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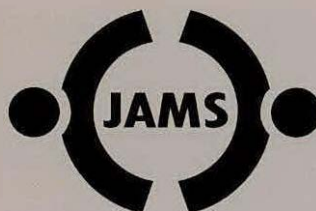
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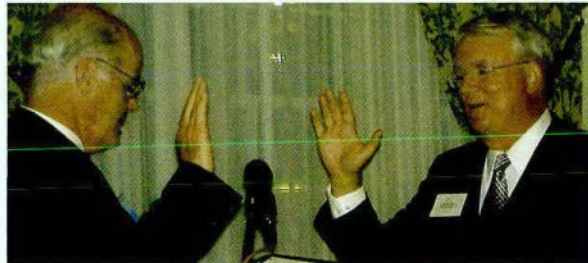
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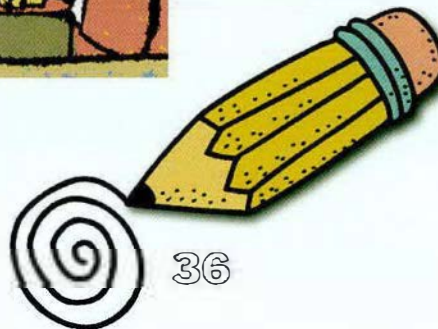
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On the cover: Brooke Taylor arrives in Seattle from Port Angeles via Kenmore Air ready for duty as 2005-2006 WSBA president. Photo by Todd Timmcke.

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## Letters to the Editor

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 be no more than 500 words in length, and that they be e-mailed to [letterstotheeditor@wsba.org](mailto:letterstotheeditor@wsba.org) or mailed to WSBA, Attn: Letters to the Editor, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330. 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.

### Licensing nonlawyers leads to bad drafting

I agree with the comments in the letter to the editor titled, "Licensing Nonlawyers Is a Bad Idea" (*Bar News*, June 2005). Additionally, since "legal technicians" have been authorized to draft deeds, I have seen hundreds of errors contained in deeds drafted by them. Further, the "form" real estate contracts utilized by them have caused several of my clients financial damages.

*George Wolcott, Richland*

### Property rights, gay rights show courts out of control

Perhaps President Ward should examine attacks on the justice system ("Attacks on the Judiciary — Living in Bizarro World," *Bar News*, July 2005) and the rule of law emanating from within the ranks of judicial officers.

Let's start with the usual — but important — disclaimer about opposition to violence against the judiciary in any form. I neither advocate nor condone any such violence or the incitement to or suggestion of such violence.

No branch of government is or should be immune from debate concerning its actions, the results of those actions and possible reform where necessary to mitigate the repetition of problems. As President Ward concedes, "Judicial independence does not mean that judges are free to decide cases according to their own whims or prejudices."

But, starting with a turn during the New Deal, many in the judicial ranks have

undertaken to develop and implement social philosophies as opposed to judicial philosophies regarding their role in the third branch of government, especially in the interpretation of the Constitution.

The primary role of judges is to observe the social policies enacted by the Congress and determine — as cases arise — whether they comport with the Constitution. Instead, we have judges adopting as constitutional law their individual views of social policy. Ninth Circuit Judge Steven Reinhardt — the most reversed judge in the nation — asserted in a recent

interview that "social justice," not neutral interpretation, should serve "as the guiding principle of the judicial branch." This lack of restraint finds a home in judges and observers of all political stripes. Outcome-oriented decision-making is the result, with decisions applauded and booed by political opposites. Thus, much of the justified criticism of the judiciary is based upon the departure by judges from their appointed role in the separation of powers for which there are no real remedies. It took a civil war to overturn one of the most heinous Supreme Court



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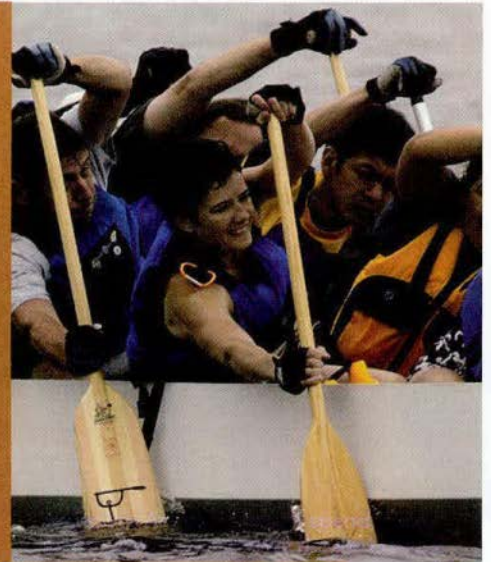
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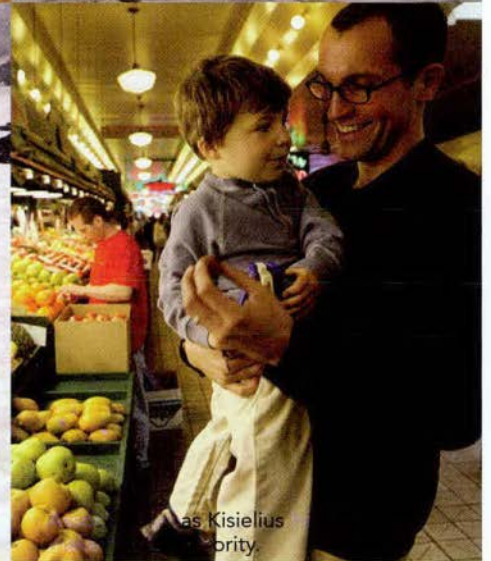


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decisions. *Scott v. Sanford*, holding that African-Americans were not "citizens" entitled to protection under the Constitution, a classic case of result-oriented judging.

What competent judge does not initiate the interpretation of a statute with a careful study of the statutory language, the contemporaneously expressed legislative intent and the circumstances at the time of enactment? Why should that be such a foreign process when interpreting the Constitution? Yet many attorneys applaud and vigorously support judges when they speak of the "living, breathing Constitution," a phrase that is always a prelude to the departure from the words, intent and import of the Constitution. Thus, the recent decision, *Kelo v. City of New London*, to expunge the words "for public use" from the Fifth Amendment provision respecting eminent domain is applauded by result-oriented urban planners, without regard for the truly scary principle (or lack thereof) behind that result.

And how does a lawyer who supports the rule of law explain to laypeople the Supreme Court's reversals of very recent cases involving constitutional jurisprudence? What constitutional amendment was adopted between 1986 (*Bowers v. Hardwick*) and 2003 (*Lawrence v. Texas*) that changed sodomy from an act which state legislatures had authority to punish (if they so voted) to a constitutionally protected right? And when was it between 1989 (*Stanford v. Kentucky*) and 2005 (*Roper v. Simmons*) that the states approved an amendment to the Constitution that prohibited the execution of minors aged 16 and 17 at the time they committed their crimes? Both opinions neglect to speak of the origins and intent of the constitutional provisions applied, instead citing supposed changing public opinion and laws in foreign countries. As matters of social policy, people can and have taken principled positions on both sides of these issues. But those who truly believe in the rule of law should be frightened by the fact that the meaning of the Constitution can change in less than 20 years — without a Constitutional amendment. What principle or rule of law will restrain the Court from once

again reversing such decisions within the next 20 years?

Attacking such decisions is not attacking the rule of law. The rule of law posits a stable and knowable legal regimen that allows a citizen to confidently order his or her affairs to comport with the law. The *Lawrence* and *Roper* decisions are poster children for the ultimate in arbitrary and capricious judicial pronouncements. They demonstrate the complete absence of predictability and thus undermine the rule of law.

Thus, what we have in many appellate courtrooms is not the rule of law, but the rule of personality, of social preference, of political motive, of individual belief transmuted into binding decisions for which there is no remedy in our constitutional structure. In such an environment, lawyers should expect confusion, criticism and lack of respect from ordinary citizens. And yet bar associations — led by folks like President Ward who miss the point entirely — engage in hand-wringing attacks on the critics and calls for the legal class to circle the wagons and get the WSBA Public Relations and Media Relations Committee in motion to defend judges, whether their decisions are defensible or not. In an unwritten but harshly enforced rule [watch the letters to the editor which follow this one], it is forbidden for lawyers to point out

judicial departures from the rule of law, even though lawyers are encouraged to participate in the reform of the law and its administration.

The answer can only be to elect and appoint judges who understand their limited role in the third branch of government. In the absence of such judicial selections, we will see continual decline in the rule of law to the point where organized resistance may be perceived as the only remaining remedy by a significant percentage of our society. I don't want to live in that kind of world, so I will continue my efforts to reform the judiciary and judicial decision-making and I urge other lawyers to join me in that endeavor.

Marc Bond, Anchorage, AK

### Bizarro World has two parties

We couldn't agree more with WSBA President Ward's recent column and his call to action to maintain an independent judiciary free "from fear or favor, based on the law and the facts of each particular case." Indeed, an independent judiciary is crucial.

However, we disagree with President Ward that this "Bizzaro World" is a new place. In fact, the threats of politicians to weaken judicial independence are nothing new. Lest we forget, the greatest

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threat against the judiciary's independence came in the 1930s when President Franklin D. Roosevelt threatened to pack the U.S. Supreme Court by enlarging the court to 12 members — three of whom he would appoint — in order to pass his New Deal legislation. Following this threat, the Supreme Court reversed course and expanded Congress's powers relative to the laws that Congress and President Roosevelt supported (known as the "switch in time that saved nine"). Whether you feel the "switch" made our

society better or worse, the political threat and the judicial reaction cannot be supported by proponents of judicial independence.

We also applaud President Ward's statements that "judicial independence does not mean that judges are free to decide cases according to their own whims or prejudices. It means that judges have the authority to exercise their constitutional obligation to make hard decisions, unpopular decisions . . ."

While we noticed that President Ward

cites the statements of Republican politicians and other known conservatives in support of his contention that we are living in "Bizzaro World," we are certain his call to action also applies when liberals and Democrats are fighting against the independence of the judiciary — such as we see today when a well-respected but clearly conservative attorney, John Roberts, is nominated to be on the U.S. Supreme Court and attacked for his philosophy rather than celebrated for his ability. Surely for attorneys the "call to action" also includes speaking out against the litmus test of abortion rights and other hot-bed political issues in favor of judicial independence?

Any other result and we are indeed doomed to the "Bizarro World" we create.

*Marc and Debra Defreyne, Olympia*

### Oligarchy much more efficient than democracy

It is certainly appropriate for President Ward to address the issue of the state of the judiciary in Washington and the country, but he almost totally missed the real issue regarding judges. The real issue is not whether we have, or should have, an independent judiciary. No one is seriously questioning that. The real issue is that the judges have become too independent, essentially ignoring the other two branches of government. They have become activist legislators instead, frequently thwarting the will of the people as expressed through that other legislative body, the legislature. Judges, in too many instances, have decided that they know better than the elected representatives of the people. Nowhere is this more apparent than with respect to social issues, such as abortion, the free exercise of religion, and issues dealing with homosexuals.

The fact that these activist judges are legislating, rather than judging according to what the Constitution says, is why we have U.S. Supreme Court decisions, issued on the same day, no less, and construing the same constitutional wording, that nonsensically allow a display of the Ten Commandments in one public place but not in another. That is why the Court can willfully ignore the 5th Amendment



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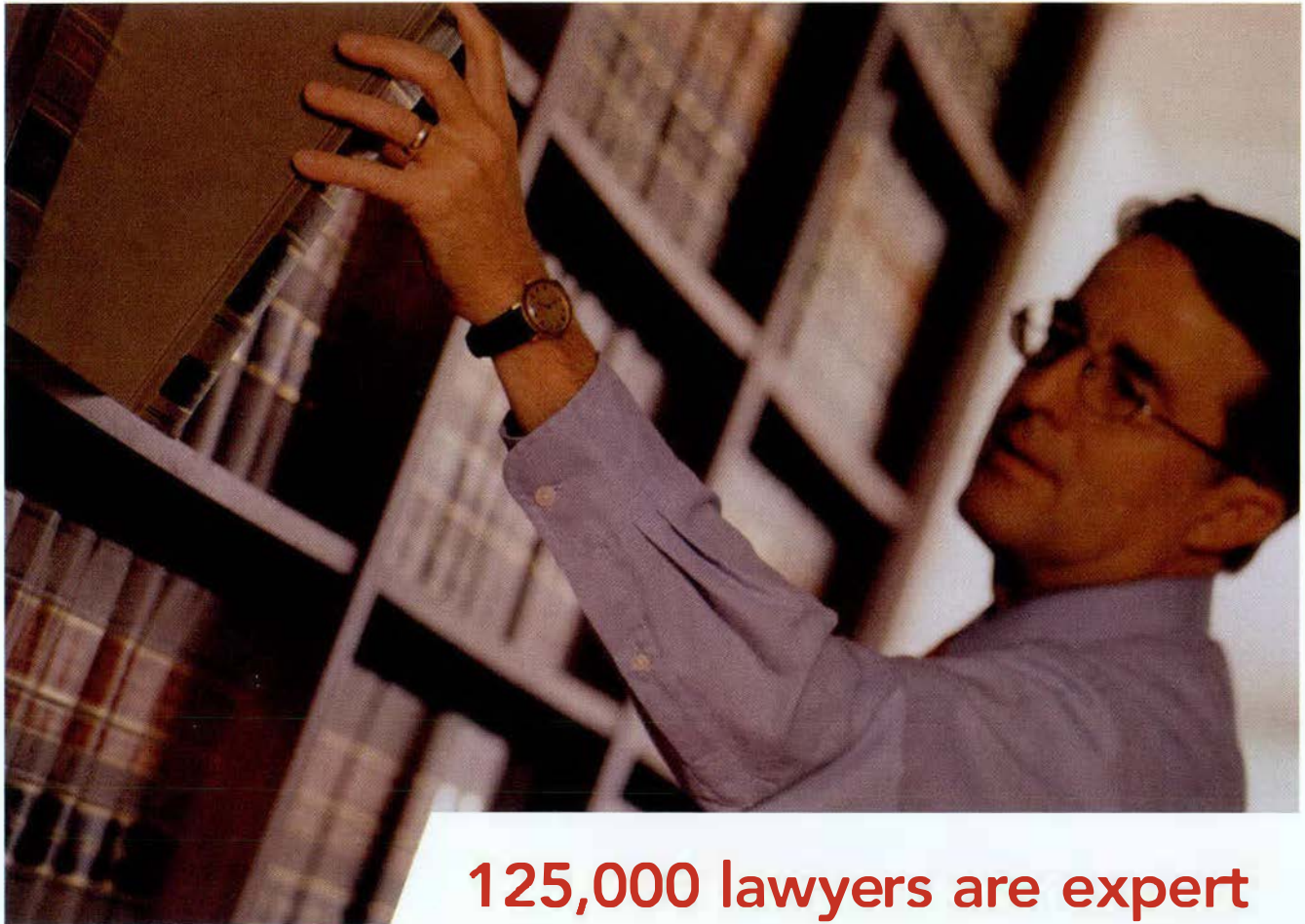
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to the Constitution, which expressly restricts the government's use of eminent domain takings to "public use," and threaten the most basic rights we thought we enjoyed under the Constitution. That is why the Court can "decide" that a law banning partial birth abortion is unconstitutional, with no constitutional basis for the decision. That is why the Court considers sociological arguments, historical trend analysis, opinions or laws from other countries, anything but the actual wording of the Constitution. That is why the Court is actively tearing down the moral consensus that previously existed in this country, in favor of a philosophy of radical autonomous individualism. This activism by the judiciary has indeed had disastrous cultural results.

But in his almost puerile eagerness to berate and censure all with whom he disagrees — namely Republicans and persons who take their religious faith seriously — President Ward is blind to reality. (Incidentally, it seems to me that he is the one guilty of "demonization" and being "out-of-control.") The fact is that the majority of Americans currently vote Republican and hold views that are distinctly at odds with the views of you and the elite groups of the left. And since you and those like you have not been able to persuade a majority of Americans to agree with you, you have concluded that democracy and majority rule are the evil inventions of the right ("bizarro world"). Thus, for you, judicial oligarchy is the better way to go. After all, under this system, you only have to persuade a judge, who already agrees with your views anyway, and generally cares not a whit for what the Constitution actually says. Ideologues of the left, like you, are afraid of the legislative branch of government. It's too slow, it doesn't keep up with the times and it's much easier to get a judge to agree with you, and the representatives of the people be damned.

There is no doubt that this country is faced with grave danger from this judicial activism. And until lawyers understand this, we can expect further erosion of our basic rights. As a leader of the association of lawyers, you would do well to use your position to elucidate the real issues.

*James A. Winterstein, Olympia*



*Clockwise from left: Vernon Smith, Douglas Cowan, William Kirk, Garth O'Brien*

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## Less attacking means better debating

Mr. Ward: I'm not a letter-to-the-editor writer, but I do want to thank you for your thoughtful article on the attacks on the judiciary. These attacks seem dangerous

to me, but are also part of a trend in our society toward attacking anyone who disagrees with the attacker's philosophy. Let's hope for a return to civility and respectful, reasoned discussion.

*Helene C. Blume, Everett*

## Trampus Borders comes from a big family

How many Trampus Borders have we all seen in our practices ("A Plea for Trampus Borders," *Bar News*, August 2005)?

I would only add this to Royce Roberts' poignant piece about the hapless Trampus:

Trampus is far less blameworthy than the American politicians, generals, and high command who have ordered the hundreds of tons of depleted uranium dropped on the Iraqi people. This hideous poison will harm the people and decimate the environment of Iraq for millions of years to come.

And . . . Trooper Jones, who brutally hog-tied Trampus and tossed him into the back seat of his patrol car, should be ordered to enroll in an anger management course, at his own expense.

*Patricia Michl, Sumner*

## Let juries decide

I applaud the WSBA Board of Governors for having the courage to take a stand against Initiative 330, an Initiative which, when scrutinized even cursorily, is clearly anti-consumer, special interest legislation of the most evil kind: legislation aimed at ripping the heart of our constitutionally based civil justice system that has served this state so well for many decades solely for economic gain by its proponents.

Proponents of I-330 state that passage of their Initiative will lower insurance rates. However, they have cleverly failed to write any mandatory premium reductions into the Initiative, nor have premiums gone down in other states that have enacted damages caps. Why should anyone believe that Washington will be any different? Furthermore, I-330 proponents also fail to point out the ugly side of damages caps: when the amount of the combined economic and non-economic damages awarded to a catastrophically injured claimant are insufficient to meet the injured person's true future needs, who ends up holding the bag? Not the insurance company; the claimant cannot go back to court and say "Wait, we need



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to take another look at this; the award wasn't sufficient to take care of my future needs!" No, we the taxpayers, or our personal health insurers end up holding the bag — instead of the wrongdoer who caused the harm. Malpractice carriers, in truth, to increase their profits seek through Initiative 330 to have others bear the costs of their wrongdoing.

State Bar President Ron Ward's column, "Initiative 330 — The Medical Malpractice Initiative," which appeared in the August 2005 issue of the *Bar News*, using facts instead of the misleading anecdotes favored by proponents of I-330, hits the nail on the head. Proponents of I-330, ignoring all evidence to the contrary, argue that "runaway" jury verdicts are the cause of increasing malpractice insurance costs for doctors. Mr. Ward adroitly points out the fallacy of this argument, and further points out the hypocrisy of those pushing for jury reform: they (including President Bush, who as Governor of Texas signed more death warrants than any governor in history up to that time) allegedly believe that juries are incapable of making reasoned and rational decisions when it comes to awarding damages to injured people, but then almost blindly trust the decisions of juries when they are entrusted to decide matters of life and death in death penalty cases. These same individuals seem to believe that juries are more than capable of making large dollar decisions when businesses sue businesses, but not in injury cases.

Furthermore, if, as I-330 proponents allege, juries so often make awards far outside of that justified by the evidence presented to the jury, why is it the *defendants* who so often demand that juries decide civil cases? For example, insurers like Allstate and Progressive (and others) routinely appeal most Mandatory Arbitration (MAR) awards, and rather than routinely paying arbitration awards rendered by an experienced lawyer presumably not influenced by passion or prejudice (or prone to making awards unsupported by the evidence) they demand a trial *de novo* before a jury. Why would they do this if juries were truly out-of-control and "routinely" made large awards unjustifiably? These same companies also usually refuse to

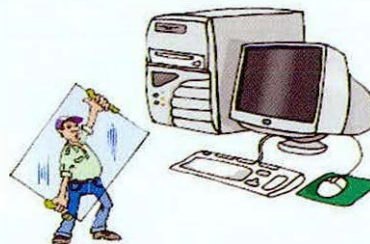
arbitrate contractual uninsured motorist claims before presumably reasonable arbitrator-lawyers, instead choosing to force their insureds to pursue more costly and time-consuming jury trials. Again, if juries are truly so out of control and routinely make awards not justified by the evidence, why do they do this? It appears to me that there is a rat in the Initiative 330 soup!

The BOG has done a very courageous thing — and the right thing — in publicly coming out against Initiative

330. Thanks, Mr. Ward, for a truthful and well researched article on this draconian Initiative, and thank you to the WSBA Board of Governors for representing the best of what our profession stands for: what is right and what is just. You have served your profession well in taking the position that you have taken, and can be proud of the person that you see in the mirror. I'm not so sure proponents of I-330 can say the same thing.

*Bradford J. Fulton, Everett*

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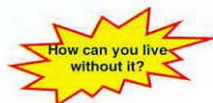
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*—Dan Molitor, client*

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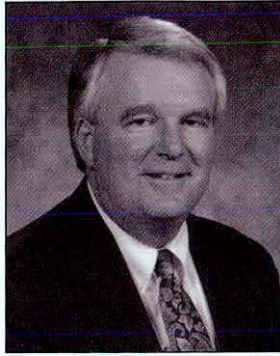
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# Rebuilding Faith in an Independent Judiciary

## Why We Lost It and How We Can Get It Back

S. Brooke Taylor, WSBA President

**E**ach WSBA president can select a theme or initiative for his or her year at the helm. You have from your election in June until September of the following year to figure it out, but if your choice will involve significant planning and preparation, you need to get with it as soon as possible.

### Communicating with All Members

Having told the Board of Governors in my election interview that, if elected, I would visit every county and specialty bar association that would have me (and I will), I already had something in mind involving better communication with members. Perhaps because of my rural location, this has been a theme of mine throughout my volunteer work with the WSBA. I feel strongly that this is something every president should do, and I finally realized that this is something I will do regardless of any initiative I might launch.

### A Revealing Case

When the Terri Schiavo case hit the national news, it caught my attention for what it revealed. What should have been a very private family tragedy became a daily feature on the television news and front pages around the world. An unassuming jurist who would have never sought this case, or the attention it generated, became the unwitting poster child for the rule of law, separation of powers, checks and balances, and judicial independence. This case from a state trial court in Florida highlighted those transcendent principles like no other in recent memory.

The Schiavo case also revealed an alarming lack of public understanding of those four foundational elements of our democracy. From the highest levels of government to public outrage across the land, the vilification of a state trial judge who was just doing his job, and by all objective accounts had done it very well, was a call to arms for all of us in the legal community.

To say that the branch of government which we proudly serve is poorly understood is an understatement. When the U.S. Congress rushes to pass an eleventh-hour bill to hijack a state trial court proceeding for the legislative branch, and when the governor of that state attempts to intervene on behalf of the executive branch, to call it anything less than a crisis is naïve. These blatant invasions of the exclusive province of the judiciary were done without even a passing nod at the doctrine of separation of powers.

The Schiavo case has passed, and Judge Greer will survive, but the level of misunderstanding which it exposed imperils the future of our democracy. Oliver Wendell Holmes characterized the judiciary as “the crown jewel of our democracy,” yet we who understand that characterization have done a dismal job of explaining it to others. How often have we heard voters question how “some judge” can throw out an initiative passed by the people? A talk-show caller opines that Congress shouldn’t worry about court security issues because the judges can just “order it” like they do everything else. A very articulate physician asked to write an opinion piece for *USA Today* concludes that he and

his colleagues “should not have to just blindly follow the order of some judge.” Key national political figures such as house majority leader Tom Delay, former U.S. Attorney General John Ashcroft, and others, have come up with catch phrases such as “judicial autocracy,” “these out-of-control judges,” and “intrusive judicial oversight.” This demonization of an entire branch of government is unprecedented in the history of our nation, and strikes at the very heart of our democracy.

A representative form of government must earn and maintain the support and confidence of the electorate to survive. In particular, that branch of government which mediates all disputes, which protects basic freedoms, and which stands between citizens and the other branches of government, must, above all, be credible and reliable. The more citizens know and understand about what lawyers and judges really do, the way the judicial system functions, and its critical role in preserving and protecting our democracy, the more attention will be paid to funding our courts, to providing security for our judges, and ultimately, to both the selection and protection of our judiciary.

### Teaching the Electorate

These four fundamental principles — the rule of law, separation of powers, checks and balances, and judicial independence — are the four corners of freedom and stability. Within these four corners lies an incredible tapestry woven together by independent judges and committed lawyers which is the envy of the rest of the world. These fundamental

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principles are not complicated. This is basic stuff. This is Government 101, and who better to teach it than the members of our profession — those of us who live and breath it (and sometimes lose sight of it)? DeToqueville concluded that the success of the American “experiment” with democracy depended on an educated electorate. Who better to teach the electorate about the critical role of the judiciary than lawyers and judges? We must start viewing every day as a teaching opportunity.

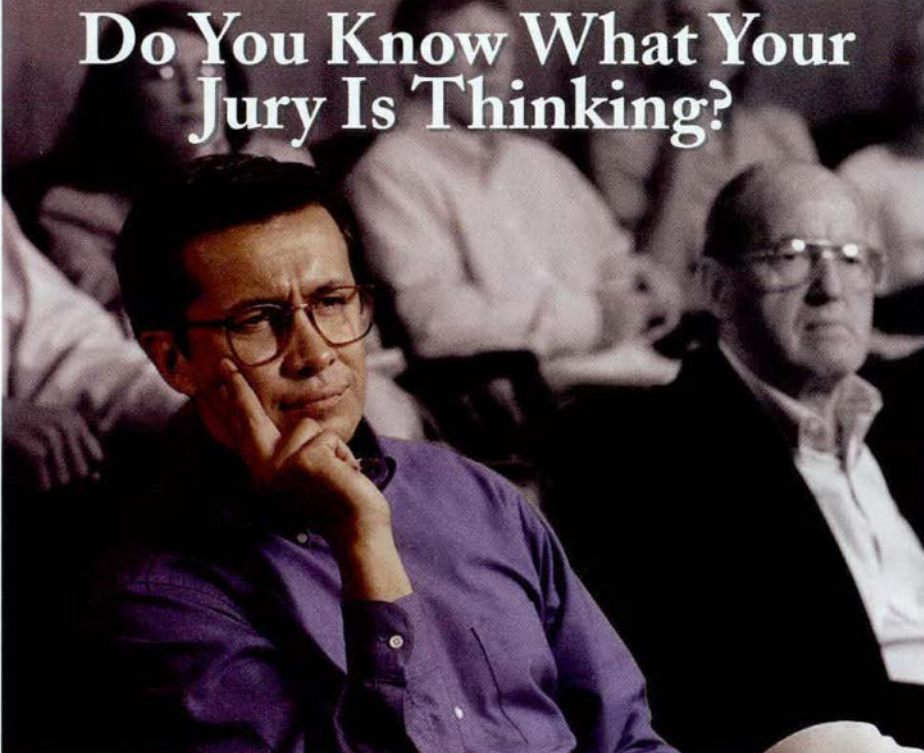
#### Back to Basics

This is not about burnishing the image of lawyers in our society. This is about standing up for what we believe in a time of crisis. This is about protecting that which protects all of us. This is about telling our story. If, in the process, the credibility of our profession is elevated in any way, that will be a welcome, but unintended, consequence. It's time to get “back to basics,” and I ask my colleagues in the Washington State Bar Association, both lawyers and judges, to join me in this effort.

Clearly, this must be a long-term endeavor, institutionalized as a WSBA program. This ground wasn't lost in a day, and it won't be regained in a day. But our immediate goal for this year is to get started — not just with thinking, planning, and structuring, but with sharing what we know at every opportunity. We can all help immediately in this effort by looking for teaching opportunities in our daily lives — with clients in our office, with friends in our church or service club, with our children at the dinner table, with citizens in our public courtrooms — these are all educational opportunities. Use the Schiavo case as a springboard to explain these core principles. Shine the light on examples of abuse, and highlight when the system works. We can do this. More to follow. <sup>BN</sup>

Brooke Taylor may be reached at 360-457-3327 or [sbtaylor@plattirwintaylor.com](mailto:sbtaylor@plattirwintaylor.com). If you would like to write a letter to the editor on this topic, please e-mail it to [letterstotheeditor@wsba.org](mailto:letterstotheeditor@wsba.org) or mail it to WSBA Bar News, Attn: Letters to the Editor, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

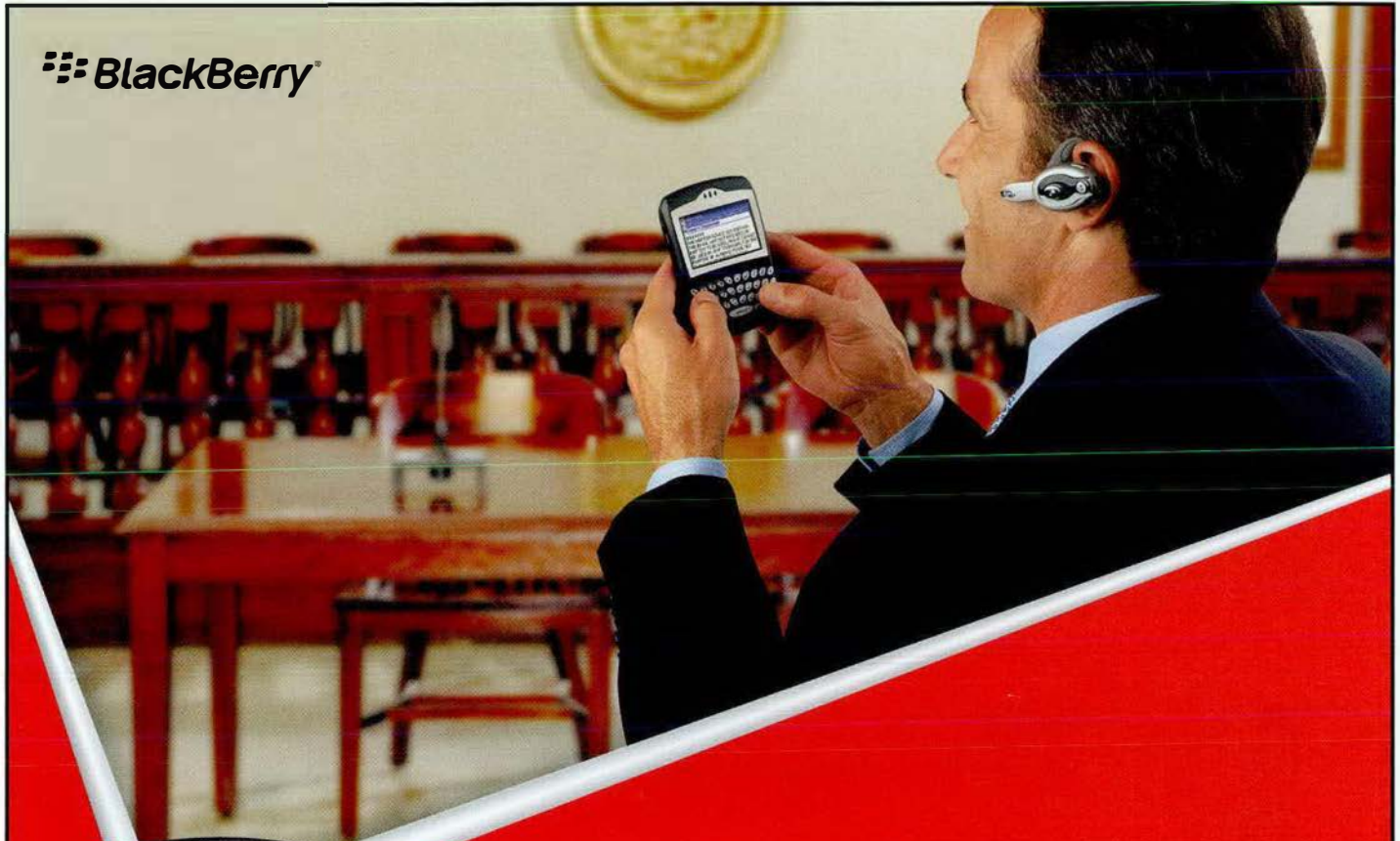
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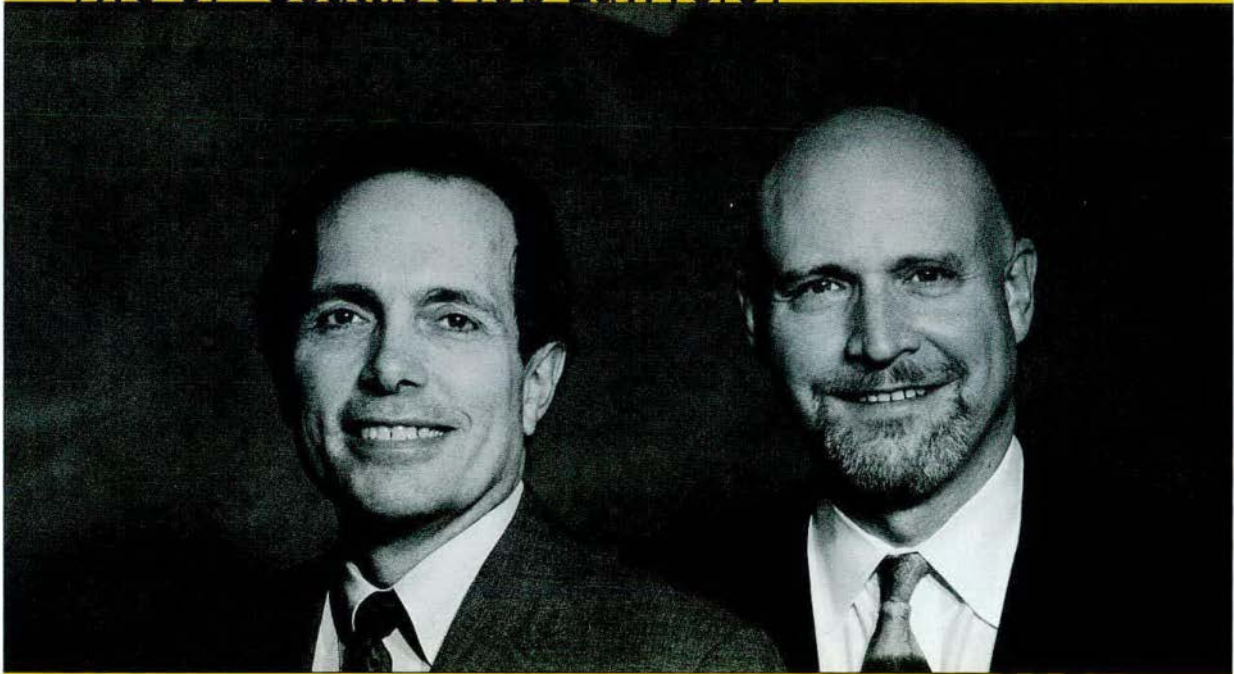
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# The Year Ahead

## What's in Store for Bar Year 2005-2006

M. Janice Michels, WSBA Executive Director

**A**s we launch Bar Year 2005-2006, I want to let you know what you'll see and hear the WSBA working on. Every year seems able to deliver its own surprises, and some of our best-laid plans can get diverted, but as we enter the new year, here's what I see ahead.

### The Board of Governors

The WSBA has five new governors on the Board: Liza Burke, Eric de los Santos, Doug Lawrence, Salvadore Mungia, and Kristal Wiitala. This group represents many vanguards of diversity and interests, and changes the profile of the Board in valuable and important ways. The Board is now 36 percent female (five women); 28 percent diverse (four persons representing one or more elements of diversity); 21 percent Young Lawyers (three governors meet the "Young Lawyer" criteria); 43 percent (six governors) practice in small firms; 21 percent (three) practice in larger firms; and governors represent government, legal services, corporate counsel, and plaintiff and defense counsel. We have a new president, Brooke Taylor, who brings a small-town, rural-county perspective, and a new president-elect, Ellen Conedera Dial, only the third female president-elect in our history. This is a remarkable board for its representativeness, interests, and backgrounds. The Board will meet eight times around the state and continue listening sessions with local bars while in their area. The Board will also continue its work in countless committees, task

forces, and workgroups, and as liaisons to the sections and committees. This is the Board and officers who will deal with the following significant issues in 2005-2006:

### Legal Technicians

The possibility of licensing nonlawyers to do isolated segments of legal work has generated a great deal of interest among members, the Court, the legal-services community, and the nonlawyer legal community. Regardless of what position the WSBA takes on this matter, there will be countervailing pressures — the issue promises to keep the year exciting.

### RPC Revisions

There is likely to be a whole-scale revision to the RPCs to conform them closer to the ABA Model Rules, which will require education, explanation, and possible refinements. With the chair of the Ethics 2003 Committee, Ellen Conedera Dial, now the WSBA president-elect, the Board is in an excellent position to deal with any exigencies around these new rules.

### Medical Malpractice Initiatives

This is an issue the WSBA did not choose, but one that has been thrust on us. The Board and members have grave concerns about the constitutionality of some provisions in I-330 and two of the provisions in I-336. Regardless of the content of the initiatives and individual members' opinions of the initiatives, we all recognize the damage to the profession that the campaigns may cause. The WSBA's work will be to deliver a

message that is non-defensive — a defensive posture would be futile, and our goal is to help the public understand the facts behind the rhetoric that may surface in the flurry of the campaign. We all anticipate having to be alert and responsive because, regardless of what the voters choose to do, something will need to be worked out in the Legislature if they both fail; or, if either or both pass, in the courts.

### WSBA Headquarters Move to Puget Sound Plaza

Characterized simply as "The Move," the relocation of the WSBA office will take significant time and energy in 2006. We aim to achieve the correct balances of good working space for staff, flexible professional conference space, and a convenient and welcoming atmosphere for members. The Board's Facilities Committee, WSBA staff, and newly selected project manager Doug Swan Associates will make it happen!

### Further Expansion of Member Services

On the table for progress in 2006 are adding to the Casemaker database and promoting this no-fee service to members; implementing sponsored disability insurance; and investigating, with our new sponsored liability and medical insurance broker, a true group medical insurance plan rather than simply a sponsored plan.

### Justice in Jeopardy — Phase Two

The achievements of 2005 were pivotal

in principle, and we need to continue to pursue adequate funding for court operations, indigent criminal defense, and civil legal services. We know what is needed, we have developed a good network of support, and we have an effective infrastructure under the leadership of Chief Justice Alexander. We must maintain our momentum and stick to the principle that justice requires adequate general-fund support.

### **Public Defense Recommendations**

The WSBA Committee on Public Defense was created to plan remedies to the findings of defense inadequacies from the Blue Ribbon Panel on Public Defense, co-chaired by Marc Boman of the Perkins Coie firm and former Chief Justice Robert Utter. The Committee will begin making recommendations for Board consideration in the areas of revised standards, non-legislative mechanisms for process improvements, enforcement of defense standards, death penalty process revisions,

and elected official education on the right to counsel. We must continue to champion adequate defense.

### **Promoting Diversity**

The WSBA has taken many significant steps toward ensuring diversity in the legal profession and its leadership. We are working to be inclusive and culturally competent to all members and their representative organizations, but fledgling relationships can be fragile. The Board, officers, and WSBA staff will embrace diversity training, promote contact and familiarity with all types of diversity, and consider all the recommendations presented on ways to eliminate bias and oppression and promote truly equal treatment.

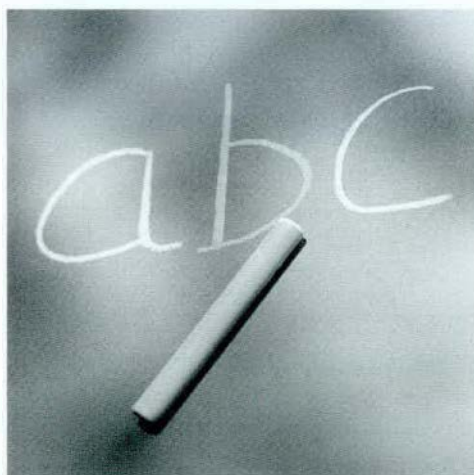
### **Public Education on the Tenets of Our Democracy**

The Council for Public Legal Education has been working for four years to restore civics to the public school curriculum, but this long-range solution to the public's misunderstanding of key democratic concepts such as

separation of powers, independence of the judiciary, and the rule of law, needs more immediate and repetitive education. President Taylor writes (in his column on page 17) about the effort he intends to mobilize, and how every member and every judge can join in this essential task.

### **The Budget**

The Bar Year will operate on an adopted budget of \$16.5 million. Revenue is made up of 60 percent license fees; 15 percent CLE; and 25 percent other revenue such as bar exam fees, service fees, and sales. This revenue covers expenses of admission, discipline, regulation, continuing legal education, member services, and overhead, while maintaining necessary emergency reserves and a moving-expense fund totaling approximately \$1.3 million. As in the past two years, this is an inflation-only budget and the Board adopted a license-fee plan for the next four years which continues to operate on this premise. Full, detailed breakdowns of the WSBA's actual revenue and expenses, as well as



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### **WSBA Executive and Deputy Director, Department Directors, and Staff**

The Bar staff works to maintain the WSBA's core activities and supports the Board of Governors in dealing with the issues outlined above. The WSBA's regulatory functions are directed by General Rule 12 and include the day-to-day work of the regulation of the practice of law, which includes admissions, licensing, discipline, and mandatory continuing legal education compliance. These functions consume the majority of the WSBA's resources and cannot be compromised or curtailed. The WSBA also provides other important services to members, such as the Lawyers' Assistance Program, Law Office Management Assistance Program, ethics call-in line, and continuing legal education. The WSBA also handles media relations, provides publications and brochures to the public, supports and coordinates bar leader programs, maintains a comprehensive website (more than 5,000 pages), sponsors the Access to Justice Board and its work, promotes diversity in the profession and leadership, and administers the sections. To support all these activities, we also need administration and technology services.

WSBA staff, functioning somewhat like the executive branch to the Board of Governors, has the internal goal of making the WSBA the best integrated bar in the country. In recent years, the WSBA has been recognized as a leader in innovative services to members, offering a continuum of disciplinary services including consumer affairs to resolve developing lawyer-client problems before they surface as grievances, diversion of less-serious misconduct to remedial services like the Law Office Management Assistance Program or ethics training, and implementing member benefit programs such as the WSBA Leadership Institute, the diversity advocate position, and effective governance techniques.

### **We Can and We Will Do It!**

Some see the WSBA as a huge ship

whose direction is not easily redirected or whose course is not easily changed. Others consider the WSBA necessary but not particularly relevant to members. On the other hand, the Board of Governors and WSBA staff are committed to listening to members and being responsive to their concerns. Together, we treasure our ability to protect the public and the reputation of lawyers, our member goodwill, sound fiscal position, and our solid relationship with the Supreme Court. Working with the many volunteer leaders, we're setting off on a year focused on diversity and

cultural competence, starship regulatory services, and educating the public about the role of the judicial branch in maintaining our democracy. We have the resources to do this important work, tackle new issues, and work toward public education about the rule of law and role of the judicial branch. The Board, officers, and the WSBA staff look forward to our year together: it promises to be another great one! *BN*

*Executive Director Jan Michels can be reached at [janm@wsba.org](mailto:janm@wsba.org).*

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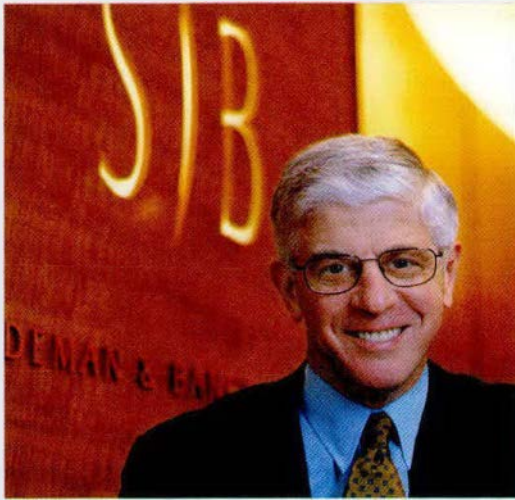
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# Reaching Out: S. Brooke Taylor Sworn In as WSBA President

BY ALFRED● TRYFERIS

**O**n September 15, 2005, S. Brooke Taylor was sworn in as the WSBA's 115th president by Washington State Supreme Court Chief Justice Gerry L. Alexander. The event took place during the WSBA's Annual Awards Dinner held at the Fairmont Olympic Hotel in Seattle. A full house of dapper luminaries from the Washington legal and business communities witnessed the swearing-in.

Taylor's presidency is the culmination of dedicated service to the WSBA and the Washington legal community. He was elected to the Board of Governors in 2000 and served a two-year term. He served as WSBA treasurer from 2001-2002, and since 2001, Taylor has been chairman of the WSBA Facilities Committee. He was the 2003-2004 WSBA liaison to the District and Municipal Court Judges' Association, and founder and co-chairman of the Washington State Trial Lawyers Association (WSTLA) Super Seminar. He is also a frequent WSTLA seminar presenter.

Born and raised in Port Angeles, Taylor has practiced law there since his admission to the Bar in 1968. He earned a degree in political science from Stanford University and a law degree from the University of Virginia School of Law.

In 1970, the ambitious 27-year-old was elected prosecuting attorney for Clallam County. He later went into private practice as an owner and partner in the law firm of Taylor & Taylor. In 1991, the two oldest law firms in Clallam County merged to form Platt Irwin Taylor, where he is now an owner and partner. His practice focuses on plaintiffs' personal injury, civil litigation, estate planning, and probate. The firm has offices in Port Angeles, Sequim, and Port Townsend.

Taylor is well known for his commitment to serving the people of the North Olympic Peninsula. His community honored him in 1999 by naming him Clallam County "Citizen of the Year." Taylor's



Washington State Supreme Court Chief Justice Gerry Alexander (left) swears in Brooke Taylor as 2005-2006 WSBA President at the WSBA Annual Awards Dinner.

community involvement includes serving as member and director of the Port Angeles Kiwanis Club, director and president of the Clallam County Family YMCA (which honored him with its National Distinguished Service Award), director of the G.M. Lauridsen Foundation, director and president of the Clallam County Community Mental Health Center, member and director of the Port Angeles Chamber of Commerce, and director and president of the Peninsula College Foundation.

Throughout his WSBA leadership experience, Taylor has focused on issues of diversity. He was instrumental in bringing about what the Board of Governors called the "Diversity Amendment" to the WSBA Bylaws, leading to the creation of three governor-at-large positions. So influential was he in the amendment's passage that the language finally adopted was dubbed "the Taylor draft," due to Taylor's efforts to make the definition of diversity as inclusive as possible.

"Brooke has consistently evidenced a deep commitment to the needs of the membership now and well into the future," wrote WSBA President-elect Ellen Conedera Dial. "Brooke is a leader and a fine steward of the goals, aspirations, and practical needs of the profession."

As president, Taylor plans on building on his accomplishments as past governor and influential committee member. "While expanding the Board of Governors has been a very important step, it is not enough," he says. "Bar leaders must continue to reach out to all segments of our membership to inform regarding the WSBA services and programs available to them, and to involve our members in governance at all levels." Indeed, Taylor says reaching out to a diverse constituency will be a theme of his presidency. "We must continue a special effort to reach out to those elements of our profession who have traditionally been unrepresented, and our profession will be the stronger for it." <sup>BN</sup>



# Welcome to the WSBA's New President-elect and Governors

## **Ellen Conedera Dial, President-elect**



Ellen Dial, a partner at Perkins Coie, has been an active participant in a broad range of WSBA activities and has assumed a number of leadership roles. She

has chaired several WSBA committees, including the Ethics 2003 Committee, the Legislative Committee, the Character and Fitness Committee, and the Committee on the Code of Professional Responsibility. In addition to her leadership and service to the WSBA, she frequently speaks at Continuing Legal Education courses on ethics, as well as real estate matters. Ms. Dial's commitment to service in the community and to the legal profession was recognized in 2004 when she received the WSBA's Award of Merit, its highest honor.

## **Liza E. Burke, 7th-East District**



A Seattle native, Liza Burke received her law degree from the University of Washington in 1993 and is currently a partner with the Seattle criminal defense

firm of Cohen & Iaria, where she appears in municipal, district, and superior courts throughout western Washington. Prior to private practice, Ms. Burke was a public defender with the Society of Counsel Representing Accused Persons, serving as staff attorney and then lead counsel in the juvenile, misdemeanor, and felony units. She is a member of the King County Bar Association Criminal Law Section, the WSBA Criminal Law Section, and the Washington Association of Criminal Defense Lawyers. Ms. Burke was recently recognized as a "Rising Star" by *Washington Law & Politics* magazine.

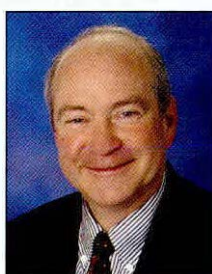
## **Eric C. de los Santos, At-large**



Eric de los Santos is currently corporate counsel for Labor Ready, Inc., where he manages an array of commercial liability and employment claims in 22 states

and Puerto Rico. Prior to that, he practiced as a plaintiffs' attorney for more than seven years in SeaTac, Burien, and Seattle, focusing on employment discrimination and personal injury law. Mr. de los Santos is a graduate of Brown University and received his law degree from the University of Washington School of Law. His professional affiliations include the Association of Corporate Counsel and the WSBA Legislative Committee.

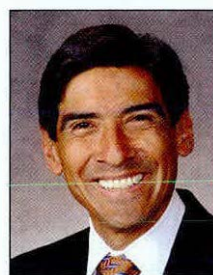
## **Douglas C. Lawrence, 8th District**



Doug Lawrence is a shareholder with the Seattle law firm of Stokes Lawrence, where he focuses on estate planning and probate matters. A graduate of Seattle University School

of Law, he is a former adjunct professor of law there, and has also taught estate planning at the University of Washington School of Law. Mr. Lawrence was actively involved in the drafting and passage of trust and estate legislation in Washington state, including the Trust Act of 1984 and the 1999 Trust and Estate Dispute Resolution Act (TEDRA). In 1999, he received the WSBA Award of Merit for his work on TEDRA. Mr. Lawrence is past chair of the WSBA Real Property, Probate and Trust Section and a former executive committee member of the Estate Planning Council of Seattle. The author of many articles on estate planning and probate-related matters, Mr. Lawrence is a frequent and sought-after lecturer on those subjects.

## **Salvador A. Mungia, 6th District**



A graduate of Georgetown University Law Center and a former adjunct professor at Pacific Lutheran University, Sal Mungia is a partner with the Tacoma office of

Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, whose primary areas of practice include commercial, personal injury, and real estate litigation. He served as president of the Tacoma-Pierce County Bar Association in 1999 and as president of LAWFund from 2002 to 2004. He currently sits on the boards of the Washington ACLU, LAWFund, and the Tacoma Human Rights Commission. In 1999, he was chair of the WSBA Bar Leadership Conference.

## **Kristal K. Wiitala, 3rd District**

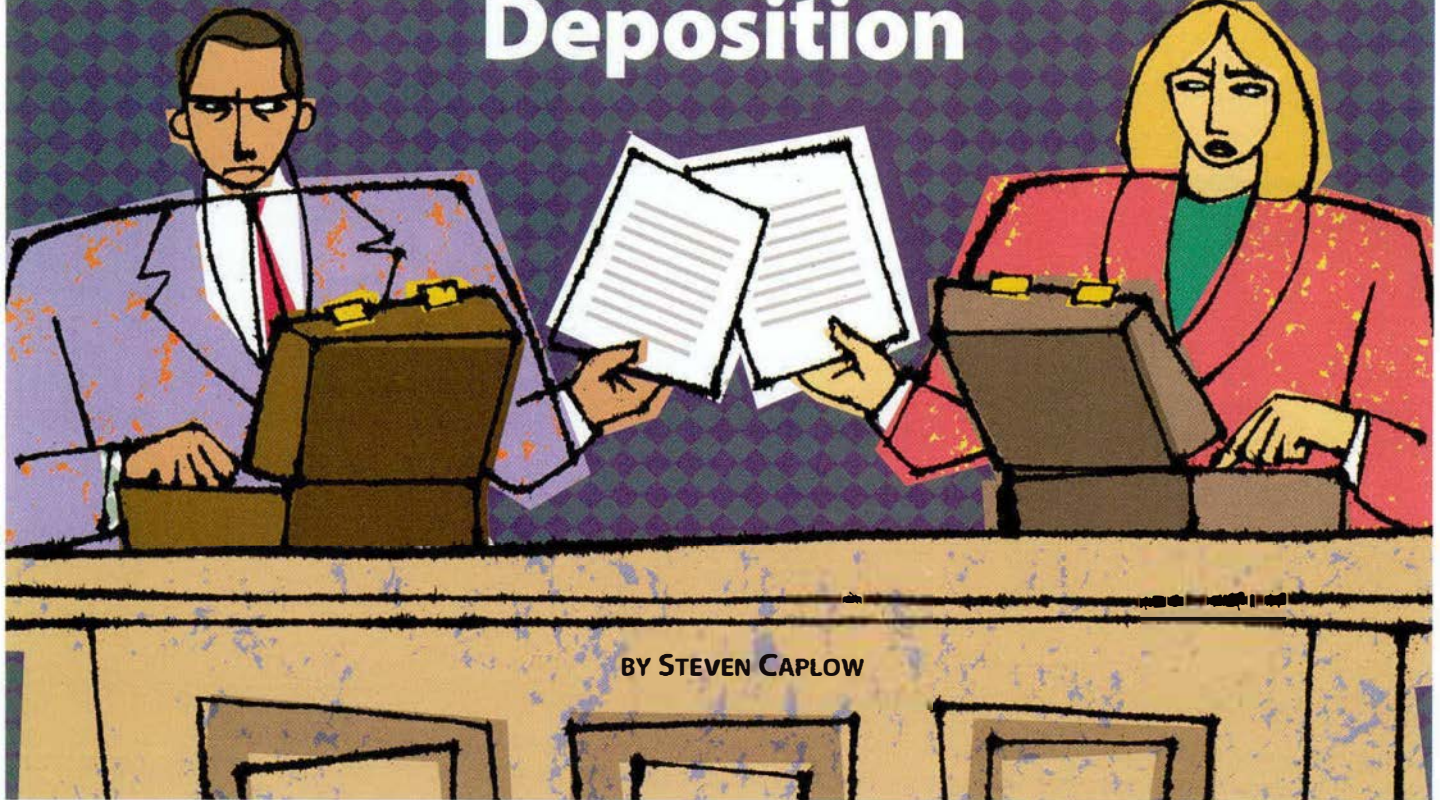


Kristal Wiitala, a public disclosure manager with the Washington State Department of Social and Health Services, has worked for several state agencies and in private

practice, and is a graduate of the University of Washington School of Law. She has recently been the WSBA Board of Governors liaison for the Government Lawyers Bar Association (GLBA), for which she is also a current board member and past president. She has held prominent leadership positions with Washington Women Lawyers and the National Association of Hearing Officials. Formerly a member of the WSBA Disciplinary Board and other WSBA committees, Ms. Wiitala now serves on the boards of the GLBA and the WSBA Administrative Law Section.

*President-elect Dial will take office in September 2006. The new governors hold office for three-year terms ending September 2008.*

# The Art of the CR 30(b)(6) Deposition



BY STEVEN CAPLOW

## Barbie, tortillas, and CR 30(b)(6) subpoenas

**T**homas Forsythe created a series of photographs using Barbie dolls “juxtaposed with vintage kitchen appliances.” One photograph in the series depicts four Barbie dolls wrapped in tortillas covered with salsa. Notwithstanding what the 9th Circuit dryly describes as Forsythe’s limited market success, the Mattel Corporation filed suit alleging that the Barbie photographs infringed on its intellectual property. See *Mattel Inc. v. Walking Mountain Productions*, 353 F.3d 792 (9th Cir. 2003).

Forsythe defended the claim by retaining an expert to explain his photographs in the context of 20th century art. Mattel in turn issued a broad CR 30(b)(6) subpoena to the expert’s employer, the San Francisco Museum of Modern Art. The district court concluded that Mattel’s subpoena, which included topics that went beyond impeaching Forsythe’s expert, had been issued for the improper purpose of persuading the museum to exert pressure on its employee not to testify as an expert in the lawsuit. The 9th Circuit subsequently

affirmed the district court’s decision quashing the subpoena and awarding the museum its attorneys’ fees.

Beyond its admonition as to the respective perils to lawyers and artists of getting involved in the world of contemporary art, the *Mattel* opinion raises an issue as to the appropriate use of a CR 30(b)(6) subpoena. To the extent the *Mattel* subpoena sought information to impeach the defendant’s expert, the opinion serves as a reminder of the many ways that a CR 30(b)(6) notice can be used properly. At the same time, the case illustrates how the rule’s extraordinary power to compel an organization to assemble information may be abused.

Washington’s appellate courts seldom discuss CR 30(b)(6). Indeed, only two published opinions discuss the rule substantively: *Flower v. T.R.A. Industries, Inc.*, 127 Wn. App. 13 (2005) and *Casper v. Esteb Enters., Inc.*, 119 Wn. App. 759, 767 (2004). Practitioners, too, sometimes overlook the possibility of using this procedural mechanism, or avoid using this tool because they do not feel comfortable with its mechanics, thereby depriving themselves of a valuable discovery device.

## The application and text of CR 30(b)(6)

An organization such as a corporation is a legal fiction that may act only through its agents. CR 30(b)(6) addresses the problem associated with obtaining testimony from such entities by creating a mechanism that allows a party to compel the entity to designate an agent to testify on its behalf regarding predesignated topics. Regardless of whether, like judicial admissions, CR 30(b)(6) testimony formally binds the party — an issue that remains unresolved under Washington law — such depositions sometimes have equal or greater value as an alternative method to obtain discovery. Like any discovery procedure, in evaluating the scope of the topics in the notice, courts take into account the burden of assembling the information, the probative value of the information to the issues in dispute, and whether or not the entity subject to the notice is a party to the litigation.

The topics frequently cover historical information, organizational structure, or methods and procedures of the organization. Other topics may seek the party’s collective knowledge of particular events. In

the past, a party seeking such information from a corporate entity sometimes had no choice but to engage in a sort of legal version of the classic game Battleship by blindly issuing notices to various agents of the organization with the hope of correctly identifying the person with relevant information. CR 30(b)(6) addresses this problem by placing the burden on the organization to identify an appropriate witness to testify on behalf of the organization as to the designated topics:

"A party may, in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. In that event the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters known on which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to the matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules."

Because CR 30(b)(6) and Fed.R.Civ.P. 30(b)(6) are nearly identical, Washington courts view federal cases interpreting the federal rule as highly persuasive to interpret Washington's analog to the federal rule.

#### **Entities within the scope of the rule**

CR 30(b)(6) allows discovery of entities, including a corporation, partnership, association, or governmental agency. As was the situation in *Mattel*, by including some additional instructions to the recipient specified in the rule, the deposition notice accompanied by a subpoena can also be served on an entity that is not a party to the litigation. Like any third-party discovery, courts generally apply a different standard to assess the reasonableness of discovery served on an entity not a party to the litigation. With both parties and nonparties, the procedure cannot be used to take the deposition of an individual in her individual capacity.

#### **Designating topics with reasonable particularity**

The party issuing the CR 30(b)(6) deposition notice must designate with reasonable particularity the topics on which the examination is requested. This creates a trade-off: The party issuing the notice must provide a clear road map as to the subjects that will be addressed during the deposition, while the responding party must ensure that the designated witness is knowledgeable regarding the designated topics.

Crafting the notice deserves some attention. An overbroad notice creates an impossible task and becomes susceptible to a motion to quash or strike. For example,

some courts have stricken "but not limited to" language from deposition notice categories out of concern that including this language makes the topics overbroad. On the other hand, the witness may legitimately refuse to testify in her CR 30(b)(6) capacity on topics not specified adequately in the notice. Similar to other discovery mechanisms, the party issuing the notice must strive to find the proper balance in formulating the deposition topics.

#### **The notice must designate "subjects" not "persons"**

Attorneys who practice in other jurisdictions sometimes issue notices of

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deposition that purport to require the appearance of "persons most knowledgeable" or "PMK," and the use of this formulation seems increasingly common in Washington actions. Although this may be an acceptable request under Rule 30(b)(1), which allows an ordinary deposition notice to identify the deponent by his or her name or by a "general description," this formulation should not be used under Rule CR 30(b)(6), which allows a party to designate only subject matters of testimony, not particular witnesses.

While designating the PMK might seem just sloppy, in a literal sense, demanding the appearance of the PMK amounts to a request for a specific witness (the most knowledgeable person). Specifying the PMK deprives the organization from selecting a witness of its choice to testify knowledgeably on the designated subjects. Although they do not directly address this issue, federal rules decisions from other jurisdictions and Wright & Miller at Volume 8A appear consistent with an interpretation of the rule prohibiting the request of the PMK in a CR 30(b)(6) deposition notice.

### The timing of deposition under the CR 30(b)(6) notice

CR 30(b)(1) states that a party taking a deposition must give "reasonable notice" of not less than five days, while its federal counterpart simply refers to "reasonable notice." For CR 30(b)(6) depositions, given the enormous range in the amount

of information that must be assembled to respond depending on the topics in the notice, courts by necessity apply a flexible standard to evaluate the reasonableness of the time stated in the notice.

The *California Practice Guide, Federal Civil Procedure Before Trial*, while acknowledging that reasonable notice will depend on the circumstances of the case, states that at least 10 days' notice is "customarily expected." Similarly, several unpublished federal district-court decisions have held that on the facts presented seven days and even 12 days was not enough time. To the extent possible, the party issuing the notice can avoid unnecessary disputes between counsel — and create a better record in the event of motion practice — by providing generous notice.

### New math: counting CR 30(b)(6) depositions under the federal rules

The federal rules, absent leave of court, now limit each party to 10 depositions. See Fed.R.Civ.P. 30(a)(2)(A). There does not appear to be much guidance yet on how to count CR 30(b)(6) depositions for purposes of the rule. It seems reasonable to assume, however, that "hours," rather than "topics" or "witnesses," will eventually become the standard to measure a deposition for purposes of the rule. Until more case law develops on this point, however, practitioners should consider addressing this issue during the Fed.R.Civ. P. 26(f) conference.

### Objections upon receipt of a CR 30(b)(6) notice

A party receiving a notice and/or subpoena may serve written objections. CR 37(d) states, however, that unless the party applies for a protective order under CR 26(c), the objections do not excuse compliance with the rule. Under CR 45(d), a non-party receiving a subpoena to testify, without requiring the production of documents, would also need to file a motion to quash or modify the subpoena. The party objecting to the notice or subpoena may seek to limit or exclude some or all of the topics in the notice.

Notwithstanding a party's latitude to select its discovery mechanism, courts will occasionally refuse to allow a party to conduct discovery using CR 30(b)(6). This occurs most commonly when the deposition notice is perceived as an attempt to depose opposing counsel, or when the discovery sought involves responses that necessarily require the assistance of counsel. In these circumstances, there are a number of federal decisions from other jurisdictions that quash the CR 30(b)(6) deposition and/or require the use of other discovery methods such as contention interrogatories.

Courts also struggle with the issue of deposition notices that require a party to designate a witness to testify about damages, when the organization's damages are being calculated by an expert. The nature of the damage claim and the timing of the deposition relative to expert disclosure requirements typically shape the court's evaluation of such notices.

### The organization's designation of a witness

Unlike a fact witness, who testifies as to her individual knowledge and gives personal opinions, the CR 30(b)(6) deponent testifies as to the knowledge of the corporation and the corporation's subjective beliefs and opinions. If the person or persons designated by the organization do not already possess personal knowledge of the matters set out in the deposition notice, the organization may be obligated to prepare the designees so that they may give knowledgeable and complete answers for the corporation.

The entity can designate more than one person to respond to the topics in the notice and can even retain a former employee, or someone who has never



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worked for the entity, to respond. The organization may designate to speak on its behalf a person who will also be testifying in the case as a fact witness.

### The organization's preparation of the witness

An organization has a duty to prepare its deposition designees so they can give full, complete, and non-evasive answers. Under the rule, the designee must testify as to matters "known or reasonably available" to the entity. Parties to a lawsuit commonly dispute what information is known or reasonably available. The fact that no one currently working at the entity

has personal knowledge does not in itself excuse a party from providing a witness. Federal courts commonly require corporate entities to go to considerable lengths to collect historical information about the entity from documents, deposition transcripts, past employees, and other sources. This issue takes on particular importance in lawsuits involving asbestos, pharmaceuticals, environmental contamination, and other issues in which the discovery rule extends the statute of limitations.

Taken literally, the duty to testify as to matters known or reasonably available could compel the designated agent to locate and assemble on the record a huge

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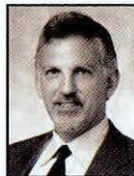
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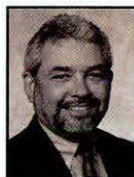
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number of business records, an interpretation of the rule that would provide little value relative to the expense. Although difficult to draw the line categorically, at some point, a request for production better accomplishes the purpose of such a deposition. Interrogatory discovery may provide a useful analogy to address this situation. CR 33 also requires a party to assemble information necessary to answer interrogatories. Under CR 33(c), however, if the party can demonstrate that the burden of deriving the answer from the records of the organization would be substantially the same to either party, it is sufficient to answer the interrogatory

by specifying the records from which the answer may be derived. Similarly, if the burden of ascertaining information from records is substantially the same, an organization should be able to satisfy its obligation under CR 30(b)(6) by making the records available.

### The binds that hold

It has not been decided clearly in Washington or the 9th Circuit whether a corporation is absolutely bound to the testimony in a CR 30(b)(6) deposition as a judicial admission that ultimately decides an issue, or if it is treated like any other testimony that may be contracted through other

corporate witnesses. A recent Court of Appeals decision from Division II collects respective federal authorities, but does not reach the issue in its decision. *Casper*, 119 Wn. App. at 768 (2004). While compelling arguments can be made for treating CR 30(b)(6) testimony like any other evidence, until this issue is resolved, the witness must be prepared under the assumption that the testimony will bind the entity.

### The deposition itself

At the commencement of the deposition, it helps to make the deposition notice containing the topics an exhibit and establish on the record which topics the witness has been designated to testify. Attorneys preparing the witness can save considerable time and confusion by preparing the witness to respond.

The deposition of a CR 30(b)(6) designee is not a memory contest. Although such material will likely become an exhibit to the deposition, the witness can bring and use documents of the entity or materials that she has created as aids.

A common dispute during CR 30(b)(6) depositions involves the propriety of questions outside the scope of topics identified in the subpoena. Notwithstanding the widespread confusion on this point, the rule is generally clear that once a party appears to testify, she can be questioned in her individual capacity on topics outside the scope of the notice. Care must be taken to make a clean record indicating which testimony is being given in the witness's individual capacity and which testimony is being given as the CR 30(b)(6) designee.

### A second bite at the apple

An organization's candidates for potential CR 30(b)(6) designees often include persons who are also likely deponents in their individual capacity. A split in authority exists as to the propriety of using a CR 30(b)(6) to obtain a second deposition of a witness. As a general rule, CR 30(b)(6) cannot be used to obtain a second deposition of the witness that would be cumulative to the testimony already procured. If during her deposition the corporate officer testifying in her individual capacity appears unprepared or evasive, courts will not hesitate to require the organization to provide a witness capable of providing complete, knowledgeable and binding answers on behalf of the organization.

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Further, if the officer is being sued in her individual capacity, a court will be more sympathetic to requiring the codefendant organization to designate a CR 30(b)(6) witness, even if the same likely designee has previously testified in her individual capacity, in order to allow the plaintiff to obtain testimony from the organization as a separate legal entity. See *supra Flowers* (reversing issuance of protective order granting second deposition).

### Motions to compel and sanctions for the unprepared witness

Like any other deposition, the party issuing a CR 30(b)(6) notice can file a motion

to compel, if the party receiving the notice fails to designate a witness to testify on one or more topics. CR 37(a)(2)(B) requires the moving party to file a certificate stating that a good-faith effort has been made to resolve the dispute without court action. CR 37(a)(4) allows the court to award the prevailing party its fees and expenses. Failing to adequately prepare the witness, however, risks far more drastic sanctions. Producing an unprepared CR 30(b)(6) witness is tantamount to failing to appear under CR 37(d) and is therefore sanctionable under CR 37(b)(2). In *Casper*, for example, the trial court sanctioned the defendant by binding it to "don't know" answers on key

financial information requested during the CR 30(b)(6) deposition. This left the defendant unable to prove its counterclaim or respond to plaintiffs' allegation that their money had been used on other construction projects. While this harsh CR 37(b) sanction was upheld by the Court of Appeals, the far more common practice when there is a dispute over the adequacy of preparation is for the parties to meet and confer, and, failing agreement, to move to compel under CR 37(a).

### Use of the rule as a compromise in lieu of dismissal of claims

The rule can also be used by courts as a discovery compromise. Foreexample, faced with doubtful claims or counterclaims, courts on occasion have limited the discovery of the party asserting such claims to a CR 30(b)(6) deposition. This allows the party some minimum of discovery while limiting expense and controlling abuse.

### CR 30(b)(6) testimony at trial

At trial, the transcript of a CR 30(b)(6) deposition can be used like the transcript of a factual witness. Further, by express rule, CR 32(a)(2), the CR 30(b)(6) transcript of a party can be used at trial for any purpose regardless of the availability of the individual witness. The deposition transcript of a nonparty designee can be used in the circumstances in which the deposition of any other nonparty witness might be used.

A February 2005 opinion from the 10th Circuit states that Fed.R.Civ.P 30(b)(6) authorizes a subpoena for deposition and not in-court testimony. Regardless, consideration should be given to videotaping the CR 30(b)(6) deposition.

### Back to 20th century art

Franz Kline explained in a 1963 interview, "Paint never seems to behave the same . . . There seems to be something that you can do so much with paint and after that you start murdering it." Thesamecan besaid for a CR 30(b)(6) deposition. Properly used, the procedure can be a thing of beauty; taken too far it makes a bloody mess. <sup>BN</sup>

*Steven Caplow is a partner with the Seattle office of Davis Wright Tremaine LLP, focusing on complex commercial and telecommunications litigation.*



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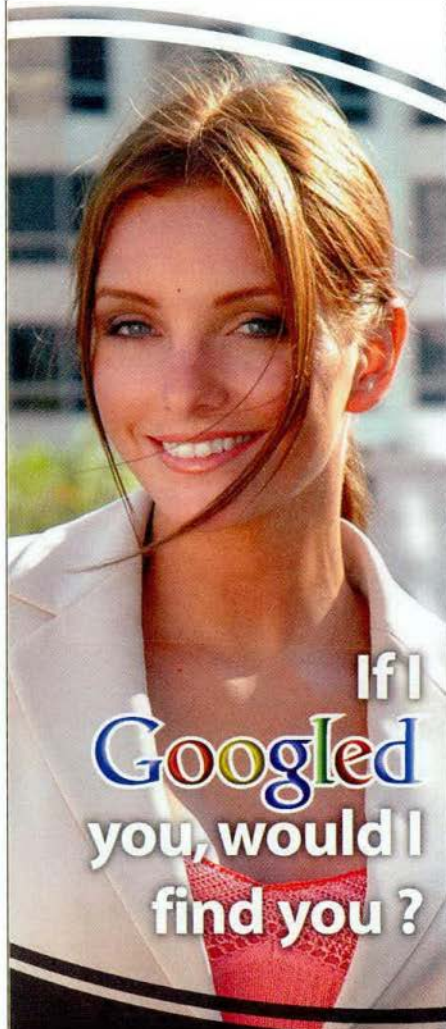


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# The Modern Lawyer's Test

BY JEFF TOLMAN

**T**he new millennium is in full swing, and all the legal visionaries say our profession is destined to mutate. The old days of client relations and traditional forms of billing will soon disappear. In their place will be MDPs (Multi-disciplinary Practice groups); officeless, paperless lawyers who meet clients over the Internet; and transitory clients who will negotiate the best deal each time they need legal services. The days of lawyers like me will go the way of the dinosaur and passenger pigeon.

To see how prepared you are for these changes, the Modern Lawyer's Test follows. Will you end up like me, a pauper surrounded by long-term, valued clients? Or will you be one of the new generation of cyberprofessionals, who, according to the prophets, will excel in our new professional world?

## 1. Why did you become a lawyer?

- I always dreamed of dividing my workday into six minute increments.
- A longtime goal has been to have a student loan debt bigger than the average annual NBA salary.
- To help people.
- I thought Atticus Finch was cool.
- I thought Atticus Finch was rich.

## 2. A tenth of an hour is:

- A unit for measuring a lawyer's billings.
- A unit for measuring a lawyer's life.
- An outdated unit of measurement. New instruments can divide time accurately into thousandths of an hour.

## 3. Billable time differs from real time in the following ways:

- None.
- There are in excess of 30 billable hours in a day, only 24 clock hours.
- One is precise, the other only an estimate.
- There is no leap year in billable time.

## 4. You know you are spending too much time at the office when:

- You tell your child to be home at three-tenths of an hour after five.
- You are agitated by the inaccuracy

- of the stove clock that measures the roast you are cooking only in minutes.
- Your conversation during your family dinner sounds like you are dictating.
- You greet your child with, "Good evening, Scott, it's always nice to see you. Please follow me back to the conference room."



## 5. The proper balance between time at your office and time with your family is:

- 2,000 hours to bill at the office; 1,000 hours to chart as a parent.
- 2,000 hours to bill at the office; do what you can at home.
- Bill what you have to so you won't get fired; coach at least two of your kid's teams each year.
- If you get a standing ovation when you enter the house, you aren't home enough.

## 6. Lawyers should be leaders in the community and active in the bar association:

- When?
- How?
- Why?
- Yeah, right!!

## 7. Why would a lawyer want to be a judge?

- Judges work 40-hour weeks and get six weeks a year off.
- Judges don't have billing quotas.
- Judges make \$120,000 a year and recognize their kids.
- Judges get the last word in and lawyers say "Thank you, Your Honor" even when they think the jurist is an idiot.
- You've always wanted to send someone to prison.

## 8. When multi-disciplinary practice is allowed, you want to be partners

## with the following people:

- Mortician. Probates are good work.
- Doctor. Dad always said, "Only be partners with people who make more money than you."
- Financial planner. You'd be rich if you didn't have to pay a commission on every stock trade.
- Police officer. They know all the people in legal trouble.

## 9. You know you have a good client when:

- They are the third generation of a family you have represented.
- They don't bring in Internet print-outs from online law sites to their appointment.
- They don't threaten to go to another law firm unless you lower your rates from the last matter you represented them on.
- They say thank you after the appointment, and ask where the bookkeeper is so they can pay their bill.

## 10. The best reason to have staff is:

- Someone to blame mistakes on.
- Someone to check the voicemail while you are playing golf.
- Someone to visit with between appointments.
- With voicemail and computers, there is none.

## 11. The main advantage of voicemail is:

- Clients can leave detailed messages.
- You can screen your calls and talk only to the clients you want.
- You can tell people, "I am temporarily away from the office or with a client" when you aren't, and no one will know.
- You have more control of your time without client interruptions.

## 12. The best reward a lawyer can get is:

- Having the bill paid.
- Receiving a thank you from a client.
- Becoming a partner so you will get some of the money the associates are billing.
- Twenty-two percent a year return on your 401(k).

## 13. You have a webpage because:

- You can't snag local clients.
- The old lawyer down the street will

never get the third generation of most families. The kids are too young and too cybersmart.

- You succumbed to the constant sales pitches of invading webmasters.
- Who needs to see clients face-to-face? You don't have to feel their pain if you don't see them.
- You want to appear more computer literate than you are.

**14. Clients who expect their calls to be returned:**

- Are behind the times. Don't they have e-mail?
- Are unreasonable. Doctors don't return their calls; why should lawyers?
- Are usually calling to complain about something.
- Are obviously obsessing too much about their problems.

**15. Client service is:**

- Old news. No one does it except the lawyer down the street with all the clients.
- The major difference between lawyers who will be successful and not.
- For lawyers who don't have enough work.
- Overemphasized. Most clients' problems will work themselves out over time.

If you answered the questions in a way that emphasized the importance of technology, you are ready for the great evolution of our profession. If you answered the questions emphasizing client relationships, you have a satisfying practice. If you answered the questions in a way that emphasized spending time with your family, find a work situation that will allow that. If you answered the questions emphasizing the negatives of our profession, good luck.

The new millennium is in full swing, and all the legal visionaries say our profession is destined to mutate. But don't tell my clients. They still think that having someone they know, who cares about them and returns their calls, and who assists them through their legal troubles is the wave of the future. *BN*

● *Jeff Tolman 2004. Jeff Tolman practices law in Poulsbo. He has served on the WSBA Board of Governors, and is a frequent speaker and writer on law-related topics.*

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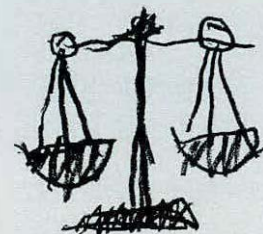
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# Lawyers' Fund for Client Protection

BY ROBERT WELDEN

**T**he Lawyers' Fund for Client Protection Committee (LFCP) meets quarterly to review applications for gifts from the Fund. The Committee is authorized to make gifts of up to \$25,000 to eligible applicants. On applications for more than \$25,000, the committee makes recommendations to the Board of Governors, whose members are the Fund's trustees. At their meeting on August 19, 2005, the Committee took the following actions:

**David A. Ambrose** (WSBA No. 21764; Edgewood; suspended): The Committee previously approved four applications regarding Ambrose, who stipulated to a two-year suspension. The conditions for reinstatement to practice include restitution to various parties.

**Applicant A:** Applicants paid Ambrose for representation in a property dispute with their neighbors. Their neighbors had filed a timber trespass action against them, and Applicants had filed a *pro se* Superior Court complaint against the neighbor and two fence companies. Ambrose said he would seek a summary judgment, that it would cost no more than \$4,000, and he would likely recover attorney's fees. Ambrose filed a Notice of Appearance, but there were no other court filings or appearances by him.

Applicants heard nothing from Ambrose so they began calling him and left messages on his door, with no response. Ambrose called and apologized for the delay. He said that to complete the process, he needed \$1,000 more. Applicants mailed him a check for \$500. He scheduled an appointment to meet with Applicants to complete interrogatories. At the meeting, Ambrose said that he had been in contact with the neighbor's lawyer and that there was a strong possibility that they could settle the case. During that meeting, Applicants gave Ambrose a check for \$500. Ambrose said he would send them a copy of the interrogatories when they were filed. They never received a copy, and nothing was ever filed.

About two weeks later, Applicants spoke with Ambrose who told them he

was in negotiations with the opposing lawyer, and that he needed another \$500 to file for summary judgment. Applicants mailed him a check for \$500 on November 6, 2004. They also gave Ambrose checks for \$250 on December 5, 2004, and \$250 on December 7, 2004.

The next time Applicants heard from Ambrose was a letter stating that he was withdrawing from representing them because of "a stipulated suspension due to major depression," and that they should seek legal counsel immediately. They then learned that an order had been entered dismissing the neighbors from the lawsuit and that a judgment was entered against Applicants, awarding attorney's fees in the amount of \$10,875. They also learned that Ambrose had never filed any pleadings or appeared in court.

During the investigation of this matter, the opposing counsel said that after an initial contact with Ambrose, he couldn't figure out what was happening. His calls and letters went unanswered, and Ambrose never responded to motions he filed in court. He said that there were never any offers of settlement, and that as far as he could tell, Ambrose did nothing on Applicants' case. The Committee approved payment of \$4,000.

**Applicant B:** Applicant paid Ambrose \$500 to evict a tenant from a mobile home. When Applicant had not heard from Ambrose, she called him. He told her he was preparing the necessary documents, and that he would mail her copies. When she heard nothing further, she called him again and he said he would mail the documents immediately. After another week, she tried calling him repeatedly from her home phone, but got no answer. In mid-February, she was told by the mobile home park owners that they were going to remove the mobile home because the tenant was not paying the ground rent. She called Ambrose from a friend's phone and he answered. He told her that everything was under control, that he had spoken with the mobile home park owner, and that the owner was evicting the tenant. Applicant called the owner and he said he was not evicting the tenant.

Applicant went to Ambrose's office but he said he was too busy to see her. She returned, and, after waiting two

hours, Ambrose opened his door. He gave her a copy of a letter that he said he had mailed to the tenant. In his stipulation to discipline, Ambrose admitted that he had never mailed the letter. Applicant fired Ambrose and asked for a refund. Ambrose did not respond. Ambrose stipulated to pay restitution of \$500, and the Committee approved payment in that amount.

**Dana P. Gelman** (WSBA No. 20147; Tacoma; disbarred):

**Applicant A:** Gelman represented Applicant in personal-injury claims from two automobile accidents. He failed to file the first claim within the statute of limitations. He agreed to represent her on the second claim for no fee.

The second claim settled for \$14,027.40. Gelman paid Applicant \$9,925.02, reimbursed himself \$181 for costs, and withheld \$3,921.38 to pay PIP reimbursement to an insurer. He and the insurer agreed that Gelman was entitled to one third of the \$3,921.38 as his fee.

When Applicant learned that the insurer had not been paid, she called Gelman. He said there was a "mix-up" and that he would take care of it. He said he would pay her one-third of the amount of the insurer's PIP claim, apparently representing their proportionate share of his fees. He told Applicant to meet his mother at a bank to receive her check. Gelman's mother gave her a cashier's check for \$1,307.13. Gelman also agreed to pay the balance to the insurer within two weeks. Gelman did not pay the balance of \$2,083.87 to the insurer but instead converted the funds to his own use. In his stipulation, Gelman agreed to pay restitution to Applicant and the Committee approved payment of \$2,083.87.

**Applicant B:** Gelman represented Applicant in a personal-injury claim that was settled for \$1,000. He gave Applicant a settlement statement showing a 31.5 percent contingent fee (\$3,465), which he paid to himself; \$200 for "close file"; \$163 withheld to pay a medical bill; and \$1,827 to reimburse an insurer for their PIP claim. He paid the balance of \$5,345 to Applicant.

Subsequently, Applicant received a letter from her doctor's office that they had spoken with Gelman about the \$163

they were owed, and he told them that Applicant had agreed to pay the bill. Gelman never paid the insurer's reimbursement or the medical bill, and never accounted for the \$1,990 he withheld from Applicant's settlement. He stipulated to pay \$1,990 restitution to Applicant, and the Committee approved payment of that amount.

**Applicant C:** Gelman represented Applicant in a personal injury claim that was settled for \$2,545. Gelman paid himself a one-third contingent fee of \$847.49, and costs reimbursement of \$84.77. He paid Applicant \$817.74. Gelman told Applicant he was retaining the balance of \$795 to reimburse an insurer for their PIP claim. He never paid the claim and instead converted the funds to his own use. Gelman stipulated to pay Applicant restitution of \$795, and the Committee approved payment in that amount.

**Applicant D:** Applicant paid Gelman \$1,500 to represent his son in a marriage dissolution. He complained that Gelman "made no effort to proceed in a diligent and satisfactory manner." A search of the county Superior Court docket disclosed that Gelman never filed a dissolution proceeding. Gelman would not respond to Applicant's or his son's phone calls, letters, e-mails, or faxes. They hired a new lawyer who commenced a dissolution proceeding. The new lawyer received Applicant's file from Gelman and found "it was a mess." It had incomplete drafts of pleadings that Gelman had prepared, but nothing was completed or filed. The Committee approved payment of \$1,500 to Applicant.

**Kevin M. Kopra** (WSBA No. 29651; Seattle; suspended):

**Applicant A:** Applicant paid Kopra \$1,500 for representation regarding his debts. He was being evicted from his condominium. Kopra filed a Chapter 13 bankruptcy petition. Applicant also gave Kopra \$17,500 to try to negotiate with the condominium association and to settle the bankruptcy. Kopra also agreed to represent Applicant on a DUI. Kopra transferred \$1,500 from his trust account as a "retainer" for the DUI.

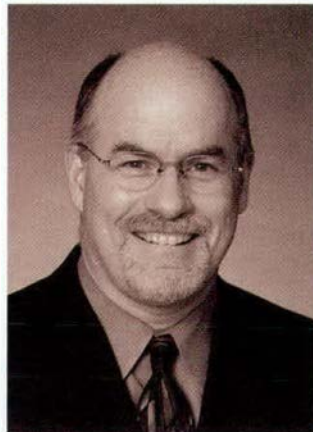
Subsequently, Kopra gave Applicant \$2,725 of his money back to pay some expenses. Kopra used \$250 to pay a court

cost, and gave Applicant \$500. At this point, Kopra should have been holding \$12,575 of Applicant's money in his trust account.

Kopra never completed the bankruptcy, which was dismissed. Applicant then hired a new attorney to complete the bankruptcy and to recover his funds from Kopra. Kopra did not respond to the attorney's letter demanding return of the funds. Kopra filed for personal bankruptcy. Applicant filed an adversary proceeding for recovery of the funds and obtained

a default judgment. He has been unable to collect on the judgment. The Committee approved payment of \$12,575.

**Applicant B:** Applicant paid Kopra \$1,500 regarding a claim against a truck driver for damage when delivering Applicant's travel trailer. After that, Applicant heard nothing from Kopra. Finally, Applicant was able to speak with him, and Kopra said he was having personal problems. He offered to return Applicant's \$1,500, but he failed to do so. The Committee approved payment of \$1,500.



**Andrew Biggs**

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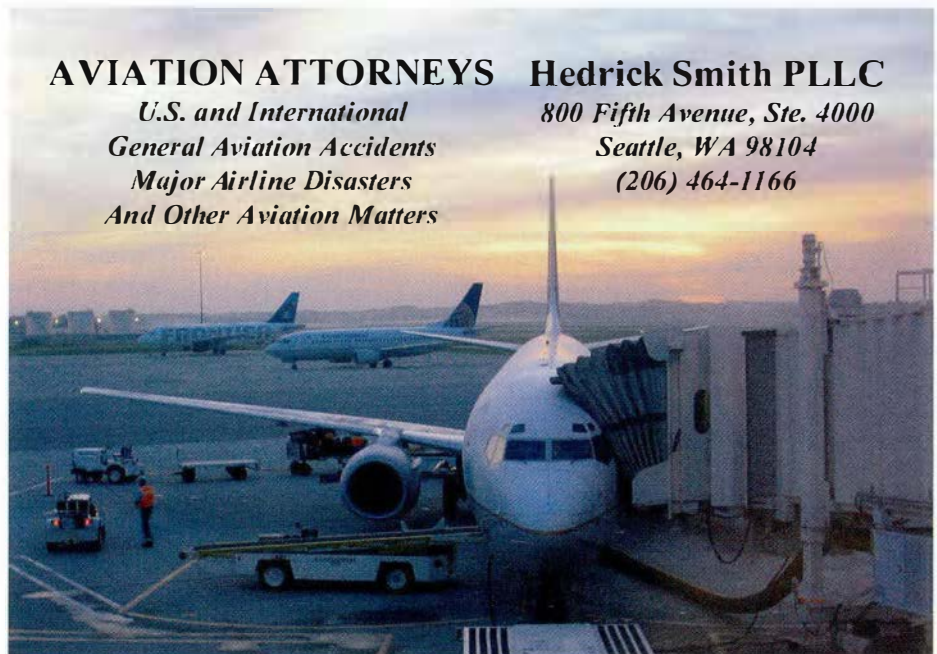
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**Applicant C:** Applicant hired Kopra to file a lawsuit on behalf of his fiancée against a roofing company. He paid \$1,500 as fees and \$200 for advanced costs. Kopra never filed the lawsuit and failed to respond to Applicant's requests for information about the case. On the occasions that he was able to speak with Kopra, Kopra would say he was about to file the lawsuit, but he never did. In reviewing the client's file, it appeared that Kopra had done no work on the case. Applicant fired Kopra and demanded a refund. Kopra told Applicant he would refund his money, but he never did. The Committee approved payment of \$1,700.

**Terry O. Forbes** (WSBA No. 5626; Everett; interim suspension): Forbes abandoned his law practice and a custodian was appointed pursuant to ELC 7.7 to protect Forbes's clients' interests. He took custody of Forbes's trust account which contained \$71,603.37. A WSBA auditor attempted to reconstruct the account and identify the ownership of the funds in the account. However, records were incomplete and there were a large number of deposits and withdrawals that could not be identified with any specific client. Because of the lack of records, the custodian and bar counsel concluded that there is no basis on which "a reasonably prudent lawyer maintaining a client trust account"

could determine the ownership of these funds as required by ELC 7.7(b).

The Committee voted unanimously to petition the Supreme Court to transfer the money currently in Mr. Forbes's trust account into a separate account under the LFCP control; and to ask the Court for guidance on the procedure to use in disbursing this money, including but not limited to: 1) how long the Fund should retain the funds; and 2) the factors the Fund should consider in disbursing competing claims.

### Other Business

The Committee recommended an amendment to APR 15 to provide for exoneration from liability for the Fund, committee members, trustees, staff, and persons communicating with the Fund regarding applications. The rule is based on the exoneration from liability rule in the Rules for Enforcement of Lawyer Conduct.

The Committee reviewed 16 additional applications that were denied for lack of evidence of dishonest conduct, or as fee disputes or claims for malpractice. The Committee also denied reconsideration of a previous decision, and deferred action on two applications to the next meeting.

### Board of Governors Action

The members of the Board of Govern-

ors serve as trustees of the Fund. At their meeting on July 29, 2005, they took the following action regarding Terry O. Forbes (WSBA No. 5626; Everett; Interim suspension): The Fund trustees approved an interim emergency payment pending the outcome of discipline against Forbes. Forbes deposited \$86,380.48 into his trust account from the proceeds of the sale of Applicant's house. After a few disbursements, he should have been holding \$72,230.48 belonging to Applicant. He has never accounted for Applicant's funds. Because Applicant is facing eviction and other serious financial hardships, the trustees approved this interim payment pursuant to Rule 6(g) of the Fund Procedural Rules.

### Restitution

Before payment is made to an applicant, the applicant must sign a subrogation agreement with the Fund, and the Fund seeks restitution from the lawyers. Because in most cases those lawyers have no assets, the chief avenue of restitution is through court-ordered restitution in criminal cases. Prosecuting attorneys cooperate with the Fund in getting it listed in restitution orders. As of June 30, 2005, seven lawyers were making regular restitution payments to the Fund, totaling \$2,838 in this fiscal year.

### Annual Report

Pursuant to APR 15(h), an annual report is filed with the Washington State Supreme Court on the activities and finances of the Fund. The Committee met four times this fiscal year to consider 121 applications to the Fund involving 51 lawyers. They approved payments on 47 applications totaling \$147,247.09. The full report is available on the WSBA website at <http://www.wsba.org/lawyers/groups/lawyersfund> or by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. <sup>BN</sup>

*The Committee chair is Olympia attorney James A. Connolly. WSBA General Counsel Robert Welden is staff liaison to the Committee.*



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# WSBA Random Examinations of Trust Accounts

BY JULIE MASS

Members frequently ask about the Bar's random-examination program. The Bar has been authorized to conduct random examinations of lawyers' trust accounts since 1977.<sup>1</sup> The general purpose of the Bar's random-examination program is both remedial and educational in nature. The primary focus of the Bar auditors is to assist members and protect the public. The objectives are to correct deficiencies noted and to educate the lawyer as to the trust account rules and regulations. We have worked with many lawyers who tell us that, although they were initially apprehensive about the examination process, they found it to be a beneficial and positive experience. The auditors frequently go the extra mile to help lawyers understand the rules and ensure that adequate records are maintained. Many lawyers have come to see the random-examination program as a valuable member service.

The Disciplinary Board chair reviews all random-examination reports and occasionally directs the Office of Disciplinary Counsel (ODC) to conduct an investigation of serious violations. In a few cases, lawyers have been publicly disciplined (suspended, reprimanded, censured) as a result of the findings of the random examination.

### The process

Of approximately 25,400 active lawyers, 12,600 (50 percent) handle client funds and maintain trust accounts. Approximately one percent to 10 percent of lawyers with trust accounts are examined each year. Under regulations adopted by the Supreme Court,<sup>2</sup> lawyers are selected at random from the WSBA's member database. This selection must be proportionally based on the number of practicing lawyers in each congressional district. Thus, the more populated congressional districts will have a higher number of lawyers selected for random examinations. Once a lawyer or firm has been examined, they are removed from the random selection pool for two years.

Lawyers selected for an examination

receive at least two weeks' notice from the Bar auditor. The auditor sends the lawyer a letter explaining the examination procedures, what records will be needed, and the week he or she would like to conduct the examination. We generally ask for bank statements, check registers, deposit slips, client ledgers, and copies of reconciliations for the last year. The lawyer is requested to call the auditor to schedule the examination. Trust account examinations generally take one day to complete, but some examinations take more or less time depending on the situation (record-keeping system used, volume of trust transactions, availability of records, etc.).

Lawyers are required to cooperate with a Bar examination.<sup>3</sup> The auditor is required to "preserve inviolate all confidences and secrets of clients of the examined lawyer or firm."<sup>4</sup> Any report of the examination is not subject to disclosure unless a disciplinary proceeding is commenced.<sup>5</sup> Even then, client confidences may be protected.<sup>6</sup>

Most violations noted are minor or a result of the lawyer's or firm's misunderstanding of the requirements imposed by RPC 1.14. After the examination, the auditor discusses his/her findings with the lawyer or firm's managing partner. The auditor will prepare a report and send a copy to the lawyer and the Disciplinary Board chair. In most situations, if the lawyer makes the suggested corrections, the examination is over and the file is destroyed.<sup>7</sup> In some situations, the Disciplinary Board chair may order that a re-examination be conducted to verify that deficiencies have been corrected.<sup>8</sup>

### Common trust account violations

The most common violations noted during random examinations include the following:

#### Miscellaneous:

- Failure to maintain complete records.
- Unidentified difference between check register, bank statements, and/or client ledgers.
- Excess funds (unidentified) in trust account.
- Inactive or unclaimed funds in trust

account.

- Large balances held in IOLTA for long period of time for which no cost/benefit analysis for the client was done to see if it should be in a separate account.
- Excessive bookkeeping errors affecting accuracy of records.
- Misuse of trust account (e.g., personal or business transactions in trust account).

#### Putting client funds at risk:

- Failure to wait for deposits to clear banking system before disbursing funds.
- Negative balances in individual client trust-account ledgers (using one client's money on behalf of another client).
- Commingling of lawyer's personal or business funds with client funds in trust account.
- Shortage of funds in trust account.

#### Failing to put client funds in the trust account:

- Improper handling of overpayments, advance fee deposits, or other client funds.
- Improper handling of credit card payments.
- Not holding funds in a qualified depository.

### Trust account information

Several resources are available to help you with your trust account. The WSBA publishes a booklet called "Managing Client Trust Accounts: Rules, Regulations and Common Sense," which provides some guidance. It can be found on the WSBA website ([www.wsba.org](http://www.wsba.org)) or contact the WSBA Service Center (800-945-WSBA, 206-443-WSBA, or [questions@wsba.org](mailto:questions@wsba.org)) to receive a copy. Information needed to set up an IOLTA account (the Request to Establish IOLTA Account form and a list of authorized financial institutions) is also available on the WSBA website. If you have specific trust account questions, you may contact WSBA Audit Manager Trina Doty (206-727-8242), WSBA Auditor Jim Roberg (206-733-5921), or WSBA Auditor Cheryl Heuett (206-733-5937). Other lawyer resources include WSBA's Law Office Management Assistance Program



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206-264-2960 phone  
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(206-727-8237) and Ethics Line (206-727-8284). <sup>BN</sup>

*Julie Mass is a lawyer and a CPA. She was the WSBA audit manager from January 2000 through May 2003. During this time, she oversaw the WSBA's random-examination program, conducted "for cause" audits of lawyers' trust accounts, and educated lawyers as to the rules and regulations regarding trust accounts. She is now the WSBA's director of finance and administration.*

**NOTES**

- <sup>1</sup> DRA 13.1(a), adopted 88 Wu.2d 1114(1977), later RLD 13.1(a), now ELC 15.1(a).
- <sup>2</sup> Reg. 105(a), as amended by Order 25700-A-449, March 29, 1990.
- <sup>3</sup> ELC 15.2, ELC 1.5.
- <sup>4</sup> Reg. 103(e).
- <sup>5</sup> ELC 15.3.
- <sup>6</sup> ELC 5.4(b).
- <sup>7</sup> Reg. 103(f).
- <sup>8</sup> Reg. 104(a).



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SINCE 1957

# Business Skills — They're Not Just for Business People Anymore

BY PETER ROBERTS

**H**ave you heard of the Association of Legal Administrators (ALA)? Legal administrators are the managers of the daily operations of larger firms. They are most frequently spotted in firms with more than 15 lawyers. (Lawyers can be legal administrators as well, but lawyer-administrators typically do not serve as managing partners.) ALA has more than 9,000 members and is headquartered in Chicago. The Puget Sound Chapter (PSALA) serves Washington state.

Business skills are of large concern to ALA. Not only does ALA promote educational opportunities for its members for improving how law offices are run, the organization also cares very much about those associate lawyers in larger firms who begin to encounter difficulties when working with business clients — or any client for that matter.

### A Survey of Associate Business Skills

In an effort to understand what associates are facing, ALA commissioned a study to measure what business skills are important and when they are most important in the progressing career of a law firm associate.<sup>1</sup> Managing partners, partners, associates, and executive directors responded to the survey. This study was conducted for several specific reasons, including:

1. The concern about the general lack of business knowledge and management skills among law firm associates.
2. The impact of that lack of knowledge on efficient client service, good firm business practices, lawyer and staff job satisfaction, and firm progress and profitability.
3. The lack of any consensus of what baseline business and management skills associates should acquire.

The results of the survey were distilled into 58 identifiable business skills

for associate lawyers to have at several stages of a standard seven-year progression to partnership.

### Addressing the Need

ALA then commissioned the development of a Business Skills Curriculum (BSC) as an aid for firms to structure the training of their associates by augmenting their present efforts of orientation, training, and mentorship. The BSC directly addresses the 58 skills identified in the survey.

Now comes PSALA. This local chapter of ALA is one of the international organization's largest. PSALA secured a grant from the Foundation of the Association of Legal Administrators to implement the BSC for associates in the Puget Sound region.

### Washington Leads the Way

This two-year pilot program is presently ongoing through September 2006. Each month, a notice goes to all PSALA members announcing the date, location, topic, speaker(s), and learning objectives for that 90-minute session. Those members encourage their firm's associates to register and attend the session (cost is \$25 or \$45, depending on whether their firms purchased the BSC from ALA). Selected topics include:

Major Matter Management  
Law Office Technology Skills  
How to Attract New Clients  
Legal Presentation Skills  
How to Retain Your Best Clients  
Effective Client Interviewing Skills  
Working in Teams  
Mastering Your Client's Business Environment  
Diverse Firm Structures  
Time Management

As the WSBA's practice management advisor, I recognize that many of the skills also have relevance for the solo and small-firm lawyer. The WSBA Law Office Management Assistance Program

(LOMAP) offers resources to members in a variety of skill areas to help their practices thrive. ALA and PSALA are taking the lead for the larger firms. Together with LOMAP, we can enable our Bar's newer admittees in any sized firm to achieve success and a more satisfying practice. <sup>BN</sup>

Learn more about the ALA at [www.alanet.org](http://www.alanet.org).

Learn more about PSALA at [www.psala.org](http://www.psala.org).

Learn more about LOMAP at [www.lomap.org](http://www.lomap.org).

See also <http://thesource.alanet.org> for law office management resources.

*Peter Roberts is the WSBA Law Office Management Assistance Program practice management advisor. He was a legal administrator for 18 years in firms on the East and West coasts and presently serves as chair of the Government/Judicial Section of the Puget Sound Chapter of the ALA. He can be reached at [peter@wsba.org](mailto:peter@wsba.org) or 206-727-8237.*

### NOTE

<sup>1</sup> See <http://www.alanet.org/periodicals/article.html> for a discussion of the survey and its results. The study states: "The most impressive finding from this study is that the 265 questionnaire respondents (partners, associates and executive directors) agree overwhelmingly that associates, by the end of their seventh year of practice, should have a competency level of Knowledge and Understanding or Application for all 58 business, management and supervisory skills. Furthermore, this agreement exists across all respondents regardless of their position, the size of their firm, or their gender."

## Special Notice: Hurricane Katrina — How You Can Help

### Message from 2004-2005 WSBA President

**Ron Ward:** We are deeply saddened by the devastating effects of Hurricane Katrina. While we may be far removed physically from the Gulf states, many of us have family and friends there, and we all, as caring and compassionate people, want to help. We believe the fastest, most effective, and most efficient way for WSBA members to contribute is through already-established channels. Listed below is information that may be helpful to you: For additional information, see the WSBA website at [www.wsba.org](http://www.wsba.org). For those of you who have already reached out to help, we thank you for your compassion and generosity.

**Donating Money.** You are encouraged to donate to the charity of your choice. Governor Gregoire has announced Washington state help for Katrina recovery and established "Washington Cares," a program through which the first \$100,000 in donations from citizens will be matched by Washington Mutual. These funds will

be directed to the American Red Cross.

**Providing Temporary Housing or Office Space.** Governor Gregoire has announced "Operation Evergreen," a Washington state effort to host people from the disaster area. For more information, see [www.governor.wa.gov](http://www.governor.wa.gov). The Atlanta Bar Association has set up a webpage where members of the legal community can post the help they are offering to lawyers and their staff who have been displaced by the hurricane. See [www.attorneyassist.org](http://www.attorneyassist.org).

**Providing Legal Assistance.** The Washington Access to Justice Board, Alliance for Equal Justice, and Office of Civil Legal Aid are working to coordinate the delivery of civil legal aid to hurricane victims who are coming to Washington. See [www.wsba.org](http://www.wsba.org). The American Bar Association is gathering information about lawyers able to provide legal assistance. See [www.abanet.org/katrina](http://www.abanet.org/katrina).

Relief funds have been established for those in the legal communities in Louisiana and Mississippi:

### Louisiana: Hurricane Katrina Legal

**Community Relief Fund.** The Louisiana State Bar Association has established the Hurricane Katrina Legal Community Relief Fund to help rebuild southern Louisiana's legal infrastructure so that lawyers can provide needed legal services to their clients and restore their damaged offices. The relief fund is being administered by the Baton Rouge Bar Foundation, a 501(c)(3) entity. Donations should be sent to: Hurricane Katrina Legal Community Relief Fund, c/o Baton Rouge Bar Foundation, 544 Main St., Baton Rouge, LA 70802.

**Mississippi: Hurricane Katrina Lawyer Relief Fund.** The Mississippi Bar and Mississippi Bar Foundation have established the Hurricane Katrina Lawyer Relief Fund to assist lawyers who have lost their offices in the storm. Funds collected will be used to assist lawyers with re-establishing their law offices. Donations should be made payable to the Mississippi Bar Foundation and mailed to Hurricane Katrina Lawyer Relief Fund, c/o Mississippi Bar Foundation, PO Box 2168, Jackson, MS 39225-2168.

## OPPORTUNITIES FOR SERVICE

### Board for Judicial Administration, Court Independence Response Team

**Application deadline: December 1, 2005**

The WSBA Board of Governors is accepting letters of interest from members interested in serving a three-year term on the Board for Judicial Administration's Court Independence Response Team (CIRT).

The membership of this committee will consist of judges from municipal, district, and superior courts; court administrators; representatives of cities and counties; city and county attorneys; the WSBA; the ACLU; public defenders; and the Attorney General's office. The CIRT Committee will be a forum for discussion and resolution of issues that arise between a court and the executive or legislative authority in the court's jurisdiction. The WSBA will nominate a representative based on demonstrated familiarity with their constituency and his or her willingness to work cooperatively to address issues that may arise between the judiciary and other government branches. The Chief Justice of

the Washington State Supreme Court will make the appointment. The committee will meet once annually and at other times as is necessary.

Please submit a letter of interest and résumé to the Office of the Executive Director, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, or e-mail [barleaders@wsba.org](mailto:barleaders@wsba.org).

### Bench-Bar-Press Committee of Washington

**Application Deadline: December 1, 2005**

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a three-year term on the Bench-Bar-Press Committee of Washington. A written expression of interest and a résumé are also required for any incumbent seeking reappointment. The three-year term will commence on February 1, 2006.

The Bench-Bar-Press Committee was formed in 1963 to foster better understanding and working relationships between judges, lawyers, and journalists.

Its mission is to reconcile, as much as possible, the tension between the constitutional values of a free press with those of a fair trial through educational events and relationship building. The committee is chaired by the Washington State Supreme Court Chief Justice and includes representatives from the legal profession, judiciary, law enforcement, and news media. The committee meets as a whole once or twice each year. Subcommittees of volunteers are organized on an ad hoc basis to plan events. Further information about the committee can be found at [www.courts.wa.gov](http://www.courts.wa.gov).

Please submit letters of interest and résumés to the Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste 400, Seattle, WA 98121-2330, or e-mail [barleaders@wsba.org](mailto:barleaders@wsba.org).

### Legal Foundation of Washington Seeks Board of Trustees Members

**Application deadline: November 1, 2005**

The WSBA Board of Governors is accept-

ing letters of interest and résumés from members interested in serving a two-year term on the Legal Foundation of Washington Board of Trustees (two positions). Incumbents are eligible for reappointment (up to two consecutive terms) and must submit a letter of interest and résumé. The Legal Foundation of Washington is a private, not-for-profit organization that promotes equal justice for low-income people through the administration of IOLTA and other funds. Trustees should have a demonstrated commitment to, and knowledge of, the need for legal services and how these services are provided in Washington. For more information, e-mail [bcclark@legalfoundation.org](mailto:bcclark@legalfoundation.org).

Please submit letters of interest and résumés to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, or e-mail [barleaders@wsba.org](mailto:barleaders@wsba.org).

**Northwest Justice Project Seeks Board of Directors Members**  
*Application Deadline: November 1, 2005*

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a three-year term on the Northwest Justice Project Board of Directors (two positions). The three-year term will begin on January 1, 2006. A letter of interest and résumé are required for incumbents seeking reap-

pointment. The Northwest Justice Project is a not-for-profit organization, which receives primary funding from the state and through the federal Legal Services Corporation to provide civil legal services to low-income people. Board members, who play an active role in setting program policy and assuring adequate oversight of program operations, must have a demonstrated interest in, and knowledge of, the delivery of high-quality civil legal services to the poor. For more information, e-mail [mac@nwjustice.org](mailto:mac@nwjustice.org). Please submit letters of interest and résumés to Bar Leaders Division, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, or e-mail [barleaders@wsba.org](mailto:barleaders@wsba.org).

**MCLE Certification for Group 2 (2003-2005) — Complete Credits by December 31, 2005**

Active WSBA members in MCLE Reporting Group 2 must report compliance with MCLE credit requirements for the 2003-2005 reporting period at the end of this year. Members in Group 2 include active members who were admitted to the WSBA in 1976-1983 or in 1992, 1995, 1998, or 2001. (Members admitted in 2004 are also in Group 2 but are not due to report until the end of 2008. Their first reporting period will be 2006-2008, but any credits earned on or after the day of admittance to the WSBA may be counted for compliance.)

If you are a Group 2 member, you will receive a Continuing Legal Education Certification (C2) form 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. This form is an affidavit that lists all WSBA-approved courses that were on your 2003-2005 MCLE online profile at the beginning of October 2005. If you have taken other classes since the C2 was printed and they are all listed in your online profile, you may print and attach a copy of the online profile to the C2 form. Indicate on your C2 form that the attached profile is the true and correct record of the courses taken for the reporting period. Alternatively, you may simply add the additional WSBA-approved courses you took to the back of the C2 form (the C3

form). The deadline for completing the C2 form and returning it to the WSBA is February 1, 2006.

*All WSBA-approved courses you list on your C2 form must have an Activity ID number.* This number is listed on your online MCLE profile and is assigned at the time the Form 1 for each course is reviewed. If you have taken courses that have not yet been approved by the WSBA, please submit Form 1s for these courses immediately to ensure that they are approved before your C2 is due. Form 1s submitted electronically (at [pro.wsba.org](http://pro.wsba.org)) could take at least four weeks to process if they are submitted in October through February, due to high volumes. Paper Form 1s may take at least six weeks to process during the same period. If you submit a paper Form 1, you will be notified by mail of the Activity ID number assigned to it after the Form 1 is processed. If you have questions about the Form 1 process, please contact the WSBA Service Center at 206-443-WSBA or 800-945-WSBA, or e-mail [questions@wsba.org](mailto:questions@wsba.org).

See the section that follows for more information about MCLE compliance.

**MCLE Certification for Active Members Due Date for MCLE Reporting**

WSBA members are divided into three MCLE reporting groups based on year of admission. (Newly admitted members are

exempt. See "Newly Admitted Members" below.)

- Group 1:** Admitted through 1975, 1991, 1994, 1997, 2000, 2003, or 2006
- Group 2:** Admitted in 1976 through 1983, 1992, 1995, 1998, 2001, or 2004
- Group 3:** Admitted in 1984 through 1990, 1993, 1996, 1999, 2002, or 2005

Reporting Group	Next Reporting Period	Complete Credits by	File C2 Form by
Group 2	2003-2005	December 31, 2005	February 1, 2006
Group 3	2004-2006	December 31, 2006	February 1, 2007
Group 1	2005-2007	December 31, 2007	February 1, 2008

**Credit Requirements.** The following credit requirements must be met by December 31 of the last year of an active member's reporting period:

- At least 45 total credits of WSBA-approved CLE activities must be taken, which need to include a minimum of 30 live credits and six ethics credits.
- A/V courses cannot be more than five years old, except approved "skills-based" courses.
- Six *pro bono* credits can be earned per year. Two of these credits are for approved annual training, which must be taken prior to being able to earn credit for the *pro bono* work. Four *pro bono* credits may be earned each year

if at least four hours of *pro bono* work was provided through a qualified legal services provider.

**Carry-over CLE Credits.** Carry-over credits from the previous reporting period may be used to meet the requirements of the current reporting period. If your current reporting period credits total exceeds 45, you may carry over a maximum combined total of 15 credits to your next reporting period. Only two ethics credits and five A/V credits may be carried over.

**C2 Reporting Requirement.** All active members due to report are required to file a Continuing Legal Education Certification (C2) form with all CLE courses taken for credit compliance. The deadline for filing your C2 form is February 1 of the year following the end of your reporting period. Note:

- Your online roster is not a substitute for filing the C2 form.
- The C2 form is an affidavit and must be signed and dated, and the city and state where signed must be identified.
- C2 forms are included in the license packets sent in early December to all members due to report (which will be Group 2 members this year).
- All CLE courses listed on member rosters as of October 1 will be printed on the back of the C2 form. If you took more CLE courses after October 1, and they appear on your online roster, and you do not want to hand-write them on the back of the C2 form, you may print a copy of your roster and attach it to your C2 form. State on your C2 form that the attached online roster printout is a true and correct statement of the CLE courses taken for credit compliance.

**MCLE Late Fees.** All active members who have not completed their credits by December 31 of the last year of their reporting period, or who submit their C2 reporting forms after March 1 of the following year (the end of the grace period after the February 1 deadline), must pay a late fee of \$150. The late fee increases by \$300 for each consecutive three-year reporting period of noncompliance.

**Newly Admitted Members.** If you are a newly admitted member, you are exempt from reporting CLE credits for the year of

your admission and the following calendar year. If you were admitted in 2004, you will not report for this reporting period (2003-2005) even though you are in Group 2. You will first report at the end of the 2006-2008 reporting period. When you report at the end of your first reporting period, you may claim all CLE credits earned on or after your date of admission to the WSBA.

**MCLE Comity.** If you are an active member of the Washington State Bar Association and your primary office for the practice of law is in Oregon, Idaho or Utah, you may meet your mandatory CLE requirements by providing proof of current MCLE compliance. Only a Certificate of MCLE Compliance from your primary state bar (not a "Certificate of Good Standing"), sent with your WA Continuing Legal Education Certification (C2) form, will satisfy your MCLE requirements in Washington.

**MCLE System – Course Listing and Member Profiles.** Members may use the online MCLE system at [www.pro.wsba.org](http://www.pro.wsba.org) to:

- Review courses taken and credits earned.
- Apply for course approval.
- Apply for writing credit, *pro bono* credit, or prep-time credit.
- Search for approved courses being offered.

To use the MCLE system, go to [www.pro.wsba.org](http://www.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 using the system. Online help is available. If you have any questions about using the MCLE system or about the MCLE compliance requirements, see the online FAQs at [www.wsba.org/lawyers/licensing/faq-mcle.htm](http://www.wsba.org/lawyers/licensing/faq-mcle.htm), call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail us at [questions@wsba.org](mailto:questions@wsba.org).

### Speakers Available

The WSBA Lawyers' Assistance Program offers speakers for engagements at county or specialty bar associations or other law-related organizations. Topics include stress management, life/work balance, and recognizing and handling problem-personality clients. For more information,

contact Jennifer Favell at 206-727-8267.

### Washington Attorneys with Disabilities to Reactivate

A group of Washington state attorneys with disabilities is planning to reactivate an interest group and/or bar organization beginning this fall. If you are interested in becoming an active and dynamic member of this group, want to meet other attorneys with disabilities, and learn more about ADA and other issues of interest to attorneys with disabilities, we will be having an organizational meeting in October or November. In addition to having regular meetings, we plan to hold a kick-off reception, offer CLEs and seminars, and conduct a survey of Washington attorneys with disabilities. For more information, please contact Shawn Murinko at Spokane City Prosecutor's Office, 909 W. Mellon Ave., Spokane, WA 99201-2129; phone 509-835-5988; e-mail [smurinko@spokanecity.org](mailto:smurinko@spokanecity.org); or contact Joslyn K. N. Donlin, WSBA diversity advocate, c/o WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; phone 206-727-8216; or e-mail [joslynd@wsba.org](mailto:joslynd@wsba.org).

### Men's Group

The Lawyers' Assistance Program is pleased to announce the formation of a confidential Men's Group led by Mel Knight, Ph.D. The group will provide a safe and supportive place for men to explore the challenges and conflicts between power and intimacy; ambition and responsibility; and financial success and the needs of loved ones and family. The group will offer an opportunity to evaluate how these challenges have the potential for colliding with the pursuit of the practice of law and a well-balanced life. The Men's Group will meet every other Thursday from 5:00 to 6:30 p.m. There is a fee of \$210 for each six-week unit. For more information, contact Dr. Knight at 206-282-5100.

### Enhance Your Relationship

The WSBA's Lawyers' Assistance Program will sponsor a Prevention and Relationship Enhancement Program (PREP), a series of relationship skill-building seminars for attorneys and their spouses or partners. The PREP seminars will be held at the

WSBA office on October 22 from noon to 6 p.m., October 29 from 1 to 4 p.m., and November 5 from 1 to 4 p.m. The PREP is based on decades of research on relationships. Couples who have taken PREP seminars have a 30 to 50 percent reduction in separation and divorce. Couples learn how to communicate more effectively, understand and solve problems, and deepen their connection to each other. APR 19(2) assures confidentiality. The cost of the PREP is \$450. The registration deadline is October 7, 2005, and space is available for 15 couples. For more information, contact Jenny Favell, Ph.D., at 206-727-8267.

### Address/Contact Information Update

2006 license fee renewal packets are scheduled to be mailed in early December. Please update your address no later than October 15 to ensure your license packet will be mailed to the correct address. (Please note: If you list a home address as your public contact address, that address will be provided as your contact information to all inquirers.) APR 13(b) requires all attorneys to update their office addresses and telephone numbers within 10 days of a change. APR 13(c), which went into effect September 1, 2005, provides as follows:

“Electronic mail address: An attorney should advise the Washington State Bar Association of a current business electronic mail address if one exists. An attorney whose business electronic mail address changes should, within 10 days after the change, notify the Executive Director of the Washington State Bar Association, who shall forward changes weekly to the Office of the Clerk of the Supreme Court for entry into the state computer system. Use of electronic mail addresses for court notice, service and filing must comply with GR 30.”

You can check your contact information by going to the online lawyer directory at [www.pro.wsba.org](http://www.pro.wsba.org). If your contact information (name, address, phone, fax, or e-mail address) has changed, please

update the information by e-mailing [questions@wsba.org](mailto:questions@wsba.org), faxing the change to 206-727-8319, or calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. All requests for contact information changes must be made directly by the member or with the member's approval.

### WSBA Leadership Institute Wins ABA 2005 Partnership Program Award

The WSBA Leadership Institute has been named one of four recipients of the ABA's 2005 Partnership Program Awards. This prestigious award, which recognizes efforts by bar associations throughout the country to increase diversity in the legal profession, was presented at the ABA Annual Meeting held August 4-9 in Chicago. This being the WSBA Leadership Institute's inaugural year makes the award especially noteworthy.



On hand to receive the ABA Partnership Program Award were, from left to right, M. Janice Michels, WSBA executive director; Ronald R. Ward, 2004-2005 WSBA president and founder of the WSBA Leadership Institute; Joslyn K. N. Donlin, WSBA diversity advocate, and James F. Williams, chair of the WSBA Leadership Institute Advisory Board.

### Welcome to the WYLD's New Officers

The new Washington Young Lawyers Division (WYLD) officers will officially take their seats at the WYLD Board of Trustees meeting in Seattle on October 1, 2005.

**John Brangwin**, of the Wenatchee firm Woods & Brangwin, was unanimously appointed to serve as the 2005-2006 WYLD president-elect. **Pallavi Mehta Wahi**, of the Seattle firm Stokes Lawrence PS, was elected to represent the King County District. **Martha Grant**, of the Wenatchee firm Johnson, Gaukroger, Drewelow & Woollett PS, was unanimously appointed to represent the North Central District.

**Michael DeWitt**, of the Olympia firm Morgan & Bartholomew, was unanimously appointed to represent the Greater Olympia District. **Amy Robinson**, of the Bellingham firm Brett & Daugert PLLC, was unanimously appointed to represent the Northwest District. **Michael Talbot**, of the Yakima County Department of Assigned Counsel, was unanimously appointed to represent the South Central District. **Toni Meacham**, of the Law Office of Toni Meacham, was unanimously appointed to represent the Southeast District. For a full WYLD Board of Trustees roster and more information about the Washington Young Lawyers Division, please visit [www.wsba.org/lawyers/groups/wyld/default.htm](http://www.wsba.org/lawyers/groups/wyld/default.htm).

### WSBA Leadership Institute Seeks Fellows for 2006

The WSBA seeks applicants for the WSBA Leadership Institute. The WSBA recognizes that many lawyers — particularly women, those of color, and those from traditionally underrepresented groups — have not been recruited for leadership positions or made aware of opportunities for skill development, professional growth, and leadership training available through the WSBA.

The mission of the WSBA Leadership Institute is to recruit, train, and retain Washington attorneys who have been admitted for 10 years or less for leadership positions in the legal community and in the WSBA, with an emphasis on racial, ethnic, gender, sexual orientation, disability, cultural, and geographic diversity. 2006 will be the Institute's second year of operation.

Approximately 10 fellows will be carefully selected for the 2006 program, which will take place January through August 2006. Fellows will devote approximately 70 hours to the program, which includes professional-development seminars (on topics such as the logistics of legal practice, the judiciary, public- versus private-sector employment, and the legislative process) and participation in a group community service project. Fellows will earn 30 CLE credits. There will be no charge to participants.

Applications will be accepted until

November 1, 2005. Further information, including application forms and instructions, is available on the WSBA website at [www.wsba.org/lawyers/leadership\\_institute.htm](http://www.wsba.org/lawyers/leadership_institute.htm).

The WSBA Leadership Institute recently received the ABA's Partnership Award, a prestigious award that recognizes efforts by bar associations to increase diversity in the legal profession.

## WYLD Trial Advocacy Program Registration Now Open

The Trial Advocacy Program (TAP) offers members of the WYLD an opportunity to improve their litigation skills, in both the civil and criminal justice fields, and acquire trial experience. The TAP provides a unique opportunity to interact with, and learn from, more experienced practitioners and to network with other new lawyers. The TAP is an intensive two-weekend program emphasizing jury trials and includes lectures, discussion groups, mock trials, exercises, and general education and instruction in courtroom trial practice. The 2005 program will be held in Seattle on November 4-5 and 11-12. This program has been approved for 30.25 CLE credits, including one ethics credit. For program details and registration, visit [www.wsba.org/lawyers/groups/wyld](http://www.wsba.org/lawyers/groups/wyld).

## Symposium on Judicial Selection and Independence

The Seattle University School of Law will host a symposium on judicial selection and independence on November 11, 2005. Former Senator **Slade Gorton** and former Governor **Gary Locke** will co-chair this event, which will explore ways to protect judges from undue influence in elections, preserve the appearance of fairness in the judicial selection process, and enhance public confidence in Washington state's judiciary. For more information, contact Alice Paine, executive director of the King County Bar Association, at 206-267-7100.

## New Sexual Orientation and Gender Identity Section Considered

This notice is posted pursuant to the WSBA Bylaws, Article IX, "Sections," regarding a six-month prior notification of intent to

establish a new Sexual Orientation and Gender Identity Legal Issues Section. For more information, please contact Rachel da Silva at 360-943-6260, ext. 203, or e-mail [rachel.dasilva@columbialegal.org](mailto:rachel.dasilva@columbialegal.org).

## Estate Planning and Probate Titles Coming from WSBA-CLE Publications

Three new titles providing definitive coverage of estate planning and probate law and practice in Washington will be released this fall. The *Washington Estate Planning Deskbook* and the *Washington Probate Deskbook* are edited by Thomas R. Andrews, Professor of Law at the University of Washington School of Law; John R. Price, Of Counsel with Perkins Coie; and Mark Reutlinger, Professor Emeritus of Law at the Seattle University School of Law. WSBA-CLE is also publishing a revised edition of *Washington Law of Wills and Intestate Succession*, by Mark Reutlinger. For more information e-mail [orders@wsba.org](mailto:orders@wsba.org).

## Computer Clinic

The WSBA offers a hands-on computer clinic for members wanting to learn more about what Microsoft Office programs — such as Outlook, PowerPoint, Excel, and Word, as well as Adobe Acrobat 6.0 — can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The next clinic will be held on October 10, 2005, from 10 a.m. to noon at the WSBA office. For more information, contact Pete Roberts at 206-727-8237 or [peter@wsba.org](mailto:peter@wsba.org).

## More LOMAP Events

LOMAP hosts a meeting of contract lawyers the first Tuesday of each month. The next meeting will take place October 4 from noon to 1:30 p.m. at the WSBA office. The October dates for "LOMAP & Ethics ... on the Road: The 2005 Traveling Seminar" are October 18 in Richland, October 19 in Walla Walla, and October 20 in Yakima. Registration is \$79, and each seminar has been approved for four CLE credits, including two ethics credits. For more information,

contact Julie Salmon at 206-733-5914 or [julies@wsba.org](mailto:julies@wsba.org).

## Job Seekers Discussion Group

Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The group discusses where to look for jobs, how to use your network of contacts, strategies for résumés and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. For more information contact Rebecca Nerison, Ph.D. at 206-727-8269 or [rebeccan@wsba.org](mailto:rebeccan@wsba.org).

## LAP Solution of the Month: Knowing When to Say No

Do you have trouble saying no? Are you struggling with cases your gut told you to avoid? If so, you may have trouble setting and maintaining good boundaries. Figure out what your limits are, then practice saying no. If you'd like help, call the Lawyers' Assistance Program at 206-727-8268 to schedule a free, confidential consultation. Enjoy feeling in control again.

## Upcoming Board of Governors Meetings

**October 28-29 — Vancouver, WA;**  
**December 9-10 — Bremerton; January 13-14 — Olympia.** 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).

## Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in September 2005 was 3.686 percent. Therefore, the maximum allowable usury rate for September is 12 percent. Information from January 1987 to date is on the WSBA website at [www.wsba.org/media/publications/barnews/usury.htm](http://www.wsba.org/media/publications/barnews/usury.htm).

## 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.*

*Note: More than 29,000 persons are eligible to practice law in Washington state. Some of them share the same or similar names. Bar News strives to include a clarification whenever an attorney listed in the Disciplinary Notices has the same name as another WSBA member; however, all discipline reports should be read carefully for names, cities, and bar numbers.*

### Suspended

**John G. Bell** (WSBA No. 4209, admitted 1968), of Seattle, was suspended for 18 months, effective May 12, 2005, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in 2003 and 2004 involving failure to promptly respond to inquiries and requests for information relevant to a grievance as required by the Rules for Enforcement of Lawyer Conduct. *John G. Bell is to be distinguished from John E. Bell of Olympia and John H. Bell of Tacoma.*

In February 2003, the Bar Association received a grievance against Mr. Bell. In March 2003, the Association requested that Mr. Bell respond to the grievance within two weeks. He did not respond to the request nor to a subsequent letter notifying him that the response was overdue and that a failure to respond would subject him to a deposition.

In June 2003, the Association attempted to personally serve Mr. Bell with a subpoena *duces tecum*. The Association was unable to effect service because Mr. Bell's office address was a private mailbox facility and he did not answer the door at his residence. In July 2003, the Association again attempted to personally serve Mr. Bell with a

subpoena *duces tecum* but again was unable to effect service.

In August 2003, the Association mailed certified letters to Mr. Bell at his residential and office addresses, instructing him to contact the Association to arrange for personal service. Although the Association received return receipts for the letters, Mr. Bell did not contact the Association as directed.

In October 2003, the Association served Mr. Bell with a petition for interim suspension under ELC 7.2(a)(3) for failing to cooperate with the disciplinary investigation. Mr. Bell did not reply to the Supreme Court's show cause order and did not appear at the show cause hearing. On November 19, 2003, the Court entered an order suspending Mr. Bell until he complied with the Association's requests for information.

In March 2004, the Association filed a formal complaint in the matter. In April 2004, the Association filed a motion for default. In May 2004, Mr. Bell filed an answer to the complaint, but did not thereafter participate in the proceedings.

Mr. Bell's conduct violated RPC 8.4(1), prohibiting a lawyer from violating a duty imposed by or under the Rules for Enforcement of Lawyer Conduct (here, ELC 5.3(e), requiring a lawyer to promptly respond to any inquiry or request for information relevant to grievances).

Kevin M. Bank represented the Bar Association. Mr. Bell represented himself. Paul M. Larson was the hearing officer.

### Reprimanded

**Robert H. Larson** (WSBA No. 1385, admitted 1965), of Bangkok, Thailand, was ordered to receive a reprimand on October 21, 2004, following a stipulation approved by a hearing officer. This discipline was based on his conduct in 2001 and 2002 involving failure to inform a tribunal of all relevant facts in an *ex parte* matter and conduct prejudicial to the administration of justice.

In 2001, Mr. Larson was hired to pursue a cause of action for unlawful trespass for cutting trees and shrubs. The alleged trespass had been com-

mitted by an individual (hereinafter referred to as "F.A.") who resided on property adjacent to the client's property. Mr. Larson commenced an action against the property owners but did not name F.A., who resided on the adjacent property but did not own it.

F.A. hired a lawyer who, in July 2001, notified Mr. Larson that he represented the individual who had committed the acts alleged in the lawsuit. F.A.'s lawyer notified Mr. Larson that he would be asserting a number of defenses and that F.A. should be substituted as the sole defendant. Mr. Larson subsequently received a notice of appearance filed by F.A.'s lawyer.

In September 2001, Mr. Larson obtained an order adding F.A. as a defendant. The order reflected that F.A. was the individual who allegedly cut down the trees and shrubs as agent for the property owners. In October 2001, F.A.'s lawyer filed and served an answer.

By letter, Mr. Larson subsequently informed F.A.'s lawyer that he was filing a motion for default against the property owners; the letter indicated that Mr. Larson would give F.A.'s lawyer notice if he obtained a default judgment. Shortly thereafter, Mr. Larson received F.A.'s response to the motion for default. Mr. Larson knew from reading the response that F.A. intended to contest the entry of a judgment against the property owners. On October 25, 2001, the court entered an order of default against the property owners.

Both Mr. Larson's client and F.A. obtained expert arborists to render opinions on the issue of damages. The plaintiff's arborist valued the damage at \$12,500, while F.A.'s arborist valued the damage at \$615. The matter was scheduled for arbitration in February 2002.

In January 2002, Mr. Larson obtained an *ex parte* default judgment against the property owners for \$35,000 plus costs and fees without providing notice to anyone. Mr. Larson incorrectly believed that the Civil Rules did not require him to provide notice to obtain a default judgment since he had already obtained an order of default with notice. Mr. Larson did not recall that he had previously agreed to

provide F.A.'s lawyer with notice if he sought a default judgment against the property owners.

The motion for a default judgment inaccurately stated, "Defendants were all served on September 18, 2001, and none of them have either appeared or filed an affirmative pleading." Mr. Larson's supporting declaration inaccurately stated that he had obtained a default order against F.A. in addition to the property owners. Mr. Larson's declaration attached a copy of the letter from his client's arborist expert to support the claim for damages. Mr. Larson did not supply the court with the conflicting opinion by F.A.'s arborist expert.

Mr. Larson never notified the defendant property owners about the default judgment after it was entered. In February 2002, Mr. Larson obtained an *ex parte* order for voluntary dismissal. The order of dismissal inaccurately stated that the "action" is dismissed without prejudice, and that "no costs are awarded to any party." Mr. Larson subsequently sent the order of dismissal to F.A.'s lawyer together with a letter stating that "my clients have decided not to go forward with the arbitration and have directed me to non-suit this matter."

In August 2002, F.A.'s lawyer discovered that a judgment lien had been filed by the plaintiff against the property owned by the other defendants. F.A.'s lawyer reminded Mr. Larson of his October 2001 assurance that he would provide notice if he attempted to obtain a default judgment and asked Mr. Larson to vacate the default judgment. Mr. Larson refused to vacate the default judgment or correct the inaccurate statements in his pleadings.

F.A.'s lawyer filed a motion to vacate the default judgment. Finding that the default judgment was improper, the court vacated the judgment in September 2002 and assessed \$2,760 in Civil Rule 11 sanctions plus \$108.50 in costs jointly against Mr. Larson and his clients. Mr. Larson personally paid the sanctions and costs.

The matter proceeded to arbitration, after which a judgment for \$1,924 plus \$871 in costs was awarded to the

plaintiff against all the defendants.

Mr. Larson's conduct violated RPC 3.3(f), requiring that, in an *ex parte* proceeding, a lawyer inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct prejudicial to the administration of justice.

Jonathan H. Burke represented the Bar Association. Kurt M. Bulmer represented Mr. Larson. James C. Lawrie was the hearing officer.

### Reprimanded

**Anna K. Nordtvedt** (WSBA No. 15622, admitted 1986), of Marina, CA, was ordered to receive a reprimand on March 24, 2005, following a stipulation approved by a hearing officer. This discipline was based on her conduct in 2003 involving obstructing a party's access to evidence, knowingly disobeying an obligation under the rules of a tribunal, and conduct prejudicial to the administration of justice.

In January 2003, an individual (hereinafter "L.B.") provided some documents to Ms. Nordtvedt and asked her to review them. The documents included a deed, a power of attorney, a contract, and a newspaper notice to creditors. Some or all of the documents related to property that was the subject of a quiet title action pending in superior court.

Subsequently, the lawyer for the plaintiff in the quiet title action telephoned Ms. Nordtvedt and asked her about the documents. Ms. Nordtvedt declined to discuss them.

In January 2003, Ms. Nordtvedt was served with a subpoena *duces tecum* issued by the plaintiff's lawyer. The subpoena commanded Ms. Nordtvedt to appear at a deposition on February 6, 2003, and produce some or all of the documents that had been delivered to her by L.B. None of those documents contained attorney-client communications between Ms. Nordtvedt and L.B.

On January 27, 2003, after she was served with the subpoena, Ms. Nordtvedt returned the documents to L.B.,

but Ms. Nordtvedt retained copies.

On January 28, 2003, Ms. Nordtvedt filed a motion to strike the deposition and to quash the subpoena. On January 30, 2003, a superior court judge denied the motion and ordered Ms. Nordtvedt to produce all the documents called for by the subpoena that were not attorney-client communications between her and L.B.

On February 5, 2003, the day before the scheduled deposition, L.B. came to Ms. Nordtvedt's office and demanded that she give him the copies of the documents that she had retained. Ms. Nordtvedt acceded to the demand and gave L.B. the copies. On February 6, 2003, Ms. Nordtvedt appeared at her deposition without any of the documents called for by the subpoena *duces tecum*.

Mr. Nordtvedt's conduct violated RPC 3.4(a), prohibiting a lawyer from unlawfully obstructing another party's access to evidence or unlawfully altering, destroying, or concealing a document or other material having potential evidentiary value; RPC 3.4(c), prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; RPC 8.4(d), prohibiting a lawyer from engaging in conduct prejudicial to the administration of justice; and RPC 8.4(j), prohibiting a lawyer from willfully disobeying or violating a court order requiring him or her to do or cease doing an act which he or she ought in good faith to do or forbear.

Scott G. Busby represented the Bar Association. J. Donald Curran represented Ms. Nordtvedt. James P. Spurgitis was the hearing officer.

### Nondisciplinary Notices

#### Suspended Pending Conclusion of Supplemental Proceedings

**Lowell V. Ruen** (WSBA No. 11407, admitted 1981), of Spokane, was by stipulation suspended pending the conclusion of supplemental proceedings, pursuant to ELC 7.4, effective March 25, 2005, by an order of the Washington State Supreme Court. This is not a disciplinary action.

### DAVIS ROTHWELL MULLIN EARLE & XÓCHIHUA P.C.

announces the withdrawal of shareholder

**Daniel F. Mullin**

and wishes him well in his new endeavors.

The name of our firm has changed to:

### DAVIS ROTHWELL EARLE & XÓCHIHUA P.C.

Pamela R. Albee	Christopher J. Drotzmann	John S. Knowles
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Gina M. Delahunt		Paul R. Xóchihua

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Seattle Office: 206-622-2295

### VANDEBERG JOHNSON & GANDARA

is pleased to announce that

**Richard D. Thaler**

(formerly of Williams Kastner Gibbs)

has joined its Seattle office as Of Counsel

Mr. Thaler will continue his real estate practice.

**Seattle**  
600 University Street  
Suite 2424  
Seattle, WA 98101

**Tacoma**  
1201 Pacific Avenue  
Suite 1900  
Tacoma, WA 98401

### YARMUTH WILSDON CALFO PLLC

is pleased to announce that

**Jordan Gross**

has become partner of the firm.

Jordan practices civil and commercial litigation, with particular expertise in appeals and federal motions practice. Jordan's experience includes litigation and appeals in the areas of employment, securities, criminal, constitutional, and business law. She also assists individuals and businesses in responding to government investigations involving financial and health care fraud, False Claims Act (whistleblower) allegations, and environmental offenses. Jordan joined Yarmuth Wilsdon Calfo in 1999. Before joining the firm, she was a judicial clerk to United States District Court Judge Barbara Jacobs Rothstein and to Washington State Court of Appeals Judge Susan R. Agid.

and that

**Lyle Tenpenny**

has joined the firm.

Lyle's practice emphasizes complex civil and commercial litigation and white-collar criminal defense. His practice also includes counseling businesses and individuals in responding to government investigations. Before joining Yarmuth Wilsdon Calfo, Lyle practiced civil and appellate litigation at Preston Gates & Ellis LLP and served as a law clerk to United States District Judge Barbara Jacobs Rothstein.

### YARMUTH WILSDON CALFO, PLLC

The IDX Tower  
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Seattle, WA 98104  
Telephone: 206-516-3800

[www.yarmuth.com](http://www.yarmuth.com)

## MCKELL GRAFF, PLLC

is pleased to announce that

**Leah M. Eccles**

has joined the firm as an associate.

Ms. Eccles is a 2004 graduate of University of Utah, S.J. Quinney College of Law. Previously, she was a mediator for Utah Dispute Resolution, and interned with the Co-Parenting Mediation Program of the Salt Lake District Court where she trained court divorce mediators. While in law school, she served as a law clerk at the Utah Federal District Court ADR Office, and Utah Legal Services. Ms. Eccles' practice will focus on family law and will enhance the firm's emphasis on collaborative practice, conciliation, and mediation.

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**is open Monday**

**through Friday,**

**8:00 a.m. to**

**5:00 p.m.**

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**206-443-WSBA**

**questions@  
wsba.org**

## In Memoriam



### G. Edward Friar

*A reminiscence by John J. Michalik*

Former WSBA Executive Director Eddie Friar passed away on June 18, 2005, at the age of 88. His son Buck (G. Edward Friar Jr.) conveyed the news of Eddie's passing to me in a letter that noted that his dad "made his exit just the way he lived — with grace and dignity." He was truly a southern gentleman, a man of many facets, careers, and talents.

Eddie was a Tennessean through and through. He made his name and early fame as a legendary and at times theatrical trial lawyer in that state. He would later serve multiple elected terms as Tennessee's secretary of state and in 1958 was the unsuccessful democratic candidate for governor. He was for years a raconteur and man about town, including conducting a long-running and popular morning radio show from the breakfast table in his home. He was, in a word, a "fixture" in Tennessee. But life in Tennessee changed for Eddie when his wife passed away. While he was, at that time, the president and chairman of the board of a multi-million dollar corporation with restaurant, motel, and recreational developments across the South, he determined to move on.

And, thus, in 1971, he became only the third executive director in the history of the Washington State Bar Association. He brought his considerable talent for organization and a personal unending work ethic to bear on an organization that evolved to much of what it is today during his tenure. A couple of decades ahead of his time, he brought a business approach to what had been a traditionally run nonprofit association. He strengthened the Association's independence and, at the same time, its ties to the State Supreme Court. And he became the opposite of the center of attention that he was in Tennessee. In his 1981 letter to the Board of Governors conveying his resignation and retirement, Eddie noted that although in Tennessee he had been "constantly and literally on stage, with the bands playing and the flags flying," he had determined early on that with the WSBA it was the organization and not any single personality that needed to be preeminent and "the focus of every shred of attention."

After, in 1970, he interviewed for the position of executive director, he wrote to the Board of Governors about this life and his beliefs, and the following excerpt from that letter says much about what he was and would continue to be:

"I am not a man who has spent his life sitting at some small desk in a cloistered cubby hole. I am not just a spectator. I have been in the Arena. I have fought for the legal profession, for human dignity and for political freedom. I have made some contributions to this state and to its people and like to feel I have had some input into the National Advance. Therefore, any investigation of me will not produce a faceless monotone with no accomplishments, no friends, no enemies and no scars of the fray. The man who never hazards what he values, for a cause that consumes him — never adds something of himself to his times — is bound always

to live in an alien land and a world of someone else's making. The man who, on the other hand, blazes new trails, stands by his principles, and fights for the causes in which he believes, makes the forest of life his very own. And I guess the point I am really trying to make is that ... my total career allows me to bring a maturity and stability and a forward look which will make a real contribution to the Washington State Bar Association and to the programs of the profession."

He was and did all of those things during his decade as executive director, including preparing the way for those who were to follow. He left the WSBA a far better and prouder place for his presence.

Eddie retired to Sarasota, Florida, in 1981. Typically, his last act on his last day at the WSBA was to skip out on a private going away luncheon he was to have with me and then-WSBA President David Welts. He would tell me years later that "leaving the Bar was the hardest thing in my life, and for an emotional litterbug like me the finality of that luncheon would have been too much."

Many years have passed since Eddie left the scene in Seattle, and most of those who were the Bar's active leaders in the 1970s have preceded Eddie in the final roll call. Those who are about and remember the man from Knoxville (and Ballard, where he lived), will appreciate the final lines in Buck Friar's letter noting his dad's passing: "Some evening when the champagne is old and the bottle is cold, lift a glass to this rare courier from the long ago and far away, and his favorite toast, 'Here's to putts that drop and stocks that don't.'"

*John Michalik is executive director and CEO of the international Association of Legal Administrators, headquartered in Chicago. He served, under Eddie Friar, as the WSBA's first director of Continuing Legal Education and succeeded Friar as executive director from 1981-1990.*

#### **Steven T. Camilleri**

Steven Camilleri was born in Los Gatos, California, where he spent part of his

childhood before moving to Kirkland. He graduated from Juanita High School in 1983. He spent two years on a mission in England. He received his A.A. degree in 1993 from San Diego City College and continued on to the University of California at San Diego, where he received his B.A. He relocated to the Seattle area in the same year to attend law school at Seattle University, where he earned his J.D. degree in 1999. He was most pleased to have passed the bar exam on his first attempt that same year. Camilleri began his career as a lawyer with the Office of the Attorney General. Just before he passed away, he achieved one of his greatest goals, which was opening his independent law firm in Kent. Family and friends remember him as a free spirit with a great sense of humor and intellect who loved travel and adventure.

Camilleri is survived by his companion, Chris Woods, his mother, his brother and sisters, four nieces and nephews, and countless friends.

Steven Taft Camilleri was born January 1, 1965, and died August 1, 2005, aged 40.

#### **Herbert E. Hood**

Herbert Hood served in the U.S. Navy during World War II as a chief yeoman, stationed in Brisbane, Australia. He graduated with honors from Gonzaga University with a law degree in 1947. He practiced law for 14 years in Opportunity. He then worked for the federal government as a procurement attorney for the U.S. Army. His tours of duty took the family to Sacramento; Yokohama and Okinawa, Japan; and Fort Monroe, Virginia, where he retired in 1984.

Hood is survived by his wife, Mary, his five children, and nine grandchildren. Donations can be made to Catholic Charities, [www.cathocicharitiesusa.org](http://www.cathocicharitiesusa.org).

Herbert Eugene Hood was born January 17, 1912, in Beach City, Ohio, and died July 1, 2005, aged 93.

#### **Lloyd Meeds**

A native of Monroe, Lloyd Meeds graduated high school in 1946 and served in the U.S. Navy. He owned and operated

a service station in Monroe until 1954, when he returned to school to pursue his law degree. He graduated second in his class at Gonzaga University School of Law in 1958. He served as prosecuting attorney for Snohomish County from 1962-64.

Meeds represented the Second Congressional District of Washington in the U.S. House of Representatives from 1965 until his retirement in 1979. Following his retirement from Congress in 1979, Meeds joined Preston Gates Ellis & Rouvelas Meeds as a partner practicing in the Washington, D.C., office. While in Congress, Meeds served on the House Labor and Education Committee and played key roles in passage of legislation that established Head Start, Youth Conservation Corps, and other initiatives. Meeds also served as a member on the Interior and Insular Affairs Committee, where he established his legacy as a conservationist and advocate for Native Americans. He was pivotal in obtaining passage of the Alaska Native Claims Settlement Act of 1971, which provided for the settlement of claims on Native lands in Alaska. He later worked for a resolution to ensure passage of the Alaska National Interest Lands Conservation Act (ANILCA). He also played a key role in conservation legislation, including bills to establish the North Cascades National Park and the Alpine Lakes Wilderness Area.

"Lloyd Meeds was a trusted friend, colleague, and mentor to many in the firm and he will be greatly missed," said Emanuel Rouvelas, chairman of Preston Gates Ellis & Rouvelas Meeds. "He cared deeply about issues affecting Washington's citizens, Native Americans, and environmental and educational causes and worked tirelessly in both the U.S. Congress and private sector to be an advocate for those concerns. Lloyd was the definition of integrity and his contributions to the firm are invaluable."

"Lloyd Meeds served the state of Washington with distinction and honor," said WSBA member and former Speaker of the U.S. House Tom Foley. "It was a privilege to serve with him in the House of Representatives and his pas-

sion and dedication were an inspiration to those who knew him. I was honored to be his friend.”

Meeds is survived by his wife, Mary, three children, and many grandchildren.

Edwin Lloyd Meeds died in Church Creek, Maryland, and was buried at Arlington National Cemetery. He was 77.

#### **William G. Luscher**

William Luscher graduated from Gonzaga University School of Law. He was a Washington State Superior Court judge from 1982 to 1990 and a member of the Spokane School Board. He served in the Army during World War II and received the Purple Heart for wounds received in the Normandy invasion. He retired to Concord, New Hampshire, in 1990.

Luscher is survived by his wife, Lucille, his daughter, two granddaughters, and two great-granddaughters.

William Gordon Luscher was born August 8, 1918, and died July 4, 2005, in Concord, New Hampshire, aged 86.

#### **Joseph J. Lynch**

Joseph Lynch was born in Spokane, the youngest of seven children. He graduated from the University of Washington in 1976 with a B.A. in Society and Justice. He attended Gonzaga University School of Law, graduating *cum laude* in 1979. He began practicing law in Spokane and was active in politics. Lynch was a criminal defense attorney for ACA for the past 15 years.

His wife, Michelle, remembers his love of politics and NPR and his sense of humor. Lynch is survived by his wife, a daughter, and a son.

Joseph Jeremiah Lynch was born March 26, 1952, in Spokane, and died July 25, 2005, aged 53.

#### **David M. Bohr**

David Bohr grew up on a dairy farm in Vilas, South Dakota. After serving in the Navy, he attended Oregon State University and then went on to receive his law degree from the University of Puget Sound. He relocated to Wenatchee and eventually opened his own practice. In his 20-year long practice, he was proud that his clients didn't have to make appointments to see him. Bohr consid-

ered himself a “country lawyer.”

Bohr was constantly involved in working with children. He spent 16 years coaching youth baseball. He loved the outdoors, especially hunting and fishing, and was involved in the Washington State Hunter Education program. Bohr's other passion was his motorcycle. In 2000, he purchased the bike of his dreams and named it “Leroy” in honor of his father.

Bohr is survived by his wife, Teresa, his two sons, his mother, and seven brothers and sisters. Memorials may be made to the Wenatchee High School Booster Club, 1102 Millerdale, Wenatchee, WA 98801.

David Michael Bohr was born October 2, 1946, in Madison, South Dakota, and died May 22, 2005, in Spokane, aged 58.

#### **John D. Cartano**

A distinguished orator, decorated veteran, business leader, and devoted husband, John Cartano made his mark on the Seattle community. He served in World War II and commanded a PT boat. He received the Navy and Marine Corps Medal of Honor for helping to rescue 35 survivors from a burning transport ship. He graduated from Harvard Law School and was a founder of the Seattle law firm Cartano, Botzer & Chapman. Cartano was a member of the steering committee that brought the 1962 World's Fair to Seattle.

As a lawyer, Cartano focused on personal-injury cases. He was married for 58 years to his wife, Jane, who died May 1. They enjoyed tending fruit trees at their Bellevue home, making jam and canning fruit.

Cartano is survived by seven children, 13 grandchildren, and three great-grandchildren. Remembrances may be made to the American Diabetes Association.

John D. Cartano was born April 4, 1909, and died July 19, 2005, aged 96.

#### **Dennis G. Seinfeld**

Dennis “Denny” Seinfeld earned degrees at Stanford University and Yale before becoming a lawyer for the state of Washington in 1964. He worked as

an assistant attorney general in the mid-1960s before joining his father in private practice in Tacoma. Seinfeld had a passion for social justice. In the summer of 1965, the 25-year-old left his pregnant wife in the South Sound while he traveled to Mississippi and donated legal help to Black residents who were being wrongfully arrested. “I was really uncertain whether my baby was going to have a father during that time,” said his wife, Karen Seinfeld, who went on to become the Tacoma area's first female state Appeals Court judge.

Seinfeld helped found the City Club of Tacoma, served as chairman of the city's Human Relations Commission, and helped draft the charter to establish Pierce County's council-executive form of government. He was involved with community groups including the Metropolitan Park District, the Korean Women's Association, and the Martin Luther King Housing Foundation. He served on the boards of the Greater Tacoma Community Foundation, Temple Beth El, Greater Lakes Mental Health Center, and the Tacoma Art Museum. “He was an advocate for his clients, but he had a higher calling, or higher duty to serve justice and serve the community,” said Patricia Fetterly, a lawyer and president of Davies Pearson.

Seinfeld is survived by his wife, Karen, three children, and eight grandchildren. Contributions may be made to the Seinfeld Family Scholarship Fund at TCC, the Tacoma Art Museum, the Tahoma Land Conservancy, or the Temple Beth El Building Fund.

Dennis Gary Seinfeld was born April 19, 1940, and died August 1, 2005, aged 65.

#### **Thomas R. Sauriol**

Born in Chehalis, Thomas Sauriol grew up in Tacoma and attended Bellarmine Preparatory Academy. He graduated from St. Martin's College in Lacey and Gonzaga Law School. He became a lawyer in 1953 and did everything from personal injury to divorce until 1978, when he joined the Superior Court bench. He served as a Pierce County Superior Court judge for 18 years.

Sauriol was known for his passion

for children, his fairness, his knowledge of the law, and, at times, his firm words. His daughter, Mary Jo, said her father loved being an advocate for people who needed help. "That's why he loved being a judge," she said. "That's why he loved being a lawyer." Sauriol was a family man and loved fishing and golfing. He was a member of the Knights of Columbus, the Tacoma Elks, Puyallup Eagles, Sierra Club, Tacoma Country and Golf Club, and attended St. Patrick Catholic Church.

Sauriol was preceded in death by his wife of 48 years, Mary Jeanine, and his son Tommy. He is survived by his wife, Katherine, eight children, 28 grandchildren, and six great-grandchildren.

Thomas Rollan Sauriol was born January 7, 1927, in Chehalis, and died September 6, 2005, aged 78.

### **R. Eugene Boyd**

Eugene Boyd was born to a cattle ranching family along the Gulf Coast of Florida. He served in the Navy during World War II as a lieutenant aboard a ship stationed in Puget Sound. He completed law school in Florida and returned to the Seattle area to start his own practice and settle in Bellevue. He was involved in the movement to turn Bellevue into an official city. He posed for a photograph marking the 1953 vote to incorporate Bellevue. In the photo, Boyd holds the post of the town-limits sign while a fellow resident draws an X through the "un" in "unincorporated." The photo has appeared in Bellevue history books, newspapers, and promotional pamphlets. His arrival in Bellevue coincided with the town's transformation from a farm town to a fast-growing suburb. Boyd remained involved in civic work. He organized the city's municipal court and served as its first judge.

Boyd is survived by his wife, Berni, his daughter, three grandchildren, and a great-granddaughter.

R. Eugene Boyd was born October 8, 1921, and died July 26, 2005, aged 83.

### **S. Christopher Eslinger**

Christopher Eslinger was a copyright/trademark attorney for Intel. He died after a swimming accident in Maryville,

Illinois. Memorials may be made to Huntington's Society or the Church of Jesus Christ of Latter Day Saints Missionary Fund.

Eslinger is survived by his wife, Doris, his daughters, and his mother.

S. Christopher Eslinger was born August 7, 1961, and died July 9, 2005, aged 40.

### **John C. Patterson**

John Patterson earned a B.A. from the University of Washington and then served as a second lieutenant during World War II. He later became a lieutenant colonel in the Army Reserve. After the war he obtained his law degree and practiced with Betts, Patterson & Mines PS. His interests over the years included the Boy Scouts, Broadway High School Alumnae, and the University of Washington Access Program.

Patterson is survived by his wife, Betty, his daughter, and a grandson. Remembrances may be made to the Northwest Parkinson's Foundation, Mercer Island.

John Patterson was born September 25, 1920, and died February 21, 2005, aged 84.

### **Clifford A. Kuhn**

A longtime Kelso attorney, Clifford Kuhn attended Willamette University in Salem before joining the Army in 1965. He was a court reporter in the 7th Infantry Division at Camp Casey, Korea. "He had a passionate love affair with the law," said attorney William Dowell, a longtime friend. "He was very prideful of the fact that he represented people that needed the services of a lawyer."

Kuhn's wife, Bonnie, said her husband "was what they call a Renaissance man. He accepted felony cases, family practice, adoptions, wills and probates, corporations and partnerships — everything except bankruptcy." Kuhn's life had "many facets," she said; he was an accomplished chef, traveled often to Europe and Asia, played tennis, enjoyed ballroom dancing, grew roses and herbs, and loved BMWs.

Clifford A. Kuhn was born April 19, 1944, in Portland, OR, and died August 16, 2005, aged 61.

### **Thomas W. Secrest**

Thomas Secrest was born in Alaska, where his father was the field engineer in charge of the construction of the Alaska Railway. After overcoming childhood polio, he studied engineering at the University of Washington in Seattle and law at Georgetown University. He practiced patent and trademark law in Seattle and Chehalis from 1953 until his death.

Secrest is survived by his ex-wife, Evelyn, six children, 13 grandchildren, and two great grandchildren.

Thomas William Secrest was born November 3, 1921, in Anchorage, Alaska, and died June 11, 2005, in Centralia, aged 83.

### **Linda M. Safar**

Linda Safar grew up in Pullman and Spokane and lived in the Chicago area until she returned to Washington to earn her law degree from the University of Puget Sound. Safar then lived in Germany with her husband and taught law and business. They relocated to Wenatchee, where Safar became involved in community organizations including the Children's Museum, Wood House Conservatory of Music, Wenatchee Valley Symphony, St. Joseph's School, and the Wenatchee City Planning Commission.

Safar's concern for social justice was the catalyst for establishing the Chelan County Superior Court Facilitator program, which provides access to justice for lower income individuals. She served as a part-time court commissioner, and enjoyed the intellectual challenges and the opportunities to help people resolve disputes.

Safar is survived by her husband, Phil, her daughters, her mother, and four brothers and sisters. Memorials may be made to the Missionary Daughters of the Most Pure Virgin Mary, 600-D St. Joseph's Place, Wenatchee.

Linda Marie Safar was born on July 14, 1957, in Pomeroy, and died May 14, 2005, in Wenatchee, aged 47. <sup>BN</sup>

*Obituaries and remembrances of WSBA members are welcome. Please e-mail to [inmemorian@wsba.org](mailto:inmemorian@wsba.org).*

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## INSURANCE BAD FAITH

*For when they insure it is sweet to them to take the money; but when disaster comes it is otherwise and each man draws his rump back and strives not to pay.*

— Francesco di Marco Datini —  
Florentine businessman, letter to his wife, 14th century.

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Information must be received by the  
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**Administrative Law**

**Administrative Practice Before  
Environmental Boards**

October 26 — Seattle. 6.25 CLE credits,  
including 1 ethics. By WSBA-CLE; 800-  
945-WSBA or 206-443-WSBA.

**Business Law**

**Corporate Counsel Institute**

October 14 — Seattle. CLE credits  
pending. By WSBA-CLE; 800-945-WSBA  
or 206-443-WSBA.

**Valuation of a Closely Held Business**

November 10 — Seattle. CLE credits  
pending. By WSBA-CLE; 800-945-WSBA  
or 206-443-WSBA.

**Immigration Law and Malpractice:  
Business, Employment, Criminal,  
and Family Law**

November 10 — Seattle. CLE credits  
pending. By WSBA-CLE; 800-945-WSBA  
or 206-443-WSBA.

## Criminal Law

### Immigration Law and Malpractice: Business, Employment, Criminal, and Family Law

November 10 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## Dispute Resolution

### Family Mediation Training for Experienced Mediators: Featuring Zena Zumeta

November 4-6 — Seattle. By the University of Washington School of Law; 800-CLE-UNIV or 206-543-0059.

### Professional Mediation Skills Training

October 7-9, 22-23 — Seattle. 34 CLE credits, including 2 ethics. By University of Washington School of Law; 800-CLE-UNIV or 206-543-0059.

## Employment Law

### Fifth Annual Labor and Employment Law Seminar

October 19 — Seattle. 5.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Immigration Law and Malpractice: Business, Employment, Criminal, and Family Law

November 10 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## Environmental Law

### Administrative Practice Before Environmental Boards

October 26 — Seattle. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Annual Water Law Conference

November 18 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Permitting Strategies in Alaska

October 6 — Anchorage. 6 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400.

## Estate Planning

### When a Simple Will Isn't Enough: Critical Issues in Estate Planning

October 6 — Vancouver. 6 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### How to Probate an Estate and Handle Post-Mortem Matters

October 19 — Seattle. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### 50th Annual Estate Planning Seminar: The Golden Anniversary Celebration

November 7-8 — Seattle. 14.5 CLE credits, including 1 ethics. Application will also be made for other professions and attorneys in other states, including Oregon, Alaska, and Idaho. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Ethics for Estate Planners

November 29 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## Ethics

### Ethical Dilemmas

October 7 — Yakima  
October 11 — Olympia  
October 26 — Spokane  
November 2 — Mount Vernon  
November 9 — Vancouver  
November 14 — Seattle.  
4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Ethics for Litigators

October 18 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Ethics and Settlement Issues

October 7 — Seattle. By WSTIA; 206-464-1011.

### Ethics for Real Estate Lawyers

October 25 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Ethics for General Practitioners

November 15 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Modern Technology and Ethical Dilemmas

November 22 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Ethics for Estate Planners

November 29 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Negotiation Ethics: Winning Without Selling Your Soul, with Marty Latz

November 30 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## Family Law

### Family Law Trials: The Dynamics of Advocacy

October 21 — Seattle. 6.5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### Immigration Law and Malpractice: Business, Employment, Criminal, and Family Law

November 10 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## General

### Ethics for General Practitioners

November 15 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

## **National Lawyers Guild 2005 Convention**

October 26-30 — Portland. CLE credits pending. By the National Lawyers Guild; www.nlg.org.

### **Immigration Law**

#### **Immigration Law and Malpractice: Business, Employment, Criminal, and Family Law**

November 10 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

### **International Law**

#### **Doing Business in China and Other Asian Nations**

October 20-21 — Seattle. 10.75 general CLE credits, including 1 ethics. By The Seminar Group; 800-574-4852 or 206-463-4400.

#### **Out of the Classroom into the Courtroom: How to Use International Law in Our Everyday Law Practices.**

October 27 — Portland. CLE credits pending. By The International Committee of the National Lawyers Guild; 800-663-1144.

### **Law Office Management**

#### **LOMAP & Ethics . . . On the Road: The 2005 Traveling Seminar!**

October 18 — Richland

October 19 — Walla Walla

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November 2 — Everett

November 14 — Tacoma

November 16 — Tukwila

4 CLE credits, including 2 ethics.

By WSBA Law Office Management Assistance Program; 800-945-WSBA or 206-443-WSBA.

### **Law Practice Management**

#### **Attorney Fees: It Ain't All About the Money**

October 27 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

#### **Legal Writing for Lawyers**

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

#### **Time Mastery for Lawyers**

November 3 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

#### **Practice Development Series #1: Building Your Real Estate Practice**

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

#### **How to Close Your Law Practice When Retiring/Changing Fields**

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

### **Liability**

#### **Client Loyalty and the Relationship with Personal Counsel in Professional Liability Cases**

October 11 — Seattle. By WDTL; 206-749-0319.

#### **Liability of Financial Advisors**

October 31 — Seattle. 5.25 general CLE credits and 1 ethics credit. By The Seminar Group; 800-574-4852 or 206-463-4400.

### **Litigation**

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### **Real Property**

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**Seeking Will of Roger Paul Sundberg.** DOB: 12/24/41. Seattle resident. Please call John Gibson at 206-935-1422 or e-mail [seattlelawyer@hotmail.com](mailto:seattlelawyer@hotmail.com).

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*Human kind/ Cannot bear very much reality.*

— T.S. Eliot, *The Four Quartets*

One of the interesting things about editing is there is always something new turning up as a potential story.

Lately, I find myself having to pay attention to Popular Culture in ways I wouldn't have if left to my own devices. Popular Culture seems to be divided between good bits that conduce to the general uplift of society and morals; the bad bits demand congressional action and the reshaping and repurposing of the courts.



## Beach to boardroom, our members are hard at it

by Lindsay Thompson

Sometimes it's hard to tell on what side of the ledger things should fall. For example, former Congressman Ben Jones, who played Cooter on the bubbleploitation television series *The Dukes of Hazzard*, has denounced this summer's movie version as a betrayal of the wholesomeness and family values of the original small-screener.

This year, in your service, I had to take up watching reality TV.

My previous experience of the genre was limited and dated. I watched the first season of *Survivor* in 2000. It was so Robinson Crusoe meets Thomas Hobbes. And I heckled the kids in the Seattle edition of *The Real World*.

2005, however, brought reality TV into *Bar News's* focus when I read that two lawyers from Washington were cast in *Survivor* and *The Apprentice*.

For the uninitiated, *Survivor* strands a dozen and a half or so folks on an island and leaves them there to alternate between living off of rice, rats, snakes, fish, and the occasional crate of Pringles; and running, jumping, and climbing trees in games that turn them against each other and force them into increasingly devious stratagems of attrition. They vote each other off until one is left, and the last one wins a million dollars.

*The Apprentice* strands about the same number of people on the island of Manhattan. We don't get much of a sense of what they eat, but otherwise they occupy a funhouse world intelligently designed by the godlike business tycoon Donald Trump. He sets them off on little business projects that turn them against each other and force them into increasingly devious stratagems of attrition. Then Trump votes them off until one is left. The winner gets a job in one of the Trump companies.

Each show is, in its own way, a hard slog to sit through. On *Survivor* you get

treated to long stretches of beachfront ennui and inter-hammock gossip. Wardrobe requirements are minimal, so the casting skews toward the Highly Decorative.

*The Apprentice* subjects viewers to three truly modern horrors: the contestants' competing power suit wardrobes (which, astonishingly, fit into one tiny roller bag when the fired have to cross the Lobby of Shame to their taxi into exile); the unspeakable over-the-topness of Trump's sense of interior decoration; and The Donald's mesmerizing comb-over. All the contestants are quite young.

In Palau, lawyer Willard gave a good account of himself in the various competitions, but commented, after being voted off, he was surprised that being fit as he could be for his age, it wasn't quite enough. He also got portrayed as a bit of a grump, which I attributed to film editors in need of storylines.

Meanwhile, in Manhattan, lawyer Alex had a sort of action-figure website as an adjunct to the show, and seemed like a golden boy until he began to run aground in a project designing and selling pizza on the street. But he hung on to nearly the end, despite a remarkable level of escalating boardroom backbiting as contestants decreased. Even getting the short end of Trump's famed, "You're fired!" I'd say Alex escaped the worse fate of actually getting a job understudying the master.

The Culture Beat moves on. It turns out there are WSBA members serving as news analysts on cable news shows now. I'm steeling myself for more research. *BN*

*For personal correspondence, Lindsay Thompson can be reached at [tradelaw@hotmail.com](mailto:tradelaw@hotmail.com). E-mail letters to the editor to [letterstotheeditor@wsba.org](mailto:letterstotheeditor@wsba.org) or mail to WSBA, Attn: Letters to the Editor, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.*

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