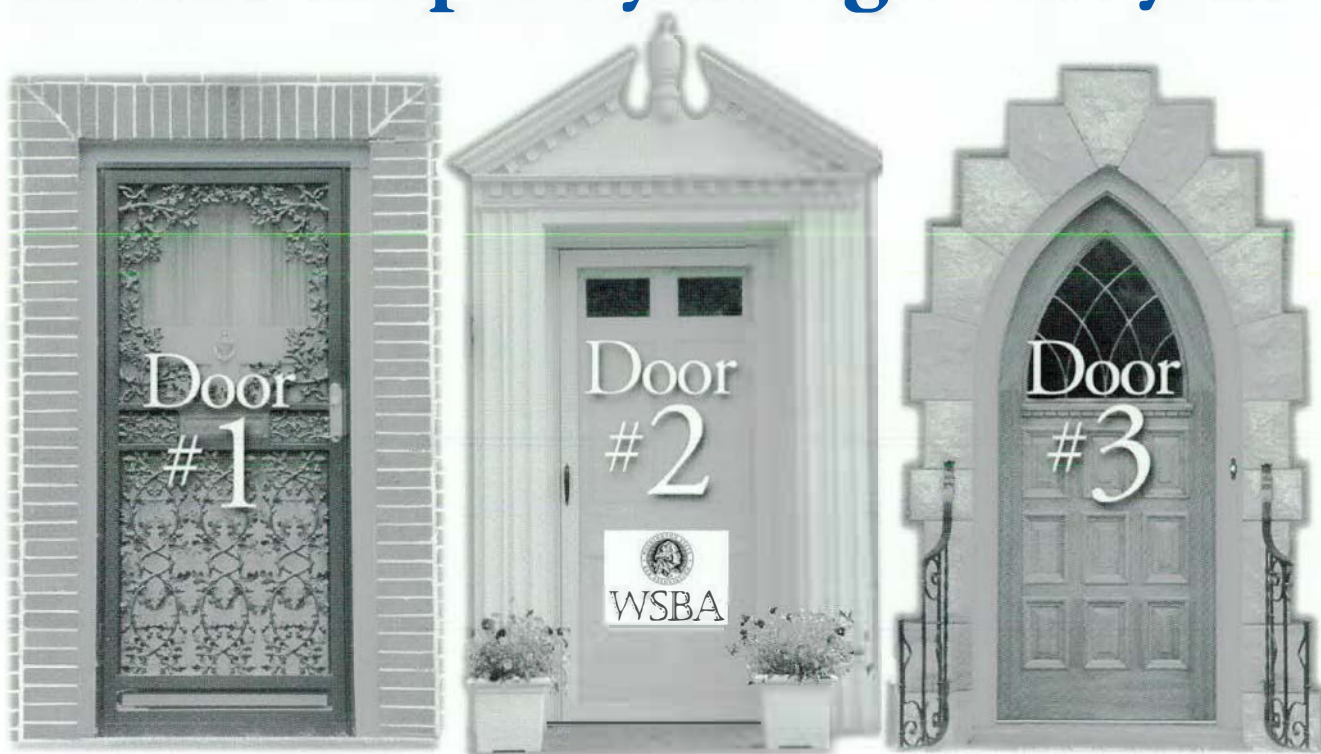


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