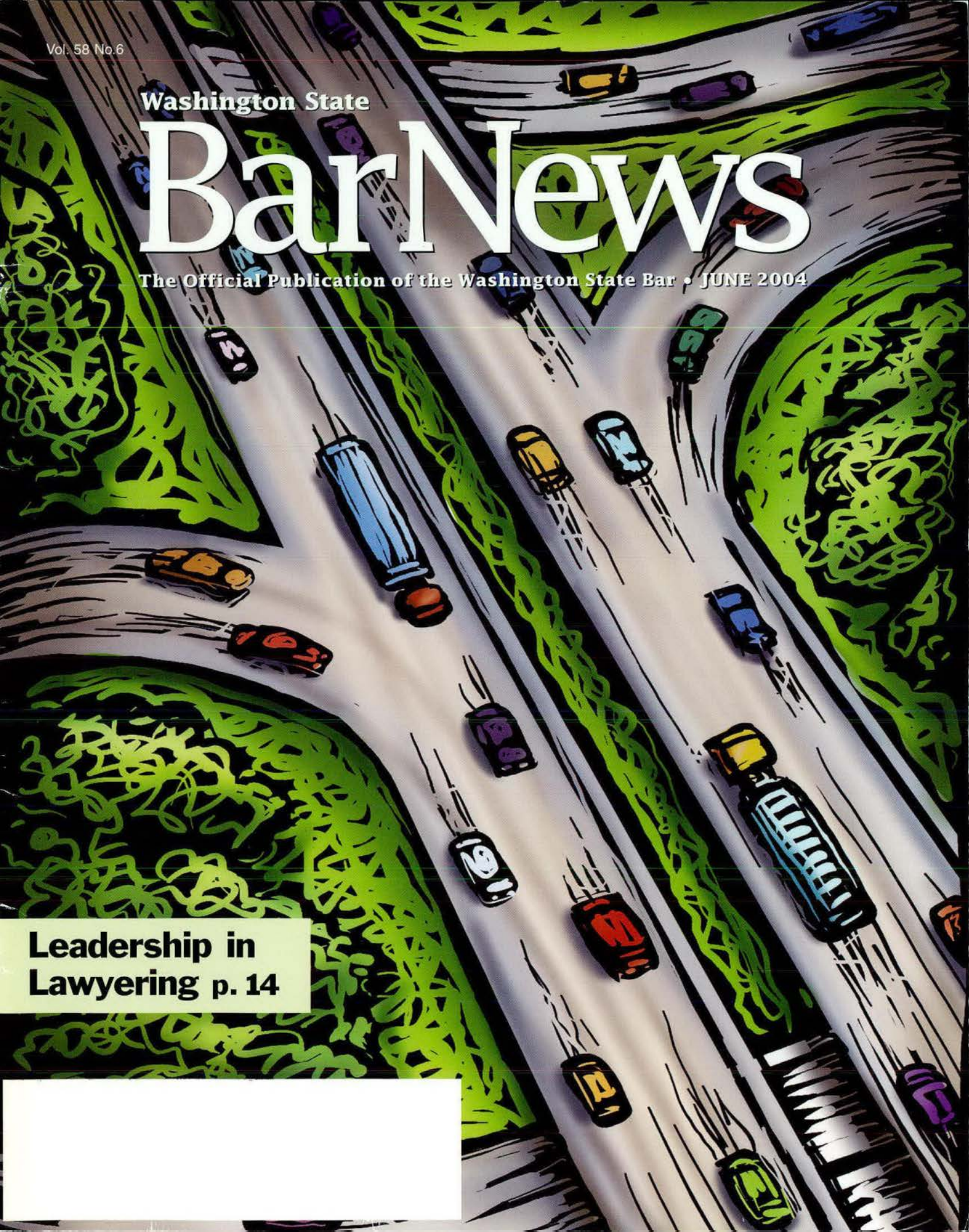
Vol. 58 No.6

Washington State

BarNews

The Official Publication of the Washington State Bar • JUNE 2004



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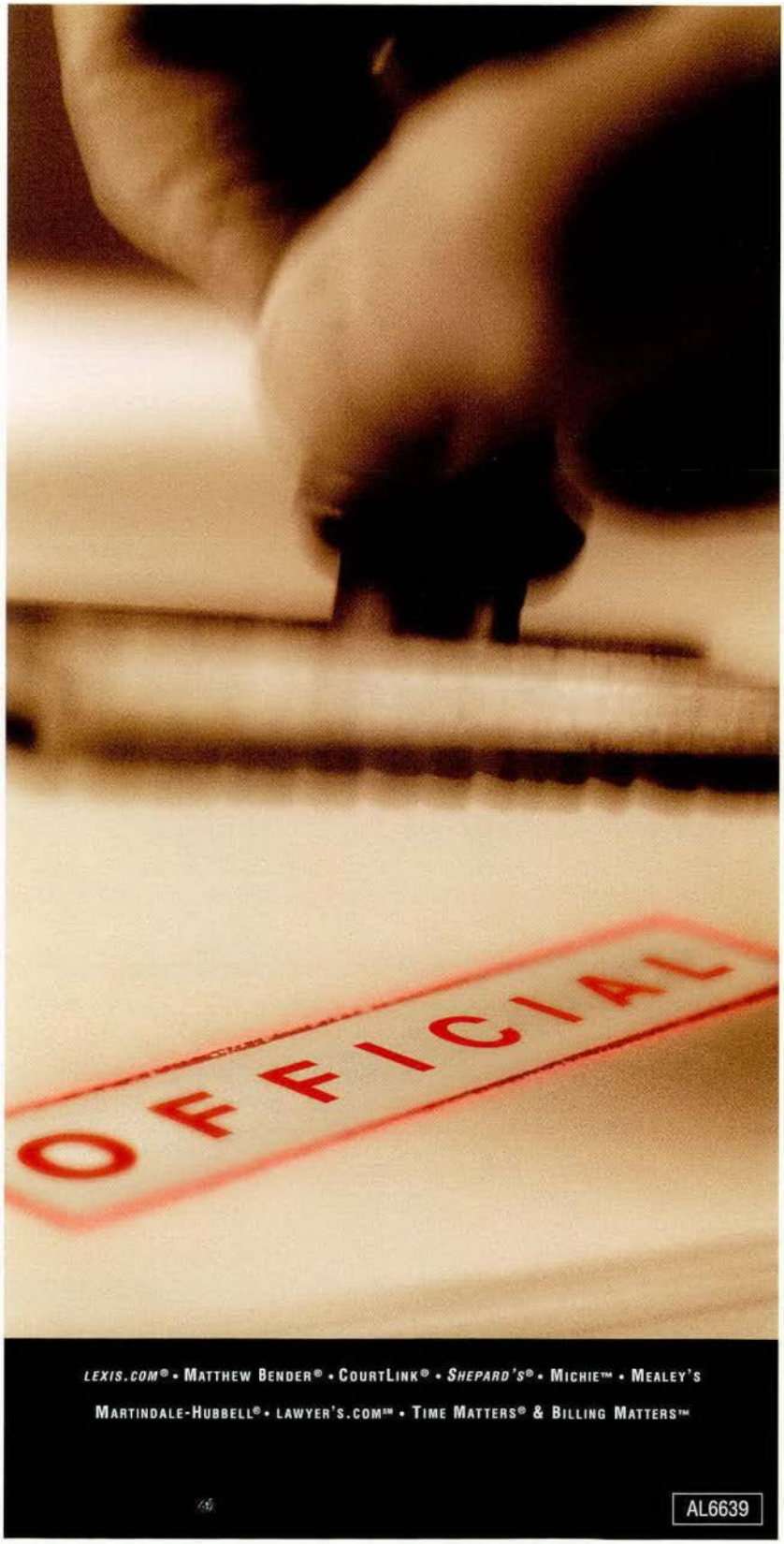

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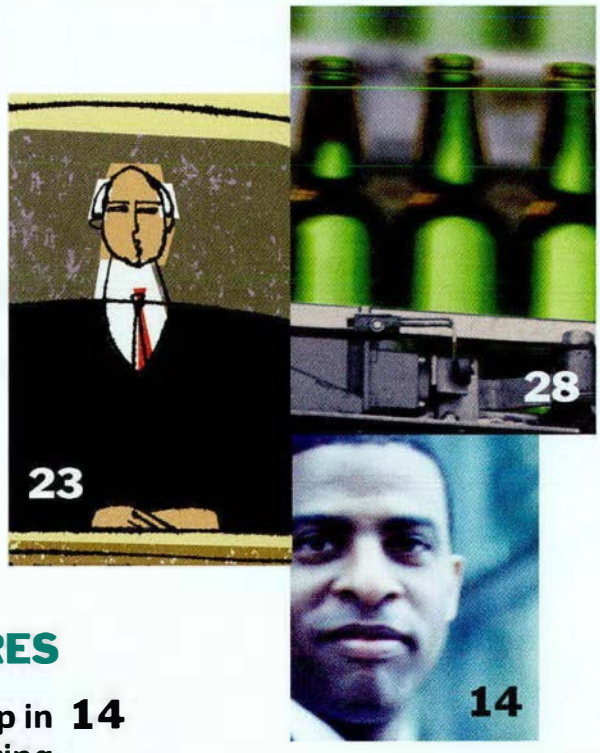
June 2004



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BarNews

Published by the

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2101 Fourth Ave., Ste. 400
Seattle, WA 98121-2330

M. Janice Michels
Executive Director
206-727-8244; janm@wsba.org

Lindsay T. Thompson
Editor
206-285-4130; tradelaw@thompson-law.com

Judith M. Berrett
Director of Member and Community Relations
206-727-8212; judithb@wsba.org

Todd W. Timmcke
Managing Editor
206-727-8214; toddt@wsba.org

Jack Young
Advertising Manager
206-727-8260; jacky@wsba.org

Kathy Henning
Communications Specialist/Website Editor
206-733-5932; kathyh@wsba.org

Amy O'Donnell
Classifieds and Subscriptions / Bar News Online
206-727-8213; amyo@wsba.org

Communications Division E-mail:
comm@wsba.org

Washington State Bar News (ISSN 886-5213) is published monthly by the Washington State Bar Association, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, and mailed periodicals postage paid in Seattle, WA. $12.53 of an active member's dues is used for a one-year subscription. For inactive and emeritus members, a free subscription is available upon request (contact Amy O'Donnell at amyo@wsba.org or 206-727-8213). For honorary members, the annual subscription rate is $15. For nonmembers, the subscription rate is $36 a year. Washington residents add 8.8 percent sales tax.

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Printed by Valco Graphics on recycled paper

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R. Joseph Wesley, former King County Superior Court Judge.

(not pictured)

Poor court funding's domino effect

My recent experience as the appointed arbitrator in a mandatory arbitration matter leads me to wonder whether the system can survive. The dispute concerned a house remodel, pitting the contractor's claim for payment against the homeowner's counterclaim for defective construction. Both parties waived jurisdictional limits. The claim and counterclaim added up to $82,000. By contract, attorney fees were awardable, adding $42,000 to the dispute.

We spent a half-day at the house looking at each disputed item and spent an additional day taking testimony. I then wrote my opinion and following that needed to deal with the motions and briefs for attorney fees and motions and briefs for reconsideration.

I spent 24 hours on this matter at an hourly rate that does not pay enough to keep the doors open at the law office. This is too much to ask of a volunteer arbitrator. The Supreme Court needs to amend MAR 1.2 and not allow waiver of claims in excess of the amount authorized by statute.

Thomas G. Richards
Seattle

E-filing is no cure-all

There is a big trap lurking in the rosy picture of e-service presented by Scott Wetzel in the April 2004 *Bar News* (p. 29). He asserts that parties may agree to e-service under GR 30. Given the decision in *Schaefco Inc. v. Columbia River Gorge Commission*, 121 Wn.2d 366, 849 P.2d 1225 (1993), I doubt very much that courts will allow parties to change the rules for service of motions that extend the time for filing a notice of appeal under RAP 5.2(e) by agreement.

In *Schaefco* the court dismissed review as untimely when a CR 59 motion for reconsideration had been timely filed but served the same day by mail. Even though the trial court had considered the motion on the merits, the *Schaefco* court held that because the motion was not timely served the time for filing a notice of appeal was not extended.

I question Mr. Wetzel's claim that parties can agree to change the rules governing service, and would advise against relying on an e-served motion for reconsideration to extend the time to file a notice of appeal. Given the extreme consequences of failure to file a timely notice of appeal — see RAP 18.8(b) — I'd caution against wholesale adoption of e-service in the state courts, at least until the rules catch up with the technology.

Catherine W. Smith
Seattle

We rest our case

I read with interest the criticisms of *Bar News* on page 64 of the April issue. I was surprised to see how many people appear concerned with your publication's "liberal slant," "liberal point of view," and "liberal bias" rooted in a Seattle-oriented, politically left perspective.

I was surprised mostly because I thought I was the only one who felt that way. Before I read your page, I had already noted (page 42 of the same issue) with disgust the WSBA's selection of Congressman Jim McDermott as the recipient of the Ralph J. Bunche Award. The WSBA selection committee seriously considered Congressman McDermott the person most worthy of recognition as "an individual who has made significant contributions toward the goal of achieving international peace"? Please. This transparent decision is precisely what concerns the WSBA and *Bar News* critics.

Charles W. Lind
Seattle

Editor's note: *The WSBA's World Peace Through Law Section gave the award, not the WSBA as a whole.* Bar News *was not involved in the matter.*

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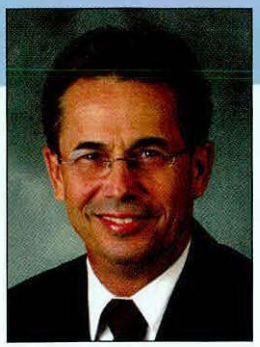

A Profound and Grave Crisis

The pursuit of blind, affordable justice

by David Savage, WSBA President

On November 1, 2001, the Washington State Supreme Court established the Task Force on Civil Equal Justice Funding. The task force was charged with the daunting task of identifying solutions to the persistent problem of inadequate funding for the programs that provide civil legal services for the low-income and vulnerable people of Washington.

The task force undertook a sophisticated analysis aided by Washington State University's Social and Economic Sciences Research Center and Portland State University's Department of Sociology. In September 2003, it completed the assessment phase of its work and published the *Washington State Civil Legal Needs Study*. The task force is now challenged with the difficult task of proposing solutions.

The *Civil Legal Needs Study* documents the profound and grave crisis in the civil justice system in Washington. More than 85 percent of the more than one million annual civil legal problems experienced by low-income and/or vulnerable people of this state go unmet. This burden is felt disproportionately by women and children.

Washington's nationally recognized equal-justice network, including lawyer *pro bono*, local bar, law school, and specialty clinical programs, together with staffed programs such as Columbia Legal Services and the Northwest Justice Project, have valiantly sought to address these needs — despite a persistent reduction in their funding that began a decade ago and continues unabated. Columbia Legal Services and Northwest Justice Project have reduced staff capacity by 18 advocates since 1999. By the end of this year, Columbia Legal Services will have reduced its statewide staffing by another 49 positions.

It is no surprise to those of us who know Ada Shen Jaffe, director of Columbia Legal Services, and Jim Bamberger, Columbia's assistant director, that they have given themselves termination notices effective at the end of this year, departing from the corporate model of responding to revenue cuts by slashing jobs at the lowest level. Their self-sacrifice, coupled with the dramatic reduction in Columbia's staff, will dramatically curtail Columbia's ability to assist those most in need of civil legal help. Despite the fact that the many partners in Washington's strong equal-justice network are stepping up to the challenge posed by these changes, they cannot provide a comprehensive solution.

While we regularly pledge ourselves to "justice for all," it is a sad irony that we have yet to acknowledge that this core democratic principle requires public funding for the basic civil legal needs of those who would otherwise be without access to our civil-justice system. Certainly, this civic obligation is no less important than the maintenance of our streets and highways, and yet it garners only a fraction of the public concern that the other does.

A number of efforts were made this past legislative session to address this need. Once again, most were unsuccessful. However, a bright spot — $1.9 million in funding for civil legal justice — was the product of the courageous and tireless work of Senators Adam Kline and Stephen Johnson; Representative Patricia Lantz; U.S. Attorney John McKay, Western District of Washington; King County Prosecuting Attorney Norm Maleng; Michael McKay, Seattle attorney and Legal Services Corporation[1] board member; and Jeff Sullivan, Chief Criminal Deputy, U.S. Attorney, Western District of Washington. Also critical to this success were the efforts of Chief Justice Gerry Alexander and the other judicial leaders of our appellate, superior, and district courts, as well as those of the WSBA and the other local and specialty bar associations across the state.

Given the immensity of unmet civil legal needs, it goes without saying that this hard-won funding falls woefully short of the mark. Neither these funds nor the IOLTA monies preserved by the *pro bono* defense provided by Maureen Hart of the Washington State Attorney General's Office and Perkins Coie attorneys David Burman, Nick Gellert, and Katie O'Sullivan (a firm contribution estimated at well over $1 million) will do more than marginally maintain the status quo, a circumstance in which the unmet civil legal needs of our state's poorest and most vulnerable continue to outstrip the resources required to address them.

A disturbing companion phenomenon is Washington's failure to provide for the defense of the needy charged with a criminal offense. This failure was shamefully highlighted in a recent *Seattle Times* series written by Ken Armstrong with respect to the failure of the public-defender system in Grant County. The series describes both capable and committed but hopelessly overworked public defenders laboring in the criminal, juvenile, and dependency courts of this state, and a few self-serving attorneys who have preyed upon this distressed system to their own economic advantage. Unfortunately, in both cases the constitutional rights and liberties of the clients are at risk.

While the WSBA and the Washington Defender Association recommend that public defenders in the criminal system carry no more than 150 felony cases per year, it is not uncommon in some counties for caseloads to approach 200. Clearly, even the most dedicated public defender can do only a marginal job for his or her clients while laboring under such a load.

This crisis in the criminal justice system is the subject of a Blue Ribbon Panel on Criminal Defense assembled by the WSBA in the spring of 2003. The panel is co-chaired by retired Justice Robert Utter and Marc Boman, a former King County chief criminal prosecutor who currently practices law at Perkins Coie. The panel's report was delivered to the Board of Governors at their May meeting this year.

It should be an embarrassment to us all — lawyers and nonlawyers alike — that Washington ranks at the very bottom in state funding of its trial courts. This state funds less than 11 percent of the costs of operating our superior courts, a calculation which includes the expense of indigent criminal defense representation. A collateral consequence of this embarrassing circumstance is that our counties, which fund approximately 80 percent of our superior courts' budgets and almost 100 percent of the district courts' budgets, often find themselves in competition with one another for the scarce state support for civil and criminal judicial needs.

To address this crisis, the Washington State Supreme Court and the Board for Judicial Administration commissioned the Court Funding Task Force, chaired by Wayne Blair, a distinguished past president of the WSBA. The mission of this task force is to bring about "stable, adequate, long-term funding of Washington courts in order to provide equal justice throughout the state." Wisely, the needs of the public-defender system have been recognized as a component of necessary court funding. The task force is expected to report its findings to the Board for Judicial Administration later this year. Do not be surprised if it reports a court-funding shortfall on the order of $100 million or more.

While the people of this state through their Legislature must step forward and assume responsibility for these critical legal needs, our membership cannot stand idly by. We must make a contribution. It is an overworked complaint that we lawyers are not held in the high regard we believe we once were by the public we serve. Addressing these unmet legal needs and repairing our image and self-esteem are missions that take us down the same path. Though the Board of Governors recently adopted a revision to RPC 6.1 recommending that lawyers contribute 30 *pro bono* hours annually, it is only an aspirational goal. (The Oregon Bar Association has an annual aspirational goal of 80 hours of *pro bono* service. The American Bar Association urges lawyers to provide a minimum of 50 hours of *pro bono* service annually.)

It may also be time for us to consider making a financial contribution. While I am convinced that any thoughtful analysis must conclude that meeting the legal needs of the indigent and the vulnerable is an obligation that must be publicly funded, we would certainly do ourselves no harm by contributing. With an active membership of more than 24,000, a voluntary financial contribution by each lawyer equal to the value of one hour at his/her hourly rate could raise in excess of $4 million annually in support of equal justice. It would certainly give us the high ground in any discussion with our Legislature, and it would serve as concrete evidence of our commitment to ensure a democratic system that delivers on its promise to provide justice for all.

As you know, I have made diversity, inclusion, and enhanced relevance of the WSBA to its members the centerpiece of my term. It would be an empty accomplishment, however, if in our effort to achieve diversity we neglected to bring the full benefit of that change to the public we serve. On occasion, doing so will mean that we must provide our services without compensation and/or underwrite a portion of the cost of legal services for the needy and the vulnerable. It is a small price to pay for our exclusive privilege to practice law.

Not only must justice be blind to race, creed, color, sex, national origin, and sexual orientation, it must not carry a prohibitive price tag. A bit of selfless civic commitment on our part will do a great deal to restore the luster to our public image.

Dave Savage may be reached at savage2@imsblaw.com or 509-332-3502.

NOTES

[1] Legal Services Corporation (LSC) is a private, nonprofit corporation established by Congress in 1974 to seek to ensure equal access to justice under the law for all Americans. For more information, visit the LSC website at www.lsc.gov.

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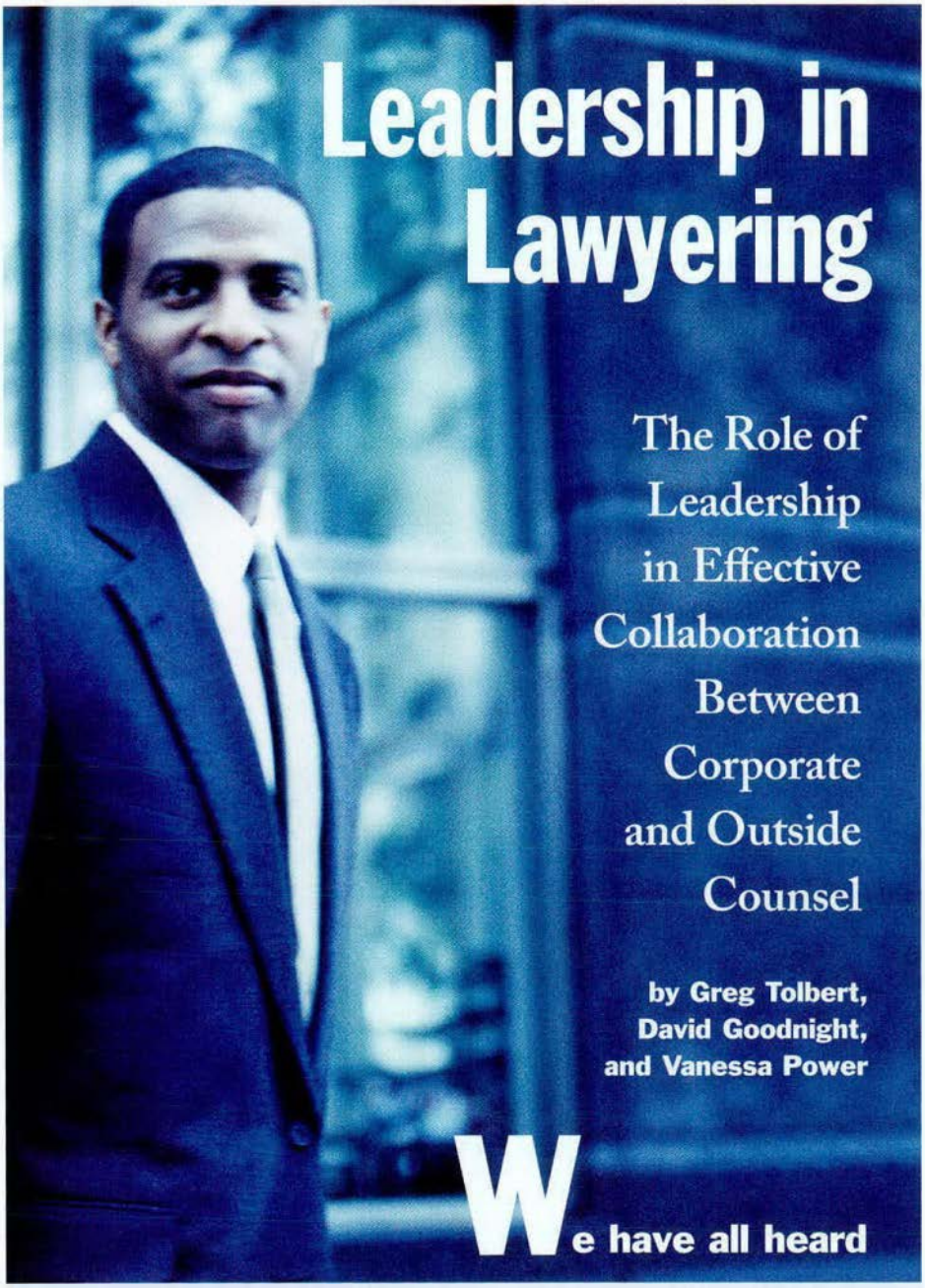


Leadership in Lawyering

The Role of Leadership in Effective Collaboration Between Corporate and Outside Counsel

by Greg Tolbert, David Goodnight, and Vanessa Power

We have all heard horror stories about cases spinning wildly out of control, fees increasing exponentially, and clients feeling drained and unhappy with final results. There is never one simple reason for such unfortunate situations, but there is often one common denominator in the equation: lack of leadership.

When we talk about leadership, images of political and military leaders — from Winston Churchill to General Dwight D. Eisenhower — may come to mind. We do not generally think about the critical role leadership plays in everyday lawyering. When selecting outside counsel, corporate counsel generally look at a firm's reputation and a lawyer's academic credentials, expertise, and experience; and talk to friends and colleagues about their options.

What is not often (or easily) assessed is the leadership quotient. This is the vital, and too often missing, component in effective collaboration between corporate and outside counsel.

The long-term health and stability of client relationships should be a primary concern for outside counsel. To develop healthy and stable client relationships, outside counsel need to work with corporate counsel to set common goals and objectives. This takes "bifocal" vision — the ability to take short-term needs into account while guiding action toward reaching long-term business goals. Ultimately, it takes leadership in lawyering.

This article is divided into three sections. The first covers the basics of effective collaboration, identifying typical mistakes and the key components of healthy partnerships. The second analyzes the role of personality, and leadership in particular, in successful partnering between corporate and outside counsel and in effective representation. The third provides practical tips for effective collaboration.

The Basics of Effective Collaboration

We begin, of course, where we always begin. Every client — small or large — desires high-quality legal representation at a reasonable cost. Simple enough, but not always achieved.

In this section, we discuss three keys to effective collaboration. First, however, we identify typical mistakes that must — absolutely must — be pushed out of a relationship to collaborate effectively.

Typical mistakes

There are numerous barriers to effective collaboration. Both corporate and outside counsel should be sensitive to the following and develop appropriate practices to minimize the deleterious effects of these barriers to effective collaboration:

- Failure to communicate;
- Failure to plan;

- Adding baggage, not value;
- Ignoring billing and budgeting; and
- Doing unnecessary work.

At the risk of oversimplifying things, effective collaboration is both a high-level commitment to successful partnering (i.e., attitude matters) and a hands-on practical approach to delivering more value through practices that enable better collaboration.

Key components of successful partnerships

As with all things in life, before you can progress, you need to master the basics. In developing an effective relationship between corporate and outside counsel there are "Three Bs" to keep in mind:

1. Outside counsel should become insiders to the business;
2. Pay attention to billing and budgeting; and
3. Balance the competencies of corporate and outside counsel.[1]

1. Business 101

Effective collaboration between corporate and outside counsel is not "business as usual." It will not occur without the active commitment of both corporate counsel and outside counsel, and it will not occur without a front-end understanding of the company and the business.

To educate outside counsel about the company's business and/or the company's approach to legal representation, corporate law departments may wish to provide an orientation session for outside counsel. These structured sessions (which likely generate the most value for significant legal representations — e.g., multiparty litigation, class actions, large acquisitions or divestitures, initial public offerings, etc.) for individual attorneys, a key law firm, or multiple firms provide an opportunity to get everyone on the same page, provide an insight to the corporation and its culture, and leverage the corporation's existing resources.

2. Pay attention to billing and budgeting

Although there are obvious reasons to substantiate the need for effective collaboration between corporate and outside counsel, one explanation that is always current is money, money, money. Simply stated, for most corporate law departments, the expense of outside counsel is the largest single budget item. Although effective collaboration between corporate counsel and outside counsel does not necessarily equate with lower outside-counsel expenses, it does help improve the odds considerably that those monies will be well spent in the course of serving the client's objectives.

Effective collaboration requires a representation plan and budget that can be periodically updated. Budgets force outside counsel and corporate counsel to focus on the work that needs to be done and the most cost-effective ways to do it. In addition, a budget decreases the temptation to make *ad hoc* decisions.

In the face of uncertainty about client expectations, it is natural for outside counsel to try to preserve some room to maneuver. Some might call this prudent management of client expectations; some might call it something worse. Either way, corporate counsel can help the budgeting process by communicating client expectations about the budget amount they believe to be necessary or justified for a particular matter. With a clearer understanding of client budget expectations and more explicit decisions as to what work is needed or not needed, outside counsel can do a better job of ruling out less-essential work to determine whether the client's budget can be achieved without compromising professional standards.

To prevent misunderstandings and promote confidence, outside counsel (especially large law firms) should ensure that billing statements are reviewed for value and accuracy by the lawyers performing the bulk of the representation. This may seem obvious, but in practice this is a major and not infrequent problem. In the end, the issue boils down to trust. Because money is at stake, billing mistakes undermine effective collaboration by eroding the confidence of both corporate counsel and the client in outside counsel. Trust is lost. The relationship is damaged.

Because trust is at stake, it is absolutely critical that outside counsel wisely guard against inaccurate or low-value billing.

3. Balance strengths of corporate and outside counsel

Corporate and outside counsel have complementary core competencies. In a recent exhaustive study,[2] the General Counsel Roundtable identified the following core competencies:

Corporate Counsel Core Competencies

- Company and industry knowledge
- Familiarity with individual business clients
- Relatively low-cost provider
- Interests aligned with company's interests
- Convenient access to documents and parties
- Business perspective, skills, and judgment
- Multidisciplinary experience

Outside Counsel Core Competencies

- Breadth of experience
- Staffing capability and flexibility
- Independent perspective
- Expertise in discrete area
- Ability to spread costs of infrastructure
- Number of professional contacts
- Broad geographical representation

The challenge is merging and maximizing these core competencies effectively and efficiently. This cannot be done without effective communication. It cannot be done without leadership. And it cannot be done without individuals who, depending upon the situation, can transition *easily* from a leadership role to a support role.

The Role of Leadership in Effective Partnerships

Successful partnering between corporate and outside counsel takes an understanding of common goals and objectives. It also requires a captain at the helm of the ship. Far too often, cases and transactions become weighted down by the volume of minutiae and the momentum of the process or, in the case of litigation, case schedules.

There are numerous serious and costly problems with a captain-less ship. A litigation matter, for instance, can easily be driven by a mindless court schedule generated by a clerk's office, or lawyers simply noting depositions and

taking other discovery without careful thought as to the client's real goals. The schedule and discovery may, or may not, have any meaningful relationship to the dispute. It might, for example, call for 16 months of discovery in a case where little or no discovery is needed. Or it might not call for mediation for 12 months into a case where mediation should occur immediately.

Part of the problem is that the legal system is essentially designed for brain surgery. If a patient comes in with a simple mole that needs to be removed, the system still pulls out all the tools for major brain surgery. That is, it does so in the absence of leadership.

The result? Without clear leadership from either corporate or outside counsel, the partnership between corporate and outside counsel envisioned above simply breaks down and the legal matter ambles along on its own, costly, accord. Another result is an amorphous relationship that does not serve the need of the company — the ultimate client — to meet its business objectives. Yet another result is a colossal waste of time and money.

Over the last 25 years, the legal process has become increasingly costly. Along with that increase in costs, the role of outside counsel has morphed from providing purely legal advice and analysis to working as a partner in ensuring a thriving business. It is absolutely critical that outside counsel recognize the role as one mandating not only standard lawyering skills (expertise, analysis, and judgment) but also meaningful leadership ability that translates into good direction, initiative, and vision.

To quote a popular maxim, counsel today must lead, follow, or get out of the way.

Leadership

Enormous work has been done on leadership in the for-profit and nonprofit fields, and many people reading this article will have read a number of popular leadership bestsellers — books like the terrific *Built to Last* and *Good to Great*, the inspiring *Leadership Jazz*, and *Geeks and Geezers*.[3] Leadership forums have developed, especially in the nonprofit sector. Willow Creek's annual "Summit" draws thousands of leaders from around the world, now with satellite conferences in many major cities around the United States.

Both for-profit and nonprofit corporations place a high premium on high-level and day-to-day leadership. This is reflected in the salaries (some might argue absurdly high salaries) paid to some corporate CEOs.

The same is not true, however, of the legal profession. When one thinks of leadership and lawyers, one tends to think of the bar association, or committee or positional leadership work within a firm or corporation. "Lawyer Jones chairs a judicial review committee." Or "my colleague Smith chairs a group of estate planning lawyers at a national firm."

These leadership roles may have little or nothing to do with the type of leadership that is required to ensure effective collaboration between corporate counsel and outside counsel — or the effective working of a case, for that matter. Lawyers, generally, simply have not placed much value on leadership within cases or on corporate law projects. Instead, we talk about analytical ability, judgment, and experience.

Traditionally, law schools have paid even less attention to leadership, while business schools have keyed in on the subject for years. Now with increasing intensity, law schools remain focused largely on the traditional nuts and bolts of lawyering and the skills required for the practice of law. Law students are rewarded for analytical and writing ability, and rightly so. Yet in the day-to-day practice of law, leadership is absolutely vital.

The premise of this article is that these traditional lawyering qualities, while they form what you might think of as an essential baseline, are not adequate and do not substitute for effective leadership.

Effective leadership is especially important in complex or multiparty cases. If four, five, or more parties, each with separate counsel, do not have the benefit of some overarching leadership, it is almost certain that the legal work will suffer and/or be considerably more expensive than necessary. Lawyers and clients will bicker. Egos will arise and vie for center stage. Work will be duplicated, without much effectiveness. Judges will read duplicative pleadings because the lawyers are not working together in a coordinated fashion. It happens all the time.

The leadership vacuum, we think, is often compounded in litigation. This is because the vast majority of judges are not natural leaders. Some judges, particularly federal court judges, have adopted supra-rule practices to help control their cases. Some have even adopted orders controlling cases. These orders require structure and impose obligations on lawyers beyond those contained in the rules. But if a judge offers no leadership in managing the case, the role falls to the lawyers — should the lawyers fail to lead, the case will be governed by the run-of-the-mill case schedule.

So what does leadership look like in this lawyer/leader context?

One might trigger a large variety of answers in attempting to define the qualities that are inherent in leadership. Raymond Cattell, a pioneer in the field of personality assessment, developed the "Leadership Potential Equation." His work is not tailored to the legal profession but offers interesting insight nonetheless. He found that traits of an effective leader include the following:[1]

- **Emotional stability.** Good leaders must be able to tolerate frustration and stress. Overall, they must be well adjusted and have the psychological maturity to deal with anything they are required to face.
- **Dominance.** Leaders are often competitive and decisive, and usually enjoy overcoming obstacles. Overall, they are assertive in their thinking style as well as their attitude in dealing with others.
- **Enthusiasm.** Leaders are usually seen as active, expressive, and energetic. They are often very optimistic and open to change. Overall, they are generally quick and alert, and tend to be uninhibited.
- **Conscientiousness.** Leaders are often dominated by a sense of duty and tend to be very exacting in character. They usually have a very high standard of excellence and an inward desire to do their best. They also have a need for order and tend to be very self-disciplined.
- **Social boldness.** Leaders tend to be spontaneous risk-takers. They are usu-

ally socially aggressive and generally thick-skinned. Overall, they are responsive to others and tend to be high in emotional stamina.

• **Tough-mindedness.** Good leaders are practical, logical, and to-the-point. They tend to be low in sentimental attachments and comfortable with criticism. They are usually insensitive to hardship and, overall, very poised.

• **Self-assurance.** Self-confidence and resiliency are common traits among leaders. Leaders tend to be free of guilt and have little or no need for approval. They are generally secure and free from guilt, and are usually unaffected by prior mistakes or failures.

• **Compulsiveness.** Leaders were found to be controlled and very precise in their social interactions. Overall, they were very protective of their integrity and reputation, and consequently tended to be socially aware and careful, abundant in foresight, and very careful when making decisions or determining specific actions.

Outside of basic leadership traits, successful leaders must also possess personality traits that allow them to envision the future and convince others that their vision is worth following. These personality traits include:[5]

• **High energy.** Long hours and some travel are usually a prerequisite for leadership positions, especially as your company grows. Remaining alert and staying focused are two of the greatest obstacles you will have to face as a leader.

• **Intuitiveness.** Rapid changes in the world today combined with information overload result in an inability to "know" everything. In other words, knowledge, reasoning, and logic will not get you through all situations. In fact, more and more leaders are learning the value of using their intuition and trusting their "gut" when making decisions.

• **Maturity.** To be a good leader, personal power and recognition must be secondary to the development of your employees. In other words, maturity is based on recognizing that more can be accomplished by empowering others than by ruling others.

• **Team orientation.** Business leaders today put a strong emphasis on teamwork. Instead of promoting an adult/child relationship with their employees, leaders create an adult/adult relationship, which fosters team cohesiveness.

• **Empathy.** Being able to "put yourself in the other person's shoes" is a key trait of leaders today. Without empathy, you can't build trust. And without trust, you will never be able to get the best effort from your employees.

• **Charisma.** People usually perceive leaders as larger than life. Charisma plays a large part in this perception. Leaders who have charisma are able to arouse strong emotions in their employees by defining a vision that unites and captivates them. Using this vision, leaders motivate employees to reach toward a future goal by tying the goal to substantial personal rewards and values.

In the end, this listing of qualities, while perhaps instructive, is one of dozens of attempts to define in words what people know to be true: some people are natural leaders. They know how to get from A to Z — and others will follow them along the way. It is, to be sure, far beyond our competence or ability to attempt to define leadership in so many

words. We believe, however, that leadership is a gift of sorts. It can be developed. But some people have this gift and others simply do not.

Leadership as the cornerstone to successful lawyering

For corporate counsel

Leadership principles should generally inform your attitude and translate into a number of behaviors when interacting with outside counsel, an opposing party in a transaction or litigation, or the court:

- **Hire a leader.** It will make your life easier.
- **Define the objective of the representation early, clearly, and repeatedly.** If you've hired the right leader, he or she should be able to get you there.
- **Provide meaningful guidance from beginning to end.** Too often, corporate counsel simply hire outside counsel and thereafter provide little meaningful guidance. One simply must engage on a substantive level if the representation is to be effective.
- **Facilitate an exchange of information.** Outside counsel, in litigation or in the course of a transaction, will generally not have the knowledge of the company required to obtain critical information. You must assist in this process.
- **Make informed judgments and then stand with outside counsel.** A leader does not stand back and point the finger when things go south. That is not leadership; it is weakness. Judgments should be made together, with full knowledge of risks. Thereafter, corporate and outside counsel should work together through good or bad. If problems arise (and they will), leaders fix the problem; they do not affix the blame.
- **Get involved.** With few exceptions, corporate counsel should be providing meaningful guidance on transactional documents, briefs, mediation submission, and strategy, and at trial.

For outside counsel

To be effective, outside counsel must provide leadership to the client, colleagues, co-counsel, opposing counsel, and the court. As with corporate counsel, this requires a constructive attitude and a number of behaviors:

- **Keep the client's business objective in mind.** This is particularly true when a "team" of lawyers is at work. Lead counsel must keep the big picture — from the client's perspective — in mind at all times.
- **Remember, relationships matter.** As a leader, your relationships with colleagues, co-counsel, court staff, in-

house staff, and opposing counsel are absolutely critical. You must pay attention to relationships. Many cases and legal projects are thrown off course because relationships are not sufficiently valued. Some fine, highly skilled lawyers create additional expense and difficulty for their clients by not paying attention to this rule.

- **Don't surprise the client.** Your client should know what you are doing, what you are not doing, and why. Clients deserve regular weekly updates showing work accomplished, work to be performed, and results obtained.
- **Communicate, communicate, communicate.** Your client deserves to know what is happening on any case, even a small one. Communication should be characterized by openness and trust. If communication breaks down, trust will break down.
- **Provide initial and updated budgets.** Clients also deserve to know what you think a project will cost. And they deserve to know what it actually costs.

Practical Tips and Simple Tools for Effective Leadership

The following are tips for building a better relationship between corporate and outside counsel:

- **Ask outside counsel to lead.** Simply make it clear from the beginning of the representation that you expect more than good thinking and writing. You expect results, and you expect leadership to get those results. Make it clear that outside counsel's role is a global role, not a technician's role.
- **Educate outside counsel.** At the beginning of each new representation, corporate counsel should provide outside counsel with a briefing on client objectives, client personnel, decision-making, control structure, and client expectations on the frequency and detail of communications and decisions.
- **Representation plan.** Outside counsel should develop a representation plan early in the engagement for the client's review and approval. The plan should be regularly updated and used as a tool for measuring performance and managing costs. A representation plan can add value by identifying those areas where corporate counsel and clients can efficiently provide information and those areas where outside counsel should concentrate their efforts. The plan should include a shared strategy to obtain the desired results.
- **Status reports.** Outside counsel should provide weekly or monthly status reports, highlighting new developments and tasks so that corporate counsel is continually, and automatically, kept up-to-date in real time. See page 22 for a sample report. Reports should be sent electronically and should highlight any new or critical information. The sample report is designed to be read in 30-60 seconds.
- **Budget to actual comparisons.** As outside counsel, provide at least quarterly budget reports to actual comparisons for each matter, showing a cumulative total. Include new matters not budgeted for at the outset. See page 22 for a sample quarterly budget.
- **Hold periodic team meetings.** Client representatives should be included in periodic team meetings. These meetings serve to redefine the goals of the repre-

sentation, identify risks and challenges, and discuss strategy. These are especially important in multiparty or multilawyer cases.

• **Keep the team informed.** Too often, lawyers communicate selectively. While this is sometimes appropriate, it is imperative to avoid triangulation. E-mails should be copied to all concerned, not to selected favorites. Controversial strategic and briefing decisions should be disclosed and discussed, not hidden or popped as a surprise.

• **Be responsive.** Promptly return telephone calls and respond to correspondence. If co-counsel called, assume it was important; if you return a call that you do not find important, consider it an opportunity to clarify expectations and reduce the risk of future misunderstandings as to what is and is not important in the representation and the co-counsel relationship.

• **Communicate more, not less.** When in doubt, ask or confirm. Speak plainly if there are perceived problems or disagreements, and develop a skin thick enough to hear and consider plain speech from co-counsel without harboring hurt feelings or injured pride. It is natural to want to avoid difficulties, but solutions require more intensive communication — not less.

Conclusion

Effective collaboration between corporate counsel and outside counsel adds value, reduces costs, and substantially improves the odds that the client will obtain high-quality legal representation at a reasonable cost. Leadership in lawyering and the ability to transition easily between a leadership role and a supporting role as the situation requires are essential components to an effective, collaborative relationship.

Greg Tolbert is senior legal counsel for Weyerhaeuser Company in Federal Way, and is a graduate of William and Mary College of Law. David Goodnight is a partner at Stoel Rives LLP in Seattle, and is a graduate of Valparaiso University and Yale Law School. Vanessa Power is an associate at Stoel Rives LLP and is a graduate of the University of Washington School of Law and the Daniel J. Evans School of Public Affairs. The authors co-chaired a WSBA CLE in Seattle on May 13 entitled "Effective Collaboration: Keys to Success for Corporate In-house and Outside Counsel."

NOTES

[1] *See* "Ask the Practical Questions: the Three Bs of Partnering," *Corporate Legal Times* (Sept. 1999), at 1.2.

[2] *See* General Counsel Roundtable, *Outside Counsel Management: Beyond the Cost-Quality Trade-Off*, at 96 (2001).

[3] *Built to Last: Successful Habits of Visionary Companies*, by James C. Collins and Jerry I. Porras; *Good to Great: Why Some Companies Make the Leap ... and Others Don't*, by James C. Collins; *Leadership Jazz*, by Max Depree; *Geeks and Geezers*, by Warren G. Bennis and Robert J. Thomas.

[4] *See* Raymond B. Cattell, *The Scientific Analysis of Personality* (1965), chap. 4.

[5] *See* United States Small Business Administration, "Leadership Traits," at www.sba.gov/managing/leadership/traits.html (Feb. 20, 2004).

Sample Weekly Status Report

CONFIDENTIAL • ATTORNEY/CLIENT PRIVILEGED

To: Corporate Counsel
CC: Client's Business Representatives
From: Outside Counsel
Date: March 9, 2004
Re: Status Update

Status:	Motion for protective order granted March 5. Discovery cutoff March 30. Final hearing scheduled for May 30.	
Items Completed this Week	1. Outside counsel prepared letter to petitioners regarding itinerary for site visit. 2. Client's business representative provided copies of photos for demonstrative exhibits at final hearing. 3. Outside counsel prepared and filed motion to compel discovery responses (see attached). Motion is noted for March 18.	
Action Items	1. Team meeting to prepare for final hearing and discuss possible PowerPoint presentation, demonstrative exhibits, and amicus draft.	3/15 @ 1:30 pm
	2. Prepare motion for partial summary judgment.	4/10
	3. Site visit.	3/24
	4. Final hearing.	5/30
Ongoing Discussion Items:	• Discussion regarding which charts/maps/PowerPoint we should use for final hearing. • Brainstormed ideas at 2/10 team meeting and 2/24 team meeting. • Possible demonstrative exhibits: financial statements. • Possible PowerPoint slides showing expert analyses and chart designating conclusions.	
Objective:	Resolve pending lawsuit and determine long-term strategy to prevent future actions based on similar issues.	

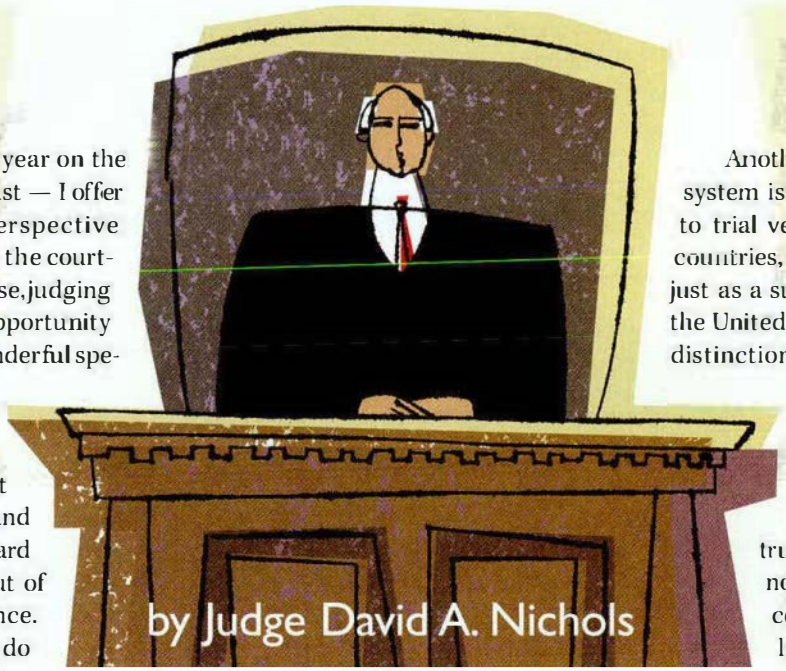
Sample Quarterly Budget Report

CONFIDENTIAL • ATTORNEY/CLIENT PRIVILEGED

To: Corporate Counsel
From: Outside Counsel
Date: March 9, 2004
Re: Fourth Quarter 2003 Budget Projections and Third Quarter 2003 Budget-to-Actual Comparison

Budgeted Fees/Costs Quarter Ending September 30, 2003:		**$40,000**
Actual Fees and Costs Quarter Ending September 30, 2003:	**Fees:**	29,314
	Costs:	1,245
	Total:	**30,559.00**
Over/Under Budget		**-9,441**
Milestones:	Outside counsel prepared a litigation risk analysis regarding the client's claim for breach of contract against purchaser of products. Outside counsel reviewed background documents, confirmed facts, and prepared and filed complaint. Outside counsel prepared draft motion for TRO.	
Budget, Tasks, Goals for Quarter Ending December 31, 2003:	October: Finalize and file motion for TRO. Propound discovery requests. Note Rule 30(b)(6) deposition.	20,000
	Total October:	**20,000**
	November: Discovery and motion practice.	10,000
	Total November:	**10,000**
	December: Discovery and motion practice.	10,000
	Total December:	**10,000**
	Total for Quarter:	**$40,000**
Objectives:	Resolve pending lawsuit and determine long-term strategy to prevent future actions based on similar issues.	

Random Thoughts from 20 Years On the Bench



by Judge David A. Nichols

As I step into my 20th year on the bench — likely my last — I offer the following perspective about lawyers and the courtroom. If nothing else, judging gives one an unparalleled opportunity to observe that rare and wonderful species, the attorney-at-law in full flight: desperate and eager, floundering and eloquent, subservient and arrogant, unprepared and articulate, suave and awkward — in short, the whole gamut of personality and performance. People ask me often, "How do you sit there and keep your interest and attention day after day?" And the answer of course is: because the personalities change like a kaleidoscope, endlessly fascinating and absorbing, even when I get the "itchies" watching performances that seem ineffective.

Attorneys in trial have my utmost respect. In 20 years I have seldom seen an attorney not trying hard to do right by the client, putting in long hours, firmly committed to the chosen course. I have never witnessed an attorney being intentionally disrespectful to the court, and I think there is a genuine desire to hold the system in esteem. Obviously, however, I would not be writing this article if all were right with the world, but it is typically not for lack of effort that attorneys do not try cases effectively.

Sadly, we do not employ the British system of training litigators and creating specialists. With the exception of a usually optional trial-practice course in law school, in the United States new lawyers come into the practice legally allowed to remove a spleen, as it were, with no background other than the first two years of "medical school" — without clinical work, internship, or residency. Unless the new lawyer manages to tie in with a prosecutor, public defender, or big firm that has a litigation department, the lawyer is destined to run on instinct alone, jeopardizing the public and condemned to a "trial" and error approach that may never produce competent trial advocacy.

As a matter of fact, though we usually manage to muddle through most trial days and come to a passable result, I have found really good trial advocacy to be quite rare, even on the part of experienced trial lawyers. That comes not only from a failure to have had good practical teaching and good mentoring along the way, but also from an unwillingness on the part of most lawyers, especially experienced ones, to ask for help and feedback from each other and from the judges who have been hearing their cases, or to make an honest self-appraisal of their performances. Winning does not necessarily reflect good lawyering, just as losing does not necessarily reflect bad lawyering. Not taking advantage of helpful comments from a judge after a trial deprives the lawyer of some very valuable insights. But woe be it to the judge who offers unsolicited suggestions. Those are seldom well received, and most judges try it only once!

Another problem with the American system is that most lawyers do not get to trial very often. In Commonwealth countries, barristers do only trial work, just as a surgeon does only surgeries. In the United States, the barrister/solicitor distinction and separation of function have never caught on. Remarkably, we require a specialized training license to do almost everything in society from medicine to driving a truck to opening a beauty salon, not to mention ongoing training certifications once the original license is obtained. But in the crucial areas of litigation, no specialty license is required showing minimum competence. Pilots tell me that to fly an aircraft safely, a person needs a minimum number of flying hours each month. That lawyers seldom go to court is evident in their performances. Yet they are the pilots of our most serious social problems.

Since our society seems little inclined to change the present system, what then can lawyers do to improve their performance?

Take Control of the Courtroom

Though it has been correctly said that there is no one kind of personality that makes a good trial lawyer, I believe that a failure to grab and hold a judge's or jury's attention and keep it throughout the trial, or, conversely, to do things that rankle a judge or jury, contributes to a lack of success in court. The courtroom is no place for the shy, the diffident, or the halting. Lawyers routinely forget the importance of controlling the environment.

A partial checklist of undesirable, but frequently encountered, behaviors might go as follows: Attorneys let their voices drop; fail to project throughout the room; lose eye contact; lounge indiscriminately

at counsel table or the bar; turn away from their key listeners; pace or fidget, and do distracting things when opposing counsel has the floor; leaf interminably through obscure notes, hunting, presumably, for some long-lost thought; are disorganized and fumble with exhibits; discuss exhibits with witnesses the fact-finder has no idea about; show they have not practiced using the overhead or some other equipment; scribble illegibly on the butcher paper; are rude or condescending to opposing counsel; mumble objections, or talk too fast and unintelligibly; use occasional bad language[1]; lack conviction in the presentation of the case; and have no real message to impart. This list is not composed of occasional isolated instances. These things occur with regularity, and almost every lawyer is guilty of one or more of them.

Judge and jury are mightily affected by all these activities, which detract from and undermine the core of the presentation. The courtroom is a stage, and the lawyers have the lead roles. As the great Broadway icon Ethel Merman once said, "I might not have the greatest voice, but the person in the last seat in the house is going to hear every word I sing!" Being articulate, brief, economical, absolutely on top of one's case, forthright, compelling, even spell-binding, are attributes every attorney who comes into court needs to cultivate, whether it be a simple motion or a four-week trial. The message must be clear from the outset, forcefully delivered, constantly reiterated, and creatively summed up. And, throughout, counsel *must* project his or her voice, so the fact-finder hears every word all the time.

Lawyers usually do an excellent job of amassing the details that support their cases. They take depositions, propound interrogatories, investigate and corroborate details, and ferret out witnesses. Often the courtroom looks like a check-in line at the airport as they pull in huge wheel-assisted luggage chock-full of files presumably crammed with all the useful material discovery has turned up. What they often fail to do is take all this detail (the novel, if you will) and turn it into a stage or screenplay — into a case that the trier of fact can digest in a short time. The trial should be a drama with a beginning, middle, and climax. The good trial lawyer learns that there is a vital distillation process, which reduces folders full of potential testimony down to a compelling drama that will hold and persuade a trier of fact. That is why the solicitor/barrister system is so good. The former does all the necessary legwork, while the latter concentrates solely on the courtroom presentation. For good trial advocacy, the lawyer must doff the solicitor hat before trial and don the barrister hat. Trial is no place for the faint of heart who do not enjoy the stage and the challenge of grabbing an audience and holding it enthralled, or the pedantic who cannot grasp the fundamental that more is usually not better. In the best of all worlds, the attorney should come to trial armed only with a thoughtfully crafted screenplay, *not* the novel!

We do it all backward, of course. After interviewing the client the first time, we should write the trial brief. We should thoroughly analyze the case, determine viable theories, research them, and decide from the beginning how the case would be presented to a judge or jury. Instead, lawyers mostly launch into often-exhaustive discovery investigations hoping theories and creative ways to

present the evidence will eventually drop out of the ether.

It all comes back to taking control of the courtroom: a good legal theory, a strong direction, a nicely conceived drama, and competent acting once on the stage.

Always Be an Officer of the Court

Attorneys forget that outcomes are not what we are about so much as being caretakers of a system of justice that is as fair as humans can make it. One acute disappointment of my judicial tenure, no doubt from naiveté on my part, has been my coming to the realization that attorneys do not join the judge in a search for a correct result. Sometimes they are not loath to skirt the truth, misstate case law, and argue positions that only put the judge off. An attorney has no duty to make the other side's arguments, but when you concede the other side is right, when you decline to make spurious arguments, when you properly distinguish cases, and in general level with the judge, you create more goodwill than you can imagine. I have been immensely frustrated to find out later that a lawyer assumed I would see that some argument was made only for the benefit of the client and was never intended to be taken seriously. If you cannot make an argument in good faith, you should not make it, even if it means running counter to the wishes of the client.

Lawyers should afford the court and staff the utmost respect, not because some judge demands it, but because it is, after all, *our* system. The more an attorney demonstrates respect for the system and the court, the better the light that shines on that attorney. Specifically, I would urge that lawyers always stand when addressing the judge; that they never address opposing counsel in the presence of the court or argue between themselves; that they introduce out-of-town counsel who may not know the judge; that they treat opposing counsel, the staff, the judge, and the jury with respect and politeness; and that they never personalize the case either by making snide or demeaning references to the other side or by addressing the other side by the attorney's name. Frequently, attorneys will make references like "Mr. [Attorney] Smith is asking you to believe" or "Ms. [Attorney] Jones says," when what ought to be said is "The *defendant* argues," or "The *State* is trying to convince you." The case belongs to the clients. It is not a contest between lawyers. The British and Canadian systems use phrases like "my learned friend" or "my learned colleague" when they need to refer to the other lawyer. Referring to opposing counsel by name makes the case personal, which should never happen. And do not forget to use the time-honored phrase, which is fast becoming a lost art form, "May it please the court," before making an argument.

Always Dress Appropriately and Be Sure Your Clients Dress Appropriately

I have had criminal defendants show up in tank tops and cut-offs for a sentencing. People who do not respect the process are unlikely to get respect from the court. In this modern day, suits are not always necessary, and a client carpenter can certainly wear a nice shirt and trousers. Sheer blouses and too-short skirts for female lawyers, and ratty old sport coats and garish ties for male lawyers are inappropriate. For jury trials, suits worn by both men and women show respect for

both court and jury. In my view, the courtroom is not the place to reflect society's informality. If the lawyer wants to be taken seriously, anything that tends to detract from the image of a working professional puts one more roadblock in the way of the fact-finder's coming out the way a lawyer hopes.

Try Your Case so that the Fact-Finder Can Best Learn the Material

Too many lawyers forget how judges and juries learn. Each judge and juror has a learning style. Some can learn by listening, which is the basic format of a trial or argument. Ironically, studies show that taking in data solely by listening is the least-effective way to learn something, and yet that is the predominant modality used in court. Listening is probably the worst way of conveying information, at least if is not accompanied by some kind of physical activity, such as writing notes, or looking at or touching exhibits. People are multisensory entities. The more the presentation engages more than the auditory sense, the greater understanding and retention there is. Lawyers often fail to use tools that will enhance comprehension and retention: the overhead, opaque projector, digital photography and imaging, copies of documents for the jury, demonstrative exhibits, and the like. Effective arguments to a judge on the motion calendar can be enhanced by an overhead or handout outlining the issues, a copy of the key document in the deed, or a statement of the relief sought. Remember who has to make the decisions in the case. More times than you might think, I have had to ask counsel for a copy of whatever is being discussed with the witness.

The old principle of KISS — Keep It Simple, Stupid — is still true today. More is not better. Fact-finders have limited attention spans. They need roadmaps, and they need to be drawn quickly into the world of the case. Good trial preparation involves winnowing out much material, deciding who the best witnesses are, considering alternative methods of proving a point, figuring out how the fact-finder can best learn the case, and having a compelling story to tell.

Prepare, Prepare, Prepare

Too many times counsel report for motions or trial ill-prepared to present the case. Cross-examination often consists of counsel leafing through notes to try and find questions, all of which should have been mapped out before. Counsel ask every question they can think of instead of just those they need to score points. They do not make copies of exhibits for court and counsel. They use depositions improperly to impeach. They are doing something else when an exhibit is offered and have to be prompted for a response. They don't know the rules of evidence, don't object when they should, and object when they should let it go. They fail to stipulate when the evidence is collateral or doesn't harm their case. They spend

untold minutes looking for stuff in their materials. They call witnesses for irrelevant purposes or ask irrelevant questions of their witnesses. They fail to accord constant deference to opposing counsel by being reasonable — being gracious when scheduling problems occur; getting witness lists, expert reports, and motions in on time; or giving opposing counsel a heads-up if the game plan changes. I can report that juries are tremendously impressed when counsel work together as professionals, contesting the case hard, but always demonstrating that they respect each other.

Do *Voir Dire* Well

As I have written before, *voir dire* is consistently done badly, not only because it fails to elicit valuable information but chiefly because, as practiced by most lawyers, it is so dreadfully tedious. To this observer, the worst thing an attorney can do is bore the jury panel. If you cannot engage the *venire* in a lively discussion, cutting the *voir dire* short is probably the best strategy. Other than the commonsense dos and don'ts of good interviewing, e.g., open-ended questions rather than closed-ended questions, we do not have helpful research on the kinds of questions that will cause jurors to reveal their deep prejudices and tendencies. Jurors are simply *not* going to reveal their inner selves to strangers. The best the jury-selection gurus can do is come up with predictions based on stereotyping, and only some of that may be valid. So get your issues out before the panel, weed out the people who are too opinionated or talkative or obviously biased, and make it short.

Avoid the Use of "Affidavit of Prejudice"

Finally, let me decry the use of the "affidavit of prejudice" to facilitate judge shopping or avoid going to trial. Old-time lawyers never filed such affidavits unless there were true conflicts. Now attorneys file affidavits routinely, often based on the "book" made about a particular judge, based, I guess, on presumed biases. One attorney told me it would be malpractice to take a certain kind of case before a particular judge. I am not saying judges may not appear predictable based on their histories. I am saying the practice is demeaning, disrupts the flow of cases through the system, and is essentially useless. Attorneys should instead be concentrating on how to present their materials so that a particular judge can readily absorb them and line up behind the lawyer's theory. If a "book" is made on judges, that book should inform the bar as to how the respective judges of the county learn. If a judge seems to make decisions early on in the case, you had better get in a good trial brief ahead of time and put your best witnesses on first. If a judge tends to be a person who likes to see the "forest" and gets bogged down in the "trees," then you do not inundate that judge with detail, and your trial brief and opening statement should very carefully delineate the path you intend to follow. In my view, cases are not won or lost by guessing right on the judge, but by having a good understanding of how to persuade a particular judge to your point of view. That takes a lot of thought, flexibility, and inventiveness in your preparation.

Conclusion

So these are some of my observations over the years as I have watched a great number of practitioners bring their cases to court. I am a strong, strong supporter of lawyers, and very aware of the tough job they have. I hate to see them engage in activities and behaviors that detract from the noble purpose they have. I am not implying that all attorneys trying cases do everything I have mentioned, but my observations lead me to the conclusion that virtually all lawyers engage in some of the behaviors I list. Perhaps some of you who read this will find the observations helpful. Regardless, I applaud you all for the very significant and vital roles you play in the best justice system in the world. It has been a pleasure.

Judge Nichols is a Whatcom County Superior Court Judge and past contributor to Bar News.

NOTES

[1] Until the Queen herself uses these words, they are not appropriate in the courtroom: "pissed," "damn," "hell," or "screwed."

Time to Untie the House?

Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board

by Erik D. Price

When local retailing giant Costco filed suit against the Washington State Liquor Control Board earlier this year, it sent shock waves throughout the beverage alcohol industry, because the case is a challenge to regulations and practices that have been in place since the end of Prohibition. Under Washington's current regulations, retailers cannot buy alcohol products directly from manufacturers, but must instead buy from distributors. Costco's lawsuit asserts that it can deliver beverage alcohol to the consumer far less expensively if market forces are allowed to operate without the limitations imposed by state regulation.

While advocates for distributors complain that changes to the status quo could dramatically reduce jobs in that industry, retailer groups see advantages to the changes that could result from Costco's suit. Beverage alcohol manufacturers may have different perspectives depending on their size — smaller brewers and wineries may perceive a benefit from the current structure of the industry, but larger manufacturers may see increased flexibility and profits from a more open alcohol market.

Costco's lawsuit asserts that it can deliver beverage alcohol to the consumer far less expensively if market forces are allowed to operate without the limitations imposed by state regulation.

The target of the Costco suit is Washington's "tied house" laws that seek to prevent vertical integration in the liquor industry by forcing the separation of the three tiers of product manufacture and delivery — (1) beverage alcohol producers, (2) wholesalers and distributors, and (3) retailers. This separation of the tiers of production and sales in the alcohol industry is deeply rooted in the history of liquor legislation at both the federal and the state levels. So established is the three-tier system that its desirability has been rarely challenged by the industry — both regulators and businesses — until now. The Costco lawsuit caused an immediate frenzy of analysis from legal and industry observers about the economic and legal impact of the clash between federal marketplace principles and states' rights.

For its part, the Washington State Liquor Control Board defended its position through a statement released on

February 24, 2004. In this statement, the board fell back on historical justifications:

> Many of these laws have been in effect since the 1930s, when the 21st Amendment to the U.S. Constitution gave states the right and responsibility to regulate all aspects of alcohol sales, distribution and consumption within their borders.
>
> The 21st Amendment reaffirms that alcohol is not just another commodity like potato chips and that its sale and distribution should occur in a fair and orderly marketplace to discourage over-consumption and protect public safety. Many states have adopted three-tiered distribution systems to accomplish these goals. In such systems, producers sell to distributors who then sell to retailers.

Without question, the analysis of the merits of the Costco suit and its impact on the economic welfare of the industry players will be dominated by the practical aspects of how these laws function in today's economy. However, as today's marketplace impacts are debated, the historical basis for the laws should not be ignored. On the eve of a potentially profound change in the beverage alcohol industry, now is an appropriate time to revisit the reasons these laws were enacted almost 70 years ago and to analyze whether those justifications are still valid today.

As any large producer, distributor, or retailer of beverage alcohol will tell you, state liquor regulations vary greatly throughout the country. This is due, in large part, to the freedom provided to the states through the 21st Amendment, enacted to repeal Prohibition. The amendment reads:

Amendment XXI

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

The express words of Section 2 of the amendment, by referencing the "laws" of the states, have been determined by the courts to grant to the states constitutional permission to closely regulate the interstate commerce of beverage alcohol in a way that would be forbidden for any other product.

Despite differences in the approaches taken by the states in liquor regulation, there are several concepts that permeate liquor regulations across the board. One of these concepts is the "three-tier" system. The strict separation of liquor manufacturers and producers from wholesalers, and distributors from retailers, is rooted, in large part, in the perceived evils associated with the "tied

house." The "house" may be tied to the producer by, obviously, joint ownership, but also more indirectly through undue influence.[1]

The purpose of the federal tied-house laws has been explained as follows:

> The Members of Congress debating the bill [in 1935] repeatedly stated that the tied house provision was designed to prevent control by alcoholic beverage producers and wholesalers over retail outlets, especially saloons. As Congressman Treadway, minority spokesman for the bill, explained:
>
> "Probably some of the Members wondered what the meaning may be of 'tied house,' the first two words under (b). To my mind that is one of the best features of this bill if it accomplishes what it is intended to accomplish. *Subsection (b) is intended to prevent distillers, brewers, and wholesalers controlling the dispensation of whisky or beer, as the case may be, by exercising dominion and control over the place at which the liquor is sold.*"[2]

Thus the essence of the "tied-house evil" was vertical integration. According to the 1935 Senate report, "[t]he tied-house provisions . . . relate to the acquisition by industry members of control over theretofore independent retail establishments . . . ."[3]

There were many symptoms of the "tied-house evil" that Congress believed it was curing in 1935. Political corruption was one such symptom:

> Before prohibition, a vast number of the retail outlets of the country where liquor was sold for consumption off the premises had fallen into the hands of the distillers and the brewers. The larger distillers and brewers controlled scores, hundreds, and possibly thousands of such outlets. That inevitably threw them into politics, inevitably led them to seek control of State and municipal legislation, and brought about an unhealthy political condition which . . . was one of the first causes of prohibition.[4]

Another evil of the tied house was the "forced increase in alcoholic beverage sales resulting from the 'tied-house.'"[5] This would, in turn, lead to a runaway proliferation of saloons and bars.[6]

Finally, irresponsible ownership of retail outlets was yet another evil addressed by the legislation. Said one senator:

> Is not it true that in the old days a lot of the opposition to liquor and beer arose because of the fact that the brewers would put in a sort of a sorry fellow who had no responsibility and no money to buy his equipment, and they would pay for his license and put him in his business, and he was usually the fellow who violated all the Sunday laws and every other kind of law? That is why the thing grew up. This evidently is based on that theory, that a man ought to have some personal responsibility to run a grog shop, not depending on the brewer financing him.[7]

Thus the "tied-house evils" — political corruption, proliferation of saloons, increase in alcohol consumption, and irresponsible ownership of retail outlets — were the result, in the view of the Con-

gress in 1935, of the "purchase of control or exclusive selling rights from ostensibly independent retailers in need of financial assistance."[8] The predominant focus, then, of the federal tied-house laws was curbing the influence of the powerful liquor producers and their abuses of the meek retailers. By demanding complete separation of the industry tiers — the producers, the distributors, and the retailers — these abuses could be controlled and minimized. The resulting structure of rigid separation between the three tiers of the beverage alcohol industry has been preserved both at the federal and state level ever since.

While other industries may have restrictions on vertical integration, those restrictions are generally imposed through traditional state and federal antitrust laws. "Liquor is different" is the usual explanation for the disparate treatment under the law. Or, as explained by the Washington State Liquor Control Board in response to Costco's legal challenge, "alcohol is not just another commodity like potato chips." While it is true that no other legal and widely consumed product has had the checkered history of beverage alcohol (such as the "great experiment" of Prohibition), whether this "difference" of liquor is sufficient to justify the continued anti-free-market structure of the industry is a valid question.

The beverage alcohol industry of the 21st Century bears little resemblance to the industry that existed in the 1930s — over time there has been a clear shift of power away from the producers and toward wholesalers and retailers.

Times have changed in the beverage alcohol industry; 2003 is not 1933. The beverage alcohol industry of the 21st Century bears little resemblance to the industry that existed in the 1930s — over time there has been a clear shift of power away from the producers and toward wholesalers and retailers.

The beer, wine, and spirits industry has changed substantially since the three-tier laws were enacted. While there were once few producers and many wholesalers, the opposite is true now, at least in wine and beer. In 1950 there were 5,000 alcohol wholesalers nationwide, today there are only 170 with the result that in some regions retailers are served by as few as two wholesalers. Conversely the numbers of breweries has grown from 401 to 1,522 while the number of wineries has quadrupled.[9]

Perhaps nowhere is this proliferation of small producers more evident than in Washington's growing wine industry. In 1981, there were 19 wineries in Washington state. By 2001, that number had grown to 170 wineries. Today there may be as many as 240 Washington wineries.

Again, the historic justifications for the tied-house laws — political corruption, proliferation of saloons, increase in alcohol consumption, and irresponsible ownership of retail outlets — were all

tied to the influence of powerful and affluent producers and correspondingly weak retailers. The industry's dramatic shift toward smaller, more-numerous producers and more-powerful distributors and retailers turns the historical paradigm on its head.

Once it can be established that the historical conditions that justified the tied-house laws have not only evaporated, but in fact have completely reversed, the question becomes, "Do these laws serve any useful purpose in a wholly different economic climate?" Those benefited by the system, notably distributors, understandably defend the three-tier system and may be able to articulate valid justifications under today's marketplace reality for continuing the system. The Costco suit, however, represents the growing movement of dissenters who view state and federal beverage alcohol regulation as archaic and based on societal concerns that simply do not exist today. And, as the Costco suit illustrates, at least some of these dissenters have the financial capability to legally challenge the well-entrenched status quo.

The ultimate impact upon Washington's beverage alcohol producers of tinkering with the system is far from certain. What is certain is that releasing the beverage alcohol industry from the tied-house laws nationwide would completely change the rules of the marketplace. While Washington's producers currently do have a modest ability to market their own products to retailers, they have no similar ability in many other states. On the one hand, these laws afford a measure of protection from out-of-state competition by providing somewhat freer access to retailers than that allowed to out-of-state producers. On the other hand, Washington wines could enjoy broader access to markets in other states if the rigidity of the industry were softened across the board. Competition could also occur on the merits of the product, or quality of the wine, rather than on the whims or prejudices of the middle-tier distributors. Furthermore, breaking down the prohibitions on ownership between tiers could allow Washington entrepreneurs to develop their own wineries while at the same time forming distribution companies or retail outlets.

The Costco suit, however, represents the growing movement of dissenters who view state and federal beverage alcohol regulation as archaic and based on societal concerns that simply do not exist today.

Beside the obvious creation of a rigid industry structure, there are also less-tangible by-products of the three-tier system that impact both business and government, like a cumbersome process for liquor licensing. Rooted in the historical concern for common ownership among the tiers, the state liquor laws create a lengthy and expensive licensing process through which state liquor investigators are compelled to thoroughly review the applicant for evidence of an ownership interest in a different tier of liquor industry. Such invasive inquiry can be a headache for regulators and businesses alike when the applicant happens to be a corporation operating in several states with multiple layers of ownership entities. If investors several layers removed from

the license applicant happen to have connections with organized crime and use a hidden hand to direct corporate operations, one can understand the state's interest in uncovering that connection. But when an investor in a license applicant happens to have a spouse with some stock ownership of Anheuser-Busch, the energy expended by the state to discover this interest makes little sense. Adjustment of the three-tier system could subject applicants for retail liquor licenses to more reasonable inquiry about investments, and the licensing process would also be more streamlined and economical as both regulators and applicants could focus on issues of serious concern like criminal influence. Oppressive marketplace abuses caused by undue integration of industry tiers could be addressed through the antitrust laws, like all other businesses.

Admittedly, there are problems with the oversimplistic solution of erasing these laws from Washington's and other states' statutes. And there is no guarantee that any such broad sweeping changes will result from the Costco suit. The current merits of the three-tier system will doubtlessly be briefed and examined in the course of the litigation. Certainly the way changes to the system will impact the economics of today's beverage alcohol industry and what they could mean to the future will be hotly debated. This debate, however, should not move forward without at least glancing backward. The historical justifications from the 1930s marketplace that created the current three-tier system may not be dispositive of whether the system should be retained, rejected, or altered. But as we stand, perhaps, on the threshold of dramatic change to beverage alcohol regulations, neither should these historical justifications be ignored.

Erik D. Price focuses his practice on government and regulatory issues, including initiative and referendum challenges. He practices in the Olympia office of Lane Powell Spears Lubersky.

NOTES

[1] Washington codified its tied-house laws at RCW 66.28.010, which states, in part:

> No manufacturer, importer, or distributor, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, or distributor own any of the property upon which such licensed persons conduct their business . . . .

[2] *National Distributing Company v. U.S.*, 626 F.2d 997, 1008 (D.C. Cir. 1980) (emphasis added).

[3] *Id.* at 1009.

[4] *Id.*

[5] *Id.*

[6] *Id.*

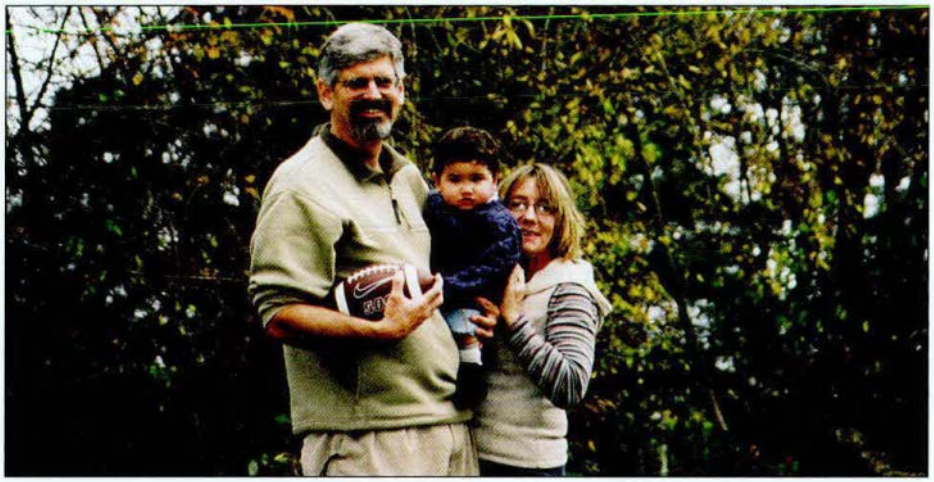
[7] *Id.* at 1008-09.

[8] *Id.* at 1010.

[9] Newkirk & Atkinson, "Buying Wine Online," Progressive Policy Institute (Jan. 2003).

A Few Minutes with Rob Boggs

First the basics. I just turned 50. I was born March 2, 1954, in Peoria, Illinois. Yes, Peoria as in, "Will it play in Peoria?" Peoria was part of the vaudeville circuit. It also produced much of the bathtub gin for Al Capone's Chicago and still produces more alcohol than any city in the world. I grew up there, in and out of the Chicago suburbs, and in Michigan.



Rob, wife Chrysty, and grandson Isaac enjoy the outdoors.

Sometime in junior high, around 1966 or 1967, I visited relatives in the Puget Sound area. I especially enjoyed visiting my aunt and uncle, who lived on Seattle's Capitol Hill. It seemed like the place to be. My dream was to graduate from high school, buy a VW, and drive to Seattle to attend the UW. Subsequently (only lawyers say subsequently), my aunt and uncle moved to Berkeley and my aspirations moved south.

Unfortunately, those dreams did not come true. After graduating from high school I went to Michigan State University. I journeyed through three majors and ended up with a B.A. in Economics in 1975. Essentially, I got a well-rounded liberal arts degree. While I was at MSU, a colleague on the Board of Governors, Randy Gordon, was down the road in Ann Arbor.

I didn't do too much in my undergraduate life to distinguish myself. My major interests at the time revolved around politics and various utopian ideals. Approaching graduation, I decided to go to law school. I think two things influenced me. One was a desire to do something that had the power to change things. The other was, believe it or not, *The Paper Chase*, which came out at the time.

I applied to all sorts of law schools. I got into the University of San Francisco and was going to go there and fulfill my junior-high ambitions. At the last minute, though, somebody fell asleep at the switch and let me into the University of Washington. A quick glance at private and public school tuition and I was on my way to Seattle in the fall of 1975.

Law school was a bit of a shock. While I liked the challenge, the classes, frankly, were not that interesting. That was not the fault of the professors; it was the subject matter. Shakespeare or Marxist Political Economy was just a lot more exciting than *trover* and *assumpsit*. Fortunately, I was able to work in a law office back in Illinois between my first and second years, and as a Rule 9 intern between my second and third years and all during my third year. I worked at a small firm just off Eastlake Avenue called, at that time, Sweet & Dussault. They actually let me try cases in district court in King and Snohomish counties. I lost my first trial and asked the partners whether I should pay the damages. They told me I was nuts. The point is that the experience of the actual practice of law inspired me to finish law school, which I did in 1978.

After law school I had a brief stint with a firm in Port Orchard, then headed over the mountains. I had several friends from law school who ended up in Wenatchee, and I visited there frequently. After spending three to four years in Seattle, I forgot what the sun looked like and discovered that I liked it a lot. I ended up in Ephrata in March of 1979 as a deputy prosecutor. My first day on the job was a Monday. The other two attorneys in the office were either in trial or gone that day. I learned there are usually a lot of people in jail needing arraignment on Mondays. There was one guy who had shot somebody over the weekend. His victim shot back and the defendant ended up in the hospital. It was my job to charge him, get a search warrant for the gun, arraign him in the hospital, and arrange for an interpreter because he didn't speak English. With the help of the secretaries I managed to do it all that day but was extremely nervous, to say the least. I broke the tape recorder that we used for search warrants. The next day I took the file into the prosecutor and told him what I had done. He looked at the file and tossed it back across the desk to me with the comment, "You filed it, you try it." Fortunately the guy pled guilty.

After three years in the prosecutor's office I was ready for something new. The trial experience was invaluable, however. In a small office you do it all, from DUIs and child support to felonies. I then moved on to Yakima to work at the firm that is now known as Lyon, Weigand & Gustafson. I have been there since January of 1982. I started there doing a little bit of every-

thing, but then everybody did a little bit of everything back then. Over the years, my practice has focused on school law and litigation. There are eight attorneys in the firm.

In 2001 our office had a retreat to identify our goals for the coming years. One of mine was to become more involved in the Bar. Shortly after that retreat I received a call from a local attorney suggesting that I would be a good candidate for the Board of Governors. One could not ask for better timing, so I put my name in and I was unopposed.

I did not come onto the BOG with any agenda other than to help out. The first year on the BOG was in large part mostly a learning experience. My eyes were opened to the fact that there are a large number of dedicated attorneys serving on the BOG and on the numerous committees doing work that is aimed at benefiting the members, the practice of law, and the overall health of the justice system. After being "elected" to the BOG, I remember one local attorney commenting to the effect, "Is that like being on student council?" I've been meaning to get back to him to let him know that it is far from it. The things the BOG and the various committees do directly affect the practice of law. The next time somebody moans about some rule change or other thing that comes to pass, I want to remind him that the genesis of those changes often comes from a committee or the action of the BOG. Those who get involved usually have a lot to do with shaping those changes. So — get involved.

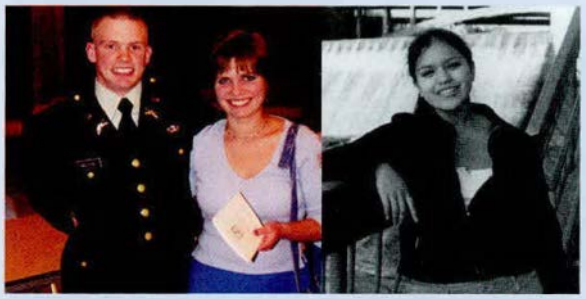
Over the years, I have been lamenting the loss of community that we used to have in the Bar statewide. It was smaller when I started — approximately 8,000 attorneys. Now that we have 28,000-plus attorneys, it is harder to keep that sense of community. However, I have found that being involved at the state level brings that sense of community back. When you start working with numerous attorneys around the state, suddenly everything seems smaller and a bit cozier again.

My eyes were also opened to the fact that the employees at the Bar office do a wonderful job. Everyone I have had contact with is very dedicated to providing service to the Bar in an efficient and cost-effective manner. If everyone could see what I have seen, no one would gripe about Bar dues again.

It has taken me awhile to get a sense of what I would want to accomplish on the BOG. Now that I have, unfortunately I am nearing the end of my tenure. What I would really like to see happen in the future is to get more people involved with the Bar and enthused about the Bar and the practice of law. Many lawyers do get involved in their communities, but I can tell you I think the bar (I mean "bar" in the sense of all of the attorneys involved in this profession) needs a shot in the arm also. We tend at times to project a certain amount of

The Many Faces, Family, and Friends of Rob Boggs

Official photo; Rocky imitation during law school in the 70s



Stepson Jim Nelson, stepdaughter Tina Nelson; daughter Rachael

With grandson Isaac and dog Newman; with pig

self-hatred, reflecting the negative stereotypes of attorneys in the public at large. Work with the Bar tends to help develop a sense of a shared mission and more pride in the profession, which should start to be reflected in how we project ourselves to the public.

When I first came to the BOG, I wasn't sure about the "diversity" seats. It all filtered through my Republican mind as so much "P.C." But I have come to believe that it is necessary for this state's Bar. The Bar is becoming much more diverse and also much more splintered. Everyone has his own "bar association" now, based on everything from ethnicity to practice areas. Nobody is going to talk to anyone else unless there is a mechanism to bring people together. I see membership on the BOG or on committees more of a duty now than some political plum or résumé builder, and, therefore, I see any complaint of "reverse discrimination" as inapplicable in this setting. When the BOG interviews people for these seats, I want to know what perspective they can add and how they can help bring more of the Bar together. (Nietzsche, when trying to find "the truth," would take wildly different perspectives to see what would happen — the Bar needs to do that too.) Getting everybody to the table to talk will actually start to smooth out the differences and increase the similarities. Everybody wins.

While on the BOG I have been on the Budget and Audit Committee, the Presidential Search Committee, and the Awards Committee.

In the personal department, I am married and have a stepson, stepdaughter, and daughter. Two of the children are grown up and out of the house and the third one is on her way. My hobbies are horseback riding and reading. I read anything that doesn't move, but it is mainly literature, philosophy, history, and politics. The last three books I read were *A Nation Under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society*, by Harvard law professor Mary Ann Glendon; *The Iliad;* and *After Virtue: A Study in Moral Theory,* by Alasdair MacIntyre.

I can't think of anything else interesting. That's it.

Robert Boggs is in his final year as a member of the WSBA Board of Governors and can be reached at 509-248-7220 or rboggs@lyon-law.com.

Have you ever had an idea about how to make the WSBA a better organization?

Get involved.

See "Opportunities for Service" at the beginning of each month's FYI section in *Bar News.*

WSBA Mediation Program Helps Lawyers and Clients Resolve Disputes

by Dee Knapp

Sometimes someone understanding makes all the world of difference. *— Client*

[The mediator] apparently gave my former client a different perspective on the fact that nothing is for sure when one goes into court. *— Lawyer*

These are two comments from satisfied participants in the WSBA Mediation Program. The program offers lawyers a chance to informally, with the help of a neutral third-party mediator, resolve disputes with other lawyers, their former clients, or other professionals. An alternative to litigation or arbitration, the Mediation Program, now in its fifth year, is a service provided by the WSBA. Participation is voluntary and confidential, as provided by RCW 5.60.070, provided that no party to the mediation will be precluded from filing or pursuing a grievance under the Rules for Enforcement of Lawyer Conduct. Each side pays a $75 filing fee to participate. There are no additional fees charged for the mediator's time.

We lawyers like to think of ourselves as skilled communicators. Communicating is what we do for a living. However, even the most skilled communicators can stumble when they have a personal stake in the outcome, professionally and emotionally. Further, since we are trained to compete, we tend to present our positions in an effort to prevail over the other party. Yet, by doing so, the other side may become more defensive and resistant to considering our interests.

The following examples may sound familiar:

— A client is frustrated that her divorce is not completed yet, and threatens to fire her lawyer or not to pay the most recent bill. The lawyer has had problems reaching the client throughout the case but feels he has done timely work in a complicated matter. Both are frustrated at the current stalemate.

— A lawyer associated another lawyer on a case which settled for less than expected. The associated lawyer believes she wasn't paid fairly for her work according to the two lawyers' agreement. The first lawyer has paid what he feels is reasonable.

— An expert witness was hired by a lawyer to prepare a report and is awaiting payment. He has called the lawyer's office numerous times and doesn't understand why he hasn't been paid yet. The lawyer is not aware that the expert witness has not yet been paid.

In the Mediation Program, authorized by APR 16, a skilled mediator helps the parties identify the misunderstandings and differing expectations that may have led to the dispute and resulted in blame and finger-pointing. By involving a third party that has no investment in the dispute, the way may be opened to a more productive dialogue. The program coordinator assigns a mediator from a list approved by the Board of Governors of lawyer volunteers with the appropriate training and experience to serve effectively in a facilitative role.

There are many different styles of mediation. Some mediators focus on the communication between the two parties, try to determine what has gone wrong, and then coach the participants into more productive ways of communicating until they can work out their problems together. Other mediators may focus on problem-solving. They may search for middle ground and help the parties identify different options for reaching solutions. Still others will blend different styles and techniques to fit the individuals and the problems involved.

Whatever the style of the mediator, most mediations follow a predictable format. When the parties meet for mediation, the mediator listens to both sides of the dispute and attempts to identify the issues and interests of each party. The mediator then assists the parties in working together to find a resolution that works for both parties. If appropriate, the mediator may meet separately in confidential sessions with each party. If the parties reach a mutually acceptable resolution of the dispute, the mediator assists in putting that agreement in writing so that it may be implemented. Such an agreement is legally binding on the parties.

Should you find yourself in a dispute with your client, another lawyer, or another professional, consider giving the WSBA Mediation Program a try. You may find that you gain not only a resolution to your dispute, but a sense of satisfaction and, depending on your goals, some improved relationships as well.

For more information about the Mediation Program or the WSBA Fee Arbitration Program, contact the program coordinator, Talia Clever, at 206-733-5923 or taliac@wsba.org. You can also find program information on the WSBA website at www.wsba.org/lawyers/services/adr.htm.

Dee Knapp is a member of the ADR Program Standing Committee and the WSBA Mediator Panel. She is an attorney for the Federal Aviation Administration and Vice President of ADR Options, a mediation and consulting firm.

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3/04

by Thomas A. Haven

In his article "The Right to Counsel: *Every* Accused Person's Right," featured in the January 2004 issue of *Bar News* (p. 22), Robert Boruchowitz raises important issues regarding indigent criminal defendants' right to counsel. However, at least some of the anecdotal information gathered to support his claim that "courts across the state violate the right to counsel" is inaccurate and misleading.

Mr. Boruchowitz states that he has "documented violations of the right to counsel in three of the largest counties in the state and in one rural one." I am interested in responding to Mr. Boruchowitz's claim that "[i]n a Kittitas County court, a judge routinely denies counsel for college students [in a manner] totally unsupported by the statute and ... at odds with case law."

The case Mr. Boruchowitz refers to is *City of Ellensburg v. Joseph R. Deutschman*. I was the judge in that case. In presenting facts in support of his claim, Mr. Boruchowitz states, "in that case, the defendant had an annual income of $3,600, which is well below the federal poverty guidelines." Mr. Boruchowitz wrote this about the decision:

> In a Kittitas County court, a judge routinely denies counsel for college students, saying that "there is a limit to the definition of indigent contained in RCW 10.101.010(e); that limit is reached when an able-bodied, employable young person with no dependents and virtually no debt chooses to forgo available employment so that he can attain a college degree." That view of indigence is totally unsupported by the statute and is at odds with case law. In that case, the defendant had an annual income of $3,600, which is well below the federal poverty guidelines.

I respectfully disagree. On April 28, Mr. Deutschman filed a financial affidavit supporting his request for a public defender. He stated that he was single, with no dependants, and a student at Central Washington University. While he wrote he was supported by "parents, friends, me," he did not report receiving any income. He also stated that he worked during the summers for Swissport Cargo Services as a cargo handler. Based on the defendant's failure to state the amount of income he was receiving, his request for court-appointed counsel was denied by court on the ground of "insufficient information provided to allow a finding of indigency."

On May 12, 2003, the defendant filed a second financial affidavit in support of his request for court-appointed counsel. This request was reviewed by the court at a pretrial hearing on May 28, 2003. He was, on May 28, a full-time student at CWU. His school and living expenses were paid by parents and "the other half of his family."

The court, concluding that the defendant's lack of income was based solely on his decision to remain in school and not seek employment, concluded that the defendant did not qualify for a public defender.

The defendant, in answer to a question from the court, stated that if he was not going to school, he would have the ability to obtain employment.

The court, concluding that the defendant's lack of income was based solely on his decision to remain in school and not seek employment, concluded that the defendant did not qualify for a public defender.[1] In addition, the defendant failed, in his second financial affidavit, to reveal the amount of income provided to him by his family.

After being told that he did not qualify for a public defender, the defendant stated that he would attempt to hire a lawyer. In order to give the defendant additional time to hire a lawyer, the June 20 jury trial was cancelled and a new jury trial date of July 11 was set.

At the pre-trial hearing held on July 2, the defendant again renewed his request for a public defender. He informed the court he was in his "summer break" from school and was working at Swissport Cargo Services. His earnings from Swissport (later confirmed by his employer) were approximately $1,160 per month. He reported his expenses increased; he had to pay for school "on his own" with the proceeds of his summer employment and by "taking out loans."

After considering this new information, the court informed the defendant that his income exceeded the federal poverty guidelines and he did not qualify for a lawyer.

After telling the defendant that he did not qualify for a public defender, the court inquired as to what efforts the defendant had made to hire a lawyer. The defendant informed the court that he had spoken to "his brother's lawyer," who wanted a $1,000 retainer.[2] The court explained to the defendant that he needed to speak to more than one lawyer, since lawyers do not all charge the same fees or require the same amount of money "up front." Once again, the court offered the defendant additional time to earn money to hire a lawyer. Again, the defendant requested additional time and, in return, signed a "speedy trial waiver" until September 30, 2003. The court set another jury trial date for August 15, 2003, and a pre-trial hearing for July 30.

At the July 30 pre-trial hearing, the defendant again addressed the question of court-appointed counsel. The defendant provided a letter from his employer stating that his gross income for the year would be "in the range of $3,600." The defendant also read a prepared statement that, among other things, pointed out that his monthly costs were approximately $535, that he was $120 in debt, and that "I'm a college student and I work when I can. I believe that under the U.S and Washington Constitutions, the court rules, and RCW 10.101 I am entitled to appointed counsel."

In response to the information provided by the defendant's employer, the court asked the defendant if there was any particular reason he was working "part-time" rather that "full-time." In re-

sponse, the defendant stated that "with all due respect, I have nothing more to add to my statement."

In findings of fact, the court determined the defendant was single, able-bodied, and able to secure and maintain full-time employment; that the defendant took no action to seek full-time employment from the date of the alleged offenses (April 23, 2003) until he was through with the spring term at Central Washington University. From April 23 until mid-June, the defendant was entirely supported by his parents. However, in none of the three financial affidavits filed by the defendant did he describe the amount of income provided by his parents and other family members.

While the defendant may have sought employment in Ellensburg between April 23 and the end of spring term, he only sought work that could fit around his school schedule. Instead of using his summer earnings to hire a lawyer, he was saving money for fall term at CWU.

The defendant's summer income exceeded federal poverty guidelines. While "annualizing" the defendant's summer income would yield an income of $3,600 (well below the federal poverty guidelines), that sum was only because of his decision to continue attending CWU in the fall. He also failed to take any meaningful steps to retain counsel, contacting only one lawyer, and that one was not in the Ellensburg area.

Based on the income reported by the defendant and his employer ($1,160 per month), the defendant's statements regarding his total debt ($120 owed to his parents), his reported monthly expenses ($535), and the cost of hiring local counsel in his case, the court concluded that the defendant did have sufficient income to hire his own lawyer. If the defendant was without sufficient funds to hire his counsel of choice, it was due to his decision to continue pursuing his educational goals and not circumstances that allow the court to find the defendant "indigent" for purposes of qualifying for public-defender services. Consequently, the defendant did not qualify for appointment of counsel at public expense.

In his article, Mr. Boruchowitz cites the landmark case of *Gideon v. Wainwright*. As the reader will recall, Clarence Earl Gideon was a "penniless drifter" denied counsel because the State of Florida provided court-appointed counsel only in capital cases. Since Mr. Gideon was charged with a noncapital felony, he was denied court-appointed counsel. Mr. Gideon ultimately defended himself at his jury trial, was found guilty, and was sentenced to five years in prison. After serving two years in a Florida prison, the U.S. Supreme Court reversed Mr. Gideon's conviction. At his second trial, Mr. Gideon was represented by appointed counsel and found not guilty.

The question of what "indigency" means must be answered on a case-by-case basis, after giving due consideration to the unique facts contained in each public-defender application.

Happily, Mr. Deutschman's case was resolved in an altogether different manner. On August 11, six days after the court had filed its Findings of Fact and Conclusions of Law denying Mr. Deutschman public-defender services, Mr. John A. Walsh, a Seattle attorney, filed his notice of appearance on behalf of the defendant. On August 13, the prosecutor, Mr. Walsh, and the defendant entered into a 12-month stay of proceedings.

That Mr. Deutschman was ultimately able to retain Mr. Walsh to represent him does not, of course, necessarily establish that the court was correct in its decision denying Mr. Deutschman court-appointed counsel. On the contrary, the questions surrounding Mr. Deutschman's case and his request for a lawyer at public expense are far from simple. However, the blinders worn by Mr. Boruchowitz as he blithely (and unfairly) summarizes the court's ruling in Mr. Deutschman's case are unhelpful to the serious discussion these important questions deserve.

The question raised by Mr. Deutschman's case is not, of course, whether an indigent defendant is entitled to appointed counsel. Clearly, indigent defendants are entitled to appointed counsel. The question instead is *what it means to be indigent*. This, it turns out, is not such a simple question. The Lower Kittitas County District Court routinely deals with student athletes who request a finding of indigency because they are involved in a sports program that requires their attendance at practice or games on a year-round basis. The court also routinely deals with students, like Mr. Deutschman, who desire to structure their lives around school. Questions surrounding the amount and source of a student/defendant's income, his or her ability to work, and the choices made by him or her in using available income for school expenses or retaining an attorney, provide the court in any college community with serious questions about what it means to be indigent.

The question of what "indigency" means must be answered on a case-by-case basis, after giving due consideration to the unique facts contained in each public-defender application. Such due consideration was given to Mr. Deutschman. Can Mr. Boruchowitz ask any more from the court?

Thomas A. Haven is judge of Lower Kittitas County District Court in Ellensburg.

NOTES

[1] At one point in the court hearings devoted to the defendant's request for public-defender services, the defendant claimed to have made numerous job applications in Ellensburg. In response to a question on this point from the court, the defendant indicated that he had only sought part-time employment that he could fit around his school schedule.

[2] In the course of preparing these Findings of Fact and Conclusions of Law, the court received a letter from Robert C. Boruchowitz, president of the Washington Defender Association. While Mr. Boruchowitz has not appeared on behalf of the defendant, the court will respond to Mr. Boruchowitz's arguments. First, Mr. Boruchowitz argues that experi-

enced Ellensburg attorneys would charge the defendant $10,000 to 15,000 to defend Mr. Deutschman. The court rejects this claim. $10.000 to $15.000 is not the "going rate" for representation by local counsel in a District Court criminal case in Ellensburg. While it may indeed be possible to find an Ellensburg attorney who would charge this fee, there are other experienced counsel who would not charge anything approaching $10,000 to $15.000. In contacting one local attorney, I was informed that the cost of representation would range between $1,500 and $2.000, *if the case went to trial.* If the case did not go to trial, she would charge $1,000. While she would, of course, rather have payment "up front," she would accept four payments of $250 over four months. While this information is merely anecdotal (like the information supplied by Mr. Boruchowitz in his letter), it is simply not true that Mr. Deutschman would need to pay $10,000 to $15,000 to hire local counsel in his case. But the important point is this: The defendant has no idea how much it would cost to hire a lawyer in Ellensburg because, as he stated at his hearing, he has not contacted any. Mr. Boruchowitz also argues that the defendant is entitled to a public defender pursuant to RCW 10.101.010, because he receives an annual income of 125 percent or less of the current federal poverty level. While it is true that the defendant's summer income "annualized" over 12 months is less than the federal poverty guidelines, the defendant has made it clear that he only earns money during the summer because "I'm a college student and I work when I can." The defendant stated at his May 28 hearing that he could obtain employment if he was not a student. It is equally clear that the defendant wants to use his summer earnings on his school expenses, and that he will be returning to college in the fall term. Thus, his annual income is low only because the defendant chooses not to work. The defendant chooses not to work so that he can pursue a college degree. While this is an admirable goal, it is not a goal that should have the effect of transferring the obligation of paying for counsel from Mr. Deutschman to the taxpayers of Kittitas County. There is a limit to the definition of "indigency" contained in RCW 10.101.010(c); that limit is reached when an able-bodied, employable young person with no dependants and virtually no debt chooses to forgo available employment so that he can attain a college degree.

by Lindsay Thompson

Tukwila, April 2-3, 2004

Well, at least it was close to home. One of the ideas behind the BOG's peregrinations is that they liaise — as the Brits say — with local bar associations.

Trouble was, the South King County Bar met the week before. They had their annual dinner with the Supreme Court. So there we were, just off I-405 in a hotel that was 90 percent atrium: a sort of poor man's homage to John Portman. The weather outside was perfect: sunny, a nice breeze. We met in a windowless room for a day and a bit. Such is life on the road.

Ellen Dial, chair of the Ethics 2003 Committee, and **Doug Ende**, the committee's reporter, came back to give the BOG a report on some more of the changes they expect to be in their final report. They brought a summary of the changes for the members to look at, rather than the entire 850 pages of material the final report comprised. Among that batch is a set of the current rules of professional conduct, the model rules of the ABA, and a redlined version showing the changes and comments. The whole package was to follow these previews by the committee.

The Board almost immediately bogged down on proposed changes to the rules on fees and clients. Some started trying to figure out how the rule would affect their practices. Other started thinking out loud. Governor **Jon Ostlund** thought a special meeting would be needed just to consider the changes.

Lunch arrived.

Specialty bar associations were invited to partake, and discuss over the meal how the WSBA could be more useful to them. The results will be compiled and looked upon.

Pat McIntyre, of the Northwest Justice Project, and **Ada Shen-Jaffe**, of Columbia Legal Services, gave the board a long report on the reorganization of the two bodies to reflect the fiscal and legal restriction realities of the times. Columbia has laid off a bunch of people and will retrench; NJP will expand to pick up the slack as best it can.[1]

BOG nominated **Nieves Negrete**, a nonlawyer director of Yakima County Volunteer Legal Services, and former King County Bar President **Daniel Gottlieb** — and renominated Spokane County District Judge **Greg Tripp** — to the Access to Justice Board. The Supreme Court will make the appointments.

BOG next approved a policy to guide future boards in evaluating member benefits from non-WSBA businesses for endorsement. Everyone who spoke up said it was a good effort.

Treasurer **Bryce Dille** brought a request for some cash to have a salary consultant look at the salary scales for WSBA staff, and to kick up to $1,500 to a sponsorship of the Loren Miller Bar Association's celebrations of the 50th anniversary of *Brown v. Board of Education*. Both were approved.

Former BOG member and WSBA president **Dale Carlisle** and WSBA Information Technology Director **Robert Levinson** updated the board on the multiyear project to upgrade and unify the WSBA's computer programs managing finance and membership issues. It was complicated, but they say things are going fine and sections of the new system are already running.

A proposal to have CLE give copies of its publications to the county law libraries brought CLE Director **Mark Sideman** to the meeting. He told the BOG that CLE has a mandate to make a profit, but the market is so volatile that one CLE that cleared $100K a few years ago did only $9,000 this year. Giving books away for free cuts into the money, especially if it's 39 copies of everything, and it all adds up, Sideman said. Good point, BOG said; we'll think about this some more.

Kenyon Luce and a band of military lawyers appeared to ask BOG for final approval of the conversion of the WSBA committee on services to members of the armed forces into a section of the Bar Association. The idea is the committee may attract more members that way, since you can join the section but have to be appointed to a committee. Luce's meandering presentation covered a variety of tangents, including an attempt to tell a joke about a Hittite, since "we all have to be so pc here, I can't tell one about any existing ethnic groups. No one here is a Hittite, are you?" I gave up taking notes and turned to *The New York Times* crossword. For reasons I've already forgotten, Luce never finished the joke about the Hittites, and despite forgetting Rule One of all presentations to bodies you want something from,[2] he got his section, and everyone left happy. I went home and mixed a shaker of martinis to appease the roiled spirits of my Hittite forebearers.

BOG reconvened Saturday morning to hear a report from Governor **Katie O'Sullivan**, who's on the Electronic Legal Research Evaluation Team. That group is looking for a legal research service that can be offered to all WSBA members. They have a contender, and have sent a letter laying out what they think such an offering should make available. So it progresses.

Executive Director **Jan Michels** pointed out a front-page story in *The Seattle Post-Intelligencer* on a burgeoning scandal in the Grant County public defender system, and said *The Seattle Times* was planning a three-part series starting April 4.

ABA delegate **J.D. Smith**, and, later, **Lish Whitson**, engaged the board in what turned into a long discussion of how BOG interacts with the ABA delegation. Usually the ABA delegation is unseen and unheard except before the meetings of the House of Delegates. Then someone comes, well, sometimes someone comes, and asks BOG if they want to instruct the delegation on how to vote on the mind-numbing catalogue of obscure things the House of Delegates will debate. "No, just go vote your hearts out," was my response when doing time on the BOG.

Well, all of this was a prelude to a discussion of whether BOG ought to pay a bigger chunk of some or all ABA delegates' way to the twice annual meetings, since it's pricey enough that younger lawyers are more or less ruled out of delegate positions. And, Smith explained, you have to start young to get ahead in the ABA. If you eventually get to be president, or some other big leader in the ABA, there

are vague but important benefits to the WSBA, so it all works out in the end.[3]

The matter will be studied some more.[4]

Gail Stone gave a legislative session report. The big success of this session was $1.9 million in new funds for legal aid, even though, as Ada Shen-Jaffe noted, that doesn't get funding even back to where it was in 1999.

All the WSBA-sponsored bills passed. The tort-reform scrum remained more or less midfield, though a proposal to reduce judgment interest on tort judgments came back to life and was passed. Governor Locke signed it. Governor **Randy Gordon** grilled Stone on why she had said at the last meeting the bill looked dead.

"It came back to life," she replied. "Things like that happen in the Legislature." If the right person in the right place takes an interest, such things can happen. There was some discussion about how to spruce up the legislative intelligence effort.

Lish Whitson, who chairs the Judicial Recommendations Committee, gave a report on how many people have been rated.

That's it. I'm outta here.

NOTES

[1] In May 2003 I invited critics of legal services programs to come up with a model that would pass conservative critiques and adequately meet the needs of the poor in Washington. I got only one response, a letter from a reader who said, just pretend it's still 1967, things worked fine then. Come on kids; let's have some more ideas. The way things are going you'll have a blank slate soon enough.

[2] "When it's going your way, siddown!"

[3] It made me think of starting in kindergarten on scheming how to get elected high school prom king.

[4] I'm sure it was just me, but I couldn't figure out why so much attention was being given to something that will benefit a handful of people who are delegates to a voluntary bar association, while BOG show no similar concern for the liaisons who attend their meetings and make a major contribution to the deliberations of this, our mandatory bar association.

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. See page 53 for details.

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.*

Clark County News

Jackson H. Welch has become a fellow of the American College of Trial Lawyers, one of the premier legal associations in America. Fellowship in the College is extended by invitation only and only after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility, and collegiality. Lawyers must have a minimum of 15 years' trial experience before they can be considered for fellowship. Welch is a partner in the firm of Duggan Schlotfeldt & Welch PPLC and has been practicing in Vancouver for 30 years.

East King County News

Doug Cowan and **William Kirk** of the Cowan & Smith Law Firm served as guest lecturers at the National College for DUI Defense winter session held in San Diego January 30-31, 2004.

Kirk lectured on the effective use of an investigator in DUI cases, and Cowan participated in a two-hour colloquium, discussing a wide range of topics relative to DUI defense.

Island County Report

by Tom Pacher

Greetings, once again, from the shores of Penn Cove. As the weather warms and the flowers start to bloom, it's nice to see the sleepy little town of Coupeville coming to life once again. Speaking of which:

March 31, after our regular county bar meeting, **Lt. Carilli**, JAG Corps, USN, came over from Whidbey NAS to enlighten all of those present on military investigations and discipline. Since a number of us deal with members of the military and their dependents on a semi-regular basis in a number of different areas of practice, it's always helpful to get an understanding of how things run in the military. Thanks for the information, Lt. Carilli, and thanks for the helpful handouts.

Oak Harbor attorney **Chris Lyons** recently did his first stint as a judge *pro tem* on the superior court's juvenile calendar. While I did not attend that calendar, participants told me that Chris did a nice job. I'm told he even managed to keep his composure while his wife and law office partner, **Deb Truitt**, was snapping pictures in the back of the courtroom. Sorry, Chris, I just couldn't resist mentioning that.

Things always perk up a bit in Coupeville this time of year. Festivals, tourists, shoppers, and the like. Still, we weren't quite expecting the excitement we got during a recent court session. March 19, about the second or third case into the superior court criminal calendar, while yours truly was entering a plea and readying for sentencing on an in-custody client, one of the defendants on an already busy calendar apparently felt the criminal calendar was a little short for his tastes. Upon spying a person he did not like entering the courtroom, that defendant jumped the newly arrived defendant and a struggle ensued.

Not a particularly bright move, given that there must have been 35-40 witnesses, including a judge and a few attorneys. The corrections officers moved pretty quickly to squelch the affair, and enforcements arrived from upstairs (sheriff's office) and two blocks away (town marshal). No one present could ever remember such an event taking place in our sedate, bucolic neck of the woods.

Dave Walker, the attorney for the victim of the attack, was quick to point out to the judge that his client had done nothing to provoke the attack, and that his client was very surprised at the turn of events. Now that's beads-up defense work. Already defending a client on a case that just happened.

Judiciary Report

by Lindsay Thompson

Governor **Gary Locke** has appointed **Craddock D. Verser** to the Jefferson County Superior Court. He succeeds Judge **Thomas Majhan**, who died in January. A graduate of the University of Virginia and Gonzaga University School of Law, Verser practiced in Port Townsend and previously served as public defender in Jefferson and Stevens counties. He also served as a member of the WSBA Board of Bar Examiners and as a volunteer with the Jefferson County Domestic Violence Sexual Assault Program. He joined the WSBA in 1980. Verser is Governor Locke's 59th judicial appointment.

Washington Supreme Court Justice **Richard B. Sanders** has been charged with violations of the Code of Judicial Conduct after he held meetings with inmates at the Special Commitment Center on McNeil Island in January 2003.

The Commission on Judicial Conduct found probable cause to believe Sanders violated Canons 1, 2, and 3(A)(4) by "engaging in *ex parte* conversations with people with cases pending or impending before the Washington Supreme Court," and "creating the appearance of impropriety." The commission alleged Sanders gave no notice to counsel for any of the inmates that he would conduct such discussions, and didn't provide counsel with documents two inmates gave him until asked to do so by an assistant attorney general. **John Strait**, one of counsel for Sanders, told *The Seattle Post-Intelligencer* Sanders had received only one letter, "a typical rant you get from a prisoner," complaining about conditions of incarceration. Former western district U.S. Attorney **Kate Pflaumer** is the commission's attorney.

Sanders was reprimanded by the commission in 1997 for addressing a pro-life rally on the steps of the state capitol shortly after being sworn in as a member of the Supreme Court. A panel of appeals court judges, sitting for the recused Supreme Court, reversed the reprimand in 1998. Sanders is seeking re-election this year.

King County Report

by Jim Varnell

Business and Basketball. **Bill Resler** (UW Law School, 1971) recently coached Seattle's Roosevelt High School to the 4A Girls basketball title. Resler, who also teaches in the business school at the UW,

was known for rarely, if ever, attending class while in law school, concentrating instead upon the bridge games in the basement of old Condon Hall. Despite Bill's infrequent or nonexistent class attendance, his high marks in law school were a source of consternation for his fellow classmates.

More Basketball. **Larry Smith** and **John Hoerster** recently completed a double-double by their team's winning the Golden Masters titles for both the season and the end-of-year tournament at the Washington Athletic Club. Finishing a solid, close second was the team of **Pat McBride**, a member of the UW Law School team that won the 1971 Graduate School Division championship featuring "Easy" **Ed Skone**, **Don** "Woody" **Woodworth**, **Paul Roesch**, and **Gordon Wilder**, a team noted for defeating the medical school, featuring ex-UW footballer **Steve Bramwell**.

Office Moves. **Kari L. O'Neill**, the self-styled "Queen of E-mail," has joined Hendricks & Lewis as an associate. **Shaukat Karjeker**, **Hillery Nye**, and **Heather Utter** have joined Steiner Norris. **Guy Bowman** has been elected to the board of directors of Betts Patterson Mines. **Amanda E. Vedrich** has joined Short Cressman & Burgess as an associate. **Sarah Mack** and **Josh Brower** are new attorneys at Mentor Law Group. **Drew Falkenstein** has joined Marler Clark as an associate. Badgley-Mullins has moved to the Bank of America Tower.

Honors. **Carmen Gonzalez** of Seattle University School of Law is one of only four people chosen nationwide for the U.S. Supreme Court Fellows Program. **Jayanne A. Hino** has been appointed to the ABA Commission on Racial and Ethnic Diversity in the Profession. Garvey Schubert Barer received the 2004 "Your Honor" award from the Legal Marketing Association.

Oregon News

Portland and Clark County attorney **Brett Bender** announces the opening of his own law office in downtown Portland. He will continue to emphasize family law, although he is expanding his practice to include small business and entertainment law.

Mary Chaffin has been named the legal counsel of Mercy Corps, an international humanitarian and relief organization with headquarters in Portland, Washington, D.C., and Scotland.

Chaffin has over nine years in private practice as well as 10 years as senior corporate counsel at U.S. Bancorp. Before joining Mercy Corps, she was the regional trust manager at U.S. Bancorp. She has been active in the efforts to further legal reform in the former Soviet and East European republics as a volunteer lecturer and commenter on draft statutes for the Central and East European Law Initiative of the ABA.

Our Far-flung Members

Perkins Coie LLP recently announced its conquest of west coast bar association business sections. **Dori Brewer** (Seattle) has been selected chair of the WSBA Business Law Section for 2004-05. Perkins Coie partners **Brent Bullock** (Portland) and **Chuck Crouch** (Los Angeles) chair the Oregon and California Bar Associations' Business Law Sections, respectively, for 2004.

Pierce County News

Thaddeus Martin IV received the Rising Star Award at Tacoma's Business Leadership Awards ceremony in January. Martin, a 1998 Seattle University law graduate, became the youngest partner at Tacoma's Gordon Thomas firm in 2003, after five years there, and after being the first associate to bring in over $1 million in business his first year. He is active in a number of civic and educational causes.

Spokane County News

Nancy Isserlis was the 2004 recipient of the Spokane County Bar Association's Smithmoore P. Myers Professionalism Award. The Association's annual gold tournament is set for June 25 at Downriver Golf Course.

Gonzaga University School of Law's Women's Law Caucus presented its 12th annual Myra Bradwell Award to Spokane County deputy prosecuting attorney **Carlin Jude** at a ceremony and reception April 13. Jude is a 1986 GU Law grad.

Paul M. Davis has become a principal with Lukins & Annis, and **Robert R. Rowley** has started his own firm in Spokane, www.rowleylegal.com.

Gregory Hesler and **Craig Winder** have joined Paine Hamblen in Spokane.

Public-Interest News

Daniel S. Gross has joined Seattle's Public Interest Law Group PLLC. He will concentrate in public-interest litigation in the areas of civil rights, disability law issues, and assisting nonprofits. The firm's mission is to create positive social change through public-interest litigation and lobbying, and to offer a full range of services to nonprofits. The firm also handles immigration law matters on a sliding-scale fee basis.

Litigation News

Paul Whelan of Seattle was named Trial Lawyer of the Year for 2003 by the Washington chapter of the American Board of Trial Advocates. Judge **Robert J. Bryan**, U.S. District Court, Tacoma, is the chapter's Judge of the Year. The awards were presented in February.

Whatcom County News

Greg Greenan is a new shareholder at Bellingham's Zender Thurston, PS. **Stephen R. Fallquist** has joined Chmelik Sitkin & Davis PS, also in Bellingham. **James B. Dolan** is now with the Law Offices of Barry M. Meyers.

In Memoriam

Clarence Campbell

A graduate of Queen Anne High School, the UW, and the UW School of Law, Clarence Campbell lived in Seattle 96 of his 100 years. After joining the WSBA in 1930, he associated with Karr & Gregory and worked there until 1939. World War II looming, he left the firm to join the Navy and served as an intelligence officer on Whidbey Island, in the Philippines, and in San Diego. He served another 17 years in the reserves, retiring with the rank of commander.

Returning to his firm, which eventually became known as Karr Tuttle Campbell, he practiced until retirement in 1975. His principal field was insurance law.

During his long retirement he enjoyed golf, gardening, investing, and philanthropy.

His survivors include his wife of 58 years, Vivian; two children; one granddaughter; and two great-granddaughters. Clarence Hugh Campbell was born in Seattle December 23, 1903, and died in Seattle March 28, 2004, aged 100.

Richard Criswell

Longtime Montesano resident Richard Criswell graduated from St. Martins College and Seattle University School of Law before returning home to pursue a career in law. He taught English and auto mechanics at Grays Harbor Community College, was a published author, and won notice as a carpenter. He was a Little League umpire and member of the Montesano School Board.

Survivors include his mother, three siblings, and three children. Richard W. Criswell died of congestive heart failure January 26, 2004, in Aberdeen, aged 47.

James Davenport

Washington native James Davenport graduated from the UW with a degree in accounting in 1942, and then served through World War II in the Army Quartermaster Corps. After the war he came home, got his MA in accounting, then a 1953 law degree from the UW. He practiced law in Seattle and Edmonds for the next 20 years before becoming counsel to Tone Commander Systems, a telecommunications venture. He retired as executive vice president in 1990.

Davenport and his wife loved travel, and most recently visited the Galapagos Islands. Survivors include his wife, two siblings, three children, and seven grandchildren.

James W. Davenport was born March 1, 1920, in Seattle and died January 18, 2004, in Bremerton, aged 83.

Hon. Ray Munson

Sunnyside native Ray Munson spent three years in the Navy before earning his law degree from the UW in 1954. He served as an FBI agent, a prosecutor, and a private lawyer before moving to the Yakima County Superior Court bench in 1964.

Four years later, Governor Dan Evans appointed Munson to the first group of judges in the newly created Court of Appeals. He served 28 years before retiring, and wrote nearly a quarter of the opinions issued by Division III of the court. Until the appeals body acquired a court space, the three judges worked at home, writing opinions on their kitchen tables.

A 1997 newspaper profile said Munson "wore out three cars" riding the eastern Washington circuit, and seemed to be working all the time. Munson compared the job to being a monk, noting that no one came in except to give him papers, and fewer still had any idea what he did for a living. But he was gregarious to the end, and a vocal liaison from the appeals court to the WSBA Board of Governors in the 1990s.

Munson collapsed and died while attending a fraternity event in Seattle, February 22, 2004. He was 76.

Allen Schwenker

The Spokane County Bar Association has reported the death of longtime member Allen L. Schwenker II March 11, 2004, after a four-year struggle with complications from diabetes. He was 56. Schwenker joined the WSBA in 1975 and was a member of the Washington Association of Criminal Defense Lawyers.

Schwenker was an avid golfer who enjoyed spending time with his wife and three sons, recalls his friend Jonathan Lee.

Palmer Smith

Palmer Smith made a substantial name for himself during the desegregation of Seattle's schools in the 1960s and 1970s. A Maryland native who served in the Navy in World War II, Smith graduated from Harvard Law School and moved to Seattle.

One of his early cases, with Robert Winsor, tackled the denial of a house purchase in North Seattle by an African-American couple. Later, in the 1960s, he drafted an abortion rights bill to allow abortions within the first four months of pregnancy, with the husband's consent or parental consent for minors. Voters approved the measure in 1970, years before *Roe v. Wade*.

Smith's son Jared told *The Seattle Times* his dad liked "working behind the scenes, with not much fanfare, and to focus on results rather than on who gets the credit." His wife of 58 years, Dorothy, wrote *Bar News* simply, "He took pride in being a member of the WSBA through the years. The rule of law was his passion."

Palmer Smith is survived by his wife, three children, and six grandchildren. He died February 11, 2004, aged 81.

De'Wayne Taylor

Beset by cirrhosis in 1999, De'Wayne Taylor was head of the list for a liver transplant in Washington when he went to spend the Christmas 2003 holidays with family. He suddenly fell ill and died December 31 before a transplant could be effected. The Bremerton lawyer was 43.

Charles Thomas

The Kentucky native was a 40-year-old Tacoma certified public accountant when he received his law degree from Willamette University School of Law in 1953. He joined the Gordon Thomas firm and quickly established himself as the sharpest tax lawyer in the area. From 1959 to 1961, Thomas served on the board that advised the Commissioner of Internal Revenue and had an influence on rewriting federal tax law before he retired in 1984. His law partner Joe Gordon Sr. told *The News Tribune* that Tacoma attorney Charles Thomas "never lost a client" in an IRS or estate case.

Charles L. Thomas was born in Paducah, Kentucky, and died March 5, 2004, in Issaquah, aged 90.

Robert A. Wright

A Kansas native who grew up in Washington, Robert Wright graduated from UPS School of Law in 1988. He loved Dungeons and Dragons-type games and was an accomplished musician. Survivors include his mother, brother, and three nephews.

Former WSBA member Robert Alan Wright was born in Wichita December 5, 1962, and died February 28, 2004, in Lynnwood, aged 41.

Bar News has also been advised of the death of the following member: **Marijo T. Ikehara**, Bellevue, admitted 1993, died January 9, 2004.

Opportunities for Service

Practice of Law Board

Application deadline: June 23, 2004

Four positions on the Practice of Law (POL) Board will be up for appointment effective September 2004 for three-year terms. At least one of these appointments must be a nonlawyer. Current board members are eligible for reappointment.

The board is established by General Rule 25. Nominations may be made by the WSBA Board of Governors and other people and organizations.

GR 25 provides that the purpose of the board is to:

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

The board is composed of 13 members, at least four of whom must be nonlawyers. The board should represent the public interest in the delivery of legal services, and it should reflect the broad range of diversity of individuals who are part of or who use the legal system.

Persons interested in seeking nomination by the Board of Governors for appointment to the POL Board should submit letters describing their background and qualifications for board membership to the address below. Applicants should have a demonstrated commitment to the POL Board's purposes as set out in GR 25. Members of the board are not compensated for their services, but are reimbursed for necessary expenses consistent with the reimbursement policies of the WSBA. The board sets its own meeting schedule, but currently meets the second Friday of each month.

Please submit letters seeking nomination by the Board of Governors to the POL Board not later than Wednesday, June 23, 2004, to Practice of Law Board, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Further information is available at www.wsba.org/practiceoflawboard. If you have any questions, contact POL Board Administrator Bob Welden at bobw@wsba.org or 206-727-8232.

Certified Professional Guardian Board

Application deadline: August 23, 2004

The WSBA Board of Governors will be nominating one member who is appointed by the Supreme Court to serve a three-year term on the Certified Professional Guardian Board commencing October 1, 2004. Incumbents must apply, if seeking reappointment.

The board establishes the standards and criteria for the certification of professional guardians as defined by RCW 11.88.008, and prescribes the conditions of and limitations upon their activities. (GR 23.)

See www.courts.wa.gov/programs_orgs/pos_guardian/?fa=pos_guardian.boardlst for more detailed information.

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

ABA House of Delegates

Application deadline: July 2, 2004

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the ABA House of Delegates representing Washington state. Four positions will be available in August 2004. A written expression of interest and a résumé are required for any incumbents seeking reappointment.

The control and administration of the ABA are vested in the House of Delegates, the policymaking body of the ABA. The House, which has approximately 500 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required. The WSBA's allowance is $700 per year per delegate. Members appointed to the House of Delegates serve a two-year term, which begins at the close of the annual meeting (August 2004).

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

Statement of ABA President Dennis W. Archer re Gramm-Leach-Bliley Act's Privacy Provisions

The following statement was issued by ABA President Dennis W. Archer on May 3, 2004.

Re: Ruling of U.S. District Court Judge Reggie B. Walton, District of Columbia District Court, in litigation over application of Gramm-Leach-Bliley Act privacy provisions to lawyers

"The public interest prevailed Friday when the United States District Court for the District of Columbia agreed with the ABA that 'Congress did not intend for the [Gramm-Leach-Bliley Act's] privacy provisions to apply to attorneys'

who provide financially-related legal services. The District Court's ruling came as the result of a lawsuit filed by the ABA against the Federal Trade Commission, which was decided along with a similar suit filed by the New York State Bar Association. The ABA's lawsuit arose from its concern that the FTC's requirement that lawyers send privacy notices to their clients was unnecessary in light of state regulation of the legal profession and would create misunderstanding about the more stringent confidentiality rules that govern the traditional lawyer-client relationship."

Fulbright Scholar Grants Available for 2005-06

Application deadline: August 1, 2004

The Fulbright Scholar Program is offering a number of lecturing, research, and lecturing/research awards in law for the 2005-2006 academic year. Awards range from two months to an academic year. Foreign-language skills are needed in some countries, but most lecturing assignments are in English. For information, see www.cies.org, or contact the Council for International Exchange of Scholars, 3007 Tilden St. NW, Ste. 5L, Washington, DC 20008; phone 202-686-7877; e-mail apprequest@cies.iie.org.

CLE Publications Gears Up for Member Appreciation Summer Sale

If you're looking for great deals on CLE products, mark your calendar for next month's WSBA-CLE Member Appreciation Summer Sale at the WSBA Online Store. Conveniently shop online for dozens of special deskbook, audio seminar, and coursebook values — offered only July 19 through July 30. Watch the WSBA homepage (www.wsba.org) and your mailbox in the coming weeks for details!

New Legislation Relating to Filing Wills Under Seal

On March 22, 2004, Governor Gary Locke signed into law an act relating to filing wills under seal before a testator's death, and adding a new section to Chapter 11.12 RCW. This means that now lawyers who have accumulated original wills of testators with whom they have lost contact have a proper place to file them.

The new statute provides that any person who has custody or control of an original will and who has not received knowledge of the testator's death may deliver the will for filing under seal to any court having jurisdiction. The testator may withdraw the will upon proper identification. Any other person, including an attorney-in-fact or guardian of the testator, may withdraw the will only upon court order after showing good cause. Upon request and presentation of a certified copy of the testator's death certificate, the clerk shall unseal the will.

The new law takes effect June 10, 2004.

Although the Rules of Professional Conduct allow it, the WSBA Professional Counsel believes the better practice for lawyers is not to retain an original will but to entrust it to the client. If there is concern about the will's safekeeping, it may be filed under seal with the county clerk after June 10, 2004.

WYLD Seeks Award Nominations

The WYLD is accepting nominations for the Thomas Neville *Pro Bono* Award, Outstanding Young Lawyer of the Year, and Professionalism Award. All three awards recognize lawyers who epitomize the best in the legal profession. Nominations are also being accepted for Outstanding YLD Affiliate or Organization, for recognition of public service and/or member-service programs.

If you know of someone who deserves to be recognized, please visit www.wsba.org/lawyers/groups/wyld for full details and a nomination form. Self-nominations will not be accepted. *Please note that a completed nomination form must accompany each nomination to be considered.*

Nominations must be received by July 30, 2004, and should be sent to Lisa Harper, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121; or lisak@wsba.org.

Award recipients will be determined by the WYLD Board of Trustees at their August 21, 2004, meeting. Recipients will receive awards at presentations to be held in conjunction with events within their law firm and/or legal community.

Washington Civil Trial and Evidence Manual to Be Released

The fifth edition of the WSBA Litigation Section's Washington Civil Trial and Evidence Manual is scheduled for release at the section's midyear in Seattle on June 18, 2004. This is the first new edition in 10 years. Editor-in-chief John Ray Nelson notes in the foreword that this all-new edition "still reflects the bulk of George Bassett's work in the original, as well as the simple brilliance of his open-book alphabetical organization (designed so that an attorney can find the law on an evidence issue during trial without having to already know what the Rule number is)." For information on how to order the manual after the June 18 midyear, please contact WSBA Order Fulfillment at 206-727-8278 or orders@wsba.org.

Law Week Thank You

The WSBA thanks all the judges and lawyers who participated in Law Week 2004, a program through which judges and lawyers volunteer to teach students about law, civics, the justice system, and democracy. Statewide, 312 judges and lawyers, and 123 teachers signed up for Law Week through the WSBA, resulting in visits to an estimated 3,500 students. Presentation and lesson topics ranged from *Brown v. Board of Education* to "No Vehicles in the Park"; many attorneys created presentations of their own.

The response from teachers reflects their sincere appreciation for the time and effort taken with their students. A small sampling of the comments we received: "Thanks for helping with this great opportunity for my kids!" "We're up for next year ... [this attorney was] very

committed and enthusiastic."

Attorney comments included, "I just had a wonderful day teaching," and "I had an absolute ball."

Thanks to all of you who made Law Week 2004 a success! We look forward to next year's Law Week, May 2 – 6, 2005.

Reception Held in Seattle for ABA President-Elect Robert Grey

On April 6, a reception was held at the Fairmont Olympic Hotel in Seattle to honor American Bar Association Presi-

dent-elect Robert J. Grey Jr., who will become president of the ABA in August 2004. In the photo above, from left to right, are WSBA President David W. Savage; WSBA President-elect Ronald R. Ward; Joseph H. Gordon, WSBA member since 1935 and long-time ABA member; Robert Grey; and Washington State Supreme Court Chief Justice Gerry L. Alexander.

Notice of Deadline for Filing WSBA Resolutions

Pursuant to WSBA Bylaw Article VII, Section F, Resolutions, any 10 active members of the WSBA may present a written resolution to the Board of Governors for consideration at the WSBA's annual business meeting. This year's meeting will be September 16, 2004, beginning at 6 p.m. at the Seattle Marriott Waterfront Hotel, 2100 Alaskan Way, Seattle. Resolutions must be filed with the WSBA executive director at least 90 days before the annual meeting (by 5 p.m. June 17, 2004), and must be accompanied by a written report explaining the resolution. The resolution and explanatory report together must not exceed a total of 1,000 words. Send resolutions to WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

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

Not more than 11 nor fewer than seven days before the annual meeting, the Resolutions Committee will hold a public hearing at the WSBA office (2101 Fourth Ave., Ste. 400, Seattle) to consider the views of proponents and opponents of resolutions. Proponents and opponents may attend the hearing in person or present their views in written form for consideration by the committee. Proposed resolutions will be published in the August 2004 issue of *BarNews*, along with the date of the Resolutions Committee meeting and a list of committee members.

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

2004 Bar Leaders and Access to Justice Conference

The 2004 WSBA Bar Leaders Conference and Access to Justice (ATJ) Conference will be held at the Red Lion Hotel Yakima Center June 11-13, 2004. For Bar Leaders registration information, contact Desiree Ogden at 206-733-5931 or desireeo@wsba.org; for ATJ information, contact Sharlene Steele at 206-727-8262 or sharlene@wsba.org. Information is also available on the WSBA website at www.wsba.org.

MCLE Certification for Group 3 (2001-2003) Past Due

MCLE Reporting Group 3 members should have completed all the credits for the 2001-2003 reporting period by December 31, 2003 and returned their C2 forms by March 1, 2004. Members in Group 3 include active members who were admitted to the WSBA from 1984 to 1990 or in 1993, 1996, or 1999. (Members admitted in 2002 are also in Group 3 but are not due to report until 2006.) The credit requirements for the period are shown below.

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

If you were unable to complete the credit requirements, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org, to discuss options for becoming compliant with MCLE requirements.

Senior Attorneys Discussion Group

Join the Senior Attorneys Discussion Group for stimulating, social, sophisticated sojourns and cookies as our members share travel adventures on Thursday, June 17, and Thursday, July 15, from 4:00 to 5:30 p.m. at the WSBA office at 2101 Fourth Ave., Ste. 400, Seattle. Parking is available on the street nearby ($2 for two hours) or under the building. For more information, please contact Jenny Favell, Ph.D., in the Lawyers' Assistance Program, at 206-727-8267.

CLE Credit for Moot Court Judging Approved by Washington Supreme Court

APR 11 Regulation 103 was amended by the Washington State Supreme Court on March 8, 2004, to authorize up to six CLE general credits per reporting period for judging moot court competitions at ABA-approved law schools,

provided that there is an educational component in addition to the judging. In addition, Regulation 104(d)7, which disallowed moot court judging, was deleted by the Court.

Credit will be given for moot court judging that takes place on or after the date the court amended these regulations, provided the content meets the education requirements of the new regulation. No retroactive credit will be given. Members must get appropriate certification from the law school for participation in moot court in order to get credit.

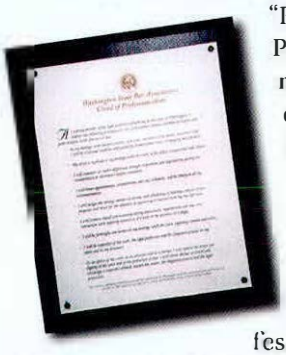
The education component that must be satisfied in the moot court judging needs to be structured into the moot court activity prior to the actual judging. It must consist of establishing a "feedback process" by which the member, as the moot court "judge," gives specific performance feedback to each student participant. The law school can do this by reviewing a written outline for points to be covered by the "judge," by showing a video with this content, or by other appropriate method. Approval of moot court judging for credit will be dependent on a clear exposition in the Form 1 submitted by the law school of the "feedback process" education component and its relationship to the "judging" in the competition to follow. The education component must also be consistent with APR 11 Regulation 104.

Interest in Establishment of New State and Local Tax Section

This notice is posted pursuant to the WSBA Bylaws, Article IX, Sections, regarding a six-month prior notification of intent to establish a new section. There is a current effort to form a State and Local Tax Section. For additional information, please contact John Piper at 206-224-8045.

"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.

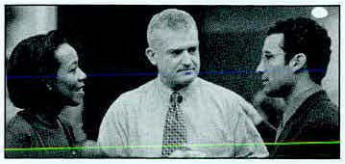


Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in May 2004 was 1.198 percent. The maximum allowable interest rate for June 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 to 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.

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 available at www.wsba.org/lawyers/services/lawyertolawyer.htm.



Upcoming Board of Governors Meetings

June 11 — Yakima
July 30-31 — Coeur d'Alene
September 16-17 — Seattle

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

DRI Establishes $10,000 Diversity Scholarships in Honor of Law Day

DRI, "The Voice of the Defense Bar," announced its first diversity scholarship in honor of Law Day, May 1. DRI, which consists of more than 21,000 members of the nation's foremost defense counsel, will award two $10,000 scholarships to law students of color and females who have completed their second year of studies. The announcement of this nationwide scholarship came just weeks before the nation celebrated the 50th anniversary of *Brown v. Board of Education*, the U.S. Supreme Court ruling that rejected the concept of "separate but equal" facilities in the nation's public schools.

"Fifty years after *Brown v. Board of Education*, the legal profession still does not reflect the diverse community it

serves," said DRI President Bill Sampson. "It is a serious problem that requires the time, resources, and devotion of the entire legal community. The DRI diversity scholarship aims to be one of many long-term efforts that will help curb this problem.

The scholarship was inspired by DRI past president and WSBA member Sheryl Willert, who in 2003 was the first female and first African-American to lead a defense bar organization. "It is not enough for a small group of minorities to become attorneys. Our nation's justice system depends on creating a new culture within the profession that welcomes and promotes diversity. It is an ambitious goal, but it is the right one," Willert said.

Qualified scholarship applicants must have successfully completed two years of study at an ABA-accredited law school and be a member of an ethnic minority group or a female. Qualified law schools were notified of award criteria application details. For more information, visit www.dri.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.

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.

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 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.

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.

Help Educate the Public About the Law

Writing editorials, visiting classrooms, and presiding over mock trials are just a few of the ways lawyers and judges can help the public better understand the legal system. For information about public legal education volunteer opportunities and resources, visit the Volunteering page of the Council on Public Legal Education website at www.wsba.org/ple/speakers. Also, the ABA recently published an excellent booklet, "Educating the Public About the Law," that contains much practical advice about volunteering as a public educator. Download the booklet at www.abanet.org/publiced/volunteer/home.html or e-mail cple@wsba.org for a hard copy.

Notice to WSBA Members on Active Military Duty

At its January 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.

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as a partner.

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Also,

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has joined the firm as an associate.

Ms. Zundel will continue her practice in family and estate law, contract, real estate, corporate and construction law.

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Ms. O'Neill will practice in the areas of civil litigation and intellectual property.

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Stephen P. Connor and **Samuel S. Chung** are pleased to announce the formation of

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and that **Ms. Anne-Marie Sargent** has joined the firm as of counsel. Ms. Sargent is a graduate of Stanford University and received her law degree from Seattle University *summa cum laude.*

The firm will concentrate on handling commercial and employment litigation matters and providing employment consulting.

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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

Richard J. McKay (WSBA No. 19987, admitted 1990), of Venice, FL, was disbarred effective July 17, 2003, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in 2001 and 2002 involving conversion of client funds, failure to comply with trust account rules, and failure to cooperate with the disciplinary investigation.

In January 2001, Mr. McKay received $60,000 in settlement funds for a client's personal-injury matter. Mr. McKay signed the checks as "attorney in fact" for the client, and the funds were deposited into a client trust account. Mr. McKay did not have authority to endorse checks on the client's behalf. By the end of March 2001, the trust account balance was less than $4,000. Mr. McKay did not send the client his approximately $25,400, or pay the $13,700 Medicare reimbursement. The hearing officer found that Mr. McKay had intentionally converted the client's settlement funds. The client visited Mr. McKay's office in the fall of 2001 and discovered that the office had been vacated. The Bar Association located Mr. McKay in Venice, FL. Mr. McKay failed to file trust-account declarations for three years. Mr. McKay did not cooperate with the disciplinary investigation.

Mr. McKay's conduct violated RPCs 8.4(b), prohibiting committing a criminal act [theft] that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; and RLDs 13.5 [now ELC 15.5], requiring all active lawyers to file annual trust-account declarations; and 2.8(a) [now ELC 5.3(e)], requiring lawyers to promptly respond to requests made for information relevant to grievance investigations.

Linda Eide represented the Bar Association. Mr. McKay represented himself. Steven W. Hale was the hearing officer.

Reprimanded

William R. Brendgard (WSBA No. 21254, admitted 1991), of Portland, OR, was ordered on July 15, 2003, to receive a reprimand, following a stipulation approved by the hearing officer. This discipline is based on his conduct in 2002 and 2003 involving lack of diligence and failure to return unearned fees in a dissolution matter.

In late 2001, Mr. Brendgard agreed to represent a client in a marriage-dissolution action. Mr. Brendgard did not deposit the client's advance fee deposit into his trust account. Mr. Brendgard drafted pleadings and told the client he would file the petition in early 2002. In May 2002, the client learned from the court that Mr. Brendgard had not filed her petition. Mr. Brendgard received, but did not answer, two certified letters from his client. In July 2003, Mr. Brendgard refunded the client's fee plus interest and returned her client file.

Mr. Brendgard's conduct violated RPCs 1.3, requiring lawyers to diligently represent clients; 1.4(a), requiring lawyers to keep clients reasonably informed of the status of their matters; 1.15(d), requiring lawyers to refund unearned advance fee payments upon withdrawal; and 1.14(a), requiring lawyers to deposit client funds into trust accounts.

Anne I. Seidel represented the Bar Association. Mr. Brendgard represented himself. Carolyn A. Lake was the hearing officer.

Reprimanded

Donna L. Johnston (WSBA No. 23630, admitted 1994), of Seattle, was ordered to receive a reprimand, following a stipulation approved by the hearing officer. This discipline is based on her conduct in 1999 involving lack of competence and diligence in a litigation matter.

In 1999, two of Ms. Johnston's clients were served with copies of a summons and complaint. The clients were named as defendants in a breach-of-contract claim. Ms. Johnston told the clients that she would take care of the matter. The complaint had not yet been filed in court. Ms. Johnston mistakenly believed that the plaintiffs were required to provide notice prior to taking a default judgment in the lawsuit. Ms. Johnston did not contact opposing counsel, file a notice of appearance, or file an answer. In June 1999, plaintiffs obtained a default judgment against Ms. Johnston's clients. When the clients inquired about the matter, Ms. Johnston assured them it was taken care of., without actually checking. If Ms. Johnston had checked, she would have discovered the default judgment. The clients learned of the judgment in January 2001, after the time period for a Civil Rule 60(b)(1) motion to vacate judgment had passed.

Ms. Johnston's conduct violated RPCs 1.1, requiring lawyers to provide competent representation; 1.3, requiring lawyers to provide diligent representation; 1.4(a), requiring lawyers to keep their clients informed of the status of their matters; and 8.4(c), prohibiting lawyers from making negligent misrepresentations.

Randy Beitel represented the Bar Association. Kurt Bulmer represented Ms. Johnston. Lawrence R. Mills was the hearing officer.

Reprimanded

Stephen G. Smith (WSBA No. 11185, admitted 1980), of Fall City, was ordered to receive a reprimand, following a stipulation approved by the hearing officer. This discipline is based on his conduct in 2000 involving lack of diligence and charging an unreasonable fee in an immigration matter. (Mr. Smith is to be distinguished from Stephen A. Smith of Seattle; Stephen C. Smith of Honolulu, HI; Steven A. Smith of Portland, OR; Steven C. Smith of Monroe; Steven W. Smith of Olympia; and Steve D. Smith of Wenatchee.)

In March or April 2000, Mr. Smith agreed to represent a client in an immigration matter. Ms. D paid Mr. Smith

$1,900 to assist a relative's immigration from Vietnam. Mr. Smith met with Ms. D and the client once. Mr. Smith opened his file in the client's name and did not cross-reference it to Ms. D's name. When Ms. D called Mr. Smith's office, he did not recognize her name or return her calls. Ms. D asked Mr. Smith to refund her fees and return the file. Mr. Smith could not immediately locate the file. He agreed to refund the fees, and sent Ms. D $500 in May 2002. In September 2002, when the Bar Association provided Mr. Smith the relative's name, he located and returned the file, and refunded the remaining fee.

Mr. Smith's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; and 1.5, requiring that lawyers charge reasonable fees.

Anne I. Seidel represented the Bar Association. Mr. Smith represented himself. Nancy K. McCoid was the hearing officer.

Transferred to Disability Inactive Status

Kern W. Cleven (WSBA No. 13455, admitted 1983), of Bellingham, was transferred to disability inactive status, effective July 11, 2003, by an order of the Washington State Supreme Court. This transfer was based on notice of a final adjudication from the Supreme Judicial Court for the Commonwealth of Massachusetts. This is not a disciplinary action.

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APPEALS

Margaret K. Dore

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

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

Passed CPA exam in 1982

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Anne Watson,
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WSBA *Bar News* Calendar
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Information must be received by the first day of the month for placement in the following month's calendar.

Business Law

Nuts and Bolts: Business Law
June 22 — Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Should Your Client Incorporate — Advising the Washington Business
July 22 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Construction Law

Construction Law Section Midyear Meeting and Seminars
June 11 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Creditor/Debtor

Nuts and Bolts: Consumer Bankruptcy
June 1 — Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Criminal Law

Nuts and Bolts: Criminal Law
June 22 — Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Elder Law

Special Needs Trust
July 14 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Estate Planning

Nuts and Bolts: Estate Planning and Probate Practice
June 8 — Seattle. 2.5 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Valuation of Assets
July 28 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Basic Washington Estate Planning Series
June 4 and 11 — Seattle. 4 CLE credits per session. By UW-CLE; 800-CLE-UNIV.

Ethics

The Ethics of Persuasive Legal Rhetoric
June 17 — Seattle. 2 ethics credits. By Emerald Education Group; 206-985-4351.

Constitutional Law and the Ethics of Privacy
July 15 — Seattle. 2 ethics credits. Emerald Education Group; 206-985-4351.

Family Law

Nuts and Bolts: Family Law
June 1 — Seattle. 3.25 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

2004 Family Law Midyear Meeting and Seminars
June 25-27 — Spokane. 16.75 CLE credits, including 2.75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

General

Instant Eloquence for Attorneys: A Workshop in Writing an Interesting and Memorable Speech
June 18 — Seattle. 7.5 CLE credits. By Emerald Education Group; 206-985-4351.

Public Speaking with Pleasure: Confidently Delivering an Interesting Speech
June 19 — Seattle. 7.5 CLE credits. By Emerald Education Group; 206-985-4351.

"Woodshedding" That Works: How to Prepare Your Witnesses for Success in Deposition and Trial Without Violating Your Ethics
June 25 — Seattle. 7.5 CLE credits, including 1 ethics. By Emerald Education Group; 206-985-4351.

Cross-Training 101: Enough Law to Spot the Critical Issues and Avoid Malpractice
July 9 — Seattle. 7.5 CLE credits. By Emerald Education Group; 206-985-4351.

Major Matter Management: Essentials of Proactive Practice, Project Management and Client Services for Big Cases and Transactions
July 15 — Seattle 7.5 CLE credits. By Emerald Education Group; 206-985-4351.

Law Office Management

Nuts and Bolts: Setting Up Your Practice/Handling Your Trust Account
June 15 — Seattle. 3.5 CLE credits, including 1.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Litigation

Nuts and Bolts: Civil Litigation
June 8 — Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Discovery Without Despair
July 29 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Litigation Section Midyear Meeting and Seminars
June 18 — Seattle. 6 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Employment Law: Introducing WSTLA's New Employment Law Handbook
June 18 — Seattle. CLE credits pending. By WSTLA: 206-464-1011.

WSTLA's 2004 Annual Meeting and Convention
July 22-25 — Skamania Lodge. CLE credits pending. By WSTLA; 206-464-1011.

Real Property

Real Property, Probate and Trust Section Midyear Meeting and Seminar
June 4-6 — Stevenson. 10.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Nuts and Bolts: Residential Real Estate
June 15 — Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Tax Law

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Labor attorney: Oregon AFSCME Council 75, an established labor union representing 21,500 employees in Oregon, is seeking an attorney to advocate for our members in Oregon. This position is based in Pendleton, OR. The ideal candidate is a lawyer, licensed in Oregon, or able to be licensed in Oregon within three months, with labor and employment law experience. Civil litigation and research capabilities are a plus. The position requires some travel and a dedicated, self-motivated attorney to work with diverse groups of public- and private-sector employees, including corrections officers, and county and city employees. The position offers competitive salary with an excellent benefits package. Send a cover letter and résumé to Greg Schneider, AFSCME, PO Box 12455, Salem, OR 97309. Position closes July 2, 2004.

Family law attorney: Family law attorneys with at least three years' experience can significantly increase their earning potential by joining our expanding three-state family law firm. We are committed to generating manageable caseloads for our attorneys that respect an individual's quality of life while providing a competitive financial structure. Our modern, attractive offices overlook Lake Union and make for a pleasant and convenient work environment. Send résumé with references to Hiring Attorney, 1100 Dexter Ave. N., Seattle, WA 98109.

Smyth & Mason PLLC, an established downtown Seattle business litigation firm, seeks an associate with a minimum of five years' litigation experience. Excellent academic qualifications required, commensurate with other firm members. Send résumés to 701 Fifth Ave., Ste. 7100, Seattle, WA 98104, Attn: Laura Kruger.

Senior attorney (employment/labor) experienced with Dept. of Labor, EEOC, and whistleblower defense for in-house position with Eastern Washington company. Admitted to Washington or other state bar association. Requires a minimum five years' employment law/labor experience. Desire experience in labor arbitrations and familiarity with whistleblower defense under DOL/DOE agency rules, NLRB proceedings. Send résumé to WSBA *Bar News* Job Code 645, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121.

Seeking attorney or LPO to run new escrow office located in Auburn. Office space, furniture, and support staff provided. Send résumé and letter to info@rdsattys.com.

Litigation attorney: Small, well-established Bellevue firm seeks litigation attorney; minimum five years' experience in commercial/civil litigation. Requires strong analytical, research, writing, oral advocacy, and people skills. Send résumé and writing samples to PO Box 50171, Bellevue, WA 98015-0171.

St. Paul Travelers Insurance Co. is seeking an attorney for its growing Seattle staff counsel office. Minimum two years' civil litigation experience. Seeking creative, motivated litigator with trial experience and a strong desire to try cases. We offer an attractive salary and benefits package and emphasize incentive-based compensation. Join a strong company and enjoy a diverse, stimulating practice. Must be WSBA member. We are an equal-employment/affirmative-action employer, committed to workforce diversity. Fax résumé in confidence to 206 326-4220.

Litigation attorney with two years' experience needed for small Seattle downtown law firm to work in our securities arbitration, intellectual property, and litigation practice. Excellent academic credentials a must. Very competitive salary plus full benefits. Send résumé to Rohde & Van Kampen, 1000 Second Ave., Ste. 3110, Seattle, WA 98104; or mlyles@rohdelaw.com.

Barnard Companies Inc., a heavy-civil construction company in Bozeman, MT, currently has an opening for in-house counsel. Responsible for providing a wide range of legal advice and representation to the company, including contracting, employment, labor, litigation, bonds, insurance, and general corporate matters. Primary focus is on management of outside counsel, providing legal support, and advising managers to minimize legal risks. The candidate must have a J.D. degree and be licensed to practice law in Montana or licensed to practice law in another state and eligible to practice as in-house counsel in Montana; excellent academic credentials; minimum of seven years' successful and diverse work experience at law firms or in-house positions (in-house experience preferred); previous experience in the construction or a related industry a plus; general corporate, contract review, and litigation experience

required; demonstrated ability to be a self-starter and independent worker with excellent communication and interpersonal skills; demonstrated ability to handle diverse workload, and build and maintain relationships with business clients and outside counsel; and proven drafting and negotiating skills. Salary depends on experience. Excellent benefits package. E-mail cover letter, résumé, and salary requirements to hr@barnardinc.com, or mail to BCCI, PO Box 99, Bozeman, MT 59771.

The Nadler Law Group PLLC, a growing team of commercial litigators located on the Seattle waterfront, is seeking an attorney with at least four years' experience. Qualified applicants will have superior academic credentials, litigation experience, and demonstrated ability to attract and retain clients. Excellent opportunity to contribute to a busy and sophisticated practice while developing your own client base. Competitive compensation. Profit-sharing opportunities available. Please send résumé and cover letter to Hiring Coordinator, The Nadler Law Group PLLC, 1011 Western Ave., Ste. 910, Seattle, WA 98104; info@nadlerlawgroup.com.

Eastern Washington opportunity: Associate attorney sought for general business practice with emphasis in utility and municipal law. Applicants must have at least three years' experience and possess outstanding credentials, have a strong work ethic and desire to live in a small eastern Washington community (Ephrata). E-mail letter and résumé to foianini@donobi.net.

Hanis Greaney Zoro PLLC invites attorneys with established practices to join us in building the largest multiservice firm in South King County. Maintain substantial independence in your practice while enjoying the shared resources and cross-referrals of a larger firm. We offer a congenial and professional work environment in a beautiful, brand-new office facility only one mile from the RJC. Please call Cynthia at 253-520-5000 or e-mail cirvine@hgzlaw.com for more information.

Leading Seattle defense firm seeks experienced construction defect associate. Competitive salary and benefits. Send or e-mail résumé and writing sample to Forsberg & Umlauf PS, 900 Fourth Ave., Ste. 1700, Seattle, WA 98164; firm@forsberg-umlauf.com.

MacDonald Hoague & Bayless, a 17-lawyer Seattle firm, seeks full-time associate for permanent business-immigration position. The caseload will be a mix of labor certification and employment-based immigrant visa work for one client, as well as a full range of other immigration work. Position requires excellent organizational, analytical, and writing skills. Two years' prior business immigration experience required. We offer a quality work environment, excellent benefits, and a tradition of legal activism. Visit www.mhb.com to learn more about our firm. Send or e-mail résumé and writing sample to Human Resources, MacDonald Hoague & Bayless, 705 Second Ave., Ste. 1500, Seattle, WA 98104; or e-mail to law@mhb.com. Position closes June 15, 2004.

Senior associate or partner: Small downtown Seattle firm concentrating in business, estate, and tax planning seeks ambitious attorney with a minimum of five years' experience in related practice areas. Candidates must have the following qualifications: excellent research and writing skills; experience in the courtroom; experience in business development; ability to work independently. Candidates with established practices preferred. E-mail cover letter, résumé, references, and writing sample to dlyons@lyonslawoffices.com.

Law firm administrator: Eisenhower & Carlson PLLC, founded in 1914, with 30 attorneys and offices in Tacoma and Seattle seeks an administrator to assist in the management and operation of the firm. This individual will manage facilities, marketing, and human resources, and assist in the areas of strategic planning, financial management, and technology. Firm has an excellent benefits package, and an exceptionally professional, dedicated, and long-term staff, with many individuals nearing 20 years with the firm. We strive to provide a workplace that provides interesting and challenging work and the utmost respect for all employees. This position is in the firm's Tacoma office, but with responsibilities for both offices. Strong background in law-firm administration preferred. Please send résumé to Robert G. Casey, Managing Partner, 1201 Pacific Ave., Ste. 1200, Tacoma, WA 98403; or rcasey@eisenhowerlaw.com. Applications will be held in strict confidence.

Digeo Inc. is seeking in-house counsel with a minimum of five years' experience; at least two years in high-tech licensing transactions in a law firm and at least two years of the same experience in-house. Substantial experience with software and/or computer hardware-related licensing required. General experience covering other typical in-house legal issues desired. Experience with the cable industry, CE hardware manufacturing, and international transactions a plus. Good people skills required for position of high visibility to senior management. Good business acumen and negotiation skills required. Curiosity and willingness to learn new technologies and to expand legal skills required. Good sense of humor and flexibility required for a dynamic, fast-paced environment. Please send cover letter and résumé to careers@digeo.com.

Join the world's largest law firm, the Army JAG Corps! The Army Reserve needs "a few good lawyers" to serve as judge advocate officers in Seattle, Spokane, Tacoma, and Vancouver. Become part of a 225-year tradition of providing legal counsel to commanders and soldiers. One weekend a month and two weeks a year provide supplemental income, low-cost life insurance and dental benefits, commissary and exchange privileges, a defined-benefit retirement plan, travel opportunities, continuing legal education, and personal and professional development. Prior military service is preferred, but not required. Idaho and Oregon attorneys and law students are welcome to apply. Visit our website at www.jagcnet.army.mil. Send cover letter

and résumé to Commander, 70th Regional Support Command, Attn: AFRC-CWA-JA (Staff Judge Advocate), 4570 Texas Way W., Fort Lawton, WA 98199-5000.

Position Wanted

Foreign attorney (common-law country), with over seven years of corporate paralegal and software-industry contracts administration experience in Washington. Looking for a challenging position (in-house or law firm), which enables completion of Rule 6 Law Clerk Program. Contact 425-889-0961 or shanixkda@hotmail.com.

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

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Contract attorney at your service: Legal research and writing for Washington lawyers; minutes from UW Law Library. Many satisfied clients. Elizabeth Dash Bottman, 206-526-5777; e-mail bjelizabeth@qwest.net.

Contract attorney: Experience, accomplished trial and appellate attorney, 20-plus years' experience. Litigation and appeals emphasized. Multiple trial victories. Appellate successes at all levels, Washington courts as well as Ninth Circuit (BAP). References, reasonable rates. M. Scott Dutton, 206-324-2306; fax 206-324-0435.

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Forensic pathologist: 20 years' experience as a medical examiner. Board-certified in anatomic and forensic pathology. Sigmund Menchel, M.D., 425-401-2083 or sigmenchel@msn.com.

Contract attorney: Experienced in all aspects of litigation through trial and appeal. Research, writing, depositions, trial preparation, etc. Reasonable rates and quality work-product. Francis X. Olding, 206-838-1971.

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

Contract attorney: All aspects of litigation and appeals, including research. Former name partner in boutique litigation firm. 12-plus years' experience. Have conducted numerous civil jury trials, including complex litigation. Reasonable rates; variable per type of work. Pete Fabish, 206-545-4818.

Dispute resolution: Donald G. Ryan Jr., 34 years' experience in Washington. Available for mediation or arbitration of real estate or personal injury disputes. 253-939-0811; info@rdsattys.com.

Bad-faith witness/insurance consultant: Over 25 years' claims, risk management, and legal experience. JD, CPCU, and ARM. Phone 425-776-7386; www.expertwitness.com/huss.

Miscellaneous

Wailea, Maui, rental: 1,600 square foot Ekolu townhome on Blue course with panoramic views of Pacific Ocean. Five-day minimum. $225 daily cost. Call Bill at 303-789-4424 home or 303-376-4466 office.

Build the home of your dreams on this five-acre view lot located in the Blakely Ridge North Estates. Spectacular 180-degree views of the Cascade Mountains, Mt. Si, and the Snoqualmie Valley. Fully usable land has potential to be subdivided. Equestrian-approved for up to five horses. Homes in this area are listed for $1.5 to 2 million. Build your custom home for considerably less than purchasing a resale. For more information, visit www.carawayteam.com or call Dave Caraway at 425-890-2728, Windermere.

Whistler/Blackcomb luxury condo at Woodrun Lodge: Two bedroom; two bath; sleeps six; fireplace; ski in/ski out or enjoy golf, biking, etc. in summer; all amenities; slope-side outdoor heated pool and hot tub; more info at www.whistler-woodrun.com. Private rentals; specials rates. Contact Joanne at joannemac@telus.net.

Housesitter available: Extremely responsible housesitter looking for a home in the Seattle area. Cultured, well-educated female in early 60s. Vigilant respect for property. Will maintain home with utmost care. Excellent references. Available immediately. For more information, call Jan at 206-285-8000.

Tie One On

by Greg Lawless, Guest Columnist

In our stressful occupation, we all need a respite from the everyday grind.

One hobby gives you an entirely new focus. It's a true escape.

I refer, of course, to fly fishing. You'll be hard put to obsess about work while facing the threat of drowning, coupled with the distinct possibility of catching yourself with a fish hook instead of your quarry.

Fly fishing is standing in the middle of a rapids, waving a whippy stick (the fly rod), which is throwing out weighted string (the front-loaded floating fly line). At the end of said string is a hook with fur or feathers on it (the fly). It's a fake bug you throw out in hope of catching a fish (Bob). To get the fly line to the fish, you cast it back and forth quickly, causing the extremely sharp and pointy fish hook to go whizzing by your ear at speeds reaching seven gazillion miles per hour.

If you cast a spot overlapping a fish, it may rise and attack the fly, hoping to startle you and cause you to fall into the stream. Your waders will fill with water and you will be dashed on a rock or swept to a horrific drowning. Fish think this is hilarious. But fly fishing is not just fun.

Fly Fishing Is Cool

As I draw more and more years from the Bank of the Future, I realize I become less and less cool. But fly fishing is *way cool*. Here is a true and accurate conversation I had with a Young Person with Tattoos and Multiple Pierced Body Parts ("YPTMPBP").

YPTMPBP: "Wow, cool."
Greg: "Excuse me?"
YPTMPBP: "Cool piercing there, dude."
Greg: "Why, thank you."
YPTMPBP: "Dude, like, what's that deal on your forehead?"
Greg: "It's a number 12 Royal Wulf."
YPTMPBP: "Cool.
Greg: "Thanks."
YPTMPBP: "Howja get it to stay, man?"
Greg: "I believe the point is imbedded in my skull."
YPTMPBP: "Cool."

Immortality

If you create a unique fly, you can name after it you. Leo Wulf created the *Royal Wulf*. Professor John Wilson made *The Professor*. There is a fly called the *Wooly Bugger*. Its story is like Dr. Watson's account of Sherlock Holmes's Adventure of the Giant Rat of Sumatra, "for a report of which the world is not yet prepared."

Flies are easy to make, using stuff around the house. I invented *The Tabby Cat*. It bears a haunting resemblance to the fur of a common house cat speckled with red dots that give the illusion of human blood. Friends sometimes ask why a fish would bite at a cat. I tell them it is part of the mystique of the sport, and change the subject.

Catch and Release

True fly fishermen never keep or kill the fish they catch. They let them go. Fish often wonder what's the point. That shows how stupid fish are.

My first fly catch was an eight-inch rainbow trout. I brought the fish in, cradling it in my right hand, reaching to remove the hook with my left. The fish wouldn't be still. I still recall the horror of blood in the water.

"Oh, no!!" I moaned, "I've killed my first fish!!"

Imagine my relief, then, to find the blood was gushing around a *14 Sparkle Pupa* sticking in my thumb. The sarcastic look the fish gave me, swimming away, was totally rude. Someday I'm going to recatch the ingrate and tag him with one of those Animal Kingdom devices for monitoring creatures in the wild. We'll see who laughs then!

The Beauty of Nature

Most fly fishermen will tell you that fishing is incidental. The real wonder of the sport is time spent in a beautiful forest stream, surrounded by trees, listening to the gentle melody of the rushing water.

We say that kind of stuff to try to impress our spouses. We'll fish in a cesspool if we think there's a three-pound rainbow in there.

However, being out in nature does make one reflective. Let me conclude by sharing with you a poem I wrote, sitting on a rock, watching the stream go by.

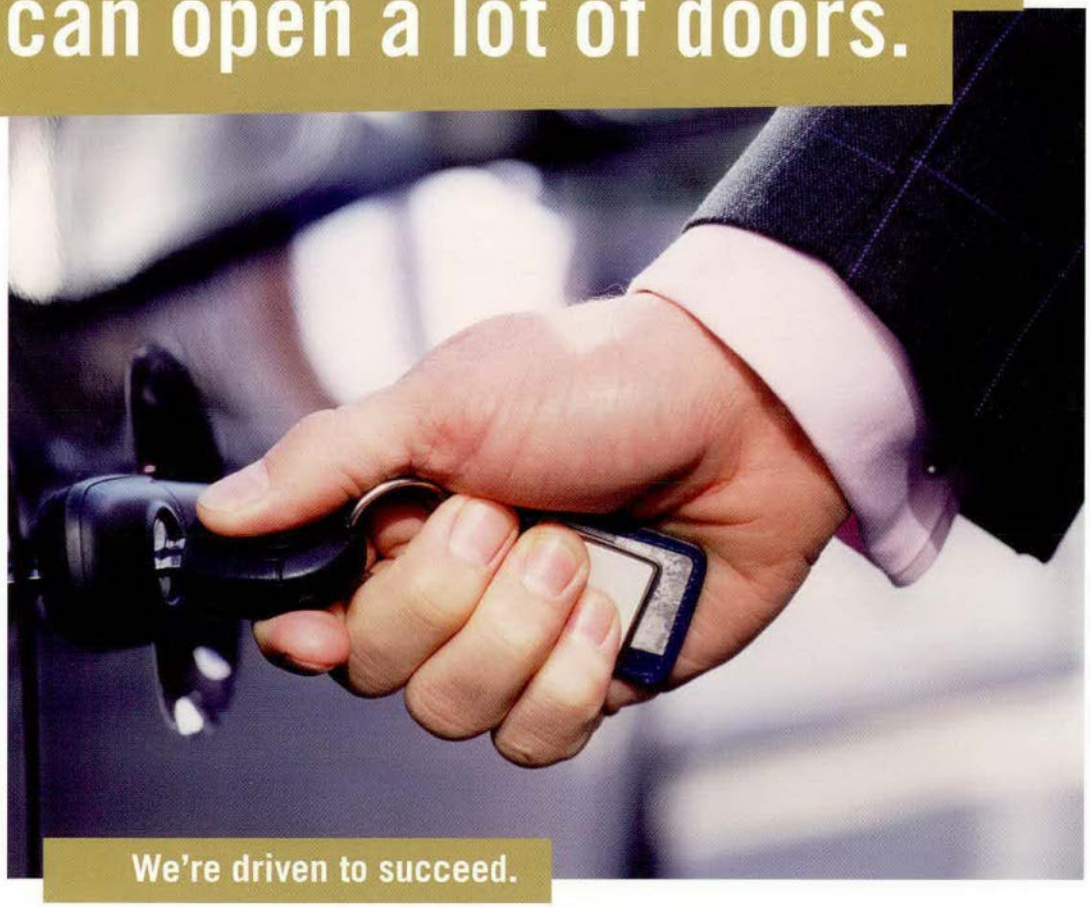
Sitting on a Rock, Watching the Stream Go By

There once was a man named Guy
Who, watching the stream go by,
Hooked a brook trout, who spit the fly out,
Lost the fish, and then his left eye.

Greg Lawless practices in Ballard and is a longtime Bar News *contributor. His previous poetic work includes an article on writing constitutional law decisions in haiku.*

Fresh from savoring his Andy Warhol single billable unit of worldwide celebrity in the Karen Dammann case, editor Lindsay Thompson found all he was good for was writing Methodist knock-knock jokes, and took this month's column off.

A good DUI defense lawyer can open a lot of doors.



Washington's strict DUI laws can have a devastating effect on lives, even for first time offenders. That's why anyone accused of a DUI needs the most tenacious and innovative defense lawyer around. At Fox Bowman Duarte, we've successfully defended hundreds of DUI cases. And our six lawyers have accumulated more than 75 years of DUI litigation experience. Fox Bowman Duarte. We help people get it together again.

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