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Washington State

# BarNews

The Official Publication of the Washington State Bar • JULY 2004



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# BarNews

The Official Publication of the Washington State Bar

July 2004



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## WASHINGTON STATE BAR ASSOCIATION

2101 Fourth Ave., Ste. 400  
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### 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; amy@wsba.org

### Communications Division E-mail:

comm@wsba.org

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

*(not pictured)*

### Reader thoughts about "Random Thoughts"

As a lawyer for over 43 years I read with appreciation many things noted in Judge Nichols' article "Random Thoughts from 20 Years on the Bench" (June, p. 23). My own perception is that things have changed in our courts much for the worse during such years.

Judge Nichols' comment on the need for courteous behavior towards opposing counsel is more than true, for the discourteous behavior towards opposing counsel now occurs just as often outside the courtroom. This was not very often the case during the early years I practiced. Judge Nichols omitted noting the current problem of being unable to trust the word of opposing counsel. I did not see this as a major problem until some years ago.

Some other things troubled me among the Judge's comments. One was his advice to present a case as "a nicely conceived drama" and "turn[ing] it into a stage or screenplay." How is the search for the truth to be fair and successful if the court and juries decide the case based on this effort? My experience is that the most truthful witnesses often appear least certain, and the liars most certain, of their memories and facts. But the reverse is true of how they are perceived by the triers of fact. Is a case to turn on how well lawyers prepare their witnesses to look certain? Not if truth is to be found. If we really wanted the truth to be found in our courts, it may be best learned with no preparation of witnesses, the court's right to question witnesses and the retention of all expert witnesses by the court, as I understand is the case in some countries in Europe.

Judge Nichols admits to naïveté in "coming to the realization that attorneys do not join the judge in a search for a correct result." I started as a lawyer with Bogle & Gates in 1961, working almost exclusively on a major case for four years. It took me about six months or less to lose that naïveté. The truth was the last thing they wanted the court to learn. I left Bogle's to join Legal Services so I could save my soul.

Another omission of the Judge was

any reference to the politics of judges. I never used to be concerned about the politics of the case and a judge's concerns for such politics. But if you haven't experienced this problem yet, just read our State Supreme Court's decisions in the Washington Public Power Supply System and the Mariners' baseball stadium cases and then read the briefs and the law review articles on these cases.

*Beri Metzger  
Seattle*

I enjoyed reading the article "Random Thoughts from 20 Years on the Bench." Allow me to disagree with a small part of it. The writer claims that the practice of filing affidavits of prejudice "is demeaning, disrupts the flow of cases through the system, and is essentially useless." I suppose that it would seem that way to a judge who is "affidavited." It certainly doesn't seem that way to many practicing lawyers. Most judges are neutral, objective, and conscientious. A few are not, and routinely exhibit bias or behavior that hardly engenders confidence that a fair decision will be reached. Affidavits of prejudice are sometimes the only meaningful way for a party of limited means to get a fair shot without having to file an appeal. That is

the unfortunate reality, and it should not be blamed on the lawyers.

*Bruce Finlay  
Shelton*

### Section believes diversity can mean "different opinions"

On behalf of the WSBA World Peace Through Law Section, let me welcome the June letter (p. 7) querying our selection of Congressman Jim McDermott for the Ralph J. Bunche Award.

Ours, like other WSBA sections, is a voluntary association of Washington lawyers that cannot necessarily reflect the opinion of the Bar as a whole.

Yet concern about Law and Peace knows no boundary, of politics, religion, race, or any other kind. To quote Dr. Bunche's 1950 Nobel Prize lecture, "In this most anxious period of human history, the subject of peace, above every other, commands the solemn attention of all men of reason and goodwill."

We therefore include persons of every persuasion in our discussions. We've had a former Nixon White House lawyer, the Pope's legal representative in America, a government negotiator with the Chiapas rebels.

I urge — no, I challenge — any lawyer who believes that law has something to do with peace to join us, to educate

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us, to express your point of view in reasoned discussion, beyond the meaningless clash of bumper sticker slogans. If you have a reasoned disagreement, so much the better! Our meetings and our listserve are open to all persons of reason and goodwill. We welcome you!

*Randall E Winn  
Mercer Island*

EDITOR'S NOTE: *The writer is chair of the World Peace Through Law Section. Its website is at [www.wsba.org/lawyers/groups/worldpeace](http://www.wsba.org/lawyers/groups/worldpeace).*

### Hoopster news

We are pleased to announce that the veteran squad of Johnson & Associates\* (12-1) has captured the 2004 Seattle Lawyers Basketball League crown.

On May 20, 2003, #1 seed Johnson & Associates prevailed over #3 seed Stanislav-Ashbaugh, in an epic battle where, literally, blood from both teams spilled on the court. It was a loud, high-energy contest, with a majority of the players being litigators and trial lawyers verses transaction attorneys.

Team members and their respective law schools are James H. Clark (Willamette, '87), Eric C. Hanson (Seattle Univ., '96), Robert Iannucci (Boston Univ., '88), Anthony C. Johnson (Boston Univ., '88), Joshua M. Lipsky (Georgetown, '95), Eric S. Nelson (Pepperdine, '92), Charles T. Paglialunga (UPS, '92), Robert J. "Jack" Slavik (Seattle Univ., '96), and William R. Spurr (Boston Univ., '90).

*Anthony C. Johnson  
Commissioner  
Lawyers Basketball League  
Seattle*

\*Johnson & Associates is the name of the basketball team composed of nine lawyers, many of whom are practicing law in small firms: it is not a law firm; the team members are not legal associates in my law firm although one team member, Bill Spurr, is my law partner.

### If only "only" was that simple

Robert Cumbow's articles are one of the onliest things I like to read in *Bar News*.

In the May edition, however, he really misses the point. In law, unlike lesser disciplines, the expression "one of the only" is a term of art. It is purely utilitarian, breathing life into logical structures otherwise uninhabited by persuasive force. Standing mute is for the hapless laity, not for the lawyer. If something must be said, yet nothing quite fills the bill, the expression "one of the only" adds dignity and length to an argument and a time sheet requiring both.

*Jerry Stimmel  
Kirkland*

### The road to Utopia

I just finally got to your article (Editor's Page, p. 64) in the back of the May *Bar News* (sorry, I'm a little busy these days). I did want to say I got a good chuckle out of it.

I've edited a school paper and written for papers and magazines (freelance) for several years now. I've come to the conclusion that there is a simple way for editors to satisfy everyone. Here it is:

1. Publish articles exactly as they are written, without editing or cutting, no matter how many thousand of pages they consume.
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OK, the solution is simple. Implementing it is another matter. Good luck!

*Tom Pacher  
Coupeville*

EDITOR'S NOTE: *The writer is also author of the Island County Report in "Around the State."*



*Bar News welcomes letters from readers. We do not run letters that have been printed in, or are pending before, other legal publications whose readership overlaps ours. We ask that, if possible, letters fall between 250 and 500 words in length, and that they be e-mailed to the editor at [tradelaw@thompson-law.com](mailto:tradelaw@thompson-law.com). We reserve the right to edit letters. Bar News does not print anonymous letters, or more than one submission per month from the same contributor.*

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# The WSBA: Have It Your Way

## Our commitment to member benefits

by David Savage, WSBA President

**A**s I undertook my term last fall, I advised the Board of Governors and the membership that I intended to make diversity and member benefits my central themes. In my October 2003 *Bar News* column, I previewed several projects which the Board of Governors and I were launching in order to deliver on my commitment to member benefits.

Among them was the first member survey about the *Bar News* in over 20 years. Having persuaded Lindsay Thompson, a Seattle attorney who edited the *Bar News* from 1988 to 1995 and served on the Board of Governors from 1998 to 2001, to return as the independent editor of the *Bar News*, we sought members' comments and critiques as to the journal. Garnering a statistically significant response, the professional survey yielded a great deal of valuable member input as to the journal generally and, in particular, as to its content, medium (paper or electronic copy), and publication frequency. It revealed, for instance, that your predominant interest is in new developments in the law and substantive legal articles as well as discipline. Almost 70 percent of the respondents urged the continuance of a monthly publication and, surprisingly in this electronic age, an affinity for the hard copy. You also indicated a strong interest in the section entitled "Around the State," which chronicles the activities of local bars and lawyers of note. Lindsay resurrected this section, which had been a feature of the *Bar News* when he earlier served as its editor. Incidentally, this section is dependent upon your input. Write Lindsay with your local news; I assure you he will use it.

Lindsay, the Editorial Advisory Board, and the WSBA staff continue to refine the *Bar News* to reflect your wishes and to better represent your interests. If you are interested in a summary of the survey responses, please write to me at my e-mail address given on page 12 or to Judith Berrett, WSBA director of member and community relations, at [judithb@wsba.org](mailto:judithb@wsba.org).

I want to describe two more exciting member benefits which are "just around the corner."

First, as you may recall, I advised last fall that I was as-

sembling a distinguished group of lawyers — men and women, young and not-so-young, from large and small firms located around the state — to research and recommend a quality, low- or no-cost electronic legal research service. This group became known as the Electronic Legal Research Evaluation Team (ELRET). It is chaired by Charlie Wiggins, a former court of appeals judge and fine appellate lawyer; he is joined by WSBA Governor Katie O'Sullivan of Seattle; Doug Ende, WSBA professional responsibility counsel; Gail Gorud, former Kirkland city attorney; Deb Kelly, Clallam County prosecuting attorney; and Robert Rembert of Pullman.

ELRET will make its final report to the Board of Governors at this month's meeting. In completing its work, the team sent out an e-mail membership survey last month. I hope you took advantage of the opportunity to respond to it.

The team has narrowed the candidates down to three systems — Casemaker, Fastcase, and VersusLaw — although they are also considering the enhancement of LegalWA.org, an existing database of Washington materials.

Casemaker is used by approximately 17 state bar associations, including Idaho and Oregon. Casemaker has offered to provide electronic access to all Washington statutes and case law back to 1935, together with access to statutory and case law from all other subscribing states, as well as some federal law.

Fastcase, founded in 1999 by attorneys from a large Washington, D.C., firm, contends it has assembled the third-largest database of U.S. case law, trailing only Westlaw and Lexis.

VersusLaw, founded in 1985, is located in Redmond, Washington. VersusLaw claims to provide the most up-to-date coverage of any such provider.

The Board of Governors received an interim report from ELRET at its May meeting. ELRET was asked to return with a final recommendation which gives weight to the Board's desire to provide this service, if at all possible, at no cost to members. While none of these services will provide the full array of features provided by Westlaw and Lexis, any of





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them will offer a truly valuable service — and, we hope, at no charge to you. We hope to go online with one of these services within a year from the date of this column. Stay tuned.

Second, as of January 1, 2007, the WSBA office will be located in Puget Sound Plaza at 1325 Fourth Avenue, Seattle. I describe this as a member benefit for a variety of reasons. First and foremost, this new facility will be much more user-friendly. Occupying floors 6, 7, and 8, the WSBA will have an enhanced ability to offer conference space (which is expected to provide 80 percent of our needs) and in-house C.I.E.s (with a consequent cost saving), as well as the prospect for partnering with other law-related entities by attracting them to locate in the same spacious building. The concept of a “law center,” bringing together other law-related organizations, is under consideration. The Legal Foundation of Washington, for instance, has recently moved to Puget Sound Plaza.

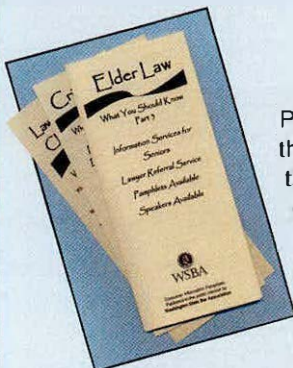
Puget Sound Plaza is much more centrally located in downtown Seattle and parking is more readily available. All in all, we are very excited about this new location which, I know you’ll be delighted to learn, will be available at a cost initially lower than we presently incur and it will average out to no more than our current rate over the term of the 10-year lease. This success was achieved by the vision and foresight of the Board of Governors and the Facilities Committee which was led by Brooke Taylor, a past member of the Board of Governors, and 2004-2005 WSBA president-elect.

Joining Brooke on the Facilities Committee were Past Presidents Wayne Blair, Dale Carlisle, and Dick Manning; Governors Carl Carlson, Joni Kerr, and Kristin Olson; former Governor Ken Davidson; Seattle real estate attorneys Ellen Dial and Gary Fluhrer; Executive Director Jan Michels; Deputy Director Paula Littlewood; and Director of Finance and Administration Kim Rutledge.

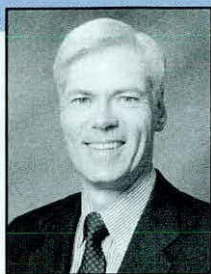
As we look forward to our relocation, we invite your input on how to best use this superb new facility on which the doors will open January 1, 2007. See you there. *ES*

Dave Savage can be reached at [savage2@imsblaw.com](mailto:savage2@imsblaw.com) or 509-332-3502.

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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. 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](http://www.wsba.org/consumer-information).



## Pro Bono Publico Services by WSBA Members in 2003

*Aiming to reduce a legal-needs gap for low-income persons*

by Andrew A. Guy, Guest Columnist

### Introduction

The Washington State Supreme Court's recently completed Washington State Civil Legal Needs Study contains some rather shocking statistics. It reveals that more than three-fourths of all low-income households in our state experience at least one civil legal problem per year, and that low-income people get legal help from an attorney in fewer than 15 percent of those problems.

In an effort to encourage lawyers in Washington to provide *pro bono* service to low-income persons, RPC 6.1, the *Pro Bono Publico Service* rule, was amended effective September 1, 2003. The rule now makes clear that each of us has a professional obligation to participate in *pro bono* activities on an ongoing basis throughout our careers. The amended rule provides as follows:

**RPC 6.1. Pro Bono Publico Service.** Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay. A lawyer should aspire to render at least thirty (30) hours of *pro bono publico* service per year. In fulfilling this responsibility the lawyers should:

(a) provide legal services without fee or expectation of fee to:

- (1) persons of limited means; or
- (2) charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide *pro bono publico* service through:

- (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civil, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
- (2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

*Pro bono publico* service may be reported on the annual fee statement furnished to the WSBA. Lawyers rendering a minimum of fifty (50) hours of *pro bono publico* service shall receive a recognition award for such service from the WSBA.

Pursuant to the last sentence of the rule, a form for reporting *pro bono publico* services was included, for the first time, in the annual licensing packet the WSBA sent to members at the end of last year.

### Recognition Awards

The WSBA and its *Pro Bono* and Legal Aid Committee (PBLAC) extend hearty kudos to the WSBA members who rendered 50 or more hours of *pro bono publico* service last year. The names of those who reported this level of service to the WSBA as part of the recent changes to RPC 6.1 are listed on pages 16-19. Their names also were provided to those who attended the June Access to Justice Conference in Yakima. Each of these individuals receives a personalized recognition certificate issued by the WSBA.

### Kinds of Service Covered by the Amended Rule

The amended rule identifies particular types of public service that are included within the rule's scope. Providing free legal services for low-income individuals or for organizations in matters that are designed primarily to address the needs of indigents is covered in RPC 6.1(a). Obvious examples include representing a low-income person in a civil legal dispute or assisting a food bank in negotiating a lease for a new free-food outlet.

RPC 6.1(b) identifies the other kinds of public-service activities that qualify for recognition. The services covered by RPC 6.1(b)(1) and (2) are pretty clear. RPC 6.1(b)(2)'s reference to delivery of legal services at a substantially reduced fee is to be compared with the totally free services covered by RPC 6.1(a). RPC 6.1(b)(3) obviously includes volunteer work on Bar committees and, based on the ABA comments to the model rule from which RPC 6.1 was derived, also includes volunteer service as a mediator, arbitrator, or continuing legal education program instructor; taking part in

Law Week activities; and uncompensated legislative lobbying to improve the law. Thus, many ways to render public service are recognized by the amended rule.

### Opportunity to Ascertain Levels of Service

Historically, information regarding the public-service contributions by lawyers in Washington has been limited to statistics maintained by legal-aid programs<sup>1</sup> regarding services rendered by lawyers who have volunteered to participate in their programs. While many law firms also keep statistics on *pro bono* services, these statistics have never been compiled on a statewide basis, and the definition of activities that qualify as *pro bono publico* vary from firm to firm. Thus, RPC 6.1's voluntary-reporting provision presents a wonderful opportunity to ascertain the amount and types of public service WSBA members are performing — at least by those willing to report the information.

### Methodology

The reporting form included in the most recent WSBA licensing packet asked lawyers to specify the number of hours and the types of *pro bono publico* services they provided in 2003.

The form first asked for members to identify the number of hours of free legal services they provided to persons of limited means and/or to organizations that address the needs of persons of limited means — the services covered by RPC 6.1(a). It then asked lawyers to identify separately the number of hours of other kinds of *pro bono publico* services they rendered, as defined by RPC 6.1(b). A space was provided to allow the responding members to describe the services rendered. To assuage any Orwellian concerns, the form noted that completion of the report was voluntary; that the description of services provided was optional; and that the WSBA is tracking aggregate hours of all members, not those

of individuals.

The form provided a place for reporting lawyers to identify themselves if they wished, but stated that inserting the respondent's name was optional. Thus, those choosing to report could remain anonymous if they wished. This is consistent with the voluntary nature of the reporting and the absence of any intention to track individual hours. When the RPC 6.1 reporting form was returned to the WSBA among the other licensing forms, the RPC 6.1 reporting form was separated from the remainder of each lawyer's packet to preserve the anonymity of those who chose not to include their names on the form.

are providing free legal services to a wide variety of clients, both individuals and organizations, in myriad causes. The clients include nonprofit organizations such as local chapters of the American Red Cross and Habitat for Humanity, private citizens who call for help through the Northwest Justice Project's CLEAR (Coordinated Legal Education, Advice, and Referral) service, low-income persons needing help obtaining Social Security and veterans' benefits, clients at neighborhood legal clinics, and persons with AIDS. The primary areas of law reported included domestic violence, bankruptcy, employment law, landlord-tenant disputes, and immigration.

An unexpected piece of information that surfaced was how far the members' *pro bono publico* services extend geographically. Comments on the form indicate that, in addition to Washington, services were performed or benefited people or organizations in California; Oregon; Minnesota; Washington, D.C.; Uganda; and Albania.

### Keeping Track of Services Rendered Throughout the Year

Many lawyers, law firms,

corporate legal departments, and governmental agencies and other organizations, both public and private, employing WSBA members have historically maintained some form of statistics on the numbers and types of *pro bono publico* services rendered. However, many have not, and those that have tracked such statistics may not have distinguished between services of the types described in RPC 6.1(a) and (b).

There are several reasons for lawyers and/or the organizations where they practice to start tracking *pro bono publico* hours and distinguishing between those services described in RPC 6.1(a) and 6.1(b), and then to report the hours to the WSBA. First, it is fitting

## Members' Pro Bono Work

Number of licensing packets sent to WSBA members at end of 2003:	<b>28,043</b>	<b>100%</b>
Number of members who completed and returned RPC 6.1 reporting form:	<b>3,678</b>	<b>13%</b>
Number indicating participation in <i>pro bono</i> work but not disclosing number of hours:	<b>20</b>	<b>.001%</b>
Number reporting 30 hours or more:	<b>1,979</b>	<b>7%</b>
Number reporting 30 to 49 hours:	<b>732</b>	<b>3%</b>
Number reporting 50 hours or more:	<b>1,242</b>	<b>4%</b>
<b>Total hours of pro bono publico service rendered:</b>	<b>202,947</b>	
<b>Hours reported under RPC 6.1(a):</b>	<b>107,763<sup>2</sup></b>	
<b>Hours reported under RPC 6.1(b):</b>	<b>95,184</b>	

### 2003 Voluntary Reporting Results

See the table above for a summary of the results (note that the numbers are not cumulative, so the percentages don't total 100 percent).

Of the 1,242 members who reported rendering 50 or more hours, 177 either did not disclose their name or asked not to be recognized by name. Accordingly, 1,065 members are being recognized by name for the *pro bono publico* services they rendered in 2003.

These, of course, are *minimum* numbers, based only on the services rendered by those lawyers who chose to complete the form.

Comments from respondents on the completed forms indicate that lawyers

that we recognize those members who are contributing so much to the public and the profession. Second, having more comprehensive data regarding the level of contributions our members make on an annual basis to the public and the profession should help project a positive image of Washington lawyers to the public. Third, broader statistics will assist the WSBA, the Access to Justice Board, and other organizations in understanding the true aggregate level of participation in *pro bono publico* activities by WSBA members so as to have a more reliable basis for future planning for service delivery to low-income people in our state.

#### A Call to Action

Accordingly, I respectfully ask each of us, as members of this Bar Association, to do three things:

First, I ask that we record the time we spend rendering *pro bono publico* services. Don't ignore the time or fail to keep track of it simply because it is non-billable.

Second, I ask that we each devise (or prompt our firms or employers to devise) time-reporting categories that will enable us to keep track of those services reportable under RPC 6.1(a) and RPC 6.1(b) separately. If we do so, it will be relatively easy to report on next year's form the two types of services we have provided, as the numbers will be readily available.

Third, and most important, I ask each of us to use the amendment of RPC 6.1 as an opportunity to reassess what we are doing in the way of "service for the public good," and to ensure that we are meeting our professional ethical responsibility to provide such service. Given this remarkable unmet need, the nature and variety of worthwhile legal services programs, the number of meritorious causes, and the breadth of other public-service opportunities included within the scope of the amended rule, there is little or no excuse for each of us not to meet or substantially exceed the 30-hour annual aspirational goal. Let's do it! ✍

*Andrew A. Guy is a partner in the Seattle office of Stoel Rives LLP, where he prac-*

*tices commercial litigation with an emphasis on resolving real estate, lending, and business disputes, and representing creditors in bankruptcy matters. He is a member of the firm's Trial Practice Group and Business Finance & Financial Insolvency Group.*

#### NOTES

<sup>1</sup> These statistics indicate that volunteer attorneys contribute approximately 50,000 hours of *pro bono* service each year to low-income people through 24 local volunteer-attorney programs in Washington. It is estimated that lawyers provide a substan-

tial number of additional hours of assistance (in the 25,000 hour range) directly to low-income people in Washington through other volunteer-attorney programs or organizations.

<sup>2</sup> Hours reported under RPC 6.1(a) include legal services to low-income people as well as legal services to organizations in matters that address the needs of low-income people. However, the statistics for attorneys who volunteer through the 24 local volunteer-attorney programs in Washington referenced in note 1 above are limited to legal assistance provided to low-income people.



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# Congratulations to the Following WSBA Members Who Reported 50 or More Hours of *Pro Bono Publico* Service in 2003

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 Gary Michael Abolofia  
 Nicholas Adams  
 Randall Richmond Adams  
 C. Edward Adams  
 Richard Howard Adler  
 Thomas M. Affolter  
 Michelle Rose Ahrens  
 Sara Lyle Ainsworth  
 Sarah E. Akhtar  
 Elizabeth A. Alaniz  
 Cynthia Alexander  
 Mark L. Alexander  
 Stephen Anthony Allar  
 Mark S. Allard  
 Craig K. Allen  
 Sherri Allen  
 Chase Christian Alvord  
 Rami Amaro  
 Martha Anamosa  
 Christopher L. Anderson  
 Julie Ann Anderson  
 Kenneth Mark Anderson  
 Kristi S. Anderson  
 Robert N. Anderton  
 Branda N. Andrade  
 Denton P. Andrews  
 Robert Stillman Apgood  
 Ryan Alan Arāi  
 Melissa Sparks Arias  
 Belinda Armijo  
 Keith D. Armstrong  
 Kelli Kristine Armstrong  
 Michael D. Armstrong  
 Steven H. Arterberry  
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 George J. Atwater III  
 Sarah Atwood  
**B** Dominic Lee Bacetic  
 Jodi R. Backlund  
 Gloria Backus  
 Naneen Keri Baden  
 Mark Thomas Bader  
 Sally Geisler Bagshaw  
 Charles William Bailey  
 William Scherer Bailey  
 Vanessa Patrice Bailey  
 James Edyrn Baker  
 Michael Gordon Ballnik  
 Kathleen Phair Barnard  
 Kirsten D. Barron  
 W. Brent Basden  
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 Lucy Endel Bassli  
 Mark F. Baum  
 Mark Kevin Baumann  
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 Duncan Andrew Bayne  
 Andrew Nathan Becker  
 Dennis Jay Beemer

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 Craig Charles Beles  
 Jennifer Elaine Bell  
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 Craig Hinton Bennion  
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 Adam J. Berger  
 Daniel M. Berger  
 A. Spencer Bergstedt  
 Stephen Alexander Bernheim  
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 Mary Anne Betker  
 Robert C. Bibb  
 Michael E. Bindas  
 Barbara J. Black  
 Jared Bowen Black  
 William Lawrence Black III  
 Eric Perkins Blank  
 Ralph Owen Bloemers  
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 Lawrence Michael Blue  
 David Boerner  
 Gloria J. Bolino  
 Barbara L. Bollero  
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 Julia Mayer Bolz  
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 Edith A. Bowler  
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 Steven Charles Burke  
 Muriel M. Burke  
 David John Burman  
 Dennis Lee Burman  
 Joseph M. Burrowes  
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 Timothy Harold Butler  
 Stanley Richard Byrd  
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 Greg John Call  
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 Jody Lee Campbell  
 Brian Robert Canfield  
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 Dale Louis Carlisle  
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 Suzanne Elizabeth Carlton  
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# Defending War Crimes Cases in The Hague

BY DAVID E. WILSON

**F**rom May 2001 until December 2003, I was lead counsel in the defense of Dragan Obrenovic, a Bosnian Serb army officer, in a war crimes case filed in the International Criminal Tribunal for the former Yugoslavia (ICTY or Tribunal) in The Hague, the Netherlands. The charges were complicity in genocide, extermination, murder, and persecution. The case arose out of the Bosnian War of 1992-95, in which Bosnian Serb forces in July 1995 executed approximately 7,000 male Muslim prisoners after the fall of the U.N. enclave of Srebrenica. My client was charged under theories of "aiding and abetting," "superior responsibility," and participating in a "joint criminal enterprise."

For brief but critical periods of several days and hours, Obrenovic, then a 32-year-old army major, had been the acting commander of a brigade in whose area of responsibility several thousand of those 7,000 executions had occurred. He was not charged with having participated in the shootings or with having ordered them. Under the theory of superior responsibility, an individual is legally responsible for any crimes committed by his subordinates of which he knew or should have known and which he failed to prevent, or for which he failed to punish those responsible. The allegations were that some members of his temporary command had guarded the prisoners in remote areas and later buried them in mass graves after they had been shot by members of other Serb units. Under the "joint criminal enterprise" principle, as under conspiracy law in the United States, one who "joins" such an endeavor is responsible for all "foreseeable" crimes committed by that enter-

prise, whether or not he personally participated in them or even knew of their commission.

The 7,000 executions that followed the fall of Srebrenica are generally regarded as the worst war crimes in Europe since World War II. Europeans, in particular, are aghast that "Srebrenica" could occur in Europe only 50 years after the end of the Holocaust, and that U.N. forces present on the ground in Bosnia failed to prevent its occurrence. In 2002, the Dutch government fell when its own commission's report placed substantial blame for the massacres on the Dutch battalion primarily responsible in 1995 for protecting the enclave. The entire Bosnian Serb chain of command up

***Under the theory of superior responsibility, an individual is legally responsible for any crimes committed by his subordinates of which he knew or should have known and which he failed to prevent....***

to and including the wartime chief of the army (Ratko Mladic) and the president of the Serbian entity in Bosnia (Radovan Karadzic) stand indicted for the murders, as does Slobodan Milosevic, president of adjoining Serbia-Montenegro. Most of those directly involved in the murders are fugitives, and Karadzic and Mladic are the "most wanted" of the Tribunal's indictees.

The 1991-92 breakup of the 70-year-old nation of Yugoslavia was accompa-

nied and followed by a resurgence of the religious strife that had plagued the Balkans for centuries. During those centuries, Roman Catholic Croats, Orthodox Serbs, and Muslims had engaged in bouts of bloodletting on a number of occasions. As Croatia left the federal union of Yugoslavia in 1992, violent struggles broke out between its Croats and Serbs. This was quickly followed by an even bloodier conflict among Serbs, Muslims, and Croats in Bosnia, the most ethnically diverse component of Yugoslavia, which lasted until the Dayton Peace Accords in December 1995. Bosnia became a "country" divided into a Serbian entity (the Republika Srpska) and a federation of Muslims and Croats (the Federation), each with its own government and its own army. As in Croatia, the federal government in Belgrade, headed by Milosevic, openly sided with the Serbs in Bosnia. Muslim authorities in Bosnia welcomed foreign Muslims, primarily Arabs, who came to participate in a jihad dedicated to preserving Bosnia as a Muslim foothold in Europe. War crimes were committed by all factions. Although the majority of those indicted at The Hague are Serbs, the indictees also include a substantial number of Croats and Muslims. (My client was simultaneously a defendant for Srebrenica crimes and a prosecution witness in an ICTY investigation into the massacre by Muslims of approximately 90 Serb prisoners from his small command, two years before Srebrenica.)

I became involved in my ICTY case by referral from a friend, a fellow former federal prosecutor with whom I had once tried a case. He was contacted by the accused, had a conflict of interest, and recommended me. In our first meeting

in the U.N. Detention Unit in The Hague (an old Gestapo prison in World War II), I learned that Obrenovic (then 39 and a lieutenant colonel) was a native of Bosnia, a Serb, and a professional soldier who had graduated at the top of his class at the Yugoslav Military Academy. He explained to me that he wanted a U.S. or British trial lawyer, preferably one with military experience. As a former Army Judge Advocate General's Corps lawyer with civilian experience as a prosecutor, judge, and defense attorney, I fit his objective criteria. In a series of conversations through interpreters over several days, we established the necessary feelings of mutual comfort or fit. He satisfied himself that I had the qualifications and experience he was seeking, and that I was not dissuaded from defending him by the enormity of the crimes in the indictment. I satisfied myself that he did not expect me to pursue a "political" defense attacking the legitimacy of the Tribunal or seeking to justify the killings of unarmed prisoners, or any defense other than a straightforward attempt to dismantle the prosecution's case.

He requested that I consider as my co-counsel a Yugoslav lawyer, a former Belgrade judge who had been fired by Milosevic for refusing to toe the party line. Thinking that any judge fired by Milosevic could not be all bad, I agreed to interview the lawyer, Dusan Slijepcevic, who flew to The Hague. After two hours of our interviewing each other, he agreed to be co-counsel. Laura Zeman of Stoel Rives, who had clerked for me when I was a U.S. magistrate judge, agreed to help part-time as a legal assistant. Stephen Karganovic, a multilingual interpreter from Seattle, became our interpreter/translator and case manager. We hired an investigator from Bosnia, and augmented our forces with part-time volunteers from the U.W. School of Law community. Having formed the defense team, we began Obrenovic's defense.

The Tribunal was created by the U.N. Security Council in 1993 to try grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity committed in the then rapidly disintegrating Yugoslavia. Collectively, these categories of crimes are usually

referred to as war crimes. Situated in The Hague, 45 minutes by train from Amsterdam, the ICTY is one of several *ad hoc* tribunals created or sponsored by the United Nations to try crimes against humanity and other war crimes committed in the world's trouble spots at the end of the 20th century. Other tribunals, using several models, were established in Rwanda, East Timor, and Sierra Leone. The ICTY and its sister tribunals are presumably both the first and the last of their breed. The new International Criminal Court (ICC) in The Hague came into being on July 1, 2002, and has juris-

vor of the Holocaust. U.S. prosecutors have had prominent roles in most of the more important cases at the ICTY. And U.S. lawyers are well represented in the defense bar, whose organization is the Associated Defense Counsel for the International Criminal Tribunal for the former Yugoslavia (ADC-ICTY). The ADC-ICTY's first president was from the United States.

In creating the ICTY, the U.N. Security Council enacted a statute defining specific crimes, and authorized rules of evidence and procedure for use before the Tribunal. The operating tenets of the



The building housing the International Criminal Tribunal for the former Yugoslavia in The Hague, Netherlands.

diction over most such allegations arising anywhere in the world after that date. (The United States has chosen not to accept the jurisdiction of the ICC, or to participate in it.)

The United States played a key role in the formation of the Tribunal, donating financial support, the services of a number of experienced prosecutors, and a multimillion-dollar computer system. Judges and lawyers from the United States have played leading roles in its work. Two of the presidents of the ICTY during its short life have been from the United States: Gabrielle Kirk McDonald (1997-99), a former U.S. district judge from Texas, and Theodor Meron (2002-present), a distinguished professor of international law from New York University who is himself a survi-

ICTY reflect a blending of principles from the world's common-law or "adversarial" legal systems, and from its civil-law or "inquisitorial" systems. (Defense attorneys at the ICTY joke that the drafters took those parts of the common-law system favorable to prosecutors, and combined them with those parts of the civil-law system favorable to prosecutors.) For judicial precedents, the ICTY looks to its own rulings and to prior rulings by other international tribunals such as that at Nuremberg, and finally to national courts' opinions in related areas. Although the ICTY is developing a substantial body of case law through the rulings of its trial and appellate chambers, its jurisprudence remains one in which there are many unanswered questions. Thus attorneys appearing there have a

unique opportunity to influence the development of international criminal law. ICTY precedents are certain to play an important role in the jurisprudence of the ICC.

The bench of the ICTY consists of 16 judges, who must come from 16 different countries. Judges are elected by the U.N. General Assembly for four-year periods, and can be re-elected. Presidents are elected by their fellow judges for two-year terms, and can be re-elected. Trials are held before three-judge "Trial Chambers." There are no juries at the ICTY. Appeals are to a seven-judge panel

known as the "Appeals Chamber," composed of judges from both the ICTY and its Rwanda counterpart. The Appeals Chamber serves as an appellate court for both tribunals. In addition to the permanent judges of the ICTY, the General Assembly has elected *ad litem* judges to sit in the Trial Chambers on individual cases, as needed.

The administrative staff for the Tribunal is housed in a branch called the Registry. The third branch of the ICTY is the Office of the Prosecutor, whose chief prosecutor is appointed by the U.N. Secretary General. The current prosecutor

is from Switzerland, her immediate predecessor was from Canada, and the first prosecutor was from South Africa. The Office of the Prosecutor's trial attorneys come from a number of countries.

The ICTY created a system of providing legal representation to indigent inditees through private attorneys compensated at an hourly rate. The system is similar to that by which private practitioners are appointed as defense counsel in federal courts in the United States under the Criminal Justice Act (CJA). Unlike in the CJA system, however, in the ICTY the accused is allowed to choose his counsel from the approved list, rather than the court making that choice for him.

In practice, most accuseds are military officers or civil servants from Europe's poorest corner, and no one charged before the ICTY has been able to afford to mount a defense through private means. The indictments are complex and typically require extensive preparation over two or more years preceding trial. Trials in turn are prolonged, with the average trial lasting between one and two years. (The trial of Milosevic has been ongoing for two years, and is expected to last another two years.) Based upon the complexity of the case, the defense teams are given a case budget for the pretrial phase of the case, for the trial phase, and for the almost inevitable appeal. (There is no "double jeopardy" protection for an accused at the ICTY. Since either the accused or the prosecution can appeal the verdict and/or the sentence, the only cases likely to escape an appellate review are those in which an accused has pleaded guilty and has received an agreed-upon sentence.)

The Tribunal strives to present an international appearance. It currently has more than 1,200 staff members from 84 countries. (Facts and statistics about the ICTY are available at [www.un.org/icty](http://www.un.org/icty).) The international character of the proceedings is most clearly on public display in the Tribunal's three courtrooms. Any number of nations will be represented in a proceeding, with three trial judges required to be from three different legal systems, and prosecutors, defense attorneys, and courtroom staff coming from still other countries. The judges wear red-and-black robes. The at-

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torneys also wear robes. Those attorneys who come from countries in which robes are traditional for attorneys wear their national robes. (My favorite outfits were those worn by the British barristers, most of whom appeared properly wigged. In a class by himself, a Swiss lawyer's en-

languages ongoing at any time.

All participants in the proceedings wear headphones that deliver simultaneous translations into English and French (the official languages of the United Nations and the Tribunal), "Bosnian-Croatian-Serbian" (a common language for the benefit of the accuseds and witnesses), and whatever other languages are necessary in order for the participants to follow the proceeding. Although the interpreters/translators are generally very good, the necessity of interpreting/translating everything that occurs in the courtroom slows down the pace of the proceedings, as it does in any courtroom.

Not surprisingly, the attempt by the Tribunal's creators to merge the common-law systems and the civil systems has led to a hybrid system in which neither camp is completely comfortable. In my view, the practitioners from the adversarial systems found in the United States and the British Commonwealth have an easier time adapting than do lawyers from inquisitorial systems. Certain core concepts of the adversarial system are firmly embedded in the Tribunal, albeit with bows to the civil system. For civil-system lawyers who are not used to such practices as extensive cross-examination and the general adversarial concepts that common-law attorneys take for granted, major adjustments in techniques are required. (One does not, for

**The bench of the ICTY consists of 16 judges, who must come from 16 different countries. ... Trials are held before three-judge "Trial Chambers." There are no juries at the ICTY. Appeals are to a seven-judge panel known as the "Appeals Chamber," composed of judges from both the ICTY and its Rwanda counterpart.**

semble included a fur-trimmed cape.) Attorneys whose countries have no such traditions wear the black robes and white bibs of Dutch lawyers. The "Defence Attorneys' Lounge" (a spelling concession to the British) usually resembled an international bar convention, with various courtroom garb and conversations in several

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example, master the art of cross-examination in a weekend.) Some civil-law attorneys quickly adapt, but others have told me that they never feel totally at ease at the Tribunal, even after more than one case. For the common-law attorneys, on the other hand, the civil-law concepts that crop up from time to time, such as the more active role traditionally played by presiding judges, usually do so in forms and contexts that permit time to recognize them, learn about them, and formulate a plan for dealing with them.

The procedural and evidentiary rules

employed in the Tribunal are premised on the theory that the fact-finders are all professional judges. By U.S. standards, the rules of evidence are extremely flexible. As examples: hearsay is admissible, testimony from previous proceedings in which your client was not a party is admissible, and out-of-court statements by nontestifying codefendants that implicate your client are admissible. In general, evidence offered will be admitted, with objections and arguments going to its weight and not its admissibility.

The composition of our Trial Chamber changed several times in the two

years preceding the start of the trial. Each change of judges had an effect on our prospects — sometimes for the better, sometimes not. Our first chief judge on the trial panel was Australian, the next German, and the last Chinese. When the trial finally began, the panel consisted of a chief judge from China, and two *ad litem* judges from the Ukraine and Argentina. All three spoke English in the courtroom. (Our two primary prosecutors were from the United States and Switzerland. The eight defense attorneys representing the four defendants ultimately charged in our case included three Bosnians; three Americans; a German; and my co-counsel, a “Yugoslav,” who in 2003 became officially a “Serbian,” when what remained of Yugoslavia finally expired.)

Although exhausting, our defense effort in the case turned out to be a relatively abbreviated one.

Soon after the trial began, after two years of extensive preparation, a codefendant and then my client elected to plead guilty pursuant to a plea bargain. Each admitted guilt as to the crime of “persecution,” agreed to cooperate in the prosecution of others, and in return received a nonbinding recommendation by the prosecutors of a sentence in the 15- to 20-year range. Although we had a triable case, my client chose not to roll the dice with regard to charges as to which the prosecutor had to prove only that he “knew or should have known” about the crimes of his subordinates, and failed to prevent the crimes or punish the subordinates. He (and I) believed that if Obrenovic were convicted of all the charges, including complicity in genocide, the probable sentence would have been much more than that recommended. (The maximum sentence at the ICTY is life imprisonment; there is no death penalty. The only previous sentence of a Srebrenica defendant, also a “superior responsibility” case, had been 46 years.) The decision to plead guilty was a difficult choice, but one rationally arrived at after exploring and considering all options.

Plea bargaining is a practice virtually unknown in the civil-law systems of the world, and some ICTY judges are clearly uncomfortable with it. It is also a risky maneuver for accuseds at the ICTY, since

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the prosecution's sentencing recommendation is not binding on the judges, and they are free to accept it or to impose a more severe sentence. In our case, after a sentencing hearing in which he was aided immensely by several courageous Muslim witnesses who testified as to his having saved their lives during the war, my client was sentenced to 17 years, which he will serve in a Scandinavian prison. With time off for good behavior and credit for time served in pretrial confinement, he can hope to be released in eight and one-half years. For him, the plea bargain worked. His sentence was within the recommended range. For his codefendant, it did not work. He pleaded guilty with the same recommendation of 15 to 20 years, but received 27 years. The codefendant is appealing his sentence, a process that carries its own risk, since the Appeals Chamber can increase his sentence, as it has done in at least one case. The other two codefendants in our case are still in trial.

I left The Hague with mixed feelings about the experience. Overall, it was a positive one professionally and personally. The case was fascinating and challenging. The participation in the process of criminal law on the international scale called upon all of my life's experiences, and offered more than enough challenge, variety, travel, and adventure. I was impressed by many of the individuals at the Tribunal, who worked hard, did the very best job they could, and clearly recognized that the work they were doing was important to the development of international law. A number of them have gone on to permanent employment with the new ICC.

I liked, respected, and felt great sympathy for my client, whom I came to know throughout this intense experience as a brave, intelligent, and honorable man, who plainly had the misfortune to be in the wrong place at the wrong time. With no foreknowledge of what was to happen at Srebrenica, he voluntarily left the hospital where he was recovering from combat wounds, days before the murders, because his unit was short of officers. Had he followed his doctor's recommendations instead, he would have remained in the hospital at the time of the executions near Srebrenica, and he would not have been charged. Hemingway de-

vised courage as "grace under pressure." He accepted his fate with far more grace than I could have managed had our roles been reversed.

I liked and respected my co-counsel, who brought to the case a very different approach from my Anglo-Saxon one. I came to know him as a man of complete integrity and goodwill. Having had his 25-year judicial career ended by a vengeful Milosevic, he shed no tears as we watched his former president arrive in The Hague in chains. But he did not dwell on past wrongs to himself. He is back in Belgrade practicing law now, and

devoting large portions of his time to unpaid service on an anticorruption commission. With men and women like him attempting to rebuild their shattered country, there is hope for the former Yugoslavia.

I enjoyed living in The Hague, a cosmopolitan and friendly city where English is a second language. I liked Serbia and Bosnia, to which I traveled repeatedly. The former Yugoslavia is a breathtakingly beautiful land, but a devastated one both economically and politically. Despite the scars of many wars and conflicts, the people there were always kind

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and hospitable to me, no matter what their religious beliefs.

On the negative side, I believed that the cases before the ICTY took too long for resolution. There are, in my view, many reasons for this, some probably unavoidable, some not. Mostly unavoidable are many logistical problems flowing from trying complex cases more than a thousand miles from the scenes of the crimes. Avoidable, however, are occasional overchargin by prosecutors, unjustified delays caused by some defense counsel, and, sometimes, institutional inefficiency. When I began my case in

spring 2001, my client was a sole defendant, newly arrested, and the estimation was that his trial would begin in May 2002 and last three months. By the time the trial actually began, there were four defendants, it was May 2003, and the prosecution's case alone was expected to last 20 months. Had we contested the case, the entire process from my appointment to verdict would have taken approximately four years. And then there would have been an appeal. In these respects the case was fairly typical.

I found the inadequacy of the resources allocated to the defense under

the ICTY rules to be a troubling factor. The problem worsened while I was there, due to ICTY budget cuts and a shrinking U.S. dollar, in which defense attorneys are paid. Having been a prosecutor for many years, I know that very few defendants can match the prosecution in resources, in any venue. In my opinion, however, the mismatch in the Tribunal is alarming, growing worse, and approaching a condition that is perilous to the overall mission of the Tribunal: to fairly affix blame for some of the world's worst crimes. The cases filed there are almost always exceedingly complex, both factually and legally. Defending against them requires a long and labor-intensive effort. Defending war crimes cases should not and will never be a path to riches for defense lawyers. But fundamental fairness to the people charged in such courts requires that they be provided with adequate resources to defend themselves, lest the proceedings be viewed as mere "victor's summary justice." If the international community is unwilling or unable to ensure that such proceedings are fair in this regard, then the decision to initiate such trials should be reconsidered.

As to the judges before whom we appeared, I found the judges who were on the panel at the time our trial began to be fair, hard-working, and considerate of everyone in the courtroom. But that was not true of every judge. One judge whom I observed on a number of occasions would have gotten very different ratings in two of the above three categories, and the judicial conduct I observed in that courtroom would have provided ammunition for the arguments of those who oppose U.S. membership in the ICC.

Would I take another case in the ICTY? Other commitments probably preclude that for now. But for anyone offered an opportunity to try a case in The Hague who has the interest and who can afford the time and other costs of the undertaking, it can be a rewarding experience unlikely to be equaled elsewhere. ✍

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*David E. "Gene" Wilson practices with McKay Chadwell in Seattle and served as a U.S. magistrate judge in the Western District of Washington from 1992 to 2000.*

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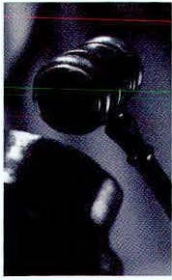


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# New Legislation of Interest to Attorneys: 2004 Highlights

By Senator STEPHEN L. JOHNSON, Member, Senate Judiciary Committee, and Representative PAT LANTZ, Chair, House Judiciary Committee

**T**he Senate and House Judiciary Committees considered a diverse number of bills during the 2004 legislative session. Significant legislation was passed, including bills dealing with criminal, family, and civil law, as well as bills pertaining to corporations, mental health, and juvenile justice. Cooperation with the House Judiciary Committee and the House Criminal Justice Committee was critical in ensuring the passage of many bills that will benefit our state's justice system.

This article focuses on Bar-related legislation considered by the Senate and House Judiciary Committees during the 2004 session. Space does not allow for a full discussion of the context of each bill; however, all bill reports, including any bills considered by the Legislature, can be accessed at the legislative website ([www.leg.wa.gov](http://www.leg.wa.gov)). The reports usually provide information on why a bill was introduced, and who testified for and against it. Senate Judiciary Committee staff can be contacted at 360-786-7462 or PO Box 40466, Olympia, WA 98504-0466.

As in past years, a full description of all bills that passed the 2004 Legislature can also be obtained by ordering the 2004 Final Legislative Report. The report is available for approximately \$10 by calling the Legislative Information Center at 360-786-7573 or by writing to PO Box 40482, Olympia, WA 98504-0482.

## Criminal Law

**SSB 5168:** Authorizing reduction of interest on legal financial obligations.

**Prime sponsor:** Senator James Hargrove

When an offender has made a good-faith effort to pay his or her legal financial obligations, he or she may petition the

court to reduce or waive the interest on legal financial obligations other than the interest on restitution.

When an offender is subject to sentence requirements and the payment of legal financial obligations and either the offender is not subject to Department of Corrections (DOC) supervision or the requirements are not complete at the end of the supervision, it is the offender's responsibility to provide the court with adequate verification of the completion of sentence requirements.

**E2SSB 5216:** Revising forensic competency and sanity examinations.

**Prime sponsor:** Senator Val Stevens

When there is reason to doubt the competency of a defendant, the court may, upon agreement of the parties, designate one professional person to evaluate the defendant.

The signed court order for the evaluation serves as authority for the experts to access the defendant's mental health, medical, educational, and correctional records that relate to the defendant's condition.

**SSB 6103:** Making certain types of extreme fighting illegal.

**Prime sponsor:** Senator Joseph Zarelli

An "amateur event" is defined as one in which "all the participants are amateurs" and it is sanctioned by specified entities, such as the Washington Interscholastic Activities Association, NCAA, Golden Gloves, or similar organizations.

Certain forms of fighting are defined as having the purpose of intentionally injuring a contestant and are prohibited.

Other forms of fighting, which allow the participation of contestants who are not trained in the sport, are defined and prohibited, and "elimination tournaments"

are also defined and prohibited.

The promotion of any form of fighting prohibited by the statute is a class C felony.

**SB 6326:** Defining prohibited bus conduct.

**Prime sponsor:** Senator Luke Esser

The definitions of "municipal transit station" and "municipal transit vehicle" are amended to include facilities or vehicles operated by a regional transit authority.

The unlawful bus conduct offenses in current law apply to persons in facilities or vehicles operated by regional transit authorities.

**SB 6357:** Modifying criminal trespass law.

**Prime sponsor:** Senator Stephen Johnson

A person who enters or remains upon improved and apparently used land that is open to the public at particular times, and is not fenced or enclosed in a manner to exclude intruders, does so with license and privilege unless notice of prohibited times of entry are posted in a conspicuous manner.

**SB 6378:** Prohibiting unauthorized recording of motion pictures.

**Prime sponsor:** Senator Luke Esser

It is a gross misdemeanor to knowingly record a motion picture being shown in an exhibition facility without the consent of both the owner of the facility and the licensor of the motion picture.

Owners and employees of exhibition facilities may not be held civilly liable for measures taken, in good faith, to detain a person reasonably believed to be recording a motion picture.

**ESHB 2400:** Providing enhanced penalties for sex crimes against children.

**Prime Sponsor:** Representative Lois McMahan

A variety of changes are made to the

Special Sex Offender Sentencing Alternative (SSOSA). The following persons are ineligible for SSOSA: (1) persons with adult convictions for violent offenses committed within five years of the current offense; (2) persons who caused substantial bodily harm to the victim; and (3) persons who had no connection with the victim other than the offense itself.

The court must consider specified factors when deciding whether to grant a SSOSA sentence. The court must give great weight to the victim's opinion. If the court orders a sentence that is contrary to the victim's opinion, the court must state its reasons in writing.

As a condition of the suspended sentence, the court must impose a term of incarceration of up to 12 months or the maximum of the standard range, whichever is less. The term may not be reduced by earned release credits. The court must order prohibitions and affirmative conditions regarding known behaviors or activities that serve as precursors to the offender's offense cycle. The maximum for the initial treatment term is increased from three years to five years.

The court must conduct a hearing on the offender's progress in treatment at least once a year. Upon a second violation of a prohibition against precursor behaviors or activities, the DOC must refer the offender back to the court and recommend revocation of the suspended sentence. The court must provide to the

victim notice and the opportunity to be heard at the annual treatment hearings and the treatment termination hearing. The court may extend treatment in two-year increments.

The Washington Institute for Public Policy and the Sentencing Guidelines Commission must analyze sex-offender sentencing policies and the SSOSA program and report their results and recommendations to the Legislature by December 31, 2004.

**ESHB 2771:** Prohibiting cyberstalking.

**Prime Sponsor:** Representative Helen Sommers

A person is guilty of the new crime of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to the other person or a third party via the Internet or electronic mail: (1) using lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act; (2) anonymously or repeatedly whether or not conversation occurs; or (3) threatening to inflict injury on the person or property of the person contacted or any member of his or her family or household.

Cyberstalking is a gross misdemeanor, but becomes a class C felony with a seriousness level of III if the offender has a pre-

vious conviction of several listed crimes or the offender committed the crime by threatening to kill another person.

**Juvenile Justice**

**SSB 6105:** Revising penalties for animal cruelty.

**Prime sponsor:** Senator Robert McCaslin

The juvenile court may impose a deferred disposition on a juvenile convicted of animal cruelty first-degree, require the offender to submit to a mental-health evaluation, and order the offender to attend treatment as a condition of community supervision.

At the conclusion of the period in the order of deferral, the offender's conviction for animal cruelty first-degree is not vacated from his or her record.

Animal cruelty first-degree is ranked as an offense category B.

**ESSB 6472:** Revising provisions relating to victims of crime.

**Prime sponsor:** Senator James Hargrove

Victims, survivors of victims, and witnesses of crimes committed by juveniles are given the same rights as victims of adult offenders.

The same definition of "victim" is added to the chemical dependency disposition alternative for juvenile offenders and to juvenile restitution provisions.

Restitution for counseling costs reasonably related to the offense is authorized for victims of all juvenile offenses, not just for sex offenses.


Judges are given discretion to relieve a juvenile offender of an obligation to pay restitution to an insurance provider if the juvenile does not have the means to pay and could not reasonably acquire the means to pay over a 10-year period.

Judges are also given discretion to relieve juveniles of the requirement to pay restitution in diversion cases, and if that relief is granted, the court may order an appropriate amount of community restitution.

In dispositions involving sex-offender treatment, a court must order that an offender shall not attend the same school as the victim or the victim's siblings.

**ESHB 3078:** Revising timelines for sealing juvenile records.

**Prime Sponsor:** Representative Mary Lou



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The requirement that a juvenile be at least 18 years old before he or she may request that his or her juvenile record be sealed is removed. The length of time a person must spend in the community without committing an offense before his or her record may be sealed is decreased. Juvenile records relating to class-B offenses may be sealed if the offender has spent five consecutive years in the community without committing an offense. Juvenile records relating to class C, gross misdemeanor, misdemeanor offenses, and diversions may be sealed after the offender has spent two consecutive years in the community without committing an offense.

### Driving Under the Influence

**SHB 2660:** Revising provisions involving alcohol-related offenses.

**Prime Sponsor:** Representative Geoff Simpson

The mandatory use of ignition interlocks is expanded with respect to criminal convictions, administrative actions, temporary restricted licenses, and deferred prosecutions. An interlock is required after the suspension or revocation of a license for any DUI offense, including a first-time, low blood alcohol concentration (BAC) offense, as well as for any alcohol-related deferred prosecution, including a first deferred prosecution.

A "temporary restricted license" is created which replaces the "occupational license" for drivers who have lost their licenses because of DUI-related criminal or administrative sanctions, and which is to be granted only if the applicant has installed an ignition interlock. The fee for a temporary restricted license is increased from \$25 to \$100.

Some DUI offenders who have refused to take the BAC test receive increased periods of revocation upon conviction. The periods of license loss for a first-, second-, and third-time offender, respectively, are two years (instead of one), three years (instead of 900 days), and four years (unchanged). Administrative and criminal periods of suspension arising from the same incident are to be credited against each other.

**SHB 3055:** Providing uniformity for ad-

missibility of alcohol tests.


**Prime Sponsor:** Representative Janéa Holmquist

Nothing in the implied consent law prevents a police officer from getting a search warrant in order to obtain breath- or blood-evidence samples.

The absence of a breath-testing device is no longer necessary before a police officer may request a blood test in lieu of a breath test when a driver is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility. The category of persons who may withdraw

blood samples is expanded.

Specific criteria are established regarding the admissibility of breath-test results in a judicial or administrative proceeding. Breath-test results are admissible if there is *prima facie* evidence that certain specified conditions were met. Defense challenges to the reliability or accuracy of a breath test may not be used to prevent the introduction of the evidence once the prosecution has made a *prima facie* case. However, evidence presented by the defense in making such a challenge may be considered by the trier of fact in determining the



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weight to be given to the breath-test results.

### Civil Law

**2ESSB 5536:** Resolving claims relating to condominium construction.

**Prime sponsor:** Senator William Finkbeiner

Implied warranties extend to the extent of defective materials, sound engineering and construction, workmanship, and compliance with all laws.

The condo owner must show that the defect adversely affected the perfor-

mance of the condo.

Damages for a breach are cost of repairs, unless cost of repairs is grossly disproportionate to the loss in market value; then damages are limited to loss in market value.

A committee is created to study third-party water-penetration inspections and arbitration as an alternative to court action.

A warranty insurance program is established as an alternative to the implied-warranty provisions of the Washington State Condominium Act (WCA), Chapter 64.34 RCW.

**SSB 5590:** Determining the appeals period for certain environmental appeals.

**Prime sponsor:** Senator Robert Morton

The period for appealing decisions of the Pollution Control Hearings Board to superior court and for appealing civil penalties, orders, permits, and other actions to the board is within 30 days of the date of receipt of notice.

Date of receipt means either five business days after the date of mailing or the date of actual receipt, if it can be proved by a preponderance of the evidence and is not later than 45 days from the date of mailing.

**ESB 6189:** Regulating receiverships.

**Prime sponsor:** Senator Stephen Johnson

The rules generally governing receivership proceedings are consolidated into a single chapter.

The rules applied to general liquidating receiverships are clarified, and a single section is created to list all circumstances in which a receiver's appointment is permissible.

The procedures, notice, and timelines for the appointment of receivers are specified as well as the powers and duties of receivers.

A comprehensive claims procedure and system of priorities in general liquidating receiverships is established.

**SSB 6261:** Modifying juror payment provisions.

**Prime Sponsor:** Senator Betti Sheldon

Statutory language is amended to clarify that jurors are eligible to receive expense payments, rather than compensation, for their service. This allows federal employees to retain expense payments for jury service, rather than being required to remit juror compensation to the federal government.

**ESSB 6270:** Revising provisions relating to attorneys' liens.

**Prime sponsor:** Senator Luke Esser

An attorney has a lien upon the action and its proceeds to the extent of the value of the services performed by the attorney in that action.

"Proceeds" are limited to monetary sums received in the action.

The attorney's lien is superior to all other liens upon the judgment, subject to the rights of secured parties under the

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**SSB 6527:** Increasing the statutory rate for attorney's fees.

**Prime sponsor:** Senator Stephen Johnson

For cases in district court, superior court, the Court of Appeals, or the Supreme Court, the statutory attorney's fee is raised from \$125 to \$200.

If a district court judgment is over \$50, but less than \$200, the statutory attorney's fee remains at \$125.

**SSB 6600:** Revising construction liability provisions.

**Prime sponsor:** Senator Dale Brandland

There is a six-year statute of limitations for all claims or causes of action of any kind against any person arising from the person having constructed, altered, or repaired any improvement upon real property, or having performed or furnished any design, planning, surveying, architectural, or construction or engineering services, or supervision or observation of construction, or administration of construction contracts for any construction, alteration, or repair of any improvement upon real property.

This applies only to persons having performed work for which the persons must be registered or licensed as architects, contractors, engineers, surveyors, landscape architects, or electricians.

**SSB 6601:** Limiting obesity lawsuits.

**Prime sponsor:** Senator Brandland

Manufacturers, packers, distributors, carriers, holders, sellers, marketers, or advertisers of food or alcoholic beverages are not subject to liability actions by a private party arising out of weight gain, obesity, or any associated health condition caused by or the result of long-term purchase or consumption of food.

**HB 1572:** Increasing small-claims judgments upon failure to pay.

**Prime Sponsor:** Representative Stephen Kirby

When the losing party in small-claims court fails to pay the judgment within 30 days or within the time allowed by the court, the court must increase the judgment by the costs incurred by the prevailing party to enforce the judgment, including reasonable attorney fees. This is in addition to the costs to certify and

file the judgment.

**HB 1580:** Revising provisions of the personality rights act.

**Prime Sponsor:** Representative Pat Lantz

The Personality Rights Act is amended to state that the act does not apply to the distribution, promotion, transfer, or license of a photograph or other material containing a person's name, voice, signature, photograph, or likeness, to a third party for use in a manner that is lawful.

A parent of a minor child may exercise the minor child's individual or personality rights granted under the act.

**SHB 1867:** Establishing replevin procedures.

**Prime Sponsor:** Representative Pat Lantz

The replevin statute is amended to alter time limitations, bond requirements, and enforcement mechanisms. The requirement that a hearing on the order to show cause be set within 10 to 25 days of the order is removed. The defendant must still be served with a copy of the order to show cause within five days of the hearing.

A plaintiff's bond is not required if the defendant was properly served with the order to show cause and the defendant ei-

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ther fails to appear, or appears but does not contest the order.

A defendant who fails to turn over property to the plaintiff or sheriff after the court has awarded the property to the plaintiff may be held in contempt of court. The order awarding possession of the property may be executed in any county of the state where the property is found.

**HB 2485:** Revising the rate of interest on certain tort judgments.

**Prime Sponsor:** Representative Pat Lantz

The interest rate on tort judgments is to be determined by adding two points to the 26-week T-bill rate. This new method of calculating interest rates applies to interest on judgments still accruing interest on the effective date of the act, as well as to interest on judgments entered after the act takes effect. The act does not change the interest rate on legal obligations imposed as the result of a criminal conviction.

**ESHB 2787:** Providing immunity from liability for licensed healthcare providers at community healthcare settings.

**Prime Sponsor:** Representative Lynn

Kessler

Good Samaritan Act immunity coverage for individuals who volunteer healthcare services in certain healthcare settings is expanded beyond physicians to include all licensed healthcare providers regulated by certain disciplining authorities. In addition, a healthcare provider may be immune from liability when volunteering healthcare services at a for-profit corporation or hospital-based clinic under certain circumstances.

**SHB 3083:** Providing immunity for any person who cooperates with an investigation of child abuse or neglect.

**Prime Sponsor:** Representative Ruth Kagi

A person is immune from civil liability for cooperating in an investigation of child abuse or neglect if the person acted in good faith and without gross negligence. The immunity does not apply to a person cooperating in an investigation if the person caused or allowed the child abuse or neglect to occur.

## Probate

**SB 6121:** Filing a will under seal before

the testator's death.

**Prime Sponsor:** Senator Stephen Johnson

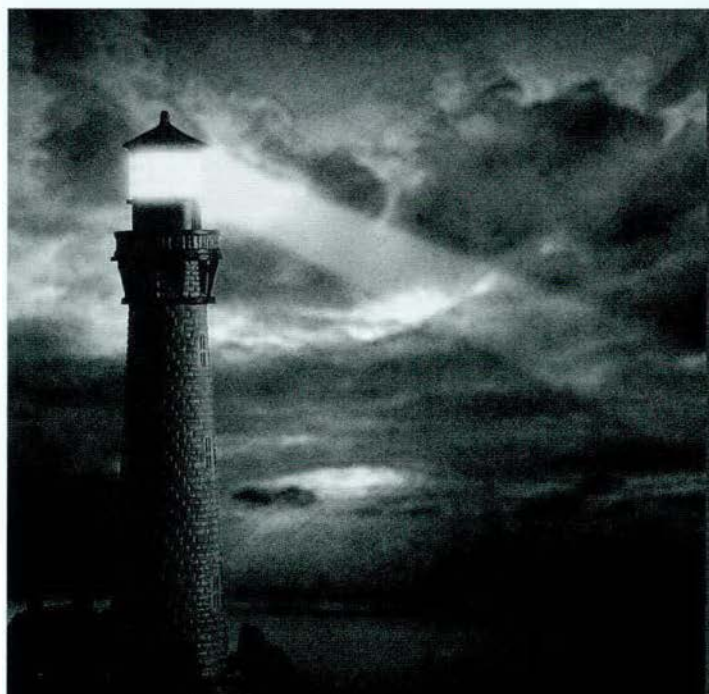
Court clerks are authorized to accept original wills under seal, and any person may file a will in his or her custody with any court having proper jurisdiction.

A will filed under seal may be withdrawn by the testator at any time; any other person may withdraw the will with a court order.

**SHB 2904:** Modifying estate adjudication provisions.

**Prime Sponsor:** Representative John Lovick

When no personal representative has been appointed to administer the estate of a deceased person, the person obtaining an adjudication of testacy, intestacy, or heirship has 30 days to provide notice of the adjudication to the Washington Department of Social and Health Services' Office of Financial Recovery along with the decedent's name and Social Security number. A person paying, delivering, transferring, or issuing property to the heir of an estate is not released from liability for assets transferred from the estate for four months after providing notice of adjudication.



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## Courts

**SB 6518:** Changing the general-election ballot for the office of judge of the district court.

**Prime sponsor:** Senator Robert McCaslin

During the primary election for the office of judge of the district court, if a candidate receives a majority of the votes cast, the name of that candidate only is printed on the general election ballot.

**HB 2473:** Restricting possession of weapons in courthouse buildings.

**Prime Sponsor:** Representative Judy Clibborn

A law-enforcement officer is prohibited from possessing a weapon in a court facility if the officer is present at the facility as a party to an action involving harassment or domestic violence.

## Insurance

**HB 2014:** Preventing denial of insurance coverage for injuries caused by narcotic or alcohol use.

**Prime Sponsor:** Representative Dennis Flannigan

All health carriers are explicitly prohibited from denying coverage for the treatment of an injury solely because the injury resulted from the use of alcohol or narcotics. The law allowing individual disability insurers to deny payment for the treatment of injuries resulting from the use of alcohol or narcotics is repealed. The provisions of the bill apply to all contracts issued or renewed on or after the effective date of the bill.

**EHB 2364:** Regulating homeowners' insurance.

**Prime Sponsor:** Representative Ruth Kagi

Property and casualty insurers offering homeowners' policies are prohibited from discriminating against an applicant or insured because he or she is a foster parent licensed under Chapter 74.15 RCW. Insurers are specifically prohibited from denying an application, as well as canceling, modifying, or refusing to renew a policy based upon the fact that the insured is a foster parent.

**ESHB 2460:** Providing access to health insurance for small employers and their employees.

**Prime Sponsor:** Representative Ellen Cody

Health carriers are authorized to offer small employers a limited health plan that features a limited schedule of covered healthcare services. The exemption from existing mandates is made applicable to plans offered to any small employer, not just those employing up to 25 employees.

The definition of small employer is changed from an establishment employing between one and 50 employees to an establishment employing between two and 50 employees. However, existing groups of one will be grandfathered.

Carriers may develop rates based on

claims costs due to network provider reimbursement schedules or type of network. Rate increases for small-group products may vary based on deductibles, benefit design, or provider network. Rate increases may vary by up to four percentage points from the overall adjustment of the carrier's entire small-group pool.

Current continuity of coverage provisions is amended to cover plans of groups of up to 200, and to allow a group plan to be discontinued, with 90 days' notice, as long as policyholders are allowed to continue coverage in any other group plan offered by the carrier. A group plan may also

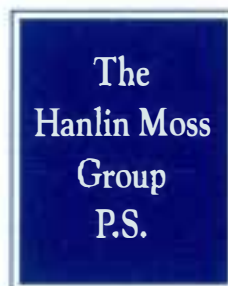
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be discontinued if the carrier discontinues all coverage in the particular market.

Employees working for small employers with fewer than 20 employees who leave their jobs may apply for individual health insurance policies without first taking the health questionnaire if they had at least 24 months of immediately prior continuous group coverage and application is made within 90 days of when the person would have qualified for COBRA coverage. The requirement that carriers offer conversion policies is repealed. Persons who lose their conversion coverage may apply for individual coverage without taking the

standard health questionnaire.

### Family Law—Domestic Violence

**SSB 6384:** Imposing penalties against convicted domestic-violence offenders to pay for domestic-violence programs.

**Prime sponsor:** Senator Luke Esser

A penalty of up to \$100 is established for anyone convicted of a crime involving domestic violence.

Revenues collected must be used to fund domestic-violence advocacy, prevention, and prosecution programs in the city or county in which the court imposing the

penalty is located.

This revenue is in addition to existing sources of funding for domestic-violence programming.

**ESSB 6642:** Ordering case conferences following shelter-care hearings.

**Prime sponsor:** Senator Val Stevens

A case conference must be convened no later than 30 days prior to the fact-finding hearing, and a written service agreement must be created that establishes voluntary services for the parent.

The participants in the case conference are specifically limited to the parties, their counsel, and other persons agreed upon by the parties.

A shelter-care order must include a provision establishing a case conference unless the parent is not present at the shelter-care hearing or does not agree to the case conference.

The court is permitted to order a conference or meeting as an alternative to the case conference so long as the ordered conference includes the requirements of the case conference and a written agreement establishing the services to be provided to the parent.

**SB 6643:** Providing guidelines for family visitation for dependent children.

**Prime sponsor:** Senator Val Stevens

The agency charged with a child's care shall encourage the maximum parent and child and sibling contact possible when it is in the best interest of the child.

The Department of Social and Health Services (DSHS) must develop consistent visitation policies and protocols, to be implemented throughout the state.

DSHS must develop the policies and protocols with researchers, community-based agencies, court-appointed special advocates, parents' representatives, and court representatives.

The policies and protocols must include the structure and quality of visitations, training, visitation supervisors, and foster parents and visitation.

DSHS must report on the policies and protocols concerning visitation for dependent children to the appropriate committees of the Legislature by January 1, 2005.

**ESHB 2554:** Authorizing collection of support payments for children with developmental disabilities in out-of-home care.

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**Prime Sponsor:** Representative Mary Lou Dickerson

The Department of Social and Health Services is required to refer a case to the Division of Child Support whenever state or federal funds are expended for the care and maintenance of a child placed into care as a result of a dependency or termination action, including a child with a developmental disability, unless there is good cause not to pursue collection of child support against the parents of the child. The act statutorily clarifies that the DSHS may administratively establish an order of child support in a dependency or termination of parental rights action.

The DSHS may institute a collection action against parents of children eligible for admission to, or who have been discharged from, a residential habilitation center if the child is placed into care as a result of a dependency or termination action.

**SHB 3051:** Revising notice provisions for proceedings involving Indian children.

**Prime Sponsor:** Representative Eric Pettigrew

Notice provisions regarding the Indian Child Welfare Act are added to the statutes dealing with (a) third-party custody proceedings; (b) adoptions; (c) dependencies; and (d) Children in Need of Services and At Risk Youth proceedings. Whenever the court or petitioner knows or has reason to know that an Indian child is involved, the petitioning party must promptly give notice to the child's parent or Indian custodian and any tribe of which the child is a member. If the identity or location of the parent or Indian custodian or the tribe cannot be determined, notice must be given to the Secretary of the Interior. The notice must contain a statement notifying the parent or Indian custodian and the tribe of the pending proceeding and notifying the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.

A provision is added to the adoption statutes that states no termination, relinquishment, or placement proceeding shall be held until at least 10 days after receipt of notice by the tribe. The tribe may request an additional 20 days to prepare for the proceeding.

## Business — Corporations — Partnerships

**ESB 6188:** Authorizing electronic notice and other communications within the Washington Nonprofit Corporation Act.

**Prime sponsor:** Senator Luke Esser

Nonprofit corporations are authorized to transmit, via electronic transmission, filings, consents, notices, and communications between shareholders and directors.

Members and directors must first consent to receive notification by electronic transmission and may revoke consent at any time.

Cooperatives organized under the Nonprofit Miscellaneous and Mutual Corporations Act may elect to avail themselves of certain rights under the Cooperative Associations Act.

**HB 2577:** Providing for committees of members.

**Prime Sponsor:** Representative Kelli Linville

The Washington Nonprofit Corporation Act is amended to specifically authorize a nonprofit corporation to create member committees according to the provisions of the nonprofit corporation's ar-

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ticles of incorporation or bylaws. A committee of members may participate in a meeting of the committee by conference telephone or other means by which all parties are able to hear each other at the same time. Unless restricted by the articles or bylaws, the members, or committee of members, may take action on a matter without a meeting if a majority of the members entitled to vote on the matter consents.

### Government Regulation/ Rulemaking

**SSB 6265:** Improving the efficiency of the permitting process when multiple agencies are involved.

**Prime sponsor:** Senator Daniel Swecker

State permitting agencies are authorized to enter into agreements with permit applicants and each other for the purpose of setting the timelines they will use for making permit decisions, and the agencies are required to commit to the timelines set in the agreement.

The timelines must not be shorter than they would otherwise be but may be extended and coordinated.

The 45-day limit in the hydraulic code maybe extended for this purpose.

**HB 2598:** Providing venue for administrative rule challenges in Spokane, Yakima, and Bellingham for residents of those appellate districts.

**Prime Sponsor:** Representative William Grant

Venue for a declaratory action challenging an agency rule is expanded for a limited time for persons in certain geographical locations. A petitioner who resides or has a principal place of business within the geographical boundaries of Division III of the Court of Appeals may file the petition in the superior court of either Spokane, Yakima, or Thurston County. A petitioner who resides or has a principal place of business within the geographical boundaries of district three of Division I of the Court of Appeals may file the petition in the superior court of either Whatcom or Thurston County. This provision expires July 1, 2008.

**HB 2683:** Changing provisions relating to providing notice of proposed rule changes.

**Prime Sponsor:** Representative Kathy Haigh

An agency proposing a new or amended rule has the option to provide the statement of inquiry or a summary of the information contained in the statement of inquiry to those who have made a request, for general rulemaking as well as for expedited rulemaking.

A pilot project is established requiring at least 10 agencies to file copies of the notice of a proposed rule to the Joint Administrative Rules Review Committee by electronic means for a period of four years.

The requirement that agencies update the roster of persons requesting notifications of interpretive and policy statements on a yearly basis is changed to update the roster periodically.

**SHB 2781:** Changing provisions relating to expedited state agency review of development regulations.

**Prime Sponsor:** Representative David Upthegrove

Counties and cities planning under the Growth Management Act (GMA) may request expedited review for any amendments for permanent changes to a development regulation. The Department of Community, Trade and Economic Development (CTED) may, after receiving a request and consultation with other state agencies, grant expedited review if the CTED determines that expedited review does not compromise the state's ability to provide timely comments related to compliance with the goals and requirements of the GMA or on other matters of state interest. Counties and cities may adopt amendments for permanent changes to a development regulation immediately following the granting of the request for expedited review.

### Health/Mental Health

**SB 6213:** Making technical, clarifying, and nonsubstantive changes to mental-health advance directive provisions.

**Prime sponsor:** Senator James Hargrove

Nothing in the voluntary discharge provisions for a person admitted to inpatient treatment under the authority of his or her mental-health advance directive prevents the person from being detained for civil commitment under the provisions of the Involuntary Treatment Act if the person

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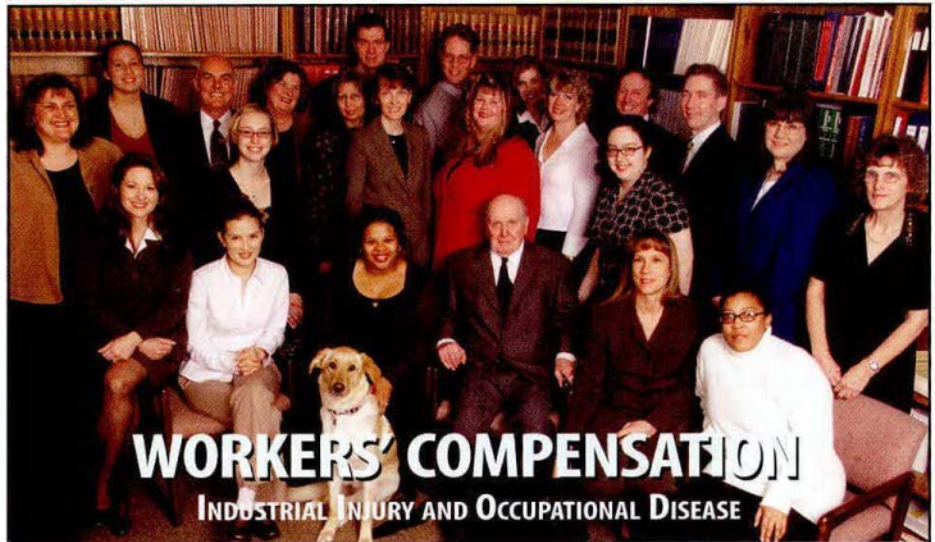


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## Child Abuse Cases

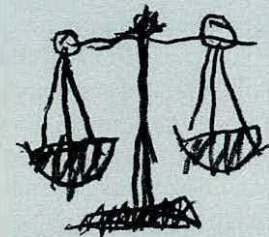
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**E2SSB 6274:** Changing provisions relating to competency restoration.

**Prime Sponsor:** Senator Debbie Regala

For purposes of determining whether a court may order involuntary medication to restore or maintain a defendant's competency, offenses in listed categories are serious offenses. If a defendant is charged with a crime that is not listed as a serious offense, the court may determine that, under the factual circumstances of the case, the offense is serious if it meets the stated criteria.

Release of mental-health information to a court in which there is a pending motion for involuntary medication to restore competency is mandatory.

The term "non-fatal injuries" means the same thing as "bodily injury."

**E2SSB 6358:** Improving collaboration regarding offenders with treatment orders.

**Prime Sponsor:** Senator James Hargrove

A court order issued for mental health or chemical-dependency treatment must specify that if the person is, or becomes, subject to DOC supervision, the person must notify his or her treatment provider and the person's mental-health or chemical-dependency treatment information must be shared with DOC. The judgment and sentence of a person convicted in superior court must contain an equivalent statement.

If an offender has failed to report to DOC as required or in an emergent situation, the treatment provider may share information related to mental-health services delivered to the offender and where the offender may be found.

A request for treatment information does not require the consent of the offender. A parallel provision exists for mental-health and chemical-dependency treatment providers.

The law enforcement exception to the mental-health confidentiality law includes DOC and is mandatory upon the provider.

When a state hospital admits a person with a history of violent acts from a correctional facility or who is or has been under DOC supervision, the hospital must consult with the appropriate corrections and chemical-dependency personnel and forensic staff to conduct a discharge re-

view to determine whether the person presents a likelihood of serious harm and is appropriate for a less-restrictive alternative. If the person is returned to a correctional facility, the hospital must notify the correctional facility that the person was subject to a discharge review.

In the situation where a person is released from jail and is subject to a discharge review, the jail must notify the county-designated mental-health professional (CDMHP) or county-designated chemical-dependency specialist (CDCDS) 72 hours in advance of the release, or upon release if the jail did not have 72 hours' notice. The CDMHP or CDCDS, as appropriate, must evaluate the person within 72 hours of release.

When a CDMHP or CDCDS becomes aware that an offender is in violation of the terms of his or her supervision that relate to public safety, or when the CDMHP or CDCDS detains a person, the CDMHP or CDCDS must notify the person's treatment provider and DOC.

When DOC becomes aware that an offender is in violation of the terms of his or her court-ordered mental health or chemical dependency treatment order, DOC must notify the CDMHP or CDCDS of the violation and request an evaluation for purposes of revocation of the less-restrictive alternative or conditional release.

DOC must provide the court and the petitioner with documentation of its risk assessment or other concerns when an offender that DOC has classified as high risk or high needs becomes the subject of a civil-commitment petition.

Mental-health and chemical-dependency treatment providers do not have a duty to supervise offenders.

Persons acting in good-faith compliance with the provisions of this act and without gross negligence are protected from civil liability.

**SSB 6466:** Regarding the admission of residents to nursing facilities.

**Prime sponsor:** Senator Darlene Fairley

Nursing facilities under common ownership with boarding homes or independent housing are not required to place the names of applicants from those facilities on the same waiting list as outside applicants for their nursing-facility placements.

Denying admission to an outside applicant is not considered discrimination if it

is done to accommodate someone from a commonly owned boarding home or CCRC.

Nursing facilities must readmit residents who have been hospitalized, or have been gone on therapeutic leave, if the resident needs nursing-facility services and is Medicaid-eligible.

## Other Areas of Interest

**ESB 6180:** Prohibiting the use of genetic information in employment decisions.

**Prime sponsor:** Senator Rosa Franklin

Genetic information is defined as information about inherited characteristics that can be derived from DNA-based or other laboratory tests, family history, or medical examination, but not including routine tests for the abuse of alcohol or drugs, or the presence of HIV.

Requiring an employee or prospective employee to submit to screening for genetic information as a condition of employment or continued employment is unlawful.

**2EHB 1645:** Addressing protection of victims of domestic violence, sexual assault, or stalking in the rental of housing.

**Prime Sponsor:** Representative Lynn Kessler

The Residential Landlord Tenant Act is amended to allow a tenant to terminate a rental agreement without further obligation if the tenant or a household member is a victim of a crime of domestic violence, sexual assault, or stalking; and if: (1) the tenant or household member has a valid order of protection or has reported the crime to a "qualified third party"; and (2) the request to terminate was made within 90 days of the reported event.

A landlord may not terminate or fail to renew a tenancy or refuse to enter into a rental agreement with a person based on the person's status as a victim of domestic violence, sexual assault, or stalking or based on the person's having previously terminated a rental agreement.

**SHB 2313:** Regulating bail-bond recovery agents.

**Prime Sponsor:** Representative Michael Carrell

A system of mandatory licensing for bail-bond recovery agents (bounty hunters) is established. The Department of Li-

censing must administer and enforce the bail-bond recovery agent licensing system. Bail-bond recovery agents must meet specified minimum requirements for licensing and may operate only pursuant to a contract with a licensed bail-bond agent. Standards of conduct are established, including specific actions that are considered unprofessional conduct.

A bail-bond recovery agent must comply with specific conditions before and during any planned forced entry of a building. These conditions include prior notice to the local law enforcement agency. A bail-bond recovery agent who fails to comply with these conditions is guilty of a gross misdemeanor.

**HB 2519:** Authorizing voter-approved property-tax levies for criminal-justice purposes.

**Prime Sponsor:** Representative Brian Hatfield

Counties with populations of 90,000 or fewer are authorized to impose a new regular property tax of up to 50 cents per \$1,000 of the assessed value of property in the county. The funds are to be used for criminal justice purposes only. The new authority is not subject to the \$5.90 per thousand dollars of assessed value limitation that applies to other junior and senior districts but is subject to the one percent of true and fair value limitation. Tax may be imposed for up to six consecutive years, but only after approval of 60 percent of the voters voting on the proposition at a general or special election. Any new tax that is imposed is subject to prorationing requirements under the one percent limitation and must be reduced before other levy types are reduced if the tax rate exceeds one percent of true and fair value.

**HB 2583:** Authorizing issuance of infractions and citations by electronic device.


**Prime Sponsor:** Representative John Lovick


Civil infractions and traffic citations may be issued by an electronic device capable of producing a printed copy of the infraction or citation. It is unlawful for a law enforcement officer or other officer or public employee to dispose of a notice of civil infraction, copies of the notice of civil infraction, or the record of the issuance of the notice of civil infraction in a manner not authorized by law. *EL*


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## Lawyers' Fund for Client Protection

*The Lawyers' Fund for Client Protection Committee meets quarterly to review applications for gifts from the fund. The committee met February 20 and May 21, 2004. It is authorized to make gifts of up to \$10,000 to eligible applicants. On applications for more than \$10,000, the committee makes recommendations to the Board of Governors, who are the fund's trustees. At the February 20 and May 21 meetings, the committee took the following actions:*

**Armando Cobos** (WSBA No. 27006; Seattle; disbarred): Cobos represented the applicant to enforce certain provisions in her dissolution settlement agreement relating to costs of her daughter's education. She paid Cobos a fee of \$500. Cobos did nothing on her case after accepting payment. She left messages but could not reach him. Then his phone was disconnected. She contacted the Bar Association and was told that Cobos had disappeared. The committee found that Cobos had never performed the services for which he was hired and had failed to return the unearned fee. The committee approved payment to the applicant of \$500.

**Jeffrey Danzig** (WSBA No. 13243; Bellingham; disbarred): Danzig initially agreed to represent applicants in a medical malpractice claim on a one-third contingent fee. Their fee agreement specified that Danzig would not advance costs. Periodically, Danzig would call the applicants to have them make additional payments, although he provided no invoices or billing statements. They paid him \$49,436.15. Eventually, they exhausted their resources, and Danzig arranged to associate co-counsel who would advance costs.

The applicants' claim was settled for \$600,000. The co-counsel accounted for his costs, but Danzig never did so. The hearing officer in Danzig's disciplinary proceeding found that Danzig's actual and legitimate costs paid on behalf of applicants totaled \$13,832.39. He found that they were entitled to a refund of \$35,603.76 in unused and unaccounted-for advance costs. Danzig made no refund. The committee recommended and the Board of Governors approved pay-

ment to the applicants of \$35,603.76.

**Rolfy DeDamm** (WSBA No. 20476; Bellevue; resigned in lieu of disbarment): The applicant hired the DeDamm law firm to represent her in a child-visitation dispute. The fee agreement provided she would be charged \$180 per hour for attorney's fees and \$90 per hour for legal assistants. She paid \$1,500 in advance.

An associate in the DeDamm law firm handled the applicant's case, which was resolved, and the applicant was sent an invoice from the firm showing charges of \$495.34, and a trust balance of \$1,004.66. DeDamm never responded to the applicant's requests for return of her unearned fee. His former associate acknowledged that no services had been performed for the applicant after the invoice was sent. DeDamm never provided any accounting for the \$1,004.66 he was holding in trust. The committee approved payment of that amount.

**Michael Johnson-Ortiz** (WSBA No. 23580; Seattle; active): In January 2004, Johnson-Ortiz abandoned his high-volume immigration law practice. He told his staff that he was going on vacation to Chile from January 3 to February 6, 2004. The staff became increasingly alarmed by the prospect that he would not be returning. The bookkeeper discovered that the firm operating account was overdrawn by about \$5,000. There was no provision to pay staff salaries in his absence. On January 9, the staff learned that Johnson-Ortiz had shipped all of his belongings, including his car, to Chile. It was subsequently learned that on December 18, 2003, he had informed his landlord that he would be vacating his offices within 30 days. He left more than 300 open files and many more closed files. The WSBA took custody of his files, and employed a former associate of Johnson-Ortiz's to contact the clients, deliver their files, and assist them in finding new counsel.

As noted below, the committee voted to defer action on most applications pending investigation by the Office of Disciplinary Counsel. However, in one case, the applicants sent a payment of \$1,000 to Johnson-Ortiz after he had gone to Chile but before his staff knew

that he had abandoned his practice. The funds were used by staff to pay the firm's operating expenses. The committee approved payment of \$1,000.

**D. Willas Miller** (WSBA No. 25454; Seattle; suspended pending the outcome of discipline): The applicants' son was charged with assault and was appointed a public defender. However, a friend recommended to the applicants that their son hire Miller. The applicants agreed to do so, and sent Miller a cashier's check for \$1,500. Miller did not advise the applicants that he was facing a criminal trial less than a month later on three felony counts of delivering a controlled substance. Miller did nothing after receiving the fee. The appointed attorney continued to represent the son, and Miller never returned or accounted for the applicants' fee payment. The committee approved a gift of \$1,500.

**S. Don Phelps** (WSBA No. 21247; Olympia; suspended pending the outcome of discipline): On November 18, 2002, Phelps was convicted of two counts of third-degree child molestation. The committee reviewed several applications concerning Phelps and approved two.

In the first, Phelps represented the applicant on a medical malpractice claim that settled for \$45,000. After learning of his conviction, she hired a private investigator to review Phelps's handling of the proceeds of her case. The initial fee agreement between the applicant and Phelps was a 45 percent contingent fee; at the time of the settlement he reduced his fee to 38 percent, or \$17,100. He noted there was an additional \$3,400 in costs. In an e-mail to his legal assistant, Phelps said that the applicant would receive "about \$24,500." It also noted that they would have to pay outstanding medical bills, if there were any. Phelps paid the applicant \$15,000. He never accounted for the \$9,500 balance of the funds, nor did he provide any accounting or billing statement. There is no evidence that any medical bills were paid from the settlement. The committee approved payment of \$9,500 to the applicant.

In the second, the applicant paid Phelps \$500 to represent her regarding

a criminal investigation and possible criminal charge relating to allegations that she had misappropriated funds from her employer. Before any action was taken by the authorities, Phelps was convicted, and never accounted for or refunded the applicant's \$500. The committee approved payment of that amount.

**Kenneth P. Schmidt** (WSBA No. 14677; Yakima; disbarred): Schmidt was appointed trustee for a trust established on behalf of a minor following his mother's death. As trustee, Schmidt received insurance proceeds totaling \$154,482.62. The applicant's stepfather was appointed legal guardian, and he requested accountings from Schmidt, but none was ever provided. Eventually, Schmidt agreed to resign as trustee.

A new trustee was appointed. He continued unsuccessfully to try to get an accounting from Schmidt. He found some account records and was able to determine that \$80,000 was intact in a certificate of deposit on behalf of the minor beneficiary. The documentation for the remaining \$74,482.62 was sketchy, but the trustee was able to determine that the remaining funds had been all withdrawn by Schmidt. Schmidt never accounted for the \$74,482.62. He was convicted of first-degree theft and ordered to pay restitution to the beneficiary of \$75,424.18.

The committee recommended and the Board of Governors approved payment to the applicant of the fund maximum gift of \$50,000. With the assistance of the Office of the Yakima County Prosecuting Attorney, the WSBA was listed in Schmidt's restitution order.

**John E. Wagenblast** (WSBA No. 5850; Yakima; disbarred): Wagenblast stipulated to disbarment based upon his representation of the personal representative (PR) of an estate, and stipulated to pay \$58,652.55 in restitution.

Wagenblast filed a probate proceeding and had the PR open two checking accounts, one for the estate and one for a testamentary trust. Wagenblast's office address was listed for the accounts. The PR was the only authorized signatory on the accounts. In February 1999, the PR wrote a check on the testamentary trust account that bounced. He contacted the

bank where the account was located and learned that there had been activity on the account that he was unaware of. The PR wrote to Wagenblast discharging him as lawyer, and advising him that he had hired a new attorney. It was subsequently determined that forged and/or unauthorized checks totaling \$19,260 had been negotiated through the estate account, and forged and/or unauthorized checks totaling \$42,418.05 had been negotiated through the testamentary trust account.

The stipulation provides that Wagenblast's secretary forged the PR's signature on the checks, and all the checks except for six payable to the secretary were deposited into Wagenblast's business account and disbursed for business and personal expenses unrelated to representing the estate or trust. The stipulation says that Wagenblast knew what his secretary was doing on these accounts.

In June 2001, the secretary pled guilty to four counts of forgery and one count of first-degree theft. She was ordered to pay \$58,652.55 in restitution. She has paid a total of \$150. The PR filed suit against Wagenblast, his secretary, and the bank that honored the forged checks. The bank was subsequently dismissed from the suit because of statutes of limitation. Wagenblast is judgment-proof, and is ill and incapacitated. The committee recommended payment of \$50,000 to the estate, which must be approved by the Board of Governors.

#### Other Business

In February, the committee reviewed nine additional applications that were denied for lack of evidence of dishonest conduct, or as fee disputes or claims for malpractice, and in May reviewed 23 additional applications that were denied for similar reasons. In May, the committee also began review of a large number of applications concerning Johnson-Ortiz, and voted to defer action until the disciplinary investigation is concluded.

#### Restitution

The fund seeks restitution from the lawyers who cause payments from the fund. Because in most cases those lawyers have no assets, the chief avenue of restitution is through court-ordered restitu-

tion in criminal cases. Prosecuting attorneys cooperate with the fund in getting the fund listed in restitution orders. In the past 12 months, nine lawyers were making regular restitution payments or had paid off their obligations to the fund.

*The Lawyers' Fund for Client Protection Committee chair is Seattle attorney Wilda Heard. WSBA General Counsel Robert Welden is staff liaison to the committee.*

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### WSBA Service Center

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## Opportunities for Service

### Certified Professional Guardian Board

*Application deadline: August 23, 2004*

The WSBA Board of Governors will be nominating one member who is appointed by the Washington State Supreme Court to serve a three-year term on the Certified Professional Guardian Board commencing October 1, 2004. Please submit a written expression of interest and a résumé. 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 and limitations upon their activities. (GR 23.)

See [www.courts.wa.gov/programs\\_orgs/pos\\_guardian/?fa=pos\\_guardian.boardlst](http://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](mailto:barleaders@wsba.org).

## WSBA Board of Governors 2004 Election Results

### Congratulations to new WSBA President-elect S. Brooke Taylor

At its June 11 board meeting, the WSBA Board of Governors elected Port Angeles attorney **S. Brooke Taylor** president-elect, to serve as the WSBA's 115th president in 2005. Brooke will take office as president-elect at the close of the September 2004 annual business meeting, when President **Dave Savage** passes the gavel to **Ron Ward**.

"He leads by example, not just by words," wrote attorney Karen Gates Hildt in one of numerous letters written in support of Brooke's election. "His integrity is impeccable, his courtesy in the face of adversity always unflinching, and his diligence in meeting his commitments unsurpassed."

### 2nd District

**Eron M. Berg** (unopposed) is governor-elect for the 2nd District.

### 4th District

Since there was no candidate with a majority vote at the May 20 ballot-counting, a run-off election in the 4th District between Terry Abeyta and Stanley Bastian was held.

The certified run-off election results from the June 10 ballot-counting name **Stanley A. Bastian** as the new governor-elect for the 4th District.

### 7th-Central District

The certified election results from the May 20 ballot-counting name **Lonnie Davis** as the new governor-elect for the 7th-Central District.

### 9th District

**James E. Baker** (unopposed) is governor-elect for the 9th District.

### At-large

On June 11, **Marcine Anderson** was elected governor-elect at-large by the Board of Governors in accordance with WSBA Bylaws Article III, Section M, Election of At-large Governors.

Each new governor will take office at the close of the annual meeting of the WSBA on September 16, 2004, and hold office for a term of three years thereafter, until September 2007.

## 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](http://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](mailto:apprequest@cies.iie.org).

## CLE Publications Presents This Year's Member Appreciation Summer Sale

From July 19 through noon on July 30, shop the WSBA-CLE Online Store for great discounts on audio seminars, coursebooks, and deskbooks. Stock up on A/V credits for your MCLE reporting and shore up your practice library. Choose from dozens of titles on sale, in a variety of practice areas, at substantial discounts. Visit <http://store.yahoo.com/wsbastore> — beginning July 19.

## WYLD Seeks Award Nominations

*Deadline July 30, 2004*

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 a person or organization deserving of recognition, please visit [www.wsba.org/lawyers/groups/wyld](http://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](mailto:lisak@wsba.org).

Award recipients will be determined by the WYLD Board of Trustees at its 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.

### **WSBA Annual Awards Dinner and Business Meeting**

The WSBA Annual Awards Dinner and Business Meeting will be held Thursday, September 16, at the Seattle Marriott Waterfront Hotel, 2100 Alaskan Way, Seattle. The reception begins at 5:30 p.m. (no-host bar), and the dinner/program begins at 6:30 p.m. Early bird registration by August 20 is \$58 per person; registration by September 10 is \$65 per person. All members of the legal community are invited. The registration form can be found on the WSBA website at [www.wsba.org/aaregform.pdf](http://www.wsba.org/aaregform.pdf).

### **Proposed Amendments to Regulation 110 of APR 11 Before the Supreme Court**

On March 8, 2004, proposed amendments to Regulation 110 of APR 11, approved by the MCLE Board and the WSBA Board of Governors, were sent to the Washington State Supreme Court for approval. The proposed amendments to this regulation clarify the basis for the granting of exemptions, waivers, or modifications of the CLE requirements by the MCLE Board. They also include a new section (f) to specifically address the application of the requirements to active members of the Bar who are on active military duty.

### **Washington Civil Trial and Evidence Manual Released**

The fifth edition of the WSBA Litigation Section's Washington Civil Trial and Evidence Manual was released on June 18, 2004 at the section's midyear meeting in Seattle. 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 the rule number)." For information on how to order the manual, please contact order fulfillment at 206-727-8278 or [orders@wsba.org](mailto:orders@wsba.org).

### **Therapy Group for Attorneys Struggling with Depression**

The Lawyers' Assistance Program will offer a confidential therapy group for active WSBA members. We will meet Wednesdays, 4-5:30 p.m., beginning July 21, with sessions ending October 6, 2004. Cost will be on a sliding-scale basis. If you have questions or would like further information, please call Jennifer Favell, Ph.D., at 206-727-8267.

### **Lawyers' Assistance Program Peer Counselor Statewide Network**

We are attorneys who volunteer support to others who need someone to listen when times are tough. We are not professional mental-health counselors, but do receive training at our statewide conference in April and regional trainings throughout the year. We seek to expand the diversity we represent and offer to WSBA members. Would you have time and interest in listening, recognizing when

a peer needs referral for additional support, attending a training session, educating the legal community about the healthy practice of law, and giving of yourself as your time allows? Please call Jennifer Favell, Ph.D., L.A.P., at 206-727-8267.

### **Senior Attorneys Discussion Group**

We meet the third Thursday every month to talk about issues important to senior attorneys who continue to be involved, creative, healthy, and active. Join the Senior Attorneys Discussion Group for stimulating, social, sophisticated sojourns and cookies as our members share travel adventures on 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 Jennifer Favell, Ph.D., in the Lawyers' Assistance Program, at 206-727-8267.

### **Third-Party Liability Information**

If your client is involved in a personal-injury case and has received or is receiving medical assistance (Medicaid) payments for medical care, you are required to contact the Department of Social and Health Services (DSHS). RCW 43.20B.060 places a lien against any settlement or judgment your client receives from a third party that is responsible for your client's injuries, in order to reimburse the medical bills that have been paid by Medicaid. Before settling your client's claim with the third party and/or the client's insurance company, please call the COB Casualty Unit of DSHS at 1-800-562-6136, or write to COB Casualty Unit, PO Box 45561, Olympia, WA 98504-5561, to supply the information that DSHS requires. Or view our website at <http://fortress.wa.gov/dshs/maa/ltpr>. Failure to pay any lien imposed by the department on any settlement or judgment obtained by your client can subject you to personal liability for any funds improperly distributed (RCW 43.20B.070).

### **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.

### **MCLE Certification for Group 1 (2002-2004) Due December 31, 2004**

MCLE Reporting Group 1 members should be planning to complete all the credits for the 2002-2004 reporting period by December 31, 2004. A Continuing Legal Education Certification (C2) form, an affidavit that lists all the WSBA-approved courses that you took for compliance, will need to be filed. This form will be in the license packet that will be mailed to you at the beginning of December. The C2 form, not your online profile, is the official record of MCLE compliance. The C2 forms must be postmarked or deliv-

ered to the WSBA no later than March 1, 2005.

Members in Group 1 include active members who were admitted to the WSBA in all years through 1975, or in 1991, 1994, 1997, or 2000. Members admitted in 2003 are also in Group 1 but are not due to report until the end of 2007. Their first reporting period will be 2005-2007, but any credits earned on or after the day of admittance to the WSBA may be counted for compliance.

The credit requirements for the 2002-2004 period are at least 45 total credits of WSBA-approved CLE activities, which must include a minimum of 30 live credits and a minimum six ethics credits.

You can use the online MCLE system at <http://pro.wsba.org> to review courses taken and credits earned, apply for course approval, apply for writing credit or for prep-time credit, and search for approved courses being presented in the future.

To use the MCLE system, go to <http://pro.wsba.org>, click on the "Member" tab, then select "Member Login." The online instructions will lead you through the process of creating a confidential password and beginning to use the system. Online help files are available to assist you.

If you have any questions about using the MCLE system or about the MCLE compliance requirements, contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or [questions@wsba.org](mailto:questions@wsba.org).

### Upcoming Board of Governors Meetings

July 30-31 — Coeur d'Alene, Idaho  
September 16-17 — Seattle  
October 22-23 — Richland

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](mailto:donnas@wsba.org). The complete Board of Governors meeting schedule is available on the WSBA website at [www.wsba.org/info/bog/schedule.htm](http://www.wsba.org/info/bog/schedule.htm). ☞

### New WSBA Admittees from the Winter 2004 Bar Exam. Congratulations!

Abrams, Brent Charles, Bellevue, WA  
Adams, Stephanie Anne, Renton, WA  
Akujor, Stanley Umunna, Houston, TX  
Allen, Kimberly A., Redmond, WA  
Allen, Melody L., Bainbridge Island, WA  
Allen, Michael Bruce, Redmond, WA  
Allen, Richard K., Boston, MA  
Almlie, William Eric, Port Townsend, WA  
Altstadt, Tajar L., Redmond, WA  
Alvarez, Alvaro M., Seattle, WA  
Ananian, Raymond Michael, Woodside, CA  
Anderson, Christopher, Seattle, WA  
Aralica, Edwin Lee, San Diego, CA  
Arjomand, Atallah, Bellevue, WA  
Armstrong, Thomas Edward, Seattle, WA  
Arthur, Mark Aaron, Seattle, WA  
Ash, Michael B., Indianola, WA  
Ashby, Scott T., Phoenix, AZ  
Avery, Steven Douglas, Kingsburg, CA  
Badeau, Ernest H., Mollalla, OR  
Bailey, Darrin E., Covington, WA  
Baker, Sarah E., Seattle, WA  
Baker, William R., Sammamish, WA  
Barrett, Shawn L., Seattle, WA  
Battle, William Michael, Woodinville, WA  
Beach, Monica K.T., Seattle, WA  
Behout, Cawood King, Burlington, WA  
Beitner-Redline, Anita L., Edmonds, WA  
Bennett, Dale, Seattle, WA  
Bly, Brett W., Seattle, WA  
Boreen, Maryanne, San Diego, CA  
Born, Philip Gregory Scott, Bothell, WA  
Bowman, Quinten Scott, Yakima, WA  
Braun, Susanna June, Sammamish, WA  
Brodie, Nicole M., Sammamish, WA  
Brown, Clarissa Louise, Seattle, WA  
Brown, Jeffrey E., Salem, OR  
Brown, Thomas David, Roseburg, OR  
Brugato, Nicole L., Salem, OR  
Buck, David F., Seattle, WA  
Budelmann, Michael S., Seattle, WA  
Burton, Christopher, Sumner, WA  
Busch, Harold R., Dallas, TX  
Carl, Dawn, Yakima, WA  
Carroll, Ben, Richland, WA  
Carroll, Mujlin, Seattle, WA  
Casey, Brandon R., Spokane, WA  
Chacon, Michael, Bothell, WA  
Chae, Henry King, Shoreline, WA  
Chan-Comer, Valerie Anne, Seattle, WA  
Chaves, Oscar Eduardo, Fircrest, WA  
Chertok, Alan, Spokane, WA  
Chhabra, Harsh, Seattle, WA  
Chhagan, Victoria Blais, Seattle, WA  
Chhagan, Vikash, Seattle, WA  
Chinn, Evan Daniel, Seattle, WA  
Christopherson, Katherine Hurley, Vashon, WA  
Clausen, Andrea Lee, Olympia, WA  
Clawson, Robin Burnham, Kirkland, WA  
Cobb, Karen L., Renton, WA  
Cochran, Rene M., Nine Mile Falls, WA  
Coleman, Nancy R., Boise, ID  
Collins, Adam Christopher, Renton, WA  
Colton, M. Todd, Spokane, WA  
Conteh, Bakary Fansu, Lynnwood, WA  
Cook, Daniel N., Tacoma, WA  
Costales, Marissa Ann, Seattle, WA  
Cramer, Shane P., Seattle, WA  
Crawford, Lisa J., San Francisco, CA  
Crawford, Scott D., Seattle, WA  
Curtiss, Melody Ann, Lacey, WA  
Cushman, Nate J., Portland, OR  
Cutter, Joseph B., Virginia Beach, VA  
Davies, Lisa Marie Knight, Hood River, OR  
Day, Alfred A., Seattle, WA  
Dempsey, Amy Patricia, Seattle, WA  
Desmond, Christopher, Lake Forest Park, WA  
Deyerin, Kara J.V., Seattle, WA  
Dhaliwal, Uphar Kaur, Seattle, WA  
Dichter, Jonathan Paul, Federal Way, WA  
DiNenna Jr., Paul A., Spokane, WA  
Donovan, Thomas Willett, Tacoma, WA  
Doyle, Abigail K., Port Angeles, WA  
Droz, Christi Lin, Mercer Island, WA  
Duffy, William J., Portland, OR  
Dudin, Jacques M., Sequim, WA  
Dunne, Sarah A., Seattle, WA  
Edralin, Elaine E. Alcid, Seattle, WA  
Eggert, Carie L., Ogden, UT  
Eiden, Amy Kathleen, Seattle, WA  
Eldred, Anelise Erin, Seattle, WA  
Elliott, Andrew R., Seattle, WA  
Ellsworth, Dewelle, Seattle, WA  
Espiritu, Scott L., Seattle, WA  
Everley, Douglas Ray, Mill Creek, WA  
Eyrich, John Frederick, Bainbridge Island, WA  
Fahey, Michael Thomas, Bellevue, WA  
Falkenberg, F. Trygve, Maple Valley, WA  
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Grieve, Marie C., Seattle, WA  
Halloran, J. Scott, Seattle, WA  
Halpern, Ari D., Seattle, WA  
Hanna, Matthew Brian, Newton, MA  
Hart, John Edward Hiscock, Pullman, WA  
Hause, Thomas L., Anchorage, AK  
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Hernandez, Wendy Ann LaMare, Spokane, WA  
Heroff, Greg, Bellevue, WA  
Higgins, Christina M., Seattle, WA  
Hildes, Lawrence Andrew, Bellingham, WA  
Hirosane, Fia, Bellevue, WA  
Hood, Mary S., Seattle, WA  
Hough, Samuel David, Oro Valley, AZ  
Hu, Chandara, Bothell, WA

Hudders, Neal Andrew, Seattle, WA  
 Huppert, Shaun Ivon, Kent, WA  
 Huynh, Thi Anh, Mukilteo, WA  
 Hyta, Robert, Spokane, WA  
 Irvin, Deena A., Portland, OR  
 Jackson, Randolph St. Clair, Portland, OR  
 Jacobson, Heather Llewellyn, Seattle, WA  
 Jahnke, Thomas Michael, Seattle, WA  
 Jamtgaard, Laurel Aileen, Chelan, WA  
 Johnson, Angela Maxine, Vancouver, WA  
 Johnson, David E., Spokane, WA  
 Jorgensen, Jean Barr, Sammamish, WA  
 Joseph, Jennifer Paige, Seattle, WA  
 Jung, Daniel S., Seattle, WA  
 Karinen, Kyle S., East Wenatchee, WA  
 Karnes, Keith Daniel, Keizer, OR  
 Keith, Adrienne E., Seattle, WA  
 Kenmore, Lacey Adell, Spokane, WA  
 Keo, Metrey, Lynnwood, WA  
 Kerwin, David Michael, Tacoma, WA  
 Kim, Jamie Sungmin, Shoreline, WA  
 Kim, Patrick, Vancouver, BC  
 Kim, Susan, Sammamish, WA  
 Kim, Tomackie, Seattle, WA  
 Kindred, Sharon L., Englewood, CO  
 King, Jennifer, Seattle, WA  
 King, Rebecca Lynn, Seattle, WA  
 Knauer, Larisa Theresa, Glendale, CA  
 Kone, Ahoua, Seattle, WA  
 Koper, Krystian Gary, Seattle, WA  
 Korzeniowski, Edgar M., Seattle, WA  
 Kuhn, Keith Joseph, Buffalo, NY  
 Kurtz, Rachel Elaine, Seattle, WA  
 Lane, George Robert, Bellevue, WA  
 Larish, Inge, Seattle, WA  
 Larrivee, Francois Paul, Bellevue, WA  
 Lau, Allan Chin-Pong, Seattle, WA  
 Leavell, Ron, Issaquah, WA  
 Lee, Andrea Christie Traynor, Bothell, WA  
 Lee, Horace, Seattle, WA  
 Lee, Richard, Seattle, WA  
 Lee, Sheldon K., Seattle, WA  
 Lee, Sunny S., Seattle, WA  
 Leffler, Cristofer Ivan, Lake Forest Park, WA  
 Lehman, William J., Portland, OR  
 Leon, Mindy S., Seattle, WA  
 Lewis, Eric L., Issaquah, WA  
 Lewis, Jennifer Michelle, Seattle, WA  
 Light, Amanda S., Seattle, WA  
 Light, Donald J., Seattle, WA  
 Lincecum, Matthew R., Seattle, WA  
 Linkon, Steven K., Irvine, CA  
 Lluis, David Andres, Los Angeles, CA  
 Loe, Cynthia Marie, Seattle, WA  
 Loudon, Jeffrey C., Yakima, WA  
 Lu, Guiping, Seattle, WA  
 Lukoff, Aaron, Bellingham, WA  
 Lysne, Matthew Jason, Portland, OR  
 MacNaughton, Bonnie, Woodinville, WA  
 MacMillan, Keith D., Redmond, WA  
 Maguddayao, Peter Basa, Renton, WA  
 Mahoney, Estelle E., Tenino, WA  
 Majd, Farjam, Bellevue, WA  
 Malaier, Michael Gregory, Lacey, WA  
 Maloney, P. Dennis, Anchorage, AK  
 Marinelli, Mathew Dominic, Gig Harbor, WA  
 Marquez, Darlene, Seattle, WA  
 Marshall, Ronald A., Puyallup, WA  
 Martin, Grady B., Seattle, WA  
 Martin, Lacey Louise, Issaquah, WA  
 Martin, Michael Walter, Pullman, WA  
 Marx, Justin A., Seattle, WA  
 Masaniai Jr., Faamomoi P., Kent, WA  
 Maza, Matthew Blas, Seattle, WA  
 McClellan, Laura L., Seattle, WA  
 McCormick, Heather L., Seattle, WA  
 McCune, Aleksandr D., Seattle, WA  
 McDermott, Carolyn L., Issaquah, WA  
 McFadden, Peter, Lynnwood, WA  
 McKenzie, Andrew Michael, Boise, ID  
 Mencke, Kammi, Spokane, WA  
 Menz, David Frederick, Sammamish, WA  
 Messerle, Ian McKenzie, Seattle, WA  
 Miller, Sally Rees, Seattle, WA  
 Miller, Sylvia A., Seattle, WA  
 Mitchell, William Genter, Lynden, WA  
 Monjay, Robert J., Seattle, WA  
 Montoya-Lewis, Raquel D., Bellingham, WA  
 Morado, Heather M., Seattle, WA  
 Morris, Genevieve Mann, Spokane, WA  
 Morriss, Roy Earl, Seattle, WA  
 Mosshart, Deborah L., Kirkland, WA  
 Motto, Brian James, Seattle, WA  
 Murinko, Shawn Michael, Spokane Valley, WA  
 Musgrove, Sheila, Seattle, WA  
 Nakamura, Minako, Seattle, WA  
 Nichols, Keith J., Washougal, WA  
 Nicholson, Chad Matthew, Aloha, OR  
 Norcia, Mary, Lake Forest, CA  
 Note, Timothy Scott, Spokane, WA  
 Oberg, Markus Berndt Gustaf, Seattle, WA  
 Okhovat, Goli, Beverly Hills, CA  
 Okoloko, Edirin Oghenekaro, Edmonds, WA  
 Olson, Mark T., Maple Valley, WA  
 Onyali, Ada Ngozi, Tacoma, WA  
 Paganelli, Francis V., Seattle, WA  
 Parda, Jennifer Ann, Edmonds, WA  
 Payne, Jeffrey J., Portland, OR  
 Perkey, Pamela, Toledo, OH  
 Peterson, Debra D., Long Beach, CA  
 Petrenko, Boris, Bellevue, WA  
 Pierson, Toni, Connell, WA  
 Pollard, Robert Eric, Montrose, CO  
 Pruett, Catherine Elaine, Shoreline, WA  
 Quale, Melissa C., Plains, MT  
 Quick, Hsiao Mien, Cupertino, CA  
 Quirk, Karin E., Kirkland, WA  
 Ranade, Amit D., Seattle, WA  
 Rancano, Armando G., Fort Lewis, WA  
 Rapp, Andrew C., Seattle, WA  
 Rawnsley, Patrick William, Olympia, WA  
 Reed, Shyrell A., Issaquah, WA  
 Resnick, Kathryn D., Bellingham, WA  
 Reynolds, Aaron S., Seattle, WA  
 Rhee, John S., Sunngam, Korea  
 Riley Benjamin J., Olympia, WA  
 Ritoch II, Ronald R., Shoreline, WA  
 Robinson, Susan S., Mercer Island, WA  
 Rodgers, Mary Kathryn, Seattle, WA  
 Rodriguez, Susanna M., Seattle, WA  
 Rogers, Jacqueline Lee, Redmond, WA  
 Rosenfield, Kevin A., Seattle, WA  
 Roth, Joanna Teanini, Seattle, WA  
 Rouse, Brandie Jonnel, Rathdrum, ID  
 Rovner, Oleg, Seattle, WA  
 Rowe, Michelle Anne, Tacoma, WA  
 Rubenstein, Andrew David, West Linn, OR  
 Ruiz, Issac, Seattle, WA  
 Russel, Sean Adam, Seattle, WA  
 Sahler, Carra L., Portland, OR  
 Salas, Joseph F., Reno, NV  
 Sato, Hana Alice, Portland, OR  
 Schally, Daniel Jeffrey Moylan, Ketchikan, AK  
 Schmidt, Samantha A., Rancho Santa Margarita, CA  
 Schor, Jessyn L.S., Seattle, WA  
 Seales, Martha Schaeffer, Kirkland, WA  
 Seeds, Wendy Lynn, Spokane, WA  
 Shaver, Gary, Seattle, WA  
 Shepard, Kimberly Ward, Oakland, ME  
 Shipley, Kelly Ray, Everett, WA  
 Shotwell, David B., Spokane, WA  
 Silva, Kiera M., Kirkland, WA  
 Simon, Patricia Ann, Seattle, WA  
 Simpson, Jeffrey Christopher, Vancouver, WA  
 Slagle, Thomas J., Juneau, AK  
 Sleight, Chad Everett, Vancouver, WA  
 Snell, Jennifer Elizabeth, Seattle, WA  
 Solier, Pamela Kae, Kent, WA  
 Soltan-Qurraie, Bitia, Sammamish, WA  
 Sroufe, Mary Cameron, Seattle, WA  
 Stahl, Elizabeth Ann, Seattle, WA  
 Stancil, Shannon d'Layne, Seattle, WA  
 Steele, Jacob, Seattle, WA  
 Stewart, Cynthia D., Federal Way, WA  
 Stewart, Janell Kathleen, Kenmore, WA  
 Stone, Ronald Alfred, Oak Harbor, WA  
 Stormes, Julie Marie, Kent, WA  
 Stryker, Lance Stewart, White Salmon, WA  
 St. John, Jeaneane Marie, Redmond, WA  
 St. Laurent, Joseph Antoine, Edmonds, WA  
 Subedar, Yeun Junga, Bellingham, WA  
 Suen, Stephanie Pui-Yun, Ann Arbor, MI  
 Suh, Min-Su, Moses Lake, WA  
 Swatt, Barbara Helen, Seattle, WA  
 Taylor, Jennifer Lane, Las Vegas, NV  
 Tenpenny, Lyle Alan, Seattle, WA  
 Thin Elk, Theresa Anne, Elmer City, WA  
 Thomas, Sally Nita, Fort Lewis, WA  
 Thompson, Kristin Louise, Mill Creek, WA  
 Thornton, Laurie Mae, SeaTac, WA  
 Tiernan, Janelle S., West Roxbury, MA  
 Tiffany, Daniel R., Spokane, WA  
 Tolles, Joshua Adam, Seattle, WA  
 Trunkey, Alan L., Eastsound, WA  
 Turk, Carl K., Seattle, WA  
 Vadher, Dipa Nathalal, Seattle, WA  
 Vanderbilt, Charlotte Wolfley, Spokane, WA  
 Vanderslice, Viivi, Las Vegas, NV  
 Van Loo, Jason Michael, Houston, TX  
 Vasiliades, Elizabeth, Seattle, WA  
 Veillon, Paul Michael, Seattle, WA  
 Vershave, Richard C., Everett, WA  
 Warren, Aaron Matthew, Bellevue, WA  
 Way Sr., Robert Alan, Tacoma, WA  
 Webb, Nathan L., Seattle, WA  
 Webb, Stephanie A., Seattle, WA  
 Webber, Karen L., Vancouver, WA  
 Webster, Michelle Nicole, Colfax, WA  
 Weeks, Brian Keith, Selah, WA  
 Weiler, Jennifer Lord, Lacey, WA  
 Weiss, Darryl A., Santee, CA  
 Wellnitz, Patrick S., Seattle, WA  
 Wells, Monica Ann, Portland, OR  
 Wetmore, Katherine E., Everett, WA  
 Whicher, Jane M., Port Townsend, WA  
 Whitcomb, Kirsten Lisa Curry, Seattle, WA  
 Williams, Cheryl A., Redondo Beach, CA  
 Williams, Kellea Renee, Hesperia, CA  
 Williams, Tracy Yvette, Puyallup, WA  
 Wilmot, Lisa Ann, Tacoma, WA  
 Wilson, David T., Edmonds, WA  
 Wilson, Karen Denise, Issaquah, WA  
 Winberg, April M., Kirkland, WA  
 Winkler, Jennifer M., Seattle, WA  
 Winship, James David, Bainbridge Island, WA  
 Wooten-Days, Ayanna, Seattle, WA  
 Wyatt, Jennifer K., Seattle, WA  
 Xiang, Joy Yuan, Seattle, WA  
 Yaghmaee, Sasan, Issaquah, WA  
 Yahne, Ryan D., Pasadena, CA  
 Yamamoto, Thomas Gen, Annapolis, MD  
 Yao, Daryl S., Seattle, WA  
 Yee, Stacie D., Los Angeles, CA  
 Yeh, Michael D., Sammamish, WA

**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](mailto:tradelaw@thompson-law.com) for more information.

### Clark County News

Blair Schaefer Hutchison & Wolfe LLP is pleased to welcome lawyers **Jonathan R. Gill** and **Trent Kunz** to the firm. Gill concentrates his practice in the areas of business and civil litigation, professional negligence, and personal injury. He received his bachelor's degree from Golden Gate University and his law degree from the University of California, Hastings College of the Law. He is licensed to practice in Washington, Oregon, and California, and is a member of the Clark County, Washington, Oregon, and California bar associations.

Kunz focuses his practice in the areas of business law, estate planning, real estate, and taxation. He received his bachelor's degree from Brigham Young University, his J.D. from the UCLA School of Law, and his LL.M. in Taxation from the University of Washington School of Law. He became an adjunct professor at Clark College in 2003. He is licensed to practice law in Washington and Oregon, and is a member of the Clark County, Washington, and Oregon bar associations.

### Gonzaga Law News

Dean **Daniel J. Morrissey** has resigned as dean of the Gonzaga University School of Law, effective June 30. He said he wanted to pursue other opportunities in academic administration. Morrissey succeeded **John Clute** in June 2001, and presided over a major fundraising campaign that culminated in the construction of a new law school building. A national search will be conducted for Morrissey's successor.

### Indian Law News

The WSBA Indian Law Section recently gifted \$5,000 in scholarships to North-

west Native law students as part of an ongoing effort to support Indian students seeking a legal education. In less than one year, the Indian Law Section and Northwest Indian Bar Association (NIBA) have raised and donated over \$30,000 in scholarships to aspiring Indian lawyers from Washington, Oregon, Idaho, and Alaska.

Although the Indian Law Section and NIBA have long supported Northwest Native law students through financial assistance, including sponsorship of the UW Native American Law Student Association's student team that attended the Moot Court Competition in New York City last year, the organizations' recent scholarship donations represent their largest contributions to date.

"It is the top priority of our tribal bar to help provide Native people with the resources they need to access the legal profession," said past two-term NIBA president and current chair of the Indian Law Section **Gabriel Galanda**. "Many of our members would not be where they are today without the scholarships they received along the way. We are committed to doing the same for others."

More than 80 Native American high school and college students from Washington, Alaska, and Idaho gathered at the UW School of Law on April 23-24 to explore legal studies as a gateway to many different rewarding careers. Made possible by a \$40,000 grant from the Law School Admissions Council, the conference allows students to get a first-hand look at what it takes to be a lawyer.

"We're in the Northwest with a vibrant Native American population, and this conference is a result of a common vision and the collaboration with the Northwest Indian Bar Association, the Native American Law Center, alumni of color, and current law students," said **Sandra Madrid**, assistant dean for students and community development. "This is about the planting of seeds — seeds of opportunity for every participant. We want to encourage them that going to law school is a reachable goal, and that an attorney's career, particularly when it is in the service of one's

community, is rich and rewarding."

Speakers included law school faculty members **Robert Anderson**, director of the Native American Law Center, and **Ron Whitener**, who leads the Tribal Court Criminal Defense Clinic, as well as prominent Native American attorneys and tribal leaders — such as **Rion Ramirez**, president of the Northwest Indian Bar Association, and **Billy Frank**, chairman of the Northwest Indian Fisheries Commission.

### Island County Report

by Tom Pacher

Greetings once again from the shores of Penn Cove.

Superior Court Judges **Alan Hancock** and **Vickie Churchill** have been studiously (judiciously?) poring over local rules for Island and San Juan Counties, and have worked out a number of changes that are still under consideration. If you're coming up here in the near future, it may be a good idea to check Island County's website or check with the court administrator to see if the new rules have taken effect yet. Consider it a friendly heads up.

The Island County Bar Association recently held its monthly meeting in Freeland. It was nice to see some familiar faces and meet some new people there. If you're going to be on Whidbey Island the last Wednesday of any month, and wish to drop by one of our meetings, please feel free to do so. You can reach the ICBA through **Hans Juhl** or me via the contact information listed by the WSBA.

**Kim Page**, an attorney who has been very active in the local Volunteer Lawyers Program and has been a key player in the Island County Bar Association, and who is married to an active-duty officer in the military, is leaving us. It seems Uncle Sam wants to send her husband to the other side of the country, and doggone it, she's going with him. Kim has given a lot of her time and energy to a lot of people in Island County, and will be missed by many.

It seems Uncle Sam is determined to have a greater effect on military spouses around here; **Jillian Carilli** and **Jane Williamson** are both following their

husbands to new assignments on other parts of the planet. We will certainly miss the wit and skill of both of these attorneys. This will also apparently mark a 25 percent diminution in attorneys practicing in this state who are named "Jillian."

Island County Deputy Prosecutor **Eric Ohme** recently complained to me that he hadn't been mentioned in a previous Island County report. Now he has. Call your friends and former professors, Eric. Your name is in *Bar News*, and it's not bad news.

### Judiciary Report

by *Lindsay Thompson*

Pierce County Superior Court recently completed production of "Behind the Scenes: The Work of a Superior Court Judge." This 15-minute educational video, produced by the Court and Rainier Cable TV in conjunction with Law Week, was aired on the county's cablecast systems (Comcast Channel 22, Click! Network Channel 86, and Rainier Group Channel 78) during May and June. The video, featuring Judges **Stephanie Arend** and **Bruce Cohoe**, explains the many and varied activities of a superior court judge when not presiding over trials.

Governor **Gary Locke**, Chief Justice **Gerry Alexander**, and others were among those present for the May 13 swearing-in of Judge **Ruth Reukauf** as a Yakima County Superior Court judge. Reukauf previously served as a district court judge and succeeded Judge **Michael Leavitt**, who resigned to become a U.S. magistrate judge in Yakima.

Also in May, Governor Locke appointed King County District Court Judge **J. Wesley Saint Clair** to the King County Superior Court. Saint Clair was appointed to the King County District Court in 1991. Prior to his election, he worked in private practice on both civil and criminal matters. He was presiding judge of the King County District Court before his new appointment. The King County Bar Association recognized Saint Clair as its 2003 Judge of the Year. He succeeded Judge **Donald Haley**, who retired after 20 years on the bench.

The governor has also appointed Tacoma attorney **Linda Lee**, formerly with

Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, to the Pierce County Superior Court. She fills the position vacated when Locke named Judge **Mary-wave Van Deren** to the state Court of Appeals in April.

State Court Administrator **Mary Campbell McQueen** resigns her post next month to become president of the National Center for State Courts. Founded in 1971, the center provides leadership, research, technology, education, and training to the state courts. McQueen is a part board member for the center, which has offices in Williamsburg and Arlington, Virginia, and in Denver. She has spent 25 years in the Washington court system, the last 17 as administrator, and was previously a court planning officer for the Washington, D.C., and Kentucky court systems.

### Spokane County Report

by *Capt. Ingrid Larson-Alexander, USAF*

The Judge Advocate General's office of Fairchild Air Force Base, Spokane, hosted a community Law Day luncheon at its Officers' Club on May 4, 2004, in celebration of the 50th anniversary of the *Brown v. Board of Education* decision. Attendees included: **William Battey**, **Pamela Byerley**, **George Jacobs**, **Ward McAuliffe**, **David Turplesmith**, and **Maureen McGuire** from the U.S. Attorney General's Office; **Larry Briney** and **Rose Priest** from the Washington Attorney General's Office; Spokane County Prosecutor **Steve Tucker**; **Howard Delaney** of the Spokane City Prosecutor's office; **Michael Connelly** and **Doris Stragier** of the Spokane City Attorney's office; **Larry Lindskog**, **David Wyrick**, and **Esther Larsen** from the Spokane County Sheriff's Office; and **Al Oldenthal** and **Jeanie Spiering** of the Spokane Police Department. Chaplain **Frederick Johnson**, **Pastor Mitchell Sherry Hokanson**, and students from Michael Anderson Elementary School provided dramatic performances and readings for the occasion.

### Thurston County Report

by *Fred D. Gentry*

TCBA's annual dinner meeting was held May 21 at the Olympia Golf and Country Club. Outgoing President **Cecilia Clynh**

turned the gavel over to **Paul Meyer**, who will guide us for the coming year. Other new officers are **Chris Schaller**, president-elect; **Allen Miller**, secretary; and **Jan Carrington**, treasurer. Soon-to-be-retiring Judge **Daniel J. Berschauer** was the 2004 Daniel Bigelow Award winner. The award is named after Dan Bigelow, a highly regarded lawyer who moved to Olympia in 1850. The award is given annually to the member who demonstrates outstanding citizenship and professionalism in the community. Other nominees were **Lee Creighton**, **C.H. Skip Houser**, and **Jim Powers**. **Joe Lynch** presented the prizes for the golf tournament. The winning foursome was made up of **Steve Henderson**, **Bill Hope**, **Chris McCabe**, and "Mr. TCBA Golf" himself, Joe Lynch. The meeting was well attended, and a good time was had by all.

Soon to be occupying their under-construction respective palatial offices are the firms of **Morris & Sockle** and **Ditlevson, Rogers & Dixon**.

### UW Law School News

**Gregory C. Simon**, president of FasterCures/The Center for Accelerating Medical Solutions, a Washington, D.C.-based "action tank," has been selected to receive the 2004 Sharon Nelson Leadership Award. Every year, the Shidler Center for Law, Commerce, and Technology selects an outstanding alumna/alumnus to acknowledge significant contributions in the fields of law and technology. The award was presented May 20 in Seattle.

Simon is a 1983 graduate of the UW School of Law, and was Vice President Al Gore's chief domestic policy advisor from 1993 to 1997. Currently, Simon heads FasterCures, a nonprofit examining the research and development process to accelerate the discovery and promotion of new treatments for deadly diseases.

Simon was nominated by Professor **Stewart Jay**, a constitutional law expert at the UW, who describes Simon as "a major player in the technology field [who] is respected by people from across partisan lines, [and] one of the most decent individuals that one is ever likely to find." The three-member awards com-

mittee consists of **Sonya Erickson** of Heller Ehrman Venture Law Group; **Glenn Kawasaki** of Catch Incorporated; and Professor **Ed Lazowska**, the UW's Bill and Melinda Gates Chair in computer science and engineering.

The award was established in 2003 and is named after the Shidler Center's first director, **Sharon Nelson**, who worked at the university from September 2000 to April 2003. She also served as the chairwoman for the Washington Utilities and Transportation Commission from 1985 to 1997. Judge **Betty Fletcher**, U.S. Court of Appeals for the 9th Circuit, was the first recipient.

### **Yakima County News**

Velikanje Moore & Shore, P.S. is pleased to announce that **Metiner G. Kimel**, a shareholder in the firm, was appointed by the Office of the United States Trustee to serve as a Chapter 7 panel trustee in Yakima, effective April 6, 2004. Mr. Kimel, whose prior experience includes three years of clerking with the bankruptcy courts in Yakima and in the Central District of California, has been with the Velikanje office since August 1999. He continues to practice in the areas of debtor-creditor transactions, general commercial and secured transactions, and commercial tax planning and litigation.

The Washington Supreme Court visited Yakima May 13, holding oral argument on three cases in Kendall Hall at Yakima Valley Community College. Members of the Court also took part in the swearing-in of new Yakima County Superior Court Judge **Ruth Reukauf**.

### **In Memoriam**

*CORRECTION: In an obituary for Alton S. White in the March Bar News, the name of Mr. White's surviving wife was misspelled. The correct spelling is **Barbetta Ralphs**, not **Barbara Ralphs**. We regret the error.*

#### **James H. Dunn**

A Seattle native and longtime Vancouver resident, Jim Dunn was a noted track athlete in high school, an Eagle Scout, and a graduate of Washington State Uni-

versity and Seattle University School of Law. He practiced in Clark County with his father, William H. Dunn, for 14 years.

Survivors include his wife, Heather; two children; his parents; and a sister and brother. James Hudson Dunn was born in Seattle March 31, 1964, and died in Everett April 20, 2004, as the result of a fall from a building. He was 40.

#### **Judge William S. Lewis**

Known as "Wild Bill" around the King County Courthouse, William Lewis spent 32 years on the King County District Court bench and became a legendary courthouse figure for his unorthodox solutions to problems. Friends recalled that when traffic defendants told him they couldn't afford their fines, he'd order them to put their cars on blocks and take the bus, or walk, to work until they could. "And he'd check," Lewis's widow, Dorothy, told *The Seattle Times*. Other times he would sentence them to wash windows or clean their homes to help out their families and still experience some form of punishment. A man he sent out to collect garbage as an alternative to paying his fine returned with a big bag of it and the question, "What do you want me to do with it?"

Born to American parents in China who shipped him home in the 1930s as Japan invaded — his father later died in a concentration camp — Lewis graduated from the UW and its law school before becoming a founding member of Lee Smart Cook & Patterson in Seattle. In 1958 he filed a lawsuit to create a new district court judgeship, and when it was created, ran for it and got elected. He held the seat until he retired in 1990.

Lewis also won renown as what *The Seattle Times* obituary called "a fabulous ballroom dancer."

Survivors include his wife; three children and one stepchild; and three grandchildren. Judge William Swenson Lewis was born in China in 1915 and died in Redmond April 1, 2004, aged 89.

#### **William Messer**

Auburn lawyer William Messer was found dead in his office in April, the victim of a fatal beating. Messer was an Air Force veteran who enjoyed breeding

and racing horses. He practiced bankruptcy law in the South King County area for a decade. Survivors include his fiancée, Doris Day; three children; and one sister.

William W. Messer was born in Chicago January 25, 1947, and died in Auburn April 12, 2004, aged 57.

#### **Jerry N. Parks**

A veteran of the Korean War, Jerry Parks was a graduate of the University of Texas at Arlington, and received his law degree from the University of Houston. He practiced for several years in Houston before moving to Bellevue in 1972. Before his retirement, he practiced both civil and criminal law, primarily in Seattle and Bellevue, and served for many years as a public defender with Eastside Public Defenders Association.

Mr. Parks was an avid bicyclist, an accomplished skier, and a dedicated reader. He volunteered with the Ski Acres/Summit Central Ski Patrol for many years, and completed two cross-country bicycle trips in the past four years. He is remembered for his penchant for a good argument, his zest for challenge, and never being without a good book. Survivors include his two daughters, his brother, and three grandchildren.

In accordance with his wishes, he will rest near his brother's cabin in the Alaskan wilderness. His family suggests memorials be made to the Ski Acres/Summit Central Volunteer Ski Patrol, 604 128th Ave. S.E., Bellevue, WA 98005.

Jerry Nathe Parks died on April 5, 2004, aged 71.

Bar News has also been advised of the deaths of the following members: **Terence J. Denigan**, Saipan, Northern Marianas Islands, admitted October 14, 1996, died September 8, 2003; **Oliver Joseph Neibel Jr.**, Omaha, NE, admitted March 27, 1953, died February 25, 2003; **Clinton Fisk Raymond**, Burnaby, B.C., admitted September 21, 1964, died February 10, 2004; **M. Lawrence Ross**, University Place, admitted September 9, 1958, died October 30, 2003; **Ralph G. Wilmot Jr.**, Larvik, Norway, admitted October 3, 1956, died August 1, 2003.

## Disciplinary Notices

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

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

### Disbarred

**Karl W. Ferrier** (WSBA No. 25217, admitted 1995), of Ocean Park, was disbarred effective October 29, 2003, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct between 1999 and 2001, involving theft of client funds and lack of diligence, and making false statements during the disciplinary investigation.

**Matters 1 and 2:** In April 2000 and March 2001, Mr. Ferrier agreed to represent clients. In both cases, he deposited the clients' advance fee deposit into his business or personal bank account and used the money for his own purposes. Mr. Ferrier did not work on the clients' cases, respond to the clients' requests that he return their files, refund their fees, or provide accountings.

**Matter 3:** In March 2001, Mr. Ferrier agreed to represent a client in an action to collect on a promissory note. Mr. Ferrier deposited the client's advance fee deposit into his business or general account and used it for his own purposes. Mr. Ferrier filed a complaint on the client's behalf; paid the filing fee; arranged for service of process on the defendant; and received, but did not file, the affidavit of service. The defendant did not file an answer to the lawsuit, but Mr. Ferrier told his client that he was too busy to obtain an order of default. After August 1, 2001, Mr. Ferrier did not communicate with his client. The client retained new counsel. Although new counsel requested that he do so, Mr. Ferrier did not file the affidavit of service within 90 days of filing the complaint. During the investigatory deposition of this matter, Mr. Ferrier made two false

statements under oath.

**Matter 4:** In September 1999, Mr. Ferrier agreed to represent clients in a lawsuit against a roofing contractor. Mr. Ferrier deposited \$900 of the clients' \$1,000 advance fee deposit in his trust account. He filed the clients' lawsuit, but failed to timely answer discovery requests, incurring \$400 in sanctions. He also failed to advise his clients that opposing counsel had offered to discuss settlement and had scheduled the clients' depositions. Neither Mr. Ferrier nor the clients appeared at the depositions. When Mr. Ferrier failed to appear at opposing counsel's subsequent motion for discovery sanctions, the court sent notice of the hearing directly to the clients. The clients appeared and indicated they could not contact Mr. Ferrier. The court imposed an additional \$2,000 in sanctions. Mr. Ferrier did not cooperate with the investigation of these disciplinary matters.

Mr. Ferrier's conduct violated RPCs 8.4(b) and (c), by committing theft (embezzlement of client funds); 1.14(a), by failing to deposit client funds in an IOLTA account; 1.14(b)(3), by failing to provide accountings of client funds upon request; 1.5(a), by failing to perform legal services and retaining advance fee deposits; 1.15(d), by failing to return client files and unearned fees upon termination of the representation; 1.3, by failing to diligently represent clients; and 1.4 (a) and (b), by failing to answer client phone calls and letters, preventing clients from being informed about the status of their matters; and RJD 2.8 [now ELC 5.3(e)], by failing to cooperate with the disciplinary investigation.

Kevin Bank represented the Bar Association. Mr. Ferrier represented himself. Waldo F. Stone was the hearing officer.

### Disbarred

**Trenidad Hernandez** (WSBA No. 25849, admitted 1996), of Ellensburg, was disbarred effective August 20, 2003, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct between 1999 and 2001 involving theft of client funds and acts of misconduct in five personal-injury and litigation matters.

**Matter 1:** In October 1999, Mr. Her-

nandez agreed to represent a client in a personal-injury matter. The verbal fee agreement was that Mr. Hernandez's fees would be an unspecified percentage of the client's recovery. The client's case settled and Mr. Hernandez received the \$5,809 settlement check. Mr. Hernandez endorsed the client's signature on the check without her permission, and deposited the check into his IOLTA account. Mr. Hernandez disbursed the client's funds to himself, but none to the client. In July and October 2001, Mr. Hernandez sent the client \$2,600 from other funds.

**Matter 2:** In January 2001, Mr. Hernandez received a client's settlement check on a personal-injury matter. In January 2001, Mr. Hernandez sent the client \$5,816, disbursed fees and costs to himself, and told the client that he had disbursed \$5,763 to pay her medical bills. In fact, Mr. Hernandez had paid only one \$2,000 medical bill. In February 2001, Mr. Hernandez disbursed an additional \$300 to himself, without explanation. By May 2001, Mr. Hernandez's trust account had a negative balance. The trust account did not contain a \$1,960 subrogation payment that the client was later required to pay from her own funds.

**Matter 3:** In January 2000, Mr. Hernandez agreed to represent a client in a personal-injury matter. Mr. Hernandez refused to disclose the location of his law office and failed to return the client's calls to his cellular phone. In September 2000, the client retained substitute counsel. In January 2001, Mr. Hernandez sent a settlement-demand package to the insurance company. The client did not authorize or review this settlement demand. Mr. Hernandez was not authorized to act as the client's lawyer at this time. The client asked Mr. Hernandez to send a letter of withdrawal to the insurance company, but he did not do so.

**Matter 4:** On March 15, 2001, Mr. Hernandez agreed to represent a client on a municipal-court traffic charge. Mr. Hernandez failed to appear for the client's pretrial conference three times. The court continued the hearing twice so that he could attend. Mr. Hernandez did not respond to the client's phone calls or refund his legal fees. The client retained new counsel.

**Matter 5:** In early 2001, Mr. Hernandez agreed to represent a client in a criminal matter. Mr. Hernandez failed to appear for the court-ordered motion and jury call dates. The court clerk notified Mr. Hernandez by phone of the client's April 5, 2001, hearing, but Mr. Hernandez failed to appear. When the client called Mr. Hernandez from the courthouse, he reported that his car had been stolen. The state filed a motion for sanctions against Mr. Hernandez for repeatedly failing to appear, and the court issued an order requiring his appearance. Mr. Hernandez called the court during the sanctions hearing and stated that his car had broken down on the pass. The court found Mr. Hernandez in contempt and imposed terms of \$750. Mr. Hernandez did not pay the terms. Mr. Hernandez promised to return the client's \$1,500 fee payment, but never did so. Mr. Hernandez did not cooperate with the disciplinary investigation into these matters.

Mr. Hernandez's conduct violated RPCs 8.4(b), 1.14(a), 1.14(b)(4), and 8.4(i), by converting client funds from his trust account (theft in the first degree); 1.5(a) or (c)(1), by failing to reduce the contingent fee agreement to writing, provide a written settlement statement, and refund unearned fees; 1.14(b)(3), by failing to provide the client an accounting of the costs and attorney's fees actually disbursed; 1.4, by failing to keep the client informed of the status of her matter; 8.4(c), by misrepresenting that he had made medical payments and telling a client he would appear at a hearing, with no intent to do so; 1.2(f), by willfully purporting to act as a person's lawyer without authorization; 1.3 and 3.2, by failing to appear at a court hearing and expedite a client's litigation; and 3.4(c), by disobeying a court order to appear for a sanction hearing; and ELC 5.3(e) and (f), by failing to cooperate with the disciplinary investigation, including failing to appear for a deposition after service of a subpoena.

Anthony Butler represented the Bar Association. Mr. Hernandez represented himself. William P. Bergsten was the hearing officer.

### **Disbarred**

**Todd H. Hutchinson** (WSBA No. 14389, admitted 1984), of Vancouver, WA, was

disbarred effective August 20, 2003, by order of the Washington State Supreme Court approving a stipulation. This discipline was based on his conduct between 2000 and 2002, involving false statements in a declaration, practicing while his license was suspended, and lack of diligence and communication in two client matters.

**Matter 1:** On April 15, 2000, Mr. Hutchinson agreed to represent a client involved in an auto accident. The client received a demand letter from the other driver's insurance company. Mr. Hutchinson's response to the insurance company contained factual errors. In September 2001, the other driver served the client with a lawsuit. Mr. Hutchinson met with the client and drafted a notice of appearance and answer, but did not notify opposing counsel that he was involved in the case or file the pleadings with the court. In November 2001, the court entered a \$4,335.29 default judgment against the client. In January 2002, the Department of Licensing suspended the client's driver license for failure to satisfy the judgment. Mr. Hutchinson did not respond to the client's phone calls or written messages. The client's uncle, a lawyer practicing in Washington, D.C., also contacted Mr. Hutchinson. Mr. Hutchinson promised to take steps to vacate the judgment and reverse the license suspension, but he did not take these steps. Mr. Hutchinson refunded the client's attorney's fees in April 2003. Mr. Hutchinson failed to cooperate with the Office of Disciplinary Counsel's investigation of this matter.

**Matter 2:** In February 2002, Mr. Hutchinson agreed to assist a client in obtaining a Qualified Domestic Relations Order (QDRO) following a marriage-dissolution action. Mr. Hutchinson told the client that this matter would take about two weeks and that she would have a court date on March 29, 2002. Mr. Hutchinson did not schedule a court date. In April 2002, Mr. Hutchinson noted a hearing and told opposing counsel that he would send a proposed QDRO the following week. Mr. Hutchinson did not send opposing counsel a proposed QDRO and agreed to strike the hearing. Mr. Hutchinson started, but did not finish, the QDRO. In October 2002, the client fired Mr.

Hutchinson and asked for a refund. Mr. Hutchinson sent the client a refund in April 2003. Mr. Hutchinson did not cooperate with the Office of Disciplinary Counsel's investigation of this matter.

**Matter 3:** On November 8, 2002, the Bar Association filed a petition with the Washington State Supreme Court asking for Mr. Hutchinson's immediate interim suspension, based on his failure to cooperate with the disciplinary investigations. Mr. Hutchinson failed to respond to the show-cause order by the date required, so, on January 10, 2003, the Court struck the hearing and stated that the matter would be considered without oral argument. On January 16, 2003, Mr. Hutchinson filed pleadings with the Court stating falsely that he had refunded the clients' flat-fee retainers. On January 17, 2003, the Court issued an order suspending Mr. Hutchinson's license.

**Matter 4:** Despite the Court's order suspending his license, Mr. Hutchinson appeared in court and signed pleadings on January 22, 2003.

Mr. Hutchinson's conduct violated RPCs 1.4(a), by failing to adequately inform clients about the status of their cases; 1.4(b), by failing to explain matters to the extent reasonably necessary for clients to make informed decisions; 1.3, by failing to serve his notice of appearance and answer, failing to file the motion to vacate judgment, and failing to obtain a QDRO; 1.5 and 1.15(d), by failing to return unearned and unreasonable fees; 3.3(a) and 8.4(c), by falsely stating in a declaration that he had refunded his clients' retainers; and 5.5(e), by signing pleadings after his license to practice had been suspended; and RLD 2.8(a) [now ELC 5.3(e)], by failing to cooperate with the disciplinary process.

Marsha Matsumoto represented the Bar Association. Mr. Hutchinson represented himself. Joseph Mano was the hearing officer.

### **Disbarred**

**Kenneth P. Schmidt** (WSBA No. 14677, admitted 1984), of Yakima, was disbarred effective September 11, 2003, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct between 1999 and 2001 involving practicing with

a suspended license, lack of diligence in four client matters, theft of client funds, and filing a false answer in the disciplinary proceeding.

**Matter 1:** The Washington State Supreme Court suspended Mr. Schmidt's license to practice law, effective July 24, 2001, for failure to pay WSBA license fees. During a July 26, 2001, deposition, Mr. Schmidt stated falsely under oath that he had "written to the Bar and sent them a check." At the time of his suspension, Mr. Schmidt had contracts to represent clients for the Yakima County Department of Assigned Counsel (DAC). Mr. Schmidt did not notify DAC, his clients, or opposing counsel of his suspension. Mr. Schmidt knowingly continued to represent several clients during his suspension. In October 2001, the DAC director learned of the suspension and asked Mr. Schmidt to prepare a list of his cases and return his files. Mr. Schmidt did not prepare the list or promptly return the files.

**Matter 2:** In 1987, Mr. Schmidt represented a client in a Labor and Industries claim. Mr. Schmidt set up a living trust for the client's L&I pension and Social Security Supplemental Disability Insurance payments. Mr. Schmidt managed the client's trust. In January 2000, Mr. Schmidt deposited one of the client's checks into his IOLTA account and did not transfer any of the funds to the client.

**Matter 3:** In November 1999, Mr. Schmidt became the trustee for a minor child, when the mother died. Mr. Schmidt opened an account for the child using the mother's life-insurance proceeds. In April 2000, Mr. Schmidt transferred \$15,000 from the child's account into an account held for another client. He then took \$100 of this money in cash, transferred \$5,900 to his personal bank account, and transferred \$5,000 into his law office account. Mr. Schmidt depleted the remaining \$4,000 in small increments for other clients. During the investigation of this matter, Mr. Schmidt falsely told disciplinary counsel that the \$15,000 were his "personal funds from an inheritance in the amount of \$15,000 which were mistakenly deposited into Mr. Bunyan's account." Disciplinary counsel subpoenaed Mr. Schmidt to appear at a deposition and produce proof of his inheritance

claim. Mr. Schmidt failed to appear for the deposition.

**Matter 4:** Mr. Schmidt represented a client who was injured in a May 1997 automobile accident. Mr. Schmidt notified the insurance company that he represented the client, but took no further action. The insurance company closed its file when the statute of limitations expired on the client's claim.

Mr. Schmidt's conduct violated RPCs 5.5(a) and 8.4(d), by continuing to practice law after suspended by order of the Washington State Supreme Court; 1.15(a)(1), by failing to terminate representation if continuing would violate the RPCs; 8.4(l), by failing to discontinue practice upon suspension; 8.4(b), (c) and (i), by making a knowingly false statement under oath during a deposition and wrongfully obtaining control over client funds (theft); 8.4(l), by failing to notify clients, employer, and opposing counsel of his inability to continue representation; and failing to file written response to grievances and appear at deposition when subpoenaed; 1.15(d), by failing to take steps to protect clients' interests upon termination; 8.4(c), by providing a false answer to First Amended Formal Complaint; and 1.3, by failing to take action on a client's claim prior to expiration of the statute of limitations.

Joanne S. Abelson represented the Bar Association. Kenneth P. Schmidt represented himself. Veronica Alicea-Galvan was the hearing officer.

## Suspended

**Randy J. Fair** (WSBA No. 22918, admitted 1993), of Moses Lake, was suspended for one year, effective October 29, 2003, by order of the Washington State Supreme Court, approving a stipulation. This discipline was based on conflicts of interest and trust-account issues in a marital dissolution matter in 2001 and a wrongful garnishment in 2002.

**Matter 1:** In 2001, Lawyer A worked in the same law office as Mr. Fair. Lawyer A represented clients in a real estate contract forfeiture action. On January 20, 2001, Lawyer A served Ms. R with a notice of forfeiture on two lots. Ms. R lived in a mobile home on these lots. Ms. R met with Lawyer A regarding the forfeiture.

During this meeting, Ms. R expressed dissatisfaction with her dissolution lawyer. Lawyer A referred Ms. R to Mr. Fair. Ms. R told Mr. Fair that she wanted title to the two real estate parcels in the property division and explained that she was concerned about the forfeiture. Mr. Fair reviewed documents, including the forfeiture notice signed by Lawyer A. Mr. Fair did not explain to Ms. R that his office represented the sellers of the two lots in the forfeiture action. Mr. Fair did not obtain a written waiver of any actual or potential conflict of interest between these two representations.

Mr. Fair referred Ms. R to his brother, a CPA, to prepare a valuation of her husband's business for use in the dissolution matter. Mr. Fair did not explain or obtain a written waiver of any potential or actual conflicts of interest in referring the client to his brother.

In July 2001, Mr. Fair prepared, and the court signed, the final dissolution pleadings. The pleadings awarded Ms. R the two real estate parcels. Mr. Fair did not conduct a title search prior to finalizing the pleadings. The contract payments and property taxes were delinquent on both parcels, and the legal descriptions of these lots contained errors. Additionally, Mr. Fair used four-year-old financial and employment information to determine his client's child support.

In September 2001, Mr. Fair received \$13,600 from the opposing client, for attorney's fees, and current and back-due child support. In October 2001, Mr. Fair wrote the client about this payment, but did not specify the amount received or the amounts he disbursed to his firm and to his brother.

In October 2001, Lawyer A filed notices of intent to forfeit the two real estate parcels. Mr. Fair reviewed these documents. Mr. Fair obtained Mr. R's signature on deeds quitclaiming his interest to Ms. R. The auditor rejected the quitclaim deeds because of back-due taxes and errors in the excise-tax affidavits. In January 2002, Mr. Fair, after being promoted to partner, withdrew from representing Ms. R, because his partner was "pursuing a foreclosure sale upon realty owned by you." The client was evicted from her mobile home.

**Matter 2:** Mr. Fair represented Ms. B in a marriage-dissolution action. The May 2002 decree required her former husband (H) to pay attorney's fees by April 10, 2003. The court's order provided that attorney's fees unpaid by May 2, 2003 would become a judgment and accrue interest. On appeal, Ms. B was awarded an additional \$4,000, to be paid by November 22, 2002.

On September 11, 2002, Mr. Fair garnished H's bank account. Mr. Fair's affidavit did not explain that H could make these payments until November 2002 and May 2003. H retained counsel, who scheduled a hearing on the garnishment for November 15. H's counsel agreed to continue the hearing date at Mr. Fair's request. Counsel sent a letter to the court continuing the hearing, but the letter did not arrive until after the hearing on September 15. Mr. Fair attended the hearing and did not tell the court of his agreement to continue the hearing. Mr. Fair argued the motions on the merits, and the court denied H's motion and awarded Mr. Fair additional attorney's fees. The matter was settled after opposing counsel filed a motion for reconsideration.

Mr. Fair's conduct violated RPCs 1.7(a) and 1.10, by two lawyers associated in the same firm representing clients whose interests are directly adverse, unless the clients consent in writing after full disclosure; 1.7(b), by representing a client if the representation may be materially limited by the lawyer's responsibilities to a third person; 1.14, by failing to promptly deliver client funds upon request; 1.4(a), by failing to keep the client reasonably informed about the fees and costs disbursed from client funds; 1.4(b), by failing to explain to the extent necessary that Mr. Fair was holding child-support payments and that the client could challenge his removal of back-due child support; 1.3, by failing to diligently represent Ms. B; 3.1 and 3.3(f), by wrongfully garnishing Mr. B's bank account and failing to inform the court that he agreed to continue the hearing date.

Leslie Ching Allen represented the Bar Association. Leland Ripley represented Mr. Fair.

### Suspended

**Haim Habib** (WSBA No. 16060, admitted 1986), of Hagatna, Guam, was sus-

pending for 60 days, effective August 18, 2003, by order of the Washington State Supreme Court imposing reciprocal discipline based on an order from the state of California. This discipline was based on his failure to protect a client's rights upon withdrawal in a litigation matter.

In Guam, Mr. Habib represented a client for approximately eight years. Five days prior to trial, Mr. Habib told the client that the judge in the case was hostile toward Mr. Habib and suggested that the client meet with lawyer G in an attempt to find new counsel. Mr. Habib sent the client's file to lawyer G and arranged two meetings. The client was not able to attend either meeting. Mr. Habib did not seek the court's permission to withdraw and did not appear for the client's trial. Lawyer G appeared at the trial, told the court he would not take the client's case, and returned her file. The judge continued the case for one week. The client appeared *pro se*, and the court entered a \$76,570 judgment against her.

Mr. Habib's conduct was found to have violated Guam Rules of Professional Conduct 1.1, requiring lawyers to provide competent representation; and 1.16, requiring lawyers to take reasonable steps to protect a client's interests upon withdrawal.

Felice Congalton represented the Association. Mr. Habib represented himself.

### Suspended

**Jerry L. Kagele** (WSBA No. 4851, admitted 1972), of Spokane, was suspended for one year and reprimanded, effective July 28, 2003, by order of the Washington State Supreme Court following a hearing. This discipline was based on violations in six client litigation matters. For additional information, please see *In re Discipline of Kagele*, 149 Wn.2d 793, 72 P.2d 1067 (2003).

**Matter 1:** In May 1995, Mr. Kagele represented clients in a dispute with a residential contractor. In August 1995, Mr. Kagele filed the lawsuit, but did not tell the clients. Also, he named the bonding company, but did not perfect service, and failed to correct service when he learned of the problem. The clients told Mr. Kagele they wanted a jury trial, but he did not file a jury demand. Between

November 1995 and early August 1996, Mr. Kagele told the clients he had no new information about their case. He failed to inform the clients of their trial date. The clients retained new counsel. New counsel found no discovery in the client file. Mr. Kagele explained that the lack of discovery was part of his trial strategy. This strategy was not communicated to the clients.

**Matter 2:** In April 1997, Mr. Kagele represented clients in a dispute with a contractor. Although he promised to serve the complaint by April 14, the clients did not receive a draft complaint until late May 1997. The draft complaint named the wrong defendant. The clients terminated the representation.

**Matter 3:** In June 1996, Mr. Kagele represented a client in a dispute regarding an interest in a house she shared with another person. Between June and August 1996, Mr. Kagele failed to return many of the client's phone calls. In August, when Mr. Kagele had not filed a complaint, the client sent a letter terminating the representation. When Mr. Kagele received the termination letter, he left a message for the client's father and filed the complaint. On September 10, Mr. Kagele received a second letter from the client terminating his services. On that day, he filed a *lis pendens*.

**Matter 4:** In March 1998, Mr. Kagele represented clients in a dispute with their neighbors over blocking of access to an alley. Mr. Kagele drove by the disputed area, but never looked at the alley. The clients specifically asked to review the complaint before Mr. Kagele filed it. Mr. Kagele filed the complaint without allowing the client review. The complaint contained an erroneous legal description, failed to reference a prescriptive easement, failed to address the alley issue, and asked to quiet title to the centerline of the one-car-width driveway. On March 30, 1998, the clients terminated the representation. Mr. Kagele told the clients that he would commence litigation to collect the remainder of his fee, even though they had terminated the representation. In April, Mr. Kagele received a trespass warning from the neighbor's lawyer, but did not inform his former clients.

**Matter 5:** In April 1995, Mr. Kagele represented a client in an immigration matter. The client misrepresented her marital status to obtain a visitor's visa. On April 21, the client was married. Mr. Kagele did not effectively communicate to the client how to resolve the immigration issue.

**Matter 6:** In January 1996, Mr. Kagele assisted clients with loan transactions. The clients were not able to contact Mr. Kagele between February and April 1996. On April 15, one client wrote a letter terminating Mr. Kagele's representation.

Mr. Kagele's conduct violated RPCs 1.1, by filing a complaint with errors, and failing to review the complaint with clients prior to filing in matter 4; 1.2 by failing to abide by the clients' instructions to seek a jury trial in matter 1; 1.3, by failing to diligently pursue matters 1, 2, and 5; 1.4, by failing to keep clients informed as to the status of their cases in matters 1, 2, 3, and 6; and 3.2, by failing to promptly file pleadings and move cases toward resolution in matters 1, 2, and 3.

Sachia Stonefeld Powell represented the Bar Association at hearing, and Kenneth W. Masters on appeal. Kurt Bulmer represented Mr. Kagele. James M. Danielson was the hearing officer.

### Suspended

**Sidney S. Rodabough** (WSBA No. 4819, admitted 1972), of Kent, was suspended for three years, effective September 11, 2003, by order of the Washington State Supreme Court approving a stipulation. This discipline was based on his lack of diligence and communication in a medical-malpractice matter between 1998 and 2001.

In February 1998, Mr. Rodabough filed a personal-injury lawsuit for a client who had suffered complications from medical treatment. In March and April, two defendants served discovery requests, but Mr. Rodabough did not respond. He also failed to attend the August 1998 status conference. In September 1998, the court granted a motion to compel discovery and imposed sanctions against Mr. Rodabough, advising that any further noncompliance with discovery would result in dismissal of the client's complaint. Mr. Rodabough failed

to respond to the defendants' motion for summary judgment or appear at the second status conference. On September 24, 1998, the court dismissed the client's case, and the statute of limitations barred re-opening of the client's claim. Until September 2001, Mr. Rodabough continued meeting with the client and leading her to believe that her case was pending. On October 8, 1998, Mr. Rodabough filed a bankruptcy petition. In October 2001, the client learned that her case had been dismissed. She retained new counsel and filed an amended claim in Mr. Rodabough's bankruptcy.

Mr. Rodabough's conduct violated RPCs 1.3, by failing to respond to a summary judgment motion, meet case deadlines, and attend hearings; and 1.4, by failing to tell the client that her case had been dismissed.

Linda B. Eide represented the Bar Association. Mr. Rodabough represented himself. David K. Hiscock was the hearing officer.

### Reprimanded

**Philip G. Henderson** (WSBA No. 19135, admitted 1989), of Bend, OR, was ordered to receive a reprimand, effective October 2, 2003, pursuant to an order from the Washington State Supreme Court imposing reciprocal discipline based on an order from the state of Oregon. This discipline was based on conflicts of interest and contacting represented parties in a corporate-dissolution matter.

Mr. Henderson represented an interior-design business. Mr. Henderson's wife (S) and another person (G) each owned half the stock in the business. In May 1993, a dispute arose between S and G, and they began to discuss dissolving the business. Mr. Henderson advised the business on this dispute on one occasion, but did not disclose to his client that his judgment might be affected by his marital relationship to one of the shareholders. By June 1993, G retained counsel and Mr. Henderson continued to represent the corporation and S individually. The corporation's interest in continuing to exist may have conflicted with S's interest in dissolving the corporation. Mr. Henderson did not disclose this conflict to his clients. In July

1993, Mr. Henderson knew that G was represented by counsel, but he communicated directly with her on corporate matters.

Mr. Henderson's conduct violated DRs 5-101(A), by giving advice about dissolving to a two-shareholder corporation while married to one of the shareholders, without disclosure of the conflict and consent to continue the representation; 10-101(B), by continuing to represent the corporation and S individually when their interests were likely conflicting, without disclosing the conflict or obtaining consent to continue the representation; and 7-104(A)(1), by contacting G directly when he knew that she was represented by counsel.

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

### Reprimanded

**Jeffrey G. Poole** (WSBA No. 15578, admitted 1986), of Seattle, received a reprimand effective September 8, 2003, following a hearing. This discipline is based on his failure to properly manage his trust account in 2001 and 2002.

**Matter 1:** In August 2000, Mr. Poole represented a client in a contract dispute. In November 2000, Mr. Poole retained an expert, asking him to send his bill to Mr. Poole's office. In February 2001, Mr. Poole billed the client for attorney's fees and the \$500 expert-witness fee. Mr. Poole deposited the client's March 2001 payment, including the expert-witness fee, into his general account. In July, Mr. Poole wrote to the client, asking her to pay the expert directly. The client responded that she had already sent the money to Mr. Poole and directed him to pay the expert's bill. Mr. Poole paid the expert bill with interest on December 19, 2001, after the expert filed a grievance with the Bar Association.

**Matter 2:** In 2002, the Bar Association audited Mr. Poole's trust account. The audit found the following trust-account management issues: check registers without a running balance and failure to reconcile the check register to the client ledgers; incomplete and inaccurate client ledgers; earned fees retained in the trust account; disbursement of funds prior to deposits clearing the banking

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system; disbursement of funds prior to date of actual client deposit; and a shortage. The hearing officer found that Mr. Poole's conduct was negligent, not intentional. No clients actually lost funds, but this conduct caused potential injury.

Mr. Poole's conduct violated RPCs 1.14(a), by failing to place client money for expert fees in the trust account; disbursing funds of one client on behalf of another; commingling the lawyer's own funds with client funds in the trust account; and failing to wait for deposited items to clear the banking system before disbursing from the trust account; 1.14(b)(4), by failing to promptly follow the client's instructions to pay the expert fee; and holding funds of inactive client in the trust account; and 1.14(b)(3), by failing to maintain complete trust-account records.

Christine Gray and Randy Beitel represented the Bar Association. Kurt Bulmer represented Mr. Poole. J. Donald Curran was the hearing officer.



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#### **Business Law**

##### **Should Your Client Incorporate?**

July 22 — Seattle. CLE credits pending.  
By WSBA-CLE; 800-945-WSBA or  
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July 14 — Seattle. 6.5 CLE credits. By  
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#### **Estate Planning**

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#### **Ethics**

##### **Constitutional Law and the Ethics of Privacy**

July 15 — Seattle. 2 ethics credits. By  
Emerald Education Group;  
206-985-4351.

##### **Video Replay: Ethics in Civil Procedure**

August 12 — Vancouver. CLE credits  
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800-945-WSBA or 206-443-WSBA.

## Announcements

### Family Law/Estate Planning

#### Valuation of Assets

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

### General

#### Cross-Training 101: Just Enough Law to Spot the Critical Issues and Avoid Malpractice in 11 Areas You (May) Rarely Practice In

July 9 — Seattle. 7.5 CLE credits. By Emerald Education Group; 206-985-4351.

#### Negotiation Science and Psychology

July 20 — Seattle. 7.5 credits, including 1.5 ethics credits. By Emerald Education Group; 206-985-4351.

#### How to Write Letters Your Clients Will Appreciate

August 19 — Seattle. 2 CLE credits. By Emerald Education Group; 206-985-4351.

### Intellectual Property

#### Fundamentals of Patent, Trademarks

August 4 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Law Practice Management

#### Mastering the Business of Law: Client Service Strategies

August 19 — Seattle. 7.5 CLE credits. By Emerald Education Group; 206-985-4351.

#### Mastering the Business of Law: Finances for the Law Firm

August 20 — Seattle. 7.5 CLE credits. By Emerald Education Group; 206-985-4351.

### Litigation

#### WSTLA's 2004 Annual Meeting and Convention

July 22-25 — Skamania Lodge. CLE credits pending. By WSTLA; 206-464-1011.

#### Discovery without Despair

July 29 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

#### Judge Morgan on Evidence

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

### Technology

#### 2004 High Technology Protection Summit

July 16-17 — Seattle. 13.5 CLE credits pending. By UW-CLE; 800-CLE-UNIV.

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# Seems like just yesterday

by Lindsay Thompson, Bar News Editor

*It is not what a lawyer tells me I may do, but what humanity, reason and justice tell me I ought to do.*

— Edmund Burke, speech in the House of Commons, March 1775

*It was intended to be an expression of the American mind.*

— Thomas Jefferson, on the Declaration of Independence, May 8, 1825

**J**uly 4 is our holiday. We should brand it: "Independence: brought to you by America's lawyers and judges."

Two and a half centuries ago, our predecessors played leading roles in justifying and enacting the unthinkable: revolution in an age when state and sovereign were, literally, the same.

Most of them were young, too: in an age when life expectancy was limited, you had to get about things in life. Thomas Jefferson was 33 the year he drafted the Declaration.

Jefferson's legacy reaches across the centuries to us. We have his Declaration; his great university, his books in the Library of Congress. This year we begin the bicentenary observance of his great presidential venture, Lewis & Clark's Corps of Discovery, and consider all its attendant, if unintended, consequences for the original nations of the Northwest. We ponder his life, an elegant, French-inspired hall of mirrors that obscures as much as it illuminates his views of liberty, slavery, wealth, and poverty. He inspired the globe with his call of freedom, yet owned slaves. He was land rich but cash poor, yet spent and lived like a prince. He envisioned an agrarian America of small farmers but was drawn to big European cities and the latest gadgets and manufactures. He edited the Bible to suit his own tastes. He was the embodiment of many of the contradictions that embody our country to this day. Whitman could have had the Sage of Monticello in mind: "Do I contradict myself? Very well then I contradict myself. (I am large, I contain multitudes.)"

John Adams, then 41, aided Jefferson in drafting the Declaration. Three years later, the Massachusetts lawyer drafted the Constitution of the Commonwealth of Massachusetts. His work, too, reverberates to this day and time: the governor of Massachusetts has spent months trying to prevent court-sanctioned same-sex marriages, only to be hamstrung by John Adams.

Having experienced the passions of crowds and the majority's demand that virtue is a function of numbers, Adams wrote the constitution to be really, really hard to amend. He required any amendment to be passed by two successive leg-



islatures before being put to a vote giving people time to calm down and reflect a bit.

Fast-forward to Gettysburg, November 19, 1863. Lawyer Abraham Lincoln ensured that we now celebrate this 228th anniversary of independence as one nation, not two. His invocations of the mystic chords of memory gave him grounding at times when he felt he must break or suspend the law to achieve a higher purpose.

Fast-forward again, to the 1940s. Lawyer Thurgood Marshall and colleagues worked out a piece-by-piece strategy for dismantling the legal instruments of segregation. It took a quarter century to bring down the fortress. Other aspects of America's less admirable past persist in local traditions, resistant thinking, and things like antimiscegenation laws still on states' books 37 years after being declared unconstitutional. It's a nice irony that Massachusetts' law, passed in 1913, was revived this year to prevent same-sex couples from other states marrying there.

Today some judges and lawyers try to freeze the Founders in amber: nothing they didn't know can exist in law. But the Founders were revolutionaries. They had prices on their heads. "We hold these truths to be self-evident," Jefferson wrote, "that all men are created equal, and are endowed by their Creator with certain inalienable rights ..." They created a new thing under the sun. To the end of their days, Adams and Jefferson traded letters about the latest in arts, science, and human nature. They expected and embraced change.

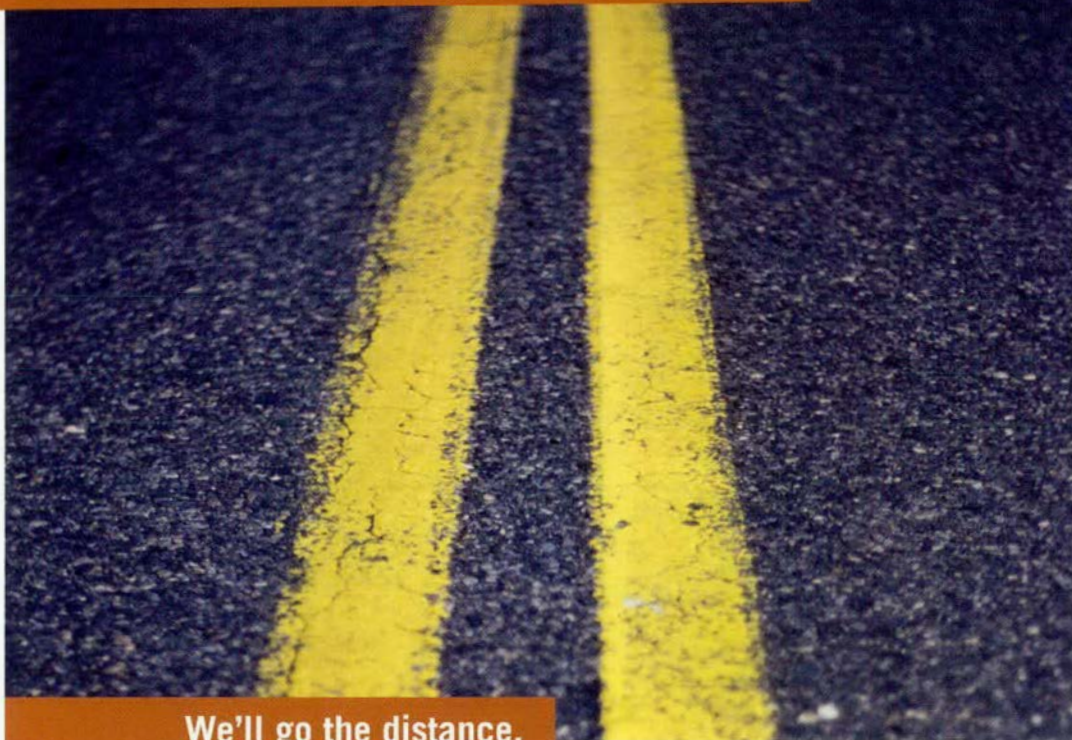
Thus the genius of the American system: slow to change, yet always under pressure to do so. The victory of any point of view is, at best, temporary. We all live to fight another day. It's democracy as open-source software: anyone who has a better idea can toss it out there.

July 4 is my favorite holiday. I spent the Bicentennial Fourth on the Mall in Washington, a young congressional intern wandering from event to event with two college friends amid a happy crowd of two million Americans. July 4 is a stocktaking day, assessing the blessings of liberty and the threats to it. Lawyers and judges are on both sides of challenges to liberties we take for granted, in the name of safety and security. At the center of every debate we have in America, there are lawyers, judges, and courts, backing, filling, advancing, redefining, the remarkable expression of the American mind. ✍

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*Lindsay Thompson practices in Seattle and can be reached at [tradelaw@thompson-law.com](mailto:tradelaw@thompson-law.com).*

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