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Washington State

BarNews

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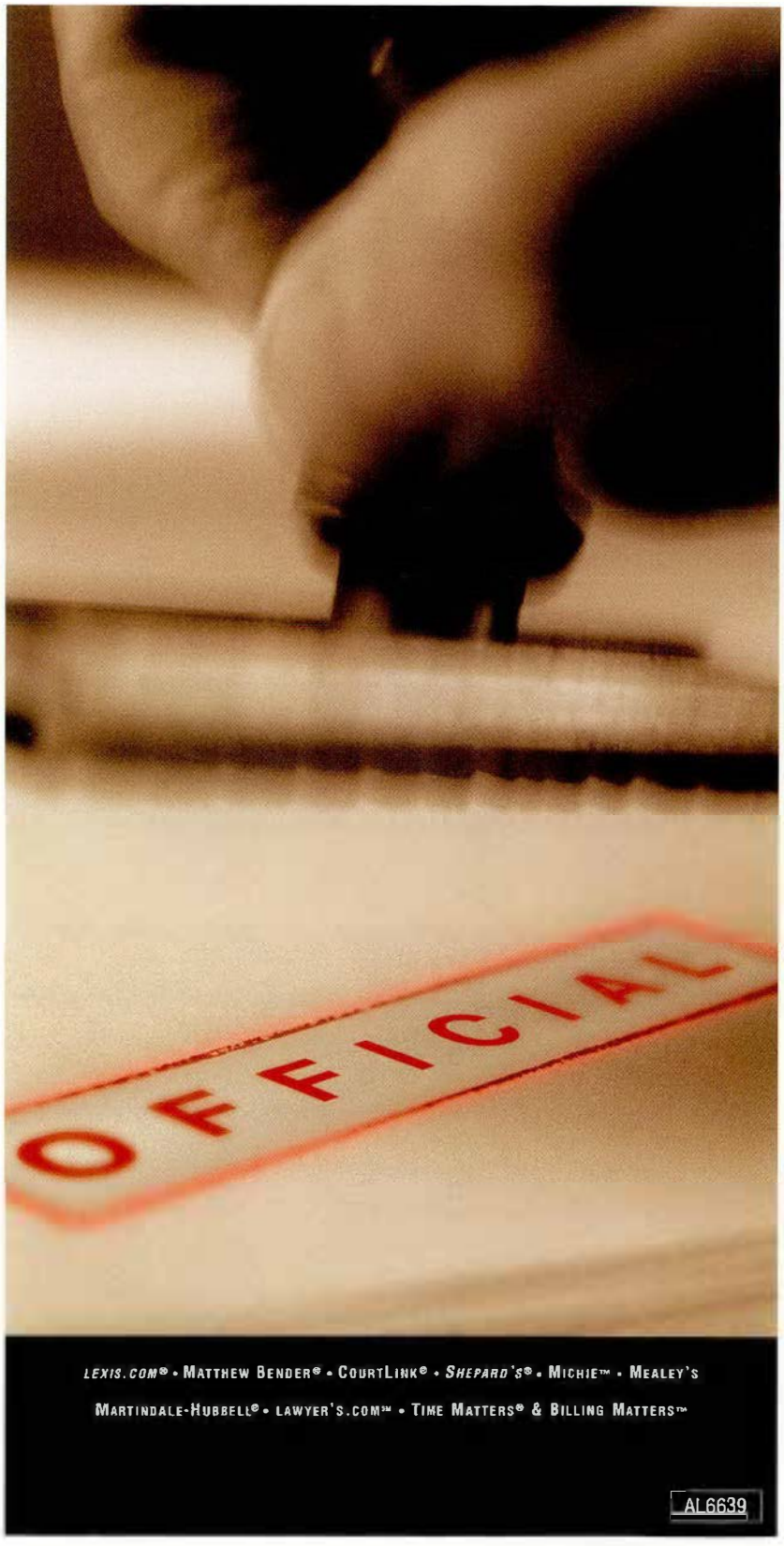

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APRIL 2005

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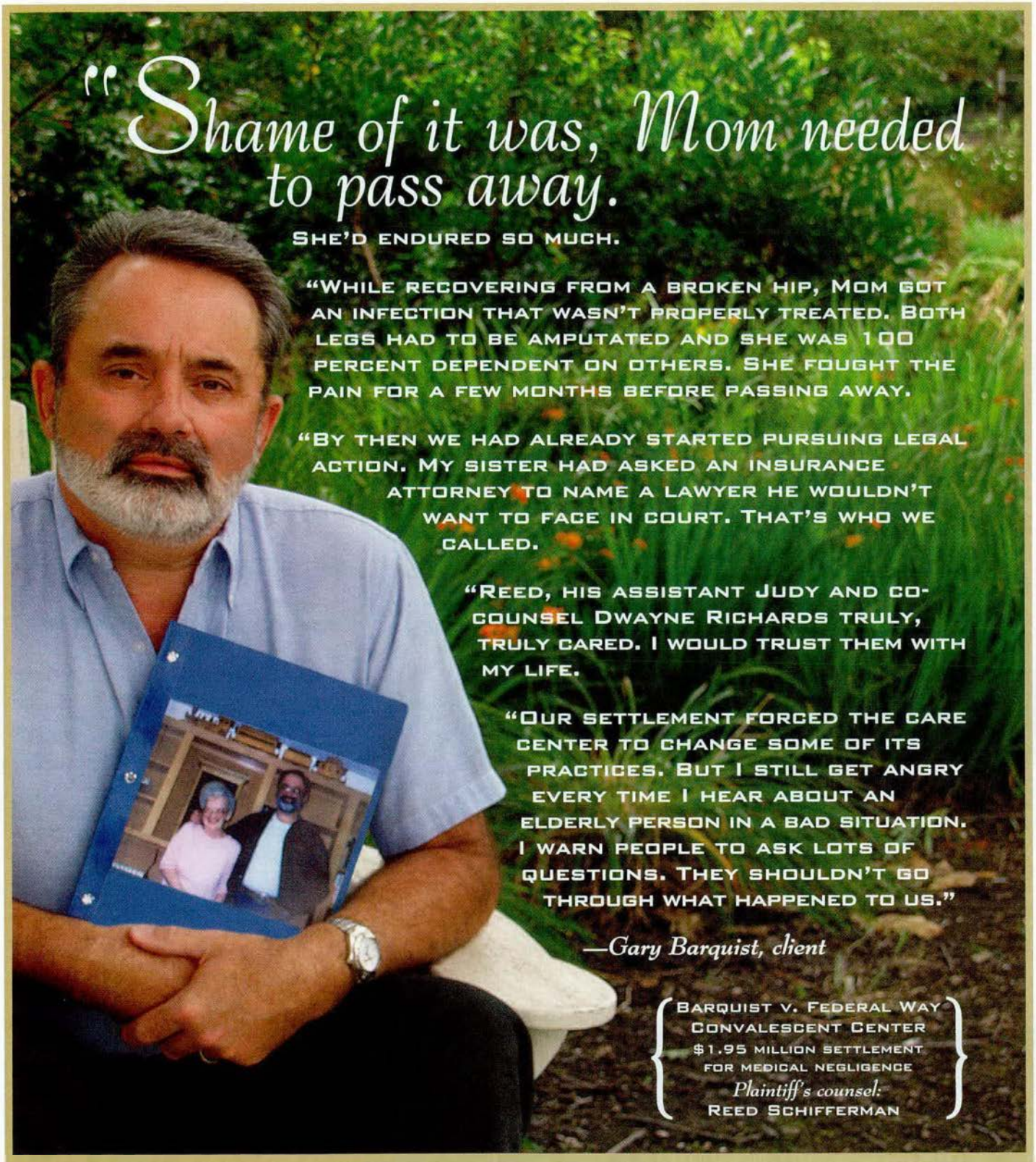

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Letters to the Editor

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 fall between 350 and 500 words in length, and that they be e-mailed to the editor at tradelaw@hotmail.com. We reserve the right to edit letters.* Bar News *does not print anonymous letters, or more than one submission per month from the same contributor.*

More on pit bulls

EDITOR'S NOTE: *President Ron Ward's February 2005* Bar News *column on aggressive lawyering generated a large and mostly favorable response from readers. Here is a sample of some of the comments received by members:*

"It's about time we had a president who tackled the real reason for the public's dim view of our profession."

". . . [T]hese low-life lawyers not only damage the public and judicial perception of the law profession, they also damage other lawyers in a way beyond the profession. I know, I am one, and personally know of others who have either abandoned the profession and/or have left Washington for kinder environs."

"In a small community, your reputation on how you deal with others is paramount. I agree with your conclusion about client result, especially the business client. What is so bothersome and illogical is that our hourly billing system tilts toward rewarding the inefficient."

"I felt compelled to let you know what a profoundly important point you make in your February column . . . . I thank you for so eloquently describing the problem as well as suggesting the solutions for elevating our profession."

"Lawyers behaving badly are a major source of stress and dissatisfaction with other lawyers . . . the message really needs to come from lawyer leaders. Thank you for speaking up and setting a positive example."

"I fear my head was nodding so much in agreement that it nearly fell from my shoulders when I read your article . . . ."

We also received a differing view, which follows.

I read with interest President Ward's lengthy condemnation of "pit bull" lawyers and his suggestion that we all need to behave in a more civil manner. First of all, I agree that all attorneys, including judges, should treat each other with respect unless and until there is a reason to abandon that approach. However, as a criminal defense attorney who has actually been called a "pitbull on crack" in the courtroom by a disappointed prosecuting attorney, I must provide some defense of "pitbull" attorneys.

In general, our state is blessed with prosecuting attorneys who demonstrate their integrity consistently and judges who endeavor to be fair and impartial. However, the reality is that some criminal prosecutions are just plain "wrong" and

some judges are just plain "unfair." All I need to say is the word "Wenatchee" to substantiate this point.

This state will be forever stained by the tragedy of the wrongful prosecution of more than thirty poor, illiterate, and disenfranchised citizens in the city of Wenatchee. This tragedy occurred only because of the "good old boy" system operating in Wenatchee at the time. There was no zealous representation of defendants until private attorneys, "pitbulls," became involved and did a thorough investigation of the tragic circumstances that led to these wrongful prosecutions. Many of the original attorneys, prosecutors, and judges were more concerned about being polite to each other and "processing" these cases than justice. Indeed, the local newspaper played into this tragic scenario by failing to question the obvious flaws in the prosecutions. Only after independent lawyers got involved in this case, as well as the *New York Times* and the *Wall Street Journal*, was the true nature of these prosecutions revealed. If there were more "pitbull" lawyers in Wenatchee, this tragedy would have never occurred.

Everything happens in context. I was accused of being a pitbull attorney by a prosecuting attorney who lost a high profile case and was licking her wounds. The fact of the matter is, the prosecution was wrongful and the judge involved in that case was more concerned with being politically correct than being legally correct. My behavior was extremely aggressive and, in the end, effective if justice is the goal.

Imagine yourself being charged with a major felony offense and you are innocent. Do you want a "pitbull" on your side or Mister Rogers?

John Henry Browne, Seattle

Proposed RPCs a nightmare

Who says you cannot legislate morality? With its newly proposed amendments to the Rules of Professional Conduct, our Washington Supreme Court (March 2005 *Bar News*, p. 36) has demonstrated that it firmly believes that we can and must legislate morality. Pity us attorneys if our moral compasses are so far off course as to require the RPCs to be reworked as extensively as proposed. Is our profession really in such poor shape that it requires so many amendments to our previous ethics code? I went cross-eyed trying to get through all the amendments.

W. Theodore Vander Wel, Bellevue

More on labels

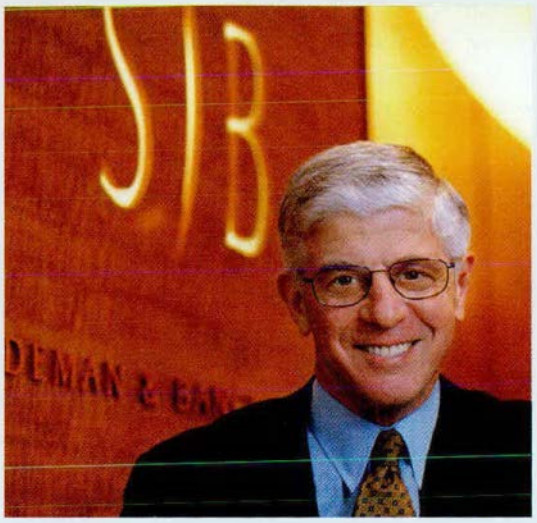
A letter I wrote, published in the October 2004 *Bar News*, was referenced in another letter published there in January's issue. The January letter evidenced, once again, my less than perfect ability to communicate clearly.

In and of itself, another example of my limited communication skills does not compel me to respond. Unfortunately, though, in this instance the difference between what I meant and what was understood vary so greatly, and the issue is one I consider so important, that I must reply and try to clarify the intent of my earlier comments.

My October letter commented on an August *Bar News* announcement that, "On June 15 the Senate voted 98–0 to confirm U.S. Magistrate Judge Ricardo S. Martinez, 52, as the state's first Hispanic federal judge." My concern is that the position to which Judge Martinez was appointed was "federal court judge" not "Hispanic federal judge" and referring to it that way tended to minimize the appointment. His cultural background and personal history are important, but they do not define the high position he has attained.

The January letter to which I now respond states, "Mr. Oliver took exception to the mention of "Hispanic" as being relevant . . . ." That is where my intent diverts from what at least one person (I'm sure if there was one there were others) understood as my message. Judge Martinez' Hispanic history is certainly relevant to the story of his accomplishment as a federal court appointee. I do not know Judge Martinez, nor do I know enough about him to know just how his cultural background has affected his life. I do, however, know enough about the history and present-day attitudes of this community, state, and country to know that it has been a factor in determining who he is. It cannot have been otherwise. I am also sure that being Hispanic in this state has at times worked against Judge Martinez in pursuit of some of his goals. People of Hispanic ancestry, as well as others, sometimes have to negotiate roadblocks in this society that Anglos do not. My point is still that the position to which he was appointed was federal judge, with the same responsibilities and duties as every other federal judge. With those responsibilities and duties come recognition and status. Those should also be the same for Judge Martinez as for other federal judges. Labeling him Hispanic federal judge subtly puts him in a different category than all those other federal judges before him,

Richard Sideman, Chairman, Sideman & Bancroft LLP



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robbing him of some of that recognition and status. That should not be.

As for attorneys from various ethnic groups forming associations to help themselves and others (the main topic of the January letter to which I respond here) I have no problem with that, but it is not the subject of this letter.

Gene Oliver, Seattle

Road ice article needs to be taken with a grain of salt

I was surprised to find my professional colleague and prominent plaintiffs' attorney, Keith Kessler, writing an article about chemical de-icers for roadways. (Anti-Icers: Is it Time for Courts to Recognize Municipalities' Use of Anti-Icers for Roadway Ice Control?, *Bar News*, February 2005). I thought it was unusual that an attorney would be offering a treatise on roadway maintenance issues, and touting the use of chemicals on public roads. But then it all made sense. I learned that Mr. Kessler and the Plaintiffs' Bar presently have a Petition for Review in the State Supreme Court regarding one of the trial court decisions referenced in his article. Mr. Kessler was apparently using the *Bar News* to present some early arguments to his audience for why there should be a change in the case law.

But now to the more fundamental problem: taking science lessons from an attorney. Mr. Kessler wades into an area where there is considerable controversy and plenty of good reasons why case law should not force local cities and towns to cover our public streets with potentially dangerous chemicals. The anti-icers referenced by Kessler — calcium chloride, magnesium chloride, and sodium chloride — are controversial to say the least. In touting these chemicals, Mr. Kessler is aligning himself with outfits like "the Salt Institute" and the Dow Chemical Company. These outfits would gladly sell an abundant amount of chemicals to local governments if permitted, and would welcome a Supreme Court decision forcing local towns to use the chemicals.

There may, however, be good reasons why we don't want these chemicals poured on our roadways. Chlorides, of course, are chemical ions. When poured onto reinforced concrete, chloride ions migrate through the paving surface to reach the metal structures below. The chloride ions bind with reactive metals, causing a chemical reaction that expands and creates voids in the pavement structure. This leads to potholes, pavements falling, and eventually a complete destruction of the pavement surface. Anyone who lives or works around saltwater knows the effect it has on metal.

But that's not all. These chloride chemicals are readily soluble in water. That means they will wash off of a roadway surface and into adjacent waterways, streams, and wetlands. Sodium chloride is highly soluble in water, will combine with soil particles, break down soil structure and decrease permeability. Calcium and magnesium chloride are soluble in water and can exchange with heavy metals in soil, potentially releasing them into the environment.

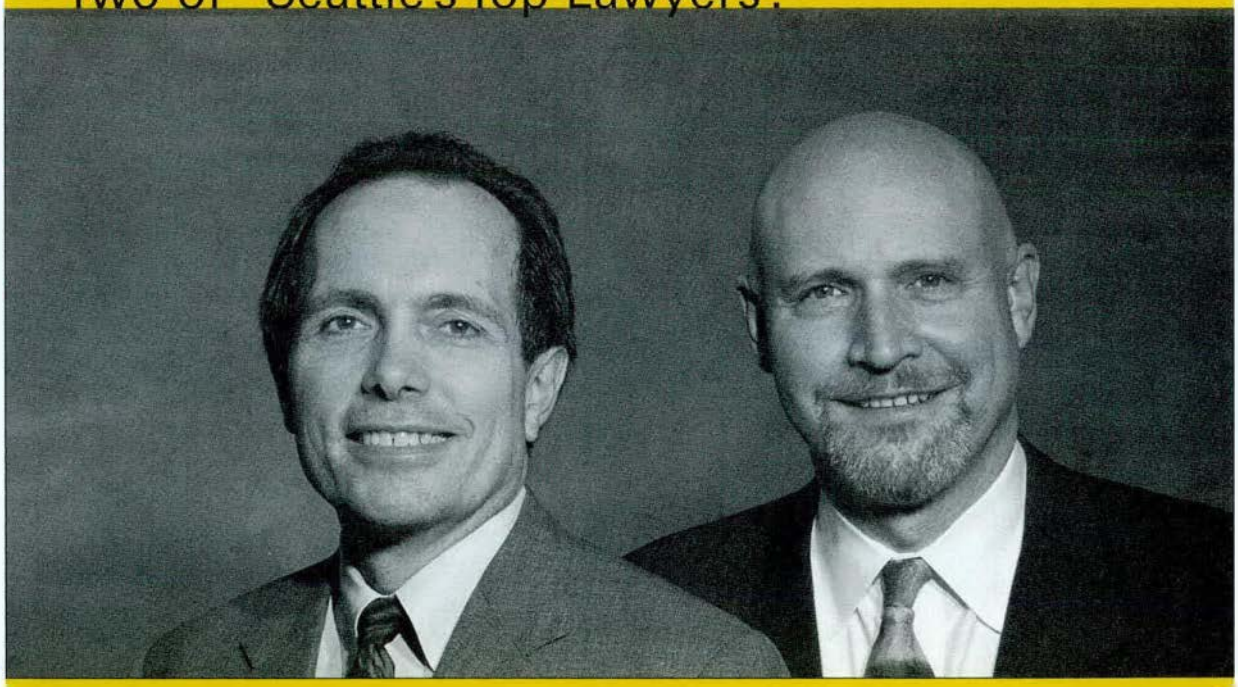
I do not believe that Mr. Kessler has no concern for our highway infrastructure or wants to expose us to dangerous chemicals. I do believe that he will try to advance arguments that will serve his client's interests. But courtrooms have typically been a bad place to resolve scientific disputes. Just ask Galileo about trying to convince a court that the Earth revolves around the Sun. He lost. I trust the Supreme Court will exercise appropriate skepticism about the broad scientific claims made in the Petitions for Review.

Andrew C. Cooley, Seattle

A thank you to our peers for the honor of your votes.

William S. Bailey

Two of "Seattle's Top Lawyers."*



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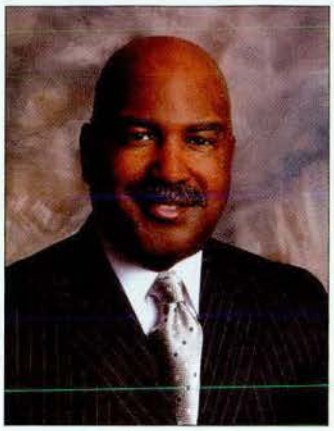

Why Diversity?

Rendering the Service of Reflecting the Persons We Serve, Leveling the Profession's Economic Playing Field, and Achieving True American Community

by Ron Ward, WSBA President

Diversity is a term fraught with the spectrum of all of our human emotions. It has needlessly evolved into something quite complex and entirely unduly provocative. It need not be. As the title suggests, diversity aspires to the full enfranchisement, economic and otherwise, of all elements of the legal community and of our society. It aspires to the best in us and in this world in which we live. "Diversity is all the human dimensions that make us different from each other, and recognizing and leveraging the power of these differences. It is the full utilization of all Human Resource potential."[1] It is the ultimate manifestation of what we claim to be and hopefully of what we will prove to be. In a rational world, this ought to be quite simple, particularly from a logical standpoint. Lawyers are noted as creatures of logic. Right?

For the legal profession, diversity serves our present and future enlightened self-interest. For our country, it is the key to our continued societal viability, or our inevitable decline. In a global multinational community in which economic evolution is moving with laser-like speed, it is the test and the determinant factor as to whether we will become obsolete, or remain competitive. That inexorable fact applies to law firms and the legal community in the Northwest. Let's talk about some present and relatively near-future changes in this country and the world and the status of the legal profession vis-à-vis diversity in Washington. First, some statistics. Statistics can be so very dry, yet so very revealing. Let's look at some.

"Diversity is all the human dimensions that make us different from each other, and recognizing and leveraging the power of these differences. It is the full utilization of all Human Resource potential."[1]

NUMBERS

2,684	**Total number of attorneys in Washington's 50 largest law firms**
23-277	**Range of number of attorneys employed at Washington's 50 largest law firms**

Full-Time Equivalent Minority Attorneys

2	**Number of firms with 0 full-time equivalent minority attorneys**
12	**Number of firms with 1 or fewer**
30	**Number of firms with 4 or fewer**
38	**Number of firms with 7 or fewer**

Minority Partners/Shareholders

73	**Number of minority partners/ shareholders out of 2,684 total attorneys in Washington's 50 largest law firms**
20	**Number of firms with 0**
28	**Number of firms with 1 or fewer**
36	**Number of firms with 2 or fewer**
46	**Number of firms with 4 or fewer**

Demographics of Population

According to the Brookings Institute, based on the most recent data and information derived from the 2000 U.S. census, the number of Hispanics/Latino/Latinas and Asians will triple over the next half-century. During this present decade, the United States will reach the demographic milestone of more than 100 million minority residents. By 2010, persons of color will number more than 110 million out of a total population of 309 million. By the year 2020, more people in America will speak Spanish as a first language than speak English. The total U.S. population will rise to about 420 million in 2050. The number of Hispanics/Latino/Latinas is projected to grow to 103 million by 2050 — a three-fold increase from 36 million in 2000. The number of Asians is projected to rise to 33 million from 11 million in 2000. The Black population will increase to 15 percent, compared with 12 percent now. Those now termed "minorities" will make up more than half of the U.S. population by the year 2050 and will be the majority.

Why diversity? Because all seg-

ments of society have a right to representation by a profession that includes their peers, to have the adjudication of their legal affairs presided over by a judiciary of their peers, and to be judged by a jury of their peers. The new burgeoning majority insists on it and will continue to do so. This demographic data signals a seminal shift and an opportunity of staggering proportions. The question for all of us is whether we will seize the time and prosper, or continue to rend ourselves apart by perpetuating issues that divide us. Right now, the answer to that question is problematical, though potentially promising.

Demographics of Diversity in Legal Employment — We've Still Got a Long Way to Go

Law Firms Nationally

There are approximately 1.2 million lawyers in the United States, but less than 10 percent are lawyers of color. There is no firm of color in the top 200 in the country. A new study by the U.S. Equal Employment Opportunity Commission (EEOC) reveals that women now comprise 40 percent of legal professionals (non-partner/non-shareholder) in the private sector, a significant gain from 14 percent nearly three decades ago. In addition, since 1975, African Americans doubled their employment as legal professionals to over 4 percent, Hispanics more than doubled to 3 percent, and Asian representation rose by five times to 6.5 percent. The EEOC research covered medium and large law firms — as only employers with 100 or more employees are required to file reports. It examines changes in employment of people of color and women as attorneys since 1975.[2]

Firm characteristics are very significant in the dynamics of employment of people of color and women. Results suggest that the most pressing equal-employment issue in large national law firms is not just hiring, but retention and conditions of employment, especially with regard to promotion to partnership. In smaller regional and local law firms, questions about fairness and transparency of hiring practices probably still remain, particularly for lawyers of color. Other cited research suggests potential problems for women and people of color in attrition and earnings. The study supplements EEOC analyses with sample data and finds that women and people of color have lower odds of being partners than white males.

One glaring statistic that is not a part of the EEOC study is the plight of multicultural women (women of color) in the legal profession. At the end of their initial eight years of practice, 100 percent of women of color have left their first employment, or left the practice of law altogether.

Law firms also need to be encouraged to provide more employment opportunities for lawyers with disabilities. Misunderstandings about disability — from concerns about the cost of reasonable accommodations to unfounded fears about performance and reliability — have prevented many qualified lawyers with disabilities from even being considered for jobs within the legal profession.

While we should certainly be proud of the progress women and people of color have made in joining the ranks of legal professionals, we must also be mindful of how far we have to go to

ensure that the diversity of America is reflected in and sought by the legal profession. The numbers in particular for persons of color, for persons with disabilities, for openly gay and lesbian individuals are still pitiably and unacceptably small. We must all make a constant sustained effort to ensure that our nation's law firms are open and inclusive to all individuals.

Washington Law Firms

Is there an assumption on the part of Northwest law firms that we are somehow insulated from the inexorable reality of the economics shaping our future? I don't think that's the case. However, the latest issue of *Washington Law & Politics* that looks at the diversity statistics of Washington's 50 largest law firms bears scrutiny. Those statistics make it clear that although the future is promising, there is substantial work to be done before the goal of representative diversity and equal economic opportunity is reached in the overwhelming majority of those firms.[3]

Women fare better in employment and partnership/shareholder statistics, but are still grossly underrepresented in the ranks of the latter. As with the national statistics set forth above, the general trend in Washington is for women and minorities to be more representative in larger firms.

Washington Judiciary

It is particularly important that an increasingly diverse general population has matters it wishes to adjudicate presided over by a judiciary of its peers. Here again, we seem to be moving in the right direction, but we need to keep moving. Of our nine Supreme Court Justices, four are female. Washington has only had one justice of color in its history — Hon. Charles Z. Smith, retired. Our Court of Appeals has a total of 22 judges, nine of whom are non-minority women and two of whom are men of color. At the Superior Court level, of 179 judges, 46 are non-minority women, five are women of color, and 11 are men of color. The District Court has a total of 110 judges, of which there are 27 non-minority women, three female judges of color, and one male judge of color. Of 97 municipal court judges statewide, 14 are

non-minority women, three are women of color, and six are men of color.[4]

Washington Law Schools

Data was assembled for this article for our three Washington law schools — Gonzaga University, Seattle University, and the University of Washington. Without setting out explicit numbers, the data indicates that despite the debilitating effects of I-200 on minority enrollment, the schools have engaged in a concerted recruiting effort. A more fair assessment will perhaps be possible, assuming legislation currently pending in the Washington Legislature (SB 5575 and HB 1586, allowing race to be considered as one factor amongst other factors in admission standards and conforming Washington law to *Grutter v. University of Michigan*) is passed.

Syndicated columnist William Raspberry commented quite correctly that no one wants quotas, or "reverse discrimination." The object is the achievement of equitable goals, not issues. Issues, by their very nature, divide. They force us to choose sides, to work against one another, to produce winners and losers. That is their political purpose. Goals, on the other hand, can be shared — even when we embrace different means for reaching them. There is, of course, no one way of producing the goal of diversity — no way, including Michigan's, that is utterly without flaws. But doing nothing is an option only for those who think the goal isn't very important.[5]

The nexus and the crucible of the legal profession start at the law school. The law school is not only a forum for teaching and learning legal principles and advocacy, but is also one of the embryos for the development of professional and societal leadership. *Any law school that practices* **or tolerates** *discrimination against any of its elements is a failure in its mission and a stain on the justice community.*

Washington State Bar Association

It would not be cricket for me to talk about diversity in the Washington legal employment community, without including the Washington State Bar Association. I unequivocally state at the outset that during the tenure of Jan Michels, our present executive director, the WSBA has progressed light years in diversity in terms of its staff and its outreach to the membership. The latter has recently been buttressed by the hiring of Joslyn Donlin as diversity advocate, a position that was the brainchild of Immediate Past President Dave Savage.

That having been said, as of December 30, 2004, the WSBA had 122 total employees according to an annual EEOC Report of the organization. Based on EEOC guidelines, the association is statistically perfect as regards diversity. But statistics, while often revealing, can also be deceptive in certain aspects of the substance they communicate. There are three levels of personnel in the WSBA structure: office/manager — the directors who supervise departments of the organization and are the highest paid; professional — such as disciplinary counsel and program managers, etc., who are the next highest paid; and office/clerical — administrative and secretarial staff, the lowest compensated level. No person of color has ever served in a director-level position in the history of the Bar Association. Substantial recent efforts have been made to address

this situation, but, for the time being, it remains what it is. Of 30 persons in the professional classification, five are persons of color. The diverse majority of WSBA personnel are found at the office/clerical level, where of 84 employees, 26 were reported as minority. The EEOC report indicates that no African-American male is employed by the association at any level. The organization is entitled to kudos and plaudits, but as with other elements of the justice system, the WSBA has room for improvement in terms of certain aspects of its diversity, notwithstanding the strides it has made.

What Does It All Mean and Where Do We Go From Here? Corporate America: ". . . See the Light, or Feel the Heat"

Corporate America finally understands that practicing diversity makes good business sense and that a commitment to diversity goes well beyond the hiring process. Focusing just on hiring, at the expense of aggressive and far-sighted career development, misses the opportunities that building a diverse work force can offer for economic fruition. Today's forward-thinking companies are finding innovative ways to expand their commitment by integrating their diversity initiatives into all areas of their business. Instituting diversity is not some ploy to win at public relations. It is to win a competitive bottom-line battle. That means that law firms must change to meet the expectation that their ranks will be as diverse as the corporation's applicant pool and customer base. Law firms will eventually see the light, or feel the heat of a shrinking client base. Any firm in this day and time that does not recognize this immutable fact is an anachronism on its way to becoming an economic non-entity.

Minority Corporate Counsel — "Call To Action"

Emblematic of change in the marketplace is the December 2004 "Call to Action" for diversity in the legal profession by the Minority Corporate Counsel Association. The "Call to Action" calls on chief legal officers (CLOs) to actively promote diversity in their own departments, as well as in the law firms they choose to retain. As signatories to this commitment, CLOs will look to make decisions regarding which law firms represent their companies based in significant part on the diversity performance of the firms. *Their commitment will entail providing increased opportunities among the firms they regularly use which positively distinguish themselves in this area, and ending or limiting relationships with firms whose performance consistently demonstrates a lack of meaningful interest in being more diverse.* The "Call to Action" reflects the view of leading corporate executives that the best legal and business interests of the corporation require representation that reflects the diversity of its employees, customers, and the communities where they do business. Diversity is not only the right thing to do, but it also positively affects the bottom line. To date, 65 chief legal officers are signatories, and the effort has received the endorsement of the Board of Directors of the Association of Corporate Counsel, which at more than 17,000 members is the world's largest professional association of attorneys who work in corporate law departments.[6]

Initiative for Diversity Governing Council

An effort in Washington to further diversify our profession continues this year with the work of the Initiative for Diversity Governing Council. The Council (a separate organization which receives WSBA support), consisting of representatives from various specialty bar associations, law firms, law schools, the judiciary, nonprofit organizations, public-interest firms, and in-house counsel, continues the work of the Diversity Consortium and its founding members who first endorsed the Initiative in 2004. The Council will promote adoption of the Initiative for Diversity by legal employers throughout Washington state. The Initiative, which consists of eight goals to which a signatory agrees to strive, reflects the value of having an attorney workforce that is inclusive of the many faces of our pluralistic society. It is designed to identify and implement strategies that will result in significant and measurable progress toward greater diversity in the legal profession.

In the months to come, the Council will ask employers to become signatories to this Initiative. The Council will be available to work with each member to discuss strategies tailored to their organization to achieve the goals of the Initiative, and to facilitate discussion amongst members. This is an exciting program that I urge all WSBA members to consider as one way to genuinely strive toward making ours a truly inclusive profession.

WSBA Leadership Institute

Founded in 2004 and commenced in 2005, the purpose of the WSBA Leadership Institute is to annually prepare a small, carefully selected group of lawyers to take on leadership positions within the legal and broader general community. The emphasis is on growing leadership amongst young lawyers of color and women who have less than 10 years' experience in the profession, although it is important to note that all interested lawyers who have practiced between three and 10 years are considered for inclusion. The initial class of 12 fellows of the Institute, consisting of nine women and three men, was selected from nearly 70 applications received from lawyers throughout our state. The Institute is off to an auspicious start, with glowing reviews.

What Can We Do?

The following have been identified as steps law firms can take to increase the employment and retention of people of color, women, people with disabilities, and other traditionally underrepresented diverse groups.

- Place a greater focus on diversity in the recruitment and hiring process;
- Implement increased mentoring and training opportunities;
- Provide genuine exposure to and interaction with firm clients;
- Address the pervasive problem of attrition, especially for women of color;
- Provide more management authority at the partner level;
- Offer family-friendly policies and flexible work options;
- Provide more employment opportunities for lawyers with disabilities;
- Support the WSBA Leadership Institute; and
- Support the Initiative for Diversity by becoming a signatory to the commitments.

It is my hope that the foregoing is not cause for recrimination or lamentation. Part of the message I have sought to transmit in this article is that the Washington legal community

needs to prepare for a changing society. Somebody has got to talk to this next generation of lawyers to let them know of the responsibility they have in this multicultural, multiracial, multiethnic America. Lawyers are gifted with the tradition, privilege, and heritage of accomplishment. We have an obligation to be societal leaders in every area of endeavor; an obligation to do more; an obligation from lawyer generation to generation, to lead and to provide service to our clients, to the public, and to our profession. Lawyers are leaders. Let's be that.

The question is not whether we can; it is whether we will. We can and we will because, working together, there is nothing we cannot change for the better.

Ron Ward may be reached at 206-624-884 or rrw@admiralty.com. If you would like to write a letter to the editor on this topic, please e-mail it to comm@wsba.org or tradelaw@hotmail.com, or mail it to WSBA Bar News, *2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, Attn: Letters to the Editor.*

NOTES

1 From a presentation by Linda Russell-Callecod at "Celebrate Diversity II," a forum sponsored by the WSBA Board of Governors and the WSBA Committee for Diversity, March 10, 2005. Russell-Callecod is a senior consultant and facilitator of The Effectiveness Institute, Inc.

2 U.S. Equal Employment Opportunity Commission, *Diversity in Law Firms. October 2003.*

3 *Washington Law & Politics, 50 Largest Washington Law Firms, L&P's 7th Annual Edition*, Page 27, February/March 2005. No. 50.

4 This information was derived from several data sources. While there is a high degree of confidence in the numbers, absolute accuracy cannot be verified at this time. Administrative Office of the Courts, 2-04-05.

5 William Raspberry, Copyright 2003, Washington Post Writers Group.

6 Minority Corporate Counsel Association (MCCA). Press Release, Washington, D.C., 12-14-04.

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On Diverting Lawyers from Discipline

BY GUEST COLUMNISTS — CHIEF DISCIPLINARY COUNSEL JOY MCLEAN AND DIVERSION ADMINISTRATOR JENNIFER FAVELL, PH.D.

We appreciate Executive Director Jan Michels's giving us the opportunity to use her column to update you with our experiences operating an exciting new alternative to discipline in Washington — diversion. We believe that, by offering professional growth alternatives to traditional discipline, diversion has the potential to salvage lawyers who might otherwise become casualties of their own further misconduct.

How did we get diversion?

In 1993, a team from the ABA came to Washington to evaluate our discipline system. They came at the behest of our Supreme Court, which has exclusive responsibility for the lawyer discipline and disability system in this state. The ABA team recommended many improvements, including that we approach lawyer misconduct from two angles — a timely and dependable system for sanctioning lawyers who engage in more serious misconduct, and an effective system for rehabilitating lawyers who engage in less serious misconduct. In response to the ABA recommendations, the Supreme Court convened a Bar/Court task force to study the ABA's recommendations and propose specific rule changes to the Court.

In late 1994, the task force issued its report, also embracing the notion of a rehabilitative alternative to discipline in certain circumstances. The task force envisioned diverting lawyers into one or more of a constellation of Bar-sponsored rehabilitation services. During the ensuing seven years, remaining pieces of this constellation came into being, including the Law Office Management Assistance Program (LOMAP) and the Mediation Program. These joined services already available, such as the Lawyers' Assistance Program (LAP), the Fee Arbitration Program, and the client trust account audit program. These programs are mostly housed in the Lawyer Services Department of the Bar, separate from lawyer discipline. Finally, in September 2001, the last piece fell into place: the Court's adoption of the diversion rule itself, now at Title 6 of the Rules for Enforcement of Lawyer Conduct (ELC).

We believe that, by offering professional growth alternatives to traditional discipline, diversion has the potential to salvage lawyers who might otherwise become casualties of their own further misconduct.

Since then, we have diverted about 90 lawyers. It's too early to predict whether diversion has a long-term beneficial effect on lawyer conduct or prevents recidivism, but, in time, correlational analyses may help answer those questions. In the meantime, what we do know is that lawyers in diversion report that it is having a positive effect on their lives.

How does diversion work?

All grievances leaving intake are investigated by disciplinary counsel. Following investigation, disciplinary counsel consider diversion if they conclude (or the lawyer admits) that the lawyer committed misconduct but not the sort that would cause a license suspension or disbarment, and if the lawyer otherwise appears eligible and appropriate for diversion (e.g., no history of recent or similar misconduct, no prior failed diversion, no pattern of misconduct, no dishonesty, amenability to rehabilitation), the Bar notifies the lawyer of the diversion option. It is entirely up to the lawyer whether to proceed with diversion.

Jennifer Favell, Ph.D., of the Lawyer Services Department, screens referred lawyers and determines what terms, if any, would serve the purpose of rehabilitating that particular lawyer in light of that lawyer's misconduct and that lawyer's individual circumstances. In the screening interview, Dr. Favell and the lawyer discuss personal and professional issues connected to the misconduct and ways to prevent misconduct in the future. If the lawyer decides not to continue into diversion, the interview remains confidential between Dr. Favell and the diversion candidate.

In considering terms of diversion, Dr. Favell considers which of the constellation of rehabilitative services listed above may best serve the purpose. Working in collaboration with disciplinary counsel, she may recommend training in office management, time management, accounting software, or boundary setting, to name a few possibilities. In every case, she recommends that the lawyer attend "ethics school," a day-long program designed by disciplinary counsel to educate a lawyer about ethics issues and provide practical tips for practice. If the lawyer elects to participate in diversion, the Bar and lawyer sign a diversion contract containing those

terms, the lawyer signs a confidential statement stipulating to the misconduct, and the lawyer pays various costs associated with the diversion. The Bar notifies the grievant that the lawyer has entered diversion. In all other respects, the diversion is kept confidential.

Dr. Favell then monitors the progress of the lawyer in diversion and reports any breaches of the diversion agreement to disciplinary counsel, who works with her to determine the best response to the breach. If the lawyer successfully completes the diversion, the matter is dismissed and closed and ordinarily deleted from the lawyer's record later. If the lawyer breaches the diversion agreement, the lawyer faces public disciplinary proceedings at which the statement of admission is entered. So far, only four lawyers have breached out of diversion.

A majority of lawyers in diversion work with Pete Roberts, MBA, LOMAP manager. He uses self-assessment instruments to help the lawyer diagnose the source of the lawyer's problems and then works with the lawyer to suggest ways to improve the lawyer's approach to the business side of practice.

Who might be diverted and to what?

Take the example of a lawyer who failed to keep proper client trust account records and, as a result, bounced a check. Or the lawyer who failed to appear at the client's summary judgment motion hearing, where the judge ruled against the client. Or still yet, the lawyer who altered an original court order to benefit her client. All of these have actually happened. Would these lawyers have been eligible for diversion? What would their diversion look like?

A lawyer's failure to keep proper books could be occasion for diversion, depending on the depth of disarray of the books and whether client funds were lost or jeopardized as a result. Diversion would likely involve a requirement that books be maintained properly and that the lawyer cooperate with periodic trust account examinations by Bar auditors. It might also involve a referral to LOMAP for general law office management education, including basic accounting.

A lawyer's failure to appear at a critical stage in a client's case, such as at a summary judgment hearing, could be quite serious. The seriousness might depend on the reasons for the failure to appear, the amount of injury to the client, the "reversibility" of the judge's ruling, steps taken to remedy the situation, etc. Assume the lawyer's life and office are in shambles, he had a conflict in his schedule (matter in another courtroom) and failed to notify the court or parties of the scheduling problem but afterward got the summary judgment order set aside, paid terms associated with it, and did not charge the client for the set-aside. But the lawyer has since failed to return client phone calls and claims that his divorce has made it impossible for him to focus on work. Diversion might be appropriate. It would likely involve working with LOMAP to develop better office systems, staffing, or protocols to avoid this situation in future. It might also involve limited psychotherapy to develop better coping skills to deal with personal stresses.

Altering an original, signed court order is an intentional, inherently dishonest, and very serious act of misconduct (and crime) for which diversion would likely never be appropriate; indeed, disbarment would likely be the presumptive sanction. Further, the rule does not envision diversion for lawyers who commit certain types of misconduct, such as deceit and dishonesty.

National attention for Washington diversion

In the past five months, we have twice been invited to present information about our diversion procedure at national conferences — one sponsored by the ABA Commission on LAP in Philadelphia last October and one sponsored by the National Organization of Bar Counsel in Salt Lake City in February. At both conferences, we were surprised but delighted by the number of attendees and their overwhelming response of interest, and their praise for what we are doing in Washington. We have had several follow-up inquiries about our approach.

Diversion is still quite new in Washington, and its long-term effectiveness unknown, but we are optimistic and think it is a valuable addition for addressing ethical misconduct. Further, diverted lawyers have expressed gratitude for the opportunity to correct problems, and for the support and expertise of those working with them to help achieve that end.

Less Privileged: Unexpected Waivers of the Attorney-Client Privilege

BY ROGER D. MELLEM

Introduction

The January 2005 issue of *ABA Journal* carried an interesting article, "Flying Under the Radar." It identified a number of legal issues the *Journal* said have percolated quietly for a number of years but now may grab headlines.

The first issue the article cited? Erosion of the attorney-client privilege.

If you do not counsel corporate clients that do business in Europe, you may not need to know that the European Commission has taken the position that corporate communications with retained counsel from outside EU member states are not privileged. But at least you should be aware of domestic developments that threaten the confidentiality of attorney-client communications.

The attorney-client privilege is an ancient legal tradition, but current trends are diminishing its former force.

Discussed here are three attorney-client privilege issues that are becoming increasingly prevalent. First, several federal government agencies — under pressure from Congress and the public to rein in "rogue" corporations — are making waivers of the attorney-client privilege a condition of cooperation-based deals to avoid prosecution or obtain lesser punishments. Second, executives of a company that seeks bankruptcy protection may find control of information protected by the attorney-client privilege has fallen out of their hands. Third, if an attorney uses privileged information in negotiations, or creates a litigation issue that depends for its resolution on the content of privileged communications, adverse parties are often entitled to much more material than the attorney — or the client — intended to provide.

The attorney-client privilege is an ancient legal tradition, but current trends are diminishing its former force.

Attorney-Client Privilege and Government Investigations

Government Agencies Are Increasing Pressure on Companies to Waive the Attorney-Client Privilege

As more corporate crimes have been uncovered in the last few years, the federal government has moved to crack down on corporate transgressions perceived to threaten the country's financial system. The U.S. Department of Justice (DOJ) is leading this response, arming prosecutors with tools that have significant impacts on both the attorney-client privilege and work-product doctrine. Corporations involved in Securities and Exchange Commission (SEC) investigations face nearly identical privilege issues, but for simplicity the discussion here will focus on the DOJ.

The centerpiece of the DOJ's strategy for prosecuting corporations is a memorandum written earlier this year by Deputy Attorney General Larry Thompson.

He addressed various factors to be taken into account when a federal prosecutor is deciding whether to file criminal charges against a corporation.[1] The Thompson Memorandum tells prosecutors that, when deciding whether to file charges, they should consider the extent to which the corporation voluntarily cooperates.[2] Voluntary cooperation includes disclosing the results of the corporation's internal investigations and waiving the attorney-client and work-product protections. Corporations that cooperate with DOJ investigations by waiving the attorney-client privilege and work-product doctrine (as well as cooperating otherwise) receive preferential treatment; in addition to the possibility of lesser (or no) charges against the corporation, any criminal penalties may be reduced.[3]

The DOJ characterizes the need for privilege waivers as a means of determining the veracity and completeness of a corporation's cooperation.[4] Further, the Thompson Memorandum attempts to downplay the DOJ's forays into piercing attorney-client privilege by stating that waivers are not "an absolute requirement" and "should ordinarily be limited to the factual internal investigation and any contemporaneous advice given to the corporation concerning the conduct at issue."[5] However, anecdotal evidence from the defense bar indicates that the DOJ customarily is seeking privilege waivers as a condition of concluding that a company has cooperated.

According to defense attorneys, DOJ "routinely" requests waivers at the onset of discussions with companies regarding alleged criminal conduct.[6] In contrast to DOJ's repeated assertions that waiver of the attorney-client privilege is not a requirement,[7] defense attorneys feel that DOJ has made waiver the epitome of corporate cooperation.[8] As one attorney stated, "A few years ago, only big offices in big cases sought waiver of privilege. Now it is almost routine to see each U.S. Attorney require it. They are forcing corporate counsel's hand. For the last year I have counseled my corporate clients that they have to assume that the Justice Department will see anything they put in writing."[9]

The consequences of not waiving the privilege during a DOJ investigation are clear. Failure to waive the attorney-client privilege or work-product doctrine can reduce the credit a corporation receives for cooperating with DOJ. Rather than singling out individual wrongdoing on the part of employees, the DOJ can prosecute the corporation as a whole and be less inclined to offer a plea bargain.[10] Moreover, non-cooperating entities are treated more harshly under the federal sentencing guidelines.[11]

Courts are recognizing numerous exceptions and waivers, and the federal government is using the waiver of privilege as a bargaining chip in investigating alleged corporate wrongdoing. Counsel and clients must be more alert to the possibility of disclosure of privileged information. Otherwise, counsel may be embarrassed to discover that candid advice, meant to be kept secret, has become revealed, and clients may be exposed to additional liability. In short, the privilege no longer can be considered sacrosanct.

While the pressure from the DOJ to waive attorney-client privilege is undeniably strong, there may be great risk in waiving it. In most jurisdictions, the privilege cannot be selectively waived; once the privilege is waived to demonstrate cooperation to DOJ, it cannot be "resurrected" in dealing with plaintiffs' lawyers.[12] Although waiver of the privilege during a DOJ investigation may be common in this era of corporate scandal, counsel would be well advised to undertake a rigorous analysis before allowing plaintiffs' attorneys a free run at privileged communications.

Corporate Officers Can Waive the Corporate Privilege After the Corporation States an Explicit Intention Not to Waive the Privilege

Even when a corporation has stated in writing that it wishes to maintain its attorney-client privilege, corporate officers potentially can "impliedly waive" the privilege.[13] Similar to cases in the "at-issue waiver" discussion below, the U.S. Court of Appeals for the Second Circuit decided a case where the chairman of a company testified before a grand jury in his individual capacity and alluded to advice from counsel as a defense in his testimony. The case involved the company's alleged criminal conduct, and the company had frequently indicated that it was not waiving the privilege. However, the court held the corporate officer could waive the corporation's privilege.[14]

Work-Product Protection May Survive When the Attorney-Client Privilege Does Not

While the attorney-client privilege does not withstand any waiver, the federal courts are divided on the ability of a corporation to preserve work-product protection over confidential documents that it has revealed to the government.[15] Courts have increasingly recognized that the goals of the two protections are somewhat different. The attorney-client privilege protects the sanctity and confidentiality of the attorney-client relationship; the work-product doctrine protects the workings of the adversarial system by keeping "trial preparation material" from opposing parties.[16]

The federal circuit courts are split, however, among three general theories on selective waiver of the work-product doctrine. First, the 8th Circuit held that releasing a company's internal investigation results to the federal government was only a "selective waiver" and did not have to be disclosed to third parties.[17] Second, a plurality of courts recognizes no "valid limitation on a waiver of confidentiality."[18] Third, some courts, led by the 2nd Circuit, have taken a flexible approach to work-product protection waiver by indicating that either a common interest between parties sharing

confidential information, or a confidentiality agreement, may serve to limit the waiver and keep the protection intact beyond limited disclosure to government officials.[19]

The common-interest rule is an exception to waivers that applies when the two parties exchanging confidential information are truly in a non-adversarial relationship, e.g., two criminal codefendants. Typically, courts have found the common interest exception does not apply to companies releasing information to government agencies that are investigating them.[20] In one particularly harsh example, a magistrate judge refused to protect privileged information that an insurance company dealing with a "rogue" employee shared with government officials, even though the government's investigation was at the request of the company.[21]

Confidentiality agreements that entities waiving work-product protection enter into with investigating government agencies have fared better in courts than common-interest arguments. One court has even allowed an oral confidentiality agreement to limit a corporation's work-product protection waiver to disclosures to the U.S. Attorney's Office.[22] However, several courts have held that work-product protection is completely waived if protected materials are shared with government investigators — notwithstanding the existence of a confidentiality agreement — on the theory that deliberate disclosure to an adversarial agency is inimical to the principles supporting the work-product doctrine.[23]

Waiver of work-product doctrine in the 9th Circuit is not any further settled at the time of this writing than it is nationally. But the 9th Circuit currently has before it a case where the district court ruled that even if there is a confidentiality agreement in place, attorney-client and work-product protections are waived if the corporation being investigated gives the government documents detailing the corporation's internal review.[24]

In the climate of increased publicity surrounding corporate governance and wrongdoing, it seems likely that the Supreme Court will address waiver of attorney-client privilege and work-product doctrine sooner rather than later. In the meanwhile, given the multitude of ap-

proaches that courts are taking in protecting or not protecting privilege after information is shared with the government, corporate counsel is well advised to be extremely cautious in dealing with government investigators, particularly from the DOJ or SEC.

Attorney-Client Privilege and Bankruptcy

Bankruptcy filings present an important consideration beyond the simple economics of entering bankruptcy protection, namely, the potential for waiver of the attorney-client privilege. Although waiver issues here are relatively simple, particularly for corporations, attorneys still should be aware of the potential ramifications.

Corporate Attorney-Client Privilege Is Controlled by the Bankruptcy Trustee

Like most other corporate powers, the power to waive the attorney-client privilege over pre-bankruptcy communications is vested in the debtor corporation's bankruptcy trustee.[25] A corporation's officers and directors have no power to prevent the trustee from waiving the privilege, even if waiver exposes those officials to personal liability.[26]

In *Commodity Futures Trading Commission v. Weintraub*,[27] the U.S. Supreme Court held that because "corporate directors fail to retain any managerial power in a bankruptcy reorganization, management should also not retain control over the attorney-client privilege."[28] The main reason for giving trustees control over the attorney-client privilege is to prevent corporate directors from inhibiting the operation of bankruptcy law, and to allow trustees to fulfill their role of balancing creditor and shareholder needs.[29]

There are three notable situations where the trustee's power to waive the privilege does not extend. First, if prior to filing for bankruptcy a corporation establishes a special committee and specifically authorizes the committee to retain separate counsel, then the special committee's attorney-client privilege is separate from the corporation's and does not come within the trustee's control.[30] Second, if individual corporate officers can demonstrate that communications with corporate counsel were personal, then those communications will not be subject to a trustee's waiver of the attorney-client privilege.[31] A third area arises when the company and its officers and directors are jointly represented by one lawyer. In that situation, the trustee should not be able to waive the privilege absent consent of the individual clients.

Individuals May or May Not Lose Control Over Their Attorney-Client Privilege in Bankruptcy

Although *Weintraub* is quite direct about the trustee controlling the attorney-client privilege in corporate bankruptcies, the Supreme Court was equally explicit in stating that it was not making any determination as to individual bankruptcies.[32] As a result, the rule for control of attorney-client privileges in individual bankruptcies is that there is no rule.[33] While there are three federal court approaches in this area, there is significant division among the circuit courts, district courts, and even within the districts.[34]

First, some courts have treated individuals like corporations, transferring the attorney-client privilege to the trustee.[35] Second, other courts have established a rule that the individual debtor never cedes

control over his or her privilege.[36] Third, an increasing number of courts are analyzing individual bankruptcies on a case-by-case basis, balancing the harm that waiver would cause the debtor with "the effect on attorney-client privilege."[37]

With critics divided between which approach is best and no Supreme Court relief from the muddle in sight, counsel must carefully research the applicable attorney-client privilege rules to ensure they protect all of their client's interests in bankruptcy.[38]

Washington's "Fairness Approach" to the Attorney-Client Privilege: Tactical Advantage and "At-Issue" Waivers

We turn now to a state law issue. Washington narrowly construes the attorney-client privilege and provides that a party will be deemed to have waived the privilege when it uses the privilege in what the court determines is an "unfair" manner. The attorney-client privilege is "strictly limited" in Washington, because the courts recognize that it serves to suppress evidence that otherwise would aid the courts in their truth-seeking function.[39] In developing this limitation, Washington has adopted the liberal "fairness approach" for implied waivers of attorney-client privilege first recognized in *Hearn v. Rhay*.[40] Washington applies two related doctrines to ensure that parties do not use the attorney-client privilege in an unfair manner: the at-issue doctrine and the partial-disclosure doctrine.

We turn now to a state law issue. Washington narrowly construes the attorney-client privilege and provides that a party will be deemed to have waived the privilege when it uses the privilege in what the court determines is an "unfair" manner. The attorney-client privilege is "strictly limited" in Washington, because the courts recognize that it serves to suppress evidence that otherwise would aid the courts in their truth-seeking function.

Attorney-Client Privilege Is Waived When a Party Puts Advice "At-Issue"

Under the at-issue doctrine, a party implicitly waives its attorney-client privilege by taking an affirmative action that makes attorney advice relevant in the case, if application of the privilege would deny its opponent access to vital evidence needed to counter the waiving party's position.[41] The affirmative act need not put the privileged material directly at issue; the act must merely serve as a catalyst that causes the material to be at issue.[42]

The affirmative act often is a cause of action or affirmative defense that puts attorney-client privileged material at issue.[43] However, the act simply may be an assertion made in a brief on a motion, the truth of which can only be assessed by examining the privileged material.[44]

For example, in *State Farm Mutual Automobile Ins. Co. v. Lee*, the court found a waiver because the defendant, rather than simply denying a claim of bad faith, affirmatively asserted in its answer that it had acted in good faith based on its agent's interpretation of the law.[45] Likewise, in *Bank Brussels Lambert v. Credit Lyonnais (Suisse)*, the court found that a party put its attorney's advice at issue by making a claim of fraud because the advice it had received from its attorneys was relevant on the issue of "reasonable reliance."[46] Similarly, in *Baker v. General Motors Corp.*, the court found waiver after the defendant made a factual assertion in support of a motion to exclude evidence that was partially refuted by privileged attorney notes.[47]

The leading Washington cases on at-issue waiver of privilege, *Pappas* and *Hearn*, are in accord. The two cases had quite disparate factual backgrounds. In *Hearn*, the attorney-client privilege in question was between the state Attorney General and prison officials accused

of civil rights violations. Hearn was a prison inmate who, during his incarceration, had assaulted an inmate and been moved around to several prison areas, including the mental-health unit. Hearn's suit focused on the mental-health unit, alleging it was a "punitive isolation tier where prisoners with behavior problems are kept in filthy . . . cells without adequate heat, hygienic materials, exercise, reading materials, and occasionally without clothing or bedding" and that treatment was not available in the unit.

The prison officials asserted six affirmative defenses, including that they acted in good faith.[48] Under the good-faith standard, public officials are not protected by qualified immunity if they "knew or reasonably should have known" their actions would violate Hearn's constitutional rights.[49]

The extent to which the prison officials followed or ignored legal advice from the Attorney General was key to determining if they acted in good faith. The court recognized this, noting "defendants' communications with their attorney [are] inextricably merged with the . . . defendants' affirmative defense."[50] In allowing the attorney-client veil to be pierced, the court noted that upholding the privilege here would allow the prison officials to "pervert . . . [the] essential purpose of [the attorney-client privilege] and transform it into a potential tool for concealment of unconstitutional conduct behind a veil of confidentiality."[51]

Central to the court's reasoning in *Hearn* was that the party asserting attorney-client privilege on a key issue was also the party that introduced the issue as a factor.[52] The court's ruling in *Hearn* renders it quite difficult for a party to use the attorney-client privilege to hide information relevant to the merits of the assertions that the party has chosen to put at issue.[53]

Pappas, in contrast, focused on attorney-client privilege issues between farm owners and the various attorneys they had hired to defend against lawsuits over the sale of diseased cattle. The Holloways originally hired Pappas as their attorney, but he withdrew one month before trial. Subsequently, Pappas sued the Holloways for unpaid attorney fees, the Holloways counter-claimed for legal malpractice, and Pappas filed third-party complaints against the other attorneys who represented the Holloways after he withdrew.[54]

Although the Holloways argued that only publicly available information about the cattle case was relevant to the malpractice claim, the court found their argument lacking, focusing on the need to know what was communicated between the Holloways and *all* of their attorneys. A malpractice inquiry requires "examining decisions made at various stages of the underlying litigation," which necessitated the production of otherwise privileged evidence of communications between the Holloways and their attorneys.[55]

The court recognized the Holloways, like the *Hearn* prison officials, as the party that created the need to examine the Holloways' privileged exchanges with their attorneys because it was central to their malpractice claim.[56] If the court allowed the Holloways' malpractice counterclaim to proceed without forcing them to produce the necessary materials, it would be allowing the Holloways to "use as a sword the protection [given to] them as a shield."[57]

Partially Disclosing Attorney-Client Communications for Tactical Advantage Waives the Privilege for All Information Related to the Disclosure

Tactical use of otherwise privileged information in an attempt either to gain leverage in settlement, or to gain advantage in litigation, generally waives any privilege that otherwise attached both to the information actually disclosed and to all related attorney-client communications.

Under the partial-disclosure doctrine, if a party discloses a portion of the substance of attorney-client communications that would otherwise be privileged to gain a tactical advantage, the party "waive[s] the privilege of withholding . . . testimony as to all matters relevant to that issue and open[s] the door for inquiry into that particular subject matter."[58]

Because the attorney-client privilege hides relevant evidence, courts "need not allow that confidentiality to be used as a tool for manipulation of the truth-seeking process. A party asserting attorney-client privilege cannot be allowed, after disclosing as much as he pleases, to withhold the remainder."[59] Otherwise a party could disclose the portions of privileged information that support its assertions while withholding the portions that undermine those assertions.[60]

In *Martin v. Shaen*, the court found a party waived the privilege by disclosing information that created a presumption in its favor, but then tried to assert the privilege to prevent its opponent from learning evidence that rebutted that presumption.[61] Similarly, in *Ideal Elec. Sec. Co. v. Int'l Fid. Ins. Co.*, the court found a party waived the privilege by submitting documents to support its claim that revealed some privileged information but also contained portions redacted because of the attorney-client privilege.[62]

The court in *Seattle NW Securities Corp. v. SDG Holding Co.*, Inc. held that disclosure of a legal conclusion does not waive the attorney-client privilege.[63] The plaintiffs in *Seattle NW Securities* (SNW) purchased a corporation from SDG under an agreement that required SDG to declare in writing a "reasonable possibility" of success if it wished to defend against litigation which also involved SNW and which SNW wanted to settle (and vice versa).[64] Exactly this situation arose: SNW and SDG became defendants in a suit based on their liability from the transferred corporation; SNW wanted to settle and SDG's attorney wrote a letter indicating that the settlement should not be accepted because "strong and valid defenses are available."[65]

SNW soon settled and filed suit alleging, in part, that "SDG had failed to give proper notice and to provide evidence of the reasonableness of its decision to pursue the case."[66] SNW moved to compel production of "any legal opinions . . . regarding the advisability of settling."[67] The trial court granted SNW's motion, but SDG refused to produce the documents and was held in contempt.

On interlocutory appeal, the Court of Appeals "concluded that no partial disclosure of confidential material sufficient to constitute a waiver of attorney-client privilege occurred."[68] The court also commented that if a disclosure such as one in the instant case "did waive the attorney-client privilege, every letter an attorney writes to opposing counsel, an audit firm, or a witness in a case could be construed as waiving the privilege. To penalize a disclosure of a legal conclusion by characterizing it as

a waiver would greatly hamper attorneys in their ability to effectively represent and advise their clients. The exception would swallow the rule and render the privilege a virtual nullity."[69]

The partial-disclosure doctrine requires a party consistently to assert the privilege. In *Nguyen v. Excel Corp.*,[70] the court found that a party waived the privilege by allowing its executives to answer *some* questions in depositions that revealed the substance of attorney advice.

The waiver also applies even if the selective disclosure is made during settlement discussions. For example, in *In re Martin Marietta Corp.*,[71] the court found a company waived its attorney-client privilege when it submitted a report to the government during settlement talks to convince the government to drop certain criminal charges. This waiver applied not only to the report, but also to all related attorney-client privileged information on the same subject matter.[72] A court reached the same result in *Sicpa N. Am., Inc. v. Donaldson Enter.*[73] There, the plaintiff revealed a report to defendant's counsel, but only after defendant's counsel signed an agreement promising not to show the report to anyone, including his client. Despite this agreement, the court found the privilege was waived because "[a] party may not insist on the protection of the privilege for damaging communications while disclosing other selected communications because they are self-serving."[74]

In short, a party may not self-servingly insist on the protection of the privilege for communications that would damage its interests if disclosed, while choosing itself to disclose selected related communications.[75] As one court put it: "It simply makes a mockery of the law to allow a litigant to claim on one hand that it acted reasonably because it made a legal evaluation from which it concluded the law permitted it to act in a certain manner, while at the same time allowing that litigant to withhold from its adversary and the factfinder information it received from counsel on that very subject and that therefore was included in its evaluation."[76]

Conclusion

Attorney-client communications often may be not as permanently confidential as both attorneys and clients commonly suppose them to be. Today it takes alertness, with knowledge of the law and current legal developments, to gain the most benefit from candid attorney-client communications. In the absence of such alertness, clients may be exposed to greater risks than otherwise they may have suspected.

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NOTES

1 Memorandum from the Deputy Attorney General of the United States, *Principles of Federal Prosecution of Business Organizations* (Jan. 20, 2003) [hereinafter Thompson Memorandum].

2 Thompson Memorandum at 3, 6.

3 *Id.* at 3, 7 n.3 ("[T]he Sentencing Guidelines reward voluntary disclosure and cooperation with a reduction in the corporation's offense level.")

4 *Id.* at 7, 15.

[5] *Id.* at 7 n.3.

[6] *See, e.g.*, Vanessa Blum, *Corporate Lawyers See Threat to Vigorous Counseling*, The Legal Intelligencer, Mar. 25, 2003 (Blum), at 4; Robert G. Morvillo and Robert J. Anello, *Issues Raised When Rare Techniques Are Used by Prosecutors*, N.Y.L.J., Oct. 10, 2002, at 3.

[7] Blum at 4; Elkan Abramowitz and Barry A. Bohrer, *Principles of Federal Prosecution of Business Organizations*, N.Y.L.J., March 4, 2003, at 3.

[8] Howard W. Goldstein, *The Thompson Memorandum*, N.Y.L.J., Mar. 6, 2003, at 5.

[9] Sue Reisinger, *Waiving Privilege Good-Bye?*, Corporate Counsel, July 1, 2003, at 117.

[10] *See* Thompson Memorandum at 1-8, n.3.

[11] *See id.*

[12] Blum at 4; *see generally* Lance Cole, *Revoking Our Privileges: Federal Law Enforcement's Multi-front Assault on the Attorney-Client Privilege*, 48 Vill. L. Rev. 469, 476 (2003).

[13] Mary J. Biros and Andrew L. Wexton, *Can a Corporate Officer Waive the Corporation's Attorney-Client Privilege Against the Wishes of the Corporation*, Metro. Corp. Council, Jan. 2001 ("Biros and Wexton"), at 16.

[14] The grand jury context, and the limited prejudice to the opposing party, narrowed the extent of the waiver in terms of breadth of issues covered. Biros and Wexton at 16 (discussing *In re Grand Jury Proceedings*, 219 F.3d 175 (2d Cir. 2000)).

[15] Robert G. Morvillo and Robert J. Anello, *Waiver Issues in Corporate Investigations*, N.Y.L.J., June 3, 2003 (*Waiver Issues*), at 3.

[16] *Id.*

[17] *Id.* (discussing *Diversified Indus. v. Meredith*, 572 F.2d 596 (8th Cir. 1978)).

[18] *Waiver Issues* at 3.

[19] *Id.* (discussing *In re Steinhard Partners L.P.*, 9 F.3d 230 (2d Cir. 1993)).

[20] *Waiver Issues* at 3.

[21] *Id.* (discussing *Bank of America v. Terra Nova Ins. Co.*, 212 F.R.D. 166 (S.D.N.Y. 2002)).

[22] *Waiver Issues* at 3 (discussing *Maruzen Co. Ltd. v. HSBC USA, Inc.*, No. 00 CIV. 1079(RO), 2002 WL 1628782 (S.D.N.Y. July 23, 2002)).

[23] *Waiver Issues* at 3.

[24] Reisinger at 117 (discussing *United States v. McKesson Corp.*, No. 03-10024 (9th Cir., filed Jan. 23, 2003)).

[25] *Commodity Futures Trading Commission v. Weintraub*, 471 U.S. 343, 105 S. Ct. 1986, 85 L. Ed. 2d 372 (1985) (*Weintraub*). Not every bankruptcy involves a trustee. A Creditors' Committee that takes over under a confirmed bankruptcy plan can also waive the privilege, as can the debtor-in-possession in seeking to pursue or investigate potential claims against former officers or directors.

[26] *Weintraub*, 471 U.S. at 353-54.

[27] *See* footnote 25.

[28] Ralph McCullough, *et al., Trustees: The Ability to Waive the Debtor's Attorney-Client Privilege*, 106 COM. L.J. 1 (McCullough), at *2-*4 (2001).

[29] *Id.* at *5-*6.

[30] Michael C. Silberberg, *On Opposing Counsel Depositions, Discovery Supplementation*, N.Y.L.J., Nov. 2, 2000, at 3.

[31] Howard W. Goldstein, *More Pitfalls in Joint Representation and Joint Defense*, N.Y.L.J., Jan. 3, 2002, at 5.

[32] McCullough at *4 (citing *Weintraub*, 471 U.S. at 356-57).

[33] McCullough at *7-*8.

[34] Julianna M. Thomas, *Fifteen Years After Weintraub: Who Controls the Individual's Attorney-Client Privilege in Bankruptcy*, 80 B.U. L. REV. 635 (2000).

[35] McCullough at *9-*10; Thomas at 658.

[36] McCullough at *11; Thomas at 667.

[37] McCullough at *14; Thomas at 661.

[38] McCullough at *23; Thomas at 679-80.

[39] *Pappas v. Holloway*, 114 Wn.2d 198, 203-04, 787 P.2d 30 (Wash. 1990).

[40] 68 F.R.D. 574 (E.D. Wash. 1975). *See Pappas*,

114 Wn.2d at 207-08 (adopting *Hearn* over other more conservative waiver approaches); see also *State Farm Mutual Automobile Ins. Co. v. Lee*, 13 P.3d 1169, 1173 (Ariz. 2000) (describing *Hearn* approach as the "fairness approach" and relying on *Hearn* and *Pappas* to support a finding that party waived attorney-client privilege by putting attorney advice at issue).

41 *Pappas*, 114 Wn.2d at 207 (citing *Hearn*, 68 F.R.D. at 581).

42 *Pappas*, 114 Wn.2d at 208.

43 *See, e.g., Pappas*, 114 Wn.2d at 201 (defendants' counterclaim).

44 *See, e.g., State Farm*, 13 P.3d at 1173-74 (finding insurer's claim in its answer that it acted in good faith based on its interpretation of the law waived attorney-client privilege); *Baker v. General Motors Corp.*, 197 F.R.D. 376, 388-89 (W.D. Mo. 1999) (holding that defendant's factual assertion in motion waived privilege because the only information the plaintiff could use to refute that assertion was contained in privileged notes made by defense counsel); *Gov't Guar. Fund of the Republic of Finland v. Hyatt Corp.*, 177 F.R.D. 336, 341-42 (D.C.V.I. 1997) (finding defendant put privileged information at issue by submitting an attorney's declaration that contained substantive evidence in defense of a summary judgment motion); *see also Bank Brussels Lambert v. Credit Lyonnais (Suisse), S.A.*, 210 F.R.D. 506, 510 (S.D.N.Y. 2002) ("finding a broad waiver of attorney-client privilege where a party asserts a position the truth of which can only be assessed by examination of the privileged communication") (quotation omitted).

45 *State Farm*, 13 P.3d at 1175 (this assertion was not made as part of an affirmative defense). *See also State Farm Mutual Automobile Ins. Co. v. Lee*, 4 P.3d 402, 409 (Ariz. App.), *reversed*, 13 P.3d 1169 (Ariz. 2000).

46 *Bank Brussels Lambert v. Credit Lyonnais (Suisse), S.A.*, 210 F.R.D. 506, 510 (S.D.N.Y. 2002)

47 197 F.R.D. at 388-89.

48 *Hearn*, 68 F.R.D. at 576-77.

49 *Id.* 578.

50 *Id.* at 582.

51 *Id.*

52 *Id.* at 581.

53 *Id.* at 581-82.

54 *Pappas*, 114 Wn.2d at 199-202.

55 *See id.* at 208-09.

56 *Id.* at 208.

57 *Id.* at 208.

58 *Martin v. Shaen*, 22 Wn.2d 505, 513, 156 P.2d 681 (1945); *see also Seattle NW Sec. Corp. v. SDG Holding Co.*, 61 Wn. App. 725, 739, 812 P.2d 488 (1991) ("the claim of attorney-client privilege is not consistent with selective disclosure of the privileged documents when the claimant decides that the confidential materials can be put to other beneficial purposes") (quotations omitted).

59 *Ideal Elec. Sec. Co. v. Int'l Fid. Ins. Co.*, 129 F.3d 143, 151 (D.C. Cir. 1997) (alterations and quotations omitted).

60 *Ideal*, 129 F.3d at 151.

61 *Martin v. Shaen*, 22 Wn.2d at 513.

62 *Ideal*, 129 F.3d at 152.

63 61 Wn. App 725, 739-40, 812 P.2d 488 (Wn. App. 1991).

64 *Id.* at 728-30.

65 *Id.* 729-31, 39 (quoting letter by SDG's attorney).

66 *Seattle NW Sec.*, 61 Wn. App. 731.

67 *Id.*

68 *Id.* at 739.

69 *Id.* at 739-40.

70 197 F.3d 200, 206-07 (5th Cir. 1999).

71 856 F.2d 619 (4th Cir. 1988).

72 *Martin Marietta*, 856 F.2d at 623.

73 430 A.2d 262 (N.J. 1981).

74 Sicpa, 430 A.2d at 265.

75 *See id.*

76 *State Farm*, 13 P.3d at 1182.

Leadership with Style: The WSBA Leadership Institute

BY JOSLYN K. N. DONLIN, J.D., WSBA DIVERSITY ADVOCATE

The WSBA Leadership Institute (Leadership Institute) made its historical debut on March 18-19, 2005, with a star-studded cast of 12 outstanding and accomplished attorneys, the first class of the Leadership Institute. Perkins Coie in Seattle served as the launch site of the inaugural event. On hand to greet the first class of the Leadership Institute were members of the WSBA Leadership Institute Advisory Board, made up of well-recognized attorneys and nonattorneys from around Washington state. The group has been hard at work for the last six months preparing for and organizing the Institute's eight sessions. The focus of the first session was on leadership skills.

2005 WSBA Leadership Institute Advisory Board

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Background of the Leadership Institute

The Leadership Institute is the brainchild of WSBA President Ronald R. Ward, who is the first African-American president in the history of the Association. One of the 2003-2006 strategic goals adopted by the WSBA Board of Governors is to "promote diversity, equality, and cultural competence in the courts, legal profession, and the bar." According to President Ward, efforts are necessary to recruit and train "many lawyers, particularly those of color, women, and those from traditionally under-represented groups, for leadership positions and to [have them] be made aware of opportunities for skill development, professional growth, and leadership training that are available through the WSBA." As a result, in 2004, the WSBA Board of Governors decided to create a leadership development program for a select group of lawyers. Thus, the first WSBA Leadership Institute began.

Mission of the WSBA Leadership Institute

The mission of the Leadership Institute is to develop and enhance the leadership skills of attorneys from diverse backgrounds in an experiential, individualized, collaborative, and mentorship learning environment. It is a unique program to recruit, train, and promote attorneys within Washington state, particularly those who come from diverse racial and ethnic backgrounds, women, and those from traditionally under-represented groups, who have practiced law between three and 10 years, for leadership positions in the WSBA, other legal organizations, and their communities. The Leadership Institute is fully funded by the WSBA.

Leadership Institute Fellows

Candidates chosen for the program are known as Leadership Institute fellows. The profile of the 2005 Leadership Institute fellows reflects the diversity within the WSBA. Of the 12 fellows, six represent geographic locations outside of the Seattle Metropolitan area: Bellingham, Kennewick, Port Orchard, Spokane, Puyallup, and Vancouver. The other six come from Seattle. Diversity is also reflected in the practice areas of the fellows. Five fellows are litigators; three work for government agencies, representing the city, state, and federal government; two are in private practice; one works for a nonprofit organization; and one is a member of the JAG Corps and is also a dean of a college. Nine are women and three are men. In terms of racial background, this is a diverse group. There are three African Americans, three Asians, four Caucasians, one Latino, and one Native American. All currently hold leadership positions within various legal and community organizations. The 2005 class of the Leadership Institute represents a highly accomplished and talented group of leaders and closely represents the profile of attorneys in the 21st century.

Highlights of Session One

Feedback from the first two-day session of the Leadership Institute indicated that it was a overwhelming success. The first day began with a warm welcome by President Ron Ward. He was followed by James Williams, the first chair of the Leadership Institute Advisory Board, who is a partner at Perkins Coie. Mr. Williams introduced the various members of the Advisory Board and the speakers. Dan Leahy, president of the Leadership Institute of Seattle (LIOS), dean of LIOS/Bastyr University School of Applied Behavioral Science, and a

(From left to right) First row seated: Advisory Board Member Marijean E. Moschetto; Fellow Lisa J. Dickinson. Second row seated: Fellows Beth Barrett Bloom and Kim Tran; WSBA President Ronald R. Ward; Fellow Gloria Ochoa Lawrence; Advisory Board Member Justice Susan Owens. Third row standing: Advisory Board Member Elizabeth Li; WSBA Past President David W. Savage; Fellow Daniel Russ; Advisory Board Member Sharon A. Sakamoto; Fellows Melissa W. Bartholomew, Angelique M. Davis, Carrie M. Coppinger Carter, Lisa M. DeCora, and Tracy S. Flood; Advisory Board Chair James F. Williams; WSBA Liaison to Leadership Institute Joslyn K. N. Donlin. Fourth row standing: Fellows Michael R. Heath and Kevin Diaz; Advisory Board Member Anthony David Gipe. *Photo by Lisa J. Dickinson.*

leadership consultant for the WSBA CLE Department served as the facilitator. As an ice-breaker, fellows shared an important aspect about themselves that they believed was important for the rest of the group to know.

Mr. Leahy introduced Session One, Leadership Skills, by providing an overview of the major characteristics of three leadership styles: servant, collaborator, and commander. One of the highlights was the portrayal of these three leadership styles by Federal District Court Judge Ricardo Martinez, Supreme Court Justice Mary Fairhurst, and Defense Attorney Jeffery Robinson. Each shared their personal stories about their own leadership styles as well as their trials, triumphs, and tribulations in attaining their particular leadership position in the legal profession.

Judge Martinez described how, after serving as a King County Superior Court judge, he wanted to pursue a federal judgeship. However, he knew that, in many cases, court appointments to the federal bench required political clout and influence, which was not something he was familiar with. Therefore, Judge Martinez decided to take a federal magistrate position. For the next five years, Judge Martinez demonstrated to his peers, fellow federal magistrates, judges, and attorneys who practiced in federal court that he was a very competent, dedicated, and hard-working judge who was highly capable of serving as a Federal District Court judge. Today, Judge Martinez is the first Latino Federal District Court judge from the Pacific Northwest.

Washington Supreme Court Justice Mary Fairhurst shared a memorable personal story about how she first learned that she had leadership skills, through a gift from her mother. On her 16th birthday, Justice Fairhurst received a copy of a *Life* magazine featuring the "Most Remarkable Women." In addition to the pictures of Katherine Hepburn and a few other outstanding women was a cut-out picture of Justice Fairhurst when she was a little girl, taped to the front of the magazine. According to Justice Fairhurst, for years she thought that the magazine with her picture on it was a strange gift from her mother. Then one day, she realized the valuable lesson she had learned — that she was a gifted leader. Although she lost her first bid as president of the WSBA, Justice Fairhurst ran again and won, serving as president for the 1997-98 term. Justice Fairhurst concluded her presentation by encouraging the fellows not to be an 85-year-old retiree reminiscing about "what could have been done, what should have been done, but what wasn't done." Today, Justice Mary Fairhurst is a member of

the Washington State Supreme Court and a sought-after conference speaker. The *Life* magazine from her mother is showcased in her office in Olympia as a reminder that she is a leader.

High-profile defense attorney Jeffery Robinson gave an inspirational talk about his upbringing and a shared a personal story about his family growing up in Tennessee. When Mr. Robinson was young, his parents wanted to buy a house in an all-white neighborhood. Because the Robinsons are African American, they were not able to successfully bid on a house. Then one day his parents bid on a house, only to again be outbid by a Caucasian family. Unbeknownst to the sellers, the Robinson family and the winning bidder had prearranged for the Robinsons to buy the house. This experience taught Robinson the value of persistence, a characteristic of leadership. Then Robinson described another personal example of persistence in leadership. After working for almost half a year on one of his toughest trial cases, Robinson lost the case. Although it was one of the hardest cases he had ever worked on and he lost, Robinson came to learn that "character is not made during times of crisis; character is revealed during times of crisis." Robinson believes that losing a trial is not necessarily a failure but can be seen as an opportunity for growth and learning, which are characteristics of a good leader.

Day two was spent discussing how race, gender, and sexual orientation have impacted the legal profession. Members of the Advisory Board provided insights into how these particular issues have affected them personally and professionally. The fellows were asked to reflect upon their own personal experiences relative to race, gender, and sexual orientation. This led to some lively and candid discussion among the fellows, and many reported that this was the first time that they had had the opportunity to share their personal stories with respect to these issues.

"Their personal stories not only inspired but provided practical suggestions for how to be a better lawyer, leader, and a better person. I have rededicated myself to the practice of law. This was outstanding!"

Comments taken from the first session of the evaluations indicated the Leadership Institute was a tremendous success. One fellow noted: "I appreciated Dan's opening session on leadership styles — it provided a good foundation/backdrop for the presentations. Each presenter provided valuable information and tools which I will be able to apply to my practice and to my life. I appreciated their candor. Their personal stories not only inspired but provided practical suggestions for how to be a better lawyer, leader, and a better person. I have rededicated myself to the practice of law. This was outstanding!" Another said that, "I am also very excited about learning how to be a positive role model and mentor. The most effective and informative sessions were the presentations by Judge Martinez, Justice Fairhurst, and Mr. Robinson."

The WSBA Leadership Institute Advisory Board

The WSBA Leadership Institute Advisory Board is responsible for the overall mission, function, and delivery of the program. During 2005, the inaugural year of the program, the primary responsibility for the Advisory Board will be to organize, develop, implement, and evaluate the Leadership Institute. Also during the first year, tasks to be included in the institutionalization of the Leadership Institute will be the following: 1) application and selection process; 2) program and curriculum development; and 3) evaluation. The Advisory Board has curriculum execution subcommittees, which are specifically responsible for organizing, developing, and implementing the curriculum program, including the community-service project and mentorship program. These subcommittees may be composed of at least one Advisory Board member and as many other non-Advisory Board members as are necessary.

The Advisory Board is made up of Washington state attorneys and nonattorneys. It includes a chairperson, the WSBA president (as an ex-officio member), representatives from minority bar associations, a WSBA Young Lawyers Division representative, a current member of the Board of Governors (who acts as a liaison to that body), a former WSBA president, two members of the state judiciary, a member of the federal judiciary, a representative from one of Washington's law schools, and three to five practicing attorneys. The names of the distinguished members of the 2005 Advisory Board are listed on p. 34. Prospective vacancies on the Advisory Board will be filled by the WSBA President with confirmation required by the BOG. The term for an Advisory Board member will be three years. The WSBA staff liaison to the Leadership Institute is Diversity Advocate Joslyn K. N. Donlin, an attorney who joined the WSBA staff in November 2004.

The inaugural session of the Leadership Institute set a high standard for future leadership sessions. The fellows and the Advisory Board look forward to their next session: "How the Bar Works." For further information on the WSBA Leadership Institute, please contact Joslyn K. N. Donlin, J.D., WSBA diversity advocate, at joslynd@wsba.org or 206-727-8216.

BY LINDSAY THOMPSON

Seattle, February 18, 2005; March 11, 2005

So, here's a bargain for you: two BOG meetings in one report! With tort reform aboil in Olympia, the BOG laid on an extra meeting in case there were things that needed to be responded to, positions to be taken, or stuff to be addressed.

The February 18 meeting began with President **Ron Ward** describing a meeting he had had with Governor **Christine Gregoire** the day before. He lobbied for the court funding legislation pending in the Legislature, and the governor reiterated her position that she's not keen on any measures to raise taxes.

David Swartling, who chairs the Court Rules and Procedures Committee, brought a proposed amendment of Civil Rule 23 to the Board. The amendment would divert 25 percent of unclaimed monies in class-action suits to legal-services organizations. Swartling reported there is a broad agreement on the wording of the rule and the idea of putting class-action residuals to a good use. The motion passed unanimously and will go to the Supreme Court for action.

WSBA Legislative Director **Gail Stone** told the Board that all WSBA section bills were moving along nicely in the Legislature; that the court-funding package (which includes — just to review — money for court operations, indigent criminal defense, and legal services) has support but is hobbled by the budget deficit; that there will be two tort-reform initiatives on the ballot, and that legislators are trying to come up with a compromise bill they can enact before then.

A former WSBA member who claims a trademark and copyright on his name has been sending bills for gazillions of dollars to WSBA staff and some governors for publishing his name, filing UCC registrations, then forgiving them, and mailing out IRS Form 1099s to his beneficiaries (imagine figuring the tax on several trillion dollars in miscellaneous income). The Board continues to be perplexed, and discussed some options for trying to get the game drawn to a close.

A Loan Repayment Advisory Board, constituted to work on a way for new lawyers to get some debt relief, gained two new members. **Dwight Williams**, who led the task force that recommended creating the program, will chair the advisory board; lawyer **Susan Hoffman** was appointed to serve on it.

Treasurer **Joni Kerr** updated the BOG on budget matters, which all seem to be ticking along nicely. They decided to continue funding the WSBA Alternative Dispute Resolution Program, but will take another look at it in the next budget cycle. The Board also declined a request of an out-of-state judge who's a WSBA member to be granted Washington judge status in WSBA.

Governors **Mark Johnson** and **Mike Pontarolo** brought the Board a recommendation to choose an insurance brokerage company called Bertholon-Rowland Corp. to act as the broker for the WSBA-sponsored professional liability insurance program; the Board liked the idea, and approved it. On another front, former BOG member **Carl Carlson** recommended that WSBA endorse the

American Bar Association retirement program, which has a solid record and is good for serving smaller firms and solo lawyers without lots of recordkeeping and fees. That sailed through, and more information will be coming about that.

ABA delegate **Paula Boggs** gave the Board a report on things going on in that group at their midyear meeting in Salt Lake City. King County Bar Association President **John Cary** talked with the Board about that group's multiyear study of state drug laws, which, they conclude, don't work very well and need fixing. He asked the Board to support a resolution asking the Legislature to form a panel of experts to make recommendations on changes. There was some discussion about whether endorsing the plan is within the scope of General Rule 12 (which defines what WSBA can and can't take positions on), and decided to circulate it to members and see what they think.

And that was what they did in February.

Came March 11, and the Board convened at the WSBA offices. Legislative Director **Gail Stone** told the Board the deadline for each house voting bills out to the other side of the Legislature was fast approaching. All WSBA's sponsored bills are in good shape, and the court-funding package still faces the problem of the budget deficit. Tort reform is still the subject of machinations. In the meantime, some legislators are passing the time by floating bills to drop the size of the state Statute Law Committee, reducing WSBA appointments to it from five to one. There was some discussion of what to do about this, because two current members of the committee, **John Schultz** and **John Strait**, weren't seeing new terms. Executive Director **Jan Michels** thought the best bet was to take it on a business-as-usual basis since any change on the size of the body wouldn't take effect until midsummer, and if the Legislature did decide to shrink it, they'd presumably write in how to do it. So the Board appointed **Joseph Panesko** and **Joan Mell**.

Treasurer **Joni Kerr** updated the financial report (yes, I know this begins to read like I'm retyping the report of the first meeting). This time she added that the Budget and Audit Committee is starting on the process of figuring out what license fees should be starting in 2007. There was some discussion about seeing if any programs could be wound down, or other efficiencies realized, to keep any increases to a minimum.

After lunch, the Practice of Law Board arrived more or less *en masse*. Chair **Steve Crossland** and Vice Chair **Paul Bastine** shared with the Board (which is addressing concerns about unauthorized practice of law by developing a regulatory framework for nonlawyers and more practical ways to define what UPL is so it can be prosecuted) unveiled their work in progress. It's a draft rule to create, license, and regulate "legal technicians" in various fields of law. They'd be allowed to work in form-driven fields where there's a demonstrable need. The Board plans public hearings on the matter in Spokane and Seattle in April and May. They're also shopping it around the WSBA sections for input, meeting with local bar associations, and they're planning a session at the June Bar Leaders Conference.

The Board's response was a collective intake of breath. This is a potentially big idea, several commented, with all kinds of intriguing possibilities, and all kinds of downsides as well. The discussion that followed was mainly one of questions and initial reactions by Board members. As a Big Idea, there was a lot to try and get a grip on. After 90 minutes they decided to take it up again in July. It's not an idea that will be rushed along.

After that presentation came another: Disciplinary Counsel **Joy McLean**, and **Jennifer Favell** and **Pete Roberts** of the LAP and LOMAP offices, briefed the Board on WSBA's diversion program, under which some lawyers can avoid formal disciplinary proceedings. It's an interesting, and apparently successful, project. See p. 21 of this issue for more details.

The Board adjourned at 4, then repaired to a reception for former BOG members at which a Local Hero Award was presented. There's more about that on page 45.

And that's it. I'm outta here.

McGavick Graves, P.S.

takes great pleasure in announcing that

T. Gary Connett

has joined the firm as a Shareholder,

Joseph P. Zehnder
Dave Luxenberg

have become Shareholders of the firm, and

W. Alexa Chiang
Lori M. Bemis

have joined the firm as Associates.

1102 Broadway, Suite 500, Tacoma, WA 98402
Phone: 253-627-1181 • Toll-free: 800-427-3389
Fax: 253-627-2247

www.mcgavickgraves.com
We invite you to call, write, and/or visit our website.

Reed McClure

is pleased to announce that

Nancy C. Elliott

has been elected a shareholder.

Nancy continues her representation of health care professionals.

Greg Silvey

has joined as a principal,

and

Kelly Hebert
Terry Price

have joined as associates.

Reed McClure
Two Union Square, 601 Union Street, Suite 1500
Seattle, WA 98101
Phone: 206-292-4900 • Fax: 206-223-0152

www.rmlaw.com

Floyd & Pflueger, P.S.

is pleased to announce that

Michael D. Gustafson

has become an associate of the firm.

The firm's litigation practice emphasizes complex civil litigation, including the defense of construction defect claims, claims of professional negligence, and toxic torts.

Floyd & Pflueger, P.S.
300 Trianon Building
2505 Third Avenue
Seattle, WA 98121-1445
Telephone: 206-441-4455
Facsimile: 206-441-8484

Sloan Bobrick Oldfield & Helsdon, PS

is pleased to announce

Peter J. Kesling

has been made a shareholder.

Areas of practice:
Insurance Defense, Civil Litigation, Commercial Law, Real Estate, Administrative Law

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7610 40th Street West, University Place, WA 98466
253-759-9500 • 1-877-552-9500

SALTER JOYCE ZIKER, PLLC

is proud to announce that

Tod A. Gold

has become a member of the firm.

Mr. Gold will continue his practice in the field of environmental law.

Our attorneys focus their practices in environmental law and litigation, commercial law and litigation, and real estate and business transactions.

SALTER JOYCE ZIKER, PLLC
1601 Fifth Avenue, Suite 2040
Seattle, WA 98101
Tel: 206-957-5960 • Fax: 206-957-5961

BARRETT & WORDEN, P.S.

takes great pleasure in announcing

GailAnn Y. Stargardter

formerly of Reed McClure, has joined the firm as a principal.

Ms. Stargardter's practice in both Washington and Oregon will continue at Barrett & Worden in the areas of Extra Contractual Insurance Claims, Insurance Bad Faith, Insurance Coverage, Insurance Fraud, and Insurance Defense. She frequently lectures on Insurance Coverage and Extra-contractual Litigation.

BARRETT & WORDEN, P.S.
2201 Sixth Avenue • Suite 1201
Seattle, WA 98121
Phone: 206-436-2020 • Fax: 206-436-2030
Toll-free: 800-419-3199

www.barrett-worden.com

THE WASHINGTON STATE BAR ASSOCIATION

is pleased to offer advertising services in the ANNOUNCEMENTS section of *Bar News*.

For more information, contact Advertising Manager Jack Young at 206-727-8260, or e-mail jacky@wsba.org.

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

The law firm of
Reed, Longyear, Malnati & Ahrens, PLLC
is pleased to announce its name change effective January 1, 2005 to

REED, LONGYEAR, MALNATI, AHRENS & WEST, PLLC

and

Jenifer C. Merkel and **Sally A. Jeffers**

have joined the firm as Associates

801 Second Avenue, 1415 Norton Building
Seattle, WA 98104
206-624-6271 • www.rlmalaw.com

Douglas W. Ahrens
Christina L. Corwin
James A. Jackson
Sally A. Jeffers
Michael J. Longyear
Michael C. Malnati
Jenifer C. Merkel
Fredric D. Reed
Barbara A. West
James Louis Wilson

Michael T. Schein
Of Counsel

William L. Maltman
1921-2004

Lawrence R. Hennings
1988-1993

OPPORTUNITIES FOR SERVICE

WSBA Presidential Search

Application deadline: May 15, 2005

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2006-2007. Pursuant to Article IV(A)(2) of the WSBA Bylaws, the primary place of business of candidates for president for 2006-2007 must be King County. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2006-2007 WSBA president will be accepted through May 15, 2005, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than five or more than 10 references. The Presidential Search Committee and the Board of Governors will consider endorsement letters received by May 31, 2005. Applications and endorsement letters should be sent to WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

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

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

The commitment begins in June 2005 following selection. A one-year term as president-elect will begin at the Annual Business Meeting in September 2005. The president-elect is expected to attend the two-day board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2006, at the WSBA Annual Business Meeting, the president-elect will assume the position as president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time will need to be devoted to communication by letter, e-mail, and telephone in connection with these responsibilities.

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

The Presidential Search Committee comprises Fawn Sharp, chair; Ronald R. Ward, president; S. Brooke Taylor, president-elect; Andrea Brenneke; Lonnie Davis; Randolph Gordon; and Katie O'Sullivan.

WYLD President-elect and Trustee Applications Sought

Application deadline: May 2, 2005

Young lawyers interested in serving on the WYLD Board of Trustees are invited to submit applications for the following positions:

Trustee, Greater Olympia District
Trustee, King County District
Trustee, North Central District
Trustee, Northwest District
Trustee, South Central District
Trustee, Southeast District
President-elect, Washington State

Applications must be received by 5:00 p.m. Monday, May 2, 2005. For detailed information and application instructions, please visit www.wsba.org/lawyers/groups/wyld/default.htm.

ABA House of Delegates

Application Deadline: July 1, 2005

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the ABA House of Delegates representing Washington state. There are three positions available (in August 2005). A written expression of interest and a résumé are required for any incumbents seeking reappointment.

The control and administration of the ABA are vested in the House of Delegates, the policymaking body of the ABA. The House, which has approximately 500 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required. The WSBA's allowance is $800 per year per delegate. Members appointed to the House of Delegates serve a two-year term, which begins at the close of the annual meeting (August 2005).

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

2005 WSBA Award Nominations Sought

Nomination deadline: May 6, 2005

Each year, WSBA members are asked to identify those members of our profession and the public who deserve the legal profession's recognition and thanks. Nominations are sought for the following awards (the *Pro Bono* Award is not included in the list for this issue, because the deadline for nominations for this award is April 1):

- **Award of Merit.** First given in 1957, this is the WSBA's

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

- **Professionalism Award.** This honor is awarded to a WSBA member who exemplifies the spirit of professionalism in the practice of law. "Professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.
- **Angelo Petruss Award for Lawyers in Public Service.** Named in honor of the late Angelo R. Petruss, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors, this award is given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public.
- **Outstanding Judge Award.** This award is presented for outstanding service to the bench and for special contribution to the legal profession at any level of the court.
- **Courageous Award.** This award is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession.
- **Excellence in Diversity Award.** This award is made to a lawyer, law firm, or law-related group that has made a significant contribution to diversity in the legal profession's employment of ethnic minorities, women, and disabled persons.
- **Outstanding Elected Official Award.** This award is presented to an elected official for outstanding service, with special contributions to the legal profession. It is awarded to an individual who has demonstrated a commitment to justice beyond the usual call of duty.
- **Excellence in Legal Journalism Award.** This award recognizes that describing the context, facts, and players involved in the legal system with fairness and sensitivity requires intelligence, knowledge, dedication, and skill. This award is given to the journalist and his/her organization that have set the standard for relevance, clarity, accuracy, and understanding in reporting.
- **Lifetime Service Award.** This is a special award given for a lifetime of service to the WSBA and the public. It is given only when there is someone especially deserving of this recognition.

Award Presentation. It is important to note that presentation of any WSBA awards is made only when there are truly deserving recipients. Some years, no award is given in some categories. Awards are limited to one recipient per category, except when a group of individuals earned the award together.

Nomination Submissions. If you know an individual who fits the criteria set forth above, please visit www.wsba.org/barleadershomepage.htm, and complete and submit the nomination form. Self-nominations will not be accepted. **Please note that the completed nomination form must accompany each nomination in order to be considered.** Please send nominations to:

Washington State Bar Association
Attn: Annual Awards
2101 Fourth Ave., Ste. 400
Seattle, WA 98121-2330
Fax: 206-727-8319
E-mail: amyo@wsba.org

The awards will be presented at the WSBA Annual Awards Dinner in Seattle on September 15, 2005, with the following exceptions:

- The *Pro Bono* Award will be presented at the Access to Justice Conference in Bellevue on June 4. (Please note that the nomination deadline for the *Pro Bono* Award is April 1, 2005.)
- The Excellence in Legal Journalism Award will be presented at the Annual Bench-Bar-Press Conference in Fall 2005.

MCLE Certification News for Group 1 (2002-2004) — Automatic Extensions to May 1, 2005 — Late Fee Due

MCLE Reporting Group 1 members should have completed all the credits for the 2002-2004 reporting period by December 31, 2004. Members in Group 1 include active members who were admitted to the WSBA in all years through 1975 or in 1991, 1994, 1997, or 2000. Members admitted in 2003 are also in Group 1 but are not due to report until the end of 2007. Their first reporting period will be 2005-2007, but any credits earned on or after the day admitted to the WSBA may be counted for compliance.

The credit requirements for members who were active for all three years of the 2002-2004 reporting period are at least 45 total credits of WSBA-approved CLE activities, which must include a minimum of 30 live credits and a minimum of six ethics credits. If you were unable to complete the credit requirements by December 31, you have an automatic extension until May 1, 2005. You do not need to apply for this extension. However, you should still return your C2 form, ensuring that all the courses you have taken to date are listed. When you have completed the rest of your credits needed for compliance, list them on a Supplemental Affidavit (available from the WSBA Service Center (see below)).

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

To make reporting easy, all courses listed in your online roster at http://pro.wsba.org as of November 1 were printed on the back side of your C2 affidavit. You must list any additional WSBA-approved courses you have taken. (APR 11 regulations stipulate that a course must be approved by the

WSBA before it can be applied toward your MCLE credit requirement.) Include the WSBA activity ID number for each course you list. For audio/visual courses, list the date you viewed or listened to the course, as well as the original recording date.

You can look up an activity ID number or apply for course approval online at http://pro.wsba.org. Click on "Member" and then select "Member Login." If it is your first time logging on, use your Bar number as your password. The online instructions will lead you through the process of creating a new password, to protect your records, and using the system.

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

MCLE Certification News for Group 1 (2002-2004) — C2 Processing Update

This year the WSBA will be processing more than 7,000 C2 forms from Group 1 members. You can confirm that the WSBA received your C2 form by checking for a date next to the "C2 Date Received" box just below the course roster on your online profile at http://pro.wsba.org.

It will take the WSBA another few months to finish processing all the 2002-2004 C2 forms and confirm compliance. Consequently, even after the WSBA receives your C2 form, you may continue to see "No" in the "C2 Data Complete" box and your profile marked as noncompliant. There should be no cause for alarm, as this simply means that your C2 form has not yet been processed. If the WSBA needs any further information or action from you in order to certify compliance, you will be contacted by letter. Every member will be given ample opportunity to take the corrective action needed to become compliant before any further action is taken.

If your C2 form shows that you have met your credit requirement, MCLE staff will not add individual courses to your roster. Instead, special summary Form 1's will be used to add credits that you have listed on your C2 form to your online roster. If you report more than 60 credits, only the first 60 will be added to your roster. This includes the 45 minimum credits required for compliance, plus up to 15 carry-over credits (of which a maximum of two credits can be ethics and five can be audio/visual).

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

2005 License Fee Payment Deadline and Suspension Information

2005 License Fee Payment Deadline. If you have not yet paid your 2005 license fee, it is now due. A 50 percent late fee must also be paid. The late fee increases from 20 percent to 50 percent on April 2.

Presuspension Notice. A presuspension notice was sent in mid-March to those members who had not paid their 2005 license fees. If you have paid your license fees, you can confirm receipt by the WSBA 10 days after you sent your payment by checking online at http://pro.wsba.org, or by contacting the WSBA Service Center at 206-443-WSBA, 800-945-WSBA, or questions@wsba.org.

Important Note about Unpaid License Fees. If either your license fee or, for active members, the Lawyers' Fund for Client Protection assessment remains unpaid two months after the mailing of the pre-suspension notice, the WSBA Bylaws require the WSBA to certify the delinquency to the Supreme Court, which will enter an Order of Suspension from the practice of law.

License Packets. Licensing packets were mailed in December 2004. The packet included your license-fee invoice, trust-account-declaration form and, if applicable, the MCLE certification form. If you have not received your licensing packet by now, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org to request a duplicate. Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the licensing packet. Active members *must* complete, sign and return a Trust Account Declaration and, if applicable, an MCLE Certification. There may be other forms included in the packet that you wish to complete and return, such as updating your contact information, reporting *pro bono* hours, completing the demographic information, and requesting a web link from the WSBA attorney directory to your website (payment required).

If You Are Mailing Your Forms and Payment. The return envelopes for your forms and payments have instructions on the reverse side for improvement in processing and ease of use. Please review them carefully before mailing your forms and payment. The white envelope should be used for returning your licensing form (A2) with a check payment. The blue envelope should be used for your licensing form when making a payment by credit card. Also use the blue envelope for mailing the Trust Account Declaration, MCLE Certification, and any voluntary forms.

If You Are Paying Your Fees Online. To pay your fees online, go to http://pro.wsba.org, click on "Member," and sign in with your WSBA Bar number and password. Prompts will lead you through the process to pay your 2005 license fees by MasterCard or Visa. Note that you do not need to return the A2 form if you pay online, but active members *must* complete and return a Trust Account Declaration and, if applicable, an MCLE Certification. The packet includes other voluntary forms you may want to complete and return. If you wish to take the Keller deduction, you will need to mail your check or credit-card payment.

Trust Account Declaration. The Trust Account Declaration included in your licensing packet *must* be completed by all active members regardless of whether or not you have a trust account. Failure to file this form can result in disciplinary action.

Software Conversion. In late summer 2004, the WSBA underwent a software conversion of the membership database. It is possible that not all information converted correctly. If you feel the amount or any other information

showing on your licensing form (A2) is not correct, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org.

WSBA Members on Active Military Duty. At its January 2004 meeting, the Board of Governors approved a Bylaw amendment that allows all active WSBA members who are on active duty in the military to waive WSBA license fees and remain active members for up to five years. (WSBA members on active duty whose WSBA membership status is inactive or emeritus must still pay the annual WSBA license fee.) If you are currently an active member on active military duty, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org.

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

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

Seattle Firm Bendich, Stobaugh and Strong, P.C. Receives WSBA's Local Hero Award

At a reception for Board of Governors Alumni and WSBA directors on March 11, David F. Stobaugh and Stephen K. Strong, and the Seattle law firm of Bendich, Stobaugh and Strong, P.C., received the WSBA's Local Hero Award for their outstanding *pro bono* work on securing the passage of provisions outlawing the double taxation of attorney awards in employment discrimination, civil rights, and other aspects of cases involving employment relations; as well as for their work on a WSBA-sponsored bill to amend the Washington Attorney Lien statute to give lawyers a property interest in attorney fees. The Local Hero Award is presented to lawyers, judges, or groups who have made noteworthy contributions to their communities. WSBA President Ronald R. Ward presented the award to David Stobaugh and Stephen Strong.

The law firm of Bendich, Stobaugh and Strong, P.C., led by David Stobaugh and Stephen Strong, was instrumental, through extensive lobbying and financial support, in making it possible for a provision of the Civil Rights Tax Relief Act (CRTRA) barring the double taxation of attorneys' fees to become law on October 22, 2004, as part of the American Jobs Creation Act of 2004. "The CRTRA is one of the most significant pieces of civil rights legislation in almost a decade," wrote Janet E. Hill, President of the National Employment Lawyers Association (NELA), of which Bendich, Stobaugh and Strong, P.C. is a member firm. "Under the new law, individuals who are successful in employment discrimination and other workplace-related cases may now take a full deduction on their federal income tax returns for the attorneys' fees and costs they incur in vindicating their rights." Prior to the enactment of this new legislation, the Internal Revenue Service taxed those individuals both on the amount that they had received as compensation for unlawful discrimination, and on the fees paid to their attorneys. As a result, it was possible for their tax bills to surpass their award.

List Yourself in the Online ADR Provider Directory

Sponsored by the WSBA Dispute Resolution Section, the ADR Provider Directory is an online attorney and citizen resource for locating appropriate alternative dispute resolution service providers. If you are a provider, don't miss the opportunity to be listed for the current year. The directory subscription year is January 1 to December 31, and fees are not prorated. The annual listing fee is $50 for members of the WSBA Dispute Resolution Section and $75 for non-members. To register online, go to www.adr-wa.com/directoryRegister-drPro.cfm.

2005 Bar Leaders and Access to Justice Conference

The 10th annual Access to Justice Conference will be held in conjunction with the WSBA Bar Leaders Conference June 3-5, 2005, at the DoubleTree Hotel in Bellevue. Registration brochures will be mailed this month. For more information or to confirm that you are on the conference mailing list, contact Sharlene Steele at 206-727-8262 or sharlene@wsba.org (Access to Justice Conference); or Desiree Ogden at 206-733-5931 or desireeo@wsba.org (Bar Leaders Conference).

Save the Date — May 20, 2005 — 2:00 p.m. to 5:30 p.m.

A celebration of the adoption of the Access to Justice Technology Principles (a/k/a The Access to Justice Technology Bill of Rights) by the Washington State Supreme Court and a celebration of all who participated and contributed to this historical step forward in the never-ending effort for equal justice for all at Seattle University School of Law. More information will be coming. Questions? Contact James Kim at 206-239-2118 or jamesk@wsba.org.

Seattle's Union Gospel Mission Legal Services' Fundraiser Event: Takin' It to the Street

Seattle's Union Gospel Mission Legal Services' fundraiser event, "Takin' It to the Street," will be held Friday, April 29, 2005, 7:00-8:30 a.m. at the Washington Athletic Club, 1325 Sixth Ave., Seattle. The speaker will be Kenneth W. Starr, and the musical guest will be the Total Experience Gospel Choir. Cost is $20 per person, or $200 for a table of 10. For more information, contact Esther Park at 206-682-4642 or epark@ugm.org.

19th Annual Goldmark Award Luncheon Honors Ada Shen-Jaffe

The Legal Foundation of Washington celebrated its 20th anniversary and presented the Charles A. Goldmark Award

for Distinguished Service to Ada Shen-Jaffe in recognition of her leadership in the equal justice community, both in the state of Washington and nationally. Shen-Jaffe has played a key role in the architecture and strategy of civil legal justice since 1981, when she became deputy director of Evergreen Legal Services, which later became Columbia Legal Services, where she served as director for the last 18 years. William H. Gates Sr. presented the award to Shen-Jaffe. Joaquin Avila, assistant professor of law at Seattle University School of Law, MacArthur fellow, and noted authority on minority voting rights issues, gave the keynote address.

The Legal Foundation of Washington is a nonprofit organization that has distributed over $76 million for legal aid to the poor since 1985.

Tausend Competition: (From l. to r.) Judge Richard Tallman, 9th Circuit Court of Appeals; Ron Ward, WSBA President; Stephanie Nichols, co-winner; Judge Betty Fletcher, 9th Circuit Court of Appeals; Pamela Casey, co-winner; Judge Nathaniel Jones, 6th Circuit Court of Appeals (retired); Justice Charles Johnson, Washington State Supreme Court; Joan Tierney, SU Career Services; and Fredric Tausend, former Seattle University School of Law dean. *Photo by Christine Mumford.*

Seattle University School of Law — Tausend Competition Winners

The Fredric C. Tausend Moot Court Competition is an appellate-level competition for second-year law students and is based on the fall semester Legal Writing II problem. All students receiving a B+ or higher on the Legal Writing II brief are eligible to compete. The top competitors advance to represent Seattle University at the National Moot Court Competition in the fall.

This year, 175 students took the class, 60 made a B+ or higher, and 45 competed. Oral argument rounds are used to reduce the 45 to eight finalists, then eight to four, and then the final two winners are selected. Judges Tallman, Fletcher, and Jones adjudicated the final round, naming Pamela Casey and Stephanie Nichols as co-winners of the competition.

Pamela Casey is a member of the National Environmental Appellate Team and the ATLA Mock Trial Team that represented SU this year at national and regional competitions. Pamela is also a law clerk with Walthew, Warner, Thompson, Eagan, Kindred & Costello.

Stephanie Nichols is involved in the following associations through the SU law school: co-president of the Native American Law Student Association, fellowship with Center on Corporations, Law and Society clerkship with Northwest Intertribal Court System, and teacher's assistant.

Lawyers' Assistance Program Peer Counselor Statewide Network

The Lawyers' Assistance Program Peer Counselor Statewide Network is a network of attorneys who volunteer support to others who need someone to listen when times are tough. These volunteer lawyers are not professional mental-health counselors, but do receive training at the network's statewide conference in April and regional trainings throughout the year. These lawyers seek to expand the diversity they represent and offer to WSBA members. Would you have time and interest in listening, recognizing when a peer needs referral for additional support, attending a training, educating the legal community about the healthy practice of law, and giving of yourself as your time allows? Please call Jenny Favell, Ph.D., 206-727-8267.

Random Acts of Professionalism Program

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

a letter, a certificate, and a copy of the WSBA Creed of Professionalism.

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. Starting April 13, we'll be discussing 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. For more information, contact Rebecca Nerison, Ph.D., at 206-727-8269 or rebeccan@wsba.org.

LAP Offered to 3-L Law Students

LAP also offers long- and short-term psychotherapy for depression, addiction, family, relationship, health, and other mental and emotional problems to 3-L students attending the University of Washington and Seattle University Schools of Law.

The cost of ongoing counseling for law students is based on a sliding-fee scale from $0 to $30, determined by the student's ability to pay. For information about the Lawyers' Assistance Program, call 206-727-8268 or visit www.wsba.org/lawyers/services/lap.htm.

Contract Attorney Discussion Group

Join the Contract Attorney Discussion Group every first Tuesday of the month from noon to 1:30 p.m. at the WSBA office. Bring a lunch and meet colleagues as your contract-attorney issues of concern are addressed. Contact Pete Roberts at 206-727-8237 or peter@wsba.org.

Access to Justice Technology Principles

On December 3, 2004, the Washington State Supreme Court signed and entered an order adopting the Access to Justice Technology Principles. For more information, visit the project website at www.atjtechbillofrights.org. Also, in January 2004 there was a symposium/conference that focused on technology, values, and the justice system that the Access to Justice Technology Bill of Rights Initiative presented and hosted. View the website at www.ischool.washington.edu/lawsymposium.

If you have any questions on the court order, ATJ Technology Principles, or the symposium, contact James Kim at jamesk@wsba.org or 206-239-2118.

Computer Clinic

WSBA offers a hands-on Computer Clinic for members wishing 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. Don't hesitate to try a clinic for help that you can use immediately in your practice. Computers are provided for your use, and seating is limited to 20 members. There is no charge, and no CLE credits are offered. The time is 10 a.m. to noon on Monday, April 11, and Monday, May 9, at the WSBA. For more information, contact Pete Roberts at 206-727-8237 or peter@wsba.org.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in March 2005 was 3.021 percent. The maximum allowable interest rate for April is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988 to June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

Upcoming Board of Governors Meetings

April 22-23 — Spokane
June 3 — Bellevue
July 29-30 — Bellingham

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

Keep in Touch

The WSBA uses e-mail to communicate with members quickly, efficiently, and inexpensively, and increasingly it is becoming the preferred method of communication for committees and sections. If you haven't already, please consider providing us with your e-mail address. Contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or questions@wsba.org. Representatives are available Monday through Friday, 8:00 a.m. to 5:00 p.m.

Visit the WSBA Online Store

Go to www.wsba.org and click "WSBA Store" in the left navigation bar to purchase Cutter & Buck polo shirts, twill baseball caps, ballpoint pens, and brass luggage tags, all sporting the WSBA logo. The store offers secure online credit-card ordering. You can also purchase logo merchandise by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Items available include: polo shirt (pewter or white, size L or XL) — $56; baseball cap (stone) — $24; ballpoint pen — $12; luggage tag — $7. Prices include shipping and handling. Sales tax (8.8 percent) will be added to orders shipped within Washington.

Learn More about Case-Management Software

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

Edward Shaw

Edward Shaw served in the U.S. Air Force from 1942 to 1945 in World War II, achieving the rank of second lieutenant. He was a bombardier. In 1947 Shaw graduated from the University of Washington. In 1953 he graduated from Gonzaga Law School. He was a private attorney for 50 years, retiring in 2004. He was a member of the Washington State Bar Association, the Spokane County Bar Association, and Ducks Unlimited. He enjoyed hunting and fishing.

Survivors include two daughters, a son, six grandchildren, and three great-grandchildren.

Edward Everett Shaw of Spokane died February 7, 2005, aged 91.

John A. Feutz

John Feutz devoted his life to the community of Lakewood, where he was born and raised and remained a resident for all of his life. Feutz graduated from the University of Puget Sound Law School in 1977.

In school and in life, he was a sports enthusiast and a great politician. He enjoyed camping, vacationing with his family, building model boats, and collecting antiques. He held many occupational positions, including prosecuting attorney, Pierce County judge *pro tem*, and City of Lakewood Municipal Court judge.

Feutz is survived by his wife, three children, two brothers, one sister, and many nieces and nephews.

John A. Feutz was born November 18, 1949, and died February 4, 2005, aged 55.

Daniel Brink

Dan Brink was a dedicated lawyer and sailor. It was that dedication, friends say, that led the prominent Seattle attorney and former state legislator through legal battles ranging from the Kingdome construction to attempts to restructure the state Democratic Party.

Brink was a native of Bay Lake, MN, where his father owned a fishing resort, and grew up loving the outdoors. He was a hunter and fisherman, and traded the pelts of animals he trapped for credit at Sears. He served in the Army Judge Advocate General's Corps for two years at Fort Lee, VA, before going into private practice in Seattle.

"Dan's rule was that anybody who walked through the front door got help," said his former law partner Joe Trethewey. "He never turned anybody down. He didn't ask about money first. None of those rules applied in our joint."

Brink served in the State House of Representatives from 1959 through 1963. Beyond his professional duties, Brink was a sailor's sailor. He raced his boat, "Tonic," for years.

Brink is survived by his wife, a nephew, and a niece.

Daniel Peter Brink died from esophageal cancer December 15, 2004, aged 75.

Kim Barry

Kim Barry, an associate counsel at NYU's Brennan Center for Justice, a legal research and advocacy center in New York City, was struck by a truck in November 2004 and later died from her injuries.

"Her death is a loss to her family, our community, and higher education," said NYU President John Sexton, who knew Barry both as a student and as a colleague. "She was a person of manifest intelligence, energy, and charm." Barry was born in the Bahamas and graduated *magna cum laude* from Georgetown University. She went on to the Fletcher School of Law and Diplomacy at Tufts University; the Institut universitaire de hautes études internationales in Geneva, Switzerland; and NYU School of Law, where she was a Dean's Scholar and a *Law Review* articles editor. As a student, she served as a research assistant to Professor Ron Noble, secretary-general of Interpol. Through law school clinics, she traveled to Eritrea to work on international development and represented Alabama death-row inmates.

Barry clerked for Judge Betty Fletcher of the U.S. Court of Appeals for the 9th Circuit, and entered private practice in Seattle before returning to New York University as a Katz Fellow and associate counsel at the Brennan Center for Justice. At the Brennan Center, she worked on democracy and poverty projects, including an effort to restore voting rights to felons in Florida.

She is survived by her mother and father, two sisters, a grandmother, and her companion, Gavin Butler. She was 35 when she died.

William Denend

Denend grew up on his grandparents' dairy farm in Drews Prairie, WA. He graduated from Hill's Military Academy in Portland in 1939 as the youngest member of his class. Denend earned his J.D. from the University of Montana. At age 16, he enlisted in the Army and retired after 31 years of service in 1973 as a colonel. He served during World War II, Korea, and Vietnam. He served in the infantry, as an aviator, and as a parachutist. He also worked with NATO. He was highly decorated; his 25 awards include the Legion of Merit, Distinguished Flying Cross, Bronze Star, Purple Heart, and United Nations Service Medal.

He was active in many organizations, including the Tacoma YMCA, American Cribbage Congress, CAP Kitsap County Senior Squadron, Kitsap AV Squadron, and American Legion. Denend was a master gardener, and enjoyed traveling, wine making, and baking family birthday cakes.

Denend is survived by his wife, Martha; five sons; two daughters; six grandchildren; and seven great-grandchildren. Donations can be made to the American Cancer Society.

William Leonard Denend was born in Centralia May 27, 1923, and died March 9, 2005, in University Place, aged 81.

Gordon H. Goldsmith

Goldsmith attended O'Dea High School in Seattle. He graduated from Creighton University School of Law in 1979. He was involved in land use law for the last 25 years.

He is survived by his wife, two children, four brothers, three sisters, and many nieces and nephews.

Gordon "Gordy" H. Goldsmith died January 26, 2005, aged 50.

James D. Horton

After his kidneys deteriorated and an early transplant failed, Jim Horton never took things for granted. When a second transplant took, Horton made the most of it. Horton lived 29 years after that kidney transplant, for the last two decades in a wheelchair after injuring his back in a fall. None of his medical problems stopped him from being active. Although he could no longer walk, Horton kept his perspective, his daughter said. "'There are people paralyzed from the neck down,' he told her. 'We're so lucky.'"

Horton worked many years at the Clark

County prosecuting attorney's office. Eventually he went into private practice. Horton put in long days at the firm Blair Schaefer Hutchinson & Wolfe, and after work always went swimming. He biked using a hand-pedaled bicycle, kayaked the Lewis River in a specially made craft, and skied down slopes on a monoski.

James Daryl Horton died December 26, 2004, aged 63.

Eldon W. Anderson

Eldon Anderson attended the UW and was a proud member of Sigma Alpha Epsilon fraternity, where he met many lifelong friends. After graduating in 1943, he joined the Marine Corps. He quickly became an officer, and saw action on Saipan, Tinion, Iwo Jima, and Okinawa. After the war, he returned to Seattle and entered law school. While in school, he met his future wife, Juanita (Ty). They married in 1947, and he earned his law degree in 1948. An accounting degree soon followed.

Anderson is survived by his wife, three children, four grandchildren, and one great-granddaughter.

Eldon Willmar Anderson of Edmonds was born September 18, 1921, and died December 2, 2004, aged 83.

James C. Lynch

James Lynch was a former Wenatchee mayor, a self-proclaimed "political animal" who was instrumental in creating the city's riverfronts parks and the regional Link bus system. He served four terms as mayor, from 1978 to 1994, and then two years later, at the age of 70, he was elected Chelan County Commissioner.

At the age of 16, Jim ran away from home, and lied about his age to join the Navy. Lynch served three years in the Navy in World War II before he was seriously wounded and sent home. He then decided on a career in law, and graduated from Gonzaga Law School in 1954. He served six years as Chelan County prosecutor, and was then appointed a municipal and district court judge. Jim was a gifted negotiator who believed that politics was the art of making things happen. He said, "An elected official represents, and is a trustee, for his constituents."

A week before his death, Lynch was especially proud to receive the 50-Year Award of Honor from the WSBA.

Lynch is survived by his wife, six children, four stepchildren, 19 grandchildren, and a brother.

James Cooper Lynch was born February 20, 1926, and died January 13, 2005, aged 78.

Albert R. Malanca Jr.

Malanca had a long and distinguished legal career. For more than five decades, he earned the respect of judges and lawyers across the country. He was a member of the prestigious American College of Trial Lawyers, and for years he served as a delegate to the 9th Circuit Judicial Conference. He was also one of the founders of the Federal Bar Association for the Western District of Washington. He was selected in the "Best Lawyers in America" publication every year starting in 1987 in three categories: business litigation; personal injury; and general litigation, including antitrust.

Malanca served as lead counsel for the city of Tacoma and more than a dozen public utilities involved in the Washington Public Power Supply System Securities Litigation, one of the largest securities cases ever filed. Malanca was the primary architect of a complex set of settlements, which resulted in hundreds of millions of dollars in savings to Tacoma and northwest ratepayers. Malanca also successfully defended the City of Tacoma in several lawsuits brought by property owners near the Tacoma landfill for alleged contamination. In the end, his efforts and strategy resulted in the city's actually making a profit from the litigation. Malanca also represented thousands of plaintiffs in a variety of multi-million-dollar environmental lawsuits brought by property owners in Kitsap County, Maple Valley, Thurston County, and Yakima for damages caused by landfills and sewer treatment plants. Collectively he recovered nearly $50 million for those clients. Most recently, Malanca defended a major international fish trading company in a complex antitrust lawsuit in Alaska involving $2 billion in damages.

Malanca is survived by his wife, three children, three stepchildren, two grandchildren, a sister, and numerous nieces and nephews.

Albert R. Malanca Jr. died peacefully January 19, 2005, aged 77.

Robert Moch

Bob Moch was coxswain of the 1936 University of Washington eight-oared crew that won the Olympic gold medal in front of Adolph Hitler. The Huskies' victory in the 1936 Olympics is considered among the greatest achievements in state history. "Bob was a great friend, a great coxswain and a great person," said Huskies teammate Jim McMillin of Bainbridge Island. The other surviving oarsmen from the storied crew are Roger Morris of Maple Valley and Joe Rantz of Redmond.

Memorials are suggested to the Dick Erickson Scholarship Fund at the UW, the George Pocock Rowing Foundation, and the Sigma Tau Education Foundation.

Moch is survived by his wife, six children, 13 grandchildren, and 21 great-grandchildren.

Robert Gaston Moch was born in Montesano and died January 7, 2005, aged 90.

Steven Victor Lundgren

Steve Lundgren was many things to many people: outstanding attorney, avid salmon fisherman, sports enthusiast, golfer, and gardener. Remembrances can be made to South Puget Sound Salmon Enhancement Group or Evergreen Hospice.

Lundgren is survived by his wife, three children, two brothers, one sister, and one grandson.

Steven Victor Lundgren was born February 27, 1941, and passed away peacefully at home after a noble fight with cancer on January 11, 2005, aged 63.

Scott Sullivan

Born and raised in Seattle, Sullivan received his law degree from the University of Puget Sound. He practiced law for 10 years. During this time he also coached St. Therese middle school boys' basketball, taking several teams to championship level. He then obtained a teaching certificate to pursue his dream of becoming a middle school teacher. He taught one year at St. George School before illness forced him to resign. He made devoted friends easily, from all walks of

life, and in the many and diverse circles in which he so comfortably moved. He loved listening to rhythm-and-blues and jazz; playing, coaching, and watching basketball; working in the yard; and renovating old cars and old houses. Donations in Scott's memory may be made to the Washington Center for Comprehensive Rehabilitation, Multiple Sclerosis Helping Hands, or St. Therese School Athletic Program.

Sullivan is survived by his wife, three children, two sisters, and one brother.

Scott Patrick Sullivan died January 11, 2005, after a long illness, suffered heroically, aged 47.

Craig E. Kastner

Kastner graduated from Gonzaga Law School in 1975. He practiced law in Seattle with the law firm of Williams, Kastner and Gibbs from 1975 to 1983. Afterwards, he had a private law practice in Issaquah and then in Poulsbo until his death. Craig was a member of the Washington Athletic Club and Poulsbo Athletic Club. He was also a member of the American Trial Lawyers, the Washington State Trial Lawyers' Association, Rotary Club of Silverdale, and the Poulsbo Chamber of Commerce. He was an avid sports fisherman and tennis player, and excelled at snow- and water-skiing. He loved the water, and eventually acquired a waterfront home near Poulsbo.

Kastner is survived by his parents, one sister, and two brothers.

Craig E. Kastner was born August 4, 1950, in Seattle, and passed away February 13, 2005, after a brief illness, aged 54.

David A. Kastle

Kastle is survived by his wife, three children, his parents, one brother, one sister, and many other family members. Contributions can be made in Kastle's name to Neurofibromatosis Foundation, WA Chapter, 22835.

David Kastle was born April 22, 1957, and died suddenly January 25, 2005, aged 47.

Kim Earl Dupuis

Kim Dupuis graduated from Whitman College in 1975, and then attended Willamette University Law School. Dupuis first worked as a public defender in Vancouver, WA, and then in Everett. In 1988, he established a family law practice in Everett. He never promoted himself but instead relied upon his reputation — as a sage counselor and, where necessary, a fierce trial lawyer — to build his practice. He co-founded the firm of Dupuis & Schwimmer in 1998, with partner Rafe Schwimmer, and practiced law until he became ill with cancer in November 2004.

Dupuis loved fine things but never hungered for them. He was happier showing off the finest mountaineering tent than he ever would have been owning an expensive car. He climbed all of the Northwest's major volcanoes and summited Mt. Rainier several times. Once he had acquired a boat, no corner of the San Juans was safe from his exploration. His work was important to him but never owned him. He cared deeply for his clients and they for him. In a profession marked by conflict, he strove to avoid it. His great sense of humor, and his thoughtful amusement at the human foibles he witnessed, earned him his reputation as a wise and caring, though sometimes stubborn, advocate.

Dupuis is survived by his father; his daughter, Sarah; and his brother Bill. Remembrances may be made to the Washington Environmental Council.

Kim Earl Dupuis was born March 22, 1953, and died January 4, 2005, aged 51.

Lisa Christine Vigna

Vigna grew up in Atlanta, Georgia, and attended the University of Georgia, graduating *magna cum laude* in 1991 with a B.A. in journalism. On April 22, 1989, she married John A. Vigna. While living in Darmstadt, Germany, she completed her degree via independent study while her husband was stationed there with the U.S. Army. After the family was transferred to Fort Lewis, Vigna attended Seattle University Law School, where she graduated with honors in 1996 and became a member of the WSBA. During her law school studies, she interned as a Pierce County prosecuting attorney.

In 1997, Vigna entered the U.S. Army with a direct commission as a member of the Army Staff Judge Advocate Corps, where she served the Army faithfully and honorably for eight years as an administrative law attorney, prosecuting attorney, associate professor of law, and criminal law division chief at Fort Drum, New York; the United States Military Academy at West Point; and Fort Leonard Wood, Missouri. For her dedicated service, she received several awards and commendations, including the Legion of Merit, the Meritorious Service Medal, three Army Commendation Medals, the Army Achievement Medal, and two Humanitarian Service Medals.

Vigna passed away after a three-year battle with cancer. During that battle, her courage, strength, and positive attitude truly inspired everyone. A loving mother, wife, daughter, sister, and friend, as well as an exemplary soldier and attorney, Vigna made everyone a better person just for knowing her. Memorial contributions can be made to the American Cancer Society.

Vigna is survived by her husband, LTC John Vigna; two daughters; her parents; her sister; and her brother.

Lisa Christine Vigna was born June 22, 1967, in Cincinnati, Ohio, and died February 5, 2005, in Fort Leonard Wood, Missouri, aged 37.

Bernice Jonson

Jonson joined her father's practice after graduating from the UW Law School in 1936. Her law career spanned six decades. Jonson began handling divorce cases in the 1960s. "There wasn't anybody in her heyday who had anything to do with domestic-relations cases who didn't know of her reputation. If you had a high-stakes case that required good, vigorous advocacy, you wanted to either hire Bernice Jonson or make damn sure your opponent didn't," recalled William Baker, now a judge on the state Court of Appeals.

Jonson worked very long hours, but she didn't neglect her family. She would go to work very early, then come home and make breakfast, then return to the office after her children had gone to school. Then she would return for dinner and often go back to work after that. She loved to fish and was active in her church.

Jonson is survived by four sons, 10 grandchildren, and seven great-grandchildren.

Bernice C. Jonson, known as the Grande Dame of divorce law, the Barracuda of Ballard, died March 7, 2005, aged 90.

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: Nearly 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 one or more other WSBA members; however, all discipline reports should be read carefully for names, cities, and bar numbers.

Correction: The Lawyers' Fund for Client Protection Committee Report in the February 2005 issue of *Bar News* incorrectly stated that Michael R. Hutton (WSBA No. 5673) was disbarred; in fact, Mr. Hutton was suspended for 3 years effective 1/31/05.

Clarification: The February issue included a notice of admonition for Eugene C. Wong of San Francisco, CA. The notice should have included the following: "Mr. Wong is to be distinguished from Eugene W. Wong of Seattle." Our apologies to Mr. Wong of Seattle.

Disbarred

Adina A. Atwood (WSBA No. 27787, admitted 1998), of Kent, was disbarred, effective September 15, 2004, by order of the Washington State Supreme Court following a default hearing. This discipline was based on her conduct in 2001 through 2003 involving abandonment of her law practice, multiple acts of misconduct in representing individual clients, and failure to cooperate with a disciplinary investigation.

In the summer of 2002, Ms. Atwood abandoned her law practice. She removed client files from her law office, but did not return the client files to the clients or to the law office. She did not inform clients that she had abandoned her law practice and had ceased handling their legal matters. She took no action to return remaining client funds in her trust account to the rightful owners.

Matter 1: In 2002, a client paid Ms. Atwood $3,000 to represent her in a dissolution matter. The client directed Ms. Atwood to obtain a temporary restraining order because she feared that her husband would physically harm her. Ms. Atwood obtained an *ex parte* restraining order that failed to include a provision preventing the husband from entering the family residence. Consequently, Ms. Atwood was obliged to request an amended order that included such a provision. At a hearing on the entry of temporary orders at which the client was not present, Ms. Atwood agreed to a provision allowing the husband to have access to the family home to remove certain property. Ms. Atwood failed to notify the client of this provision. The client did not learn of the provision until the husband appeared at her home with a copy of the order. When the client terminated Ms. Atwood's services, the client requested an itemized bill and a refund of the remaining balance. Ms. Atwood never responded to these requests, never contacted the client, and did not file a notice of withdrawal. The client obtained a default judgment against Ms. Atwood in small claims court for $3,036.

Matter 2: In 2002, a client paid Ms. Atwood $950 to represent her in a Chapter 7 bankruptcy. Following commencement of the bankruptcy proceeding, a judgment creditor continued to enforce an order of garnishment against the client. The client paid Ms. Atwood an additional $150 to quash the garnishment. Ms. Atwood failed to file a motion to quash or to do anything else to prevent the judgment creditor from garnishing the client's wages. Despite the client's repeated efforts to contact her, Ms. Atwood failed to communicate with the client. Although the client obtained a refund of $300 in garnished wages, she lost $648 as a result of Ms. Atwood's failure to take action.

Matter 3: In 1998 or 1999, a client with mental-health and substance-abuse problems hired Ms. Atwood to represent her in various matters, including a marital dissolution. Under the terms of a stipulated property distribution, Ms. Atwood, on the client's behalf, was to receive $18,760 pursuant to a Qualified Domestic Relations Order. Out of that sum Ms. Atwood was to discharge an $8,500 third-party debt and provide the lawyer for the former spouse with proof of payment. Following receipt of the proceeds in January 2001, Ms. Atwood deposited the sum into her trust account. Shortly thereafter, although she had no client authorization to do so, Ms. Atwood disbursed $12,000 to herself. At the time, Ms. Atwood was not owed $12,000 by the client. When the lawyer for the former spouse inquired about discharge of the debt, Ms. Atwood intentionally misrepresented to him that she was waiting for the check to clear. Ms. Atwood disregarded further communications from the lawyer. In April 2002, Ms. Atwood disbursed to herself another $2,000 of the client's money without the client's authority, knowledge, or consent. Ms. Atwood took no steps to return the funds remaining in her trust account to the client.

Matter 4: In April 2002, a client paid Ms. Atwood $775 to represent her in a Chapter 7 bankruptcy. After filing the bankruptcy, Ms. Atwood failed to inform the client of the date for the meeting of creditors, and did not attend the meeting of creditors. Ms. Atwood never contacted the client again about the bankruptcy, which was dismissed in October 2002 because no one had appeared at the meeting of creditors.

Matter 5: Ms. Atwood did not respond to Bar Association requests for information about and responses to the grievances in matters 1 through 4 above. In April 2003, Ms. Atwood failed to appear for a deposition as required by a subpoena *duces tecum*. Owing to her failure to cooperate with the Bar Association's disciplinary investigation, on August 6, 2003, the Supreme Court suspended Ms. Atwood from the practice of law pending the outcome of disciplinary proceedings.

Ms. Atwood's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep the client reasonably informed about the status of a matter and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions; RPC 1.5(a), requiring that a lawyer's fee be reasonable; RPC 1.14, requiring a lawyer to deposit client funds into a trust account and to pay to the client funds that the client

is entitled to receive; RPC 1.15(d), requiring that a lawyer take reasonably practicable steps to protect a client's interests upon termination of representation (including surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned); RPC 4.1(a), prohibiting a lawyer from knowingly making a false statement of material fact or law to a third person; RPC 8.4(b), prohibiting commission of a criminal act (namely, theft) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting conduct involving dishonesty, deceit, fraud, or misrepresentation; RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice; and RPC 8.4(l), prohibiting a lawyer from violating a duty imposed by or under the Rules for Enforcement of Lawyer Conduct.

Jonathan H. Burke represented the Bar Association. Ms. Atwood represented herself. Marc L. Silverman was the hearing officer.

Disbarred

D. Willas Miller (WSBA No. 25454, admitted 1995), of Seattle, was disbarred, effective September 17, 2004, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in 1999 involving commission of several violations of the Uniform Controlled Substances Act.

In February 1999, Mr. Miller was charged by information in King County Superior Court with five felony violations of the Uniform Controlled Substances Act. In July 2000, a jury convicted Mr. Miller of three counts of delivery of a controlled substance and one count of attempted delivery of a controlled substance. In September 2000, Mr. Miller was sentenced to 48 months in prison.

Mr. Miller's conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(i), which prohibits a lawyer from, *inter alia*, committing any act which reflects disregard for the rule of law; and RPC 8.4(k), prohibiting a lawyer from violating his or her oath as an attorney (namely, the oath to "abide by" the laws of the state of Washington).

Douglas J. Ende and Debra Slater represented the Bar Association. Mr. Miller represented himself.

Disbarred

S. Don Phelps (WSBA No. 21247, admitted 1991), of Olympia, was disbarred, effective September 17, 2004, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in two matters involving the commission of criminal acts, failure to avoid a conflict of interest, having sexual relations with a client, and engaging in conduct prejudicial to the administration of justice.

Matter 1: On August 12, 2002, Mr. Phelps was charged with two counts of first-degree child molestation based on allegations that, *inter alia*, he reached into the pants and fondled the genitalia of a 15-year-old boy who was staying overnight at his home. In November 2002, a jury convicted Mr. Phelps on both counts. He was sentenced to a 17.5-month term of confinement.

Matter 2: Mr. Phelps represented a client charged with second-degree murder in Thurston County Superior Court. The client was released from custody prior to trial. The conditions of release included requirements that the client reside with his grandmother and be at her home between 8:00 p.m. and 6:00 a.m., that when not at work or at home he be accompanied by someone at least 25 years old and aware of the restrictions, and that he not possess or consume alcohol. Violation of the conditions of pretrial release could have resulted in the client's incarceration pending trial.

Mr. Phelps assisted and encouraged the client in violating the conditions of pretrial release by having the client spend the night at his home, by having the client run errands without being accompanied by someone over the age of 25, by supplying the client with alcoholic drinks, and by allowing the client to drink alcoholic beverages in front to him. When the client asked Mr. Phelps whether these actions were in violation of his pretrial release, Mr. Phelps assured him that it was permissible either because the client was going to see his lawyer, because the client was following the directions of his lawyer, or because Mr. Phelps had "taken care of it." During this period, Mr. Phelps gave the client gifts and money, bought him meals, greeted him with hugs, and complimented him on his physique. On one occasion, while the client was showering in Mr. Phelps's home, Mr. Phelps entered the bathroom; while the client was attempting to attire himself, Mr. Phelps grabbed the client's genitalia. The client instructed Mr. Phelps not to go any further.

Mr. Phelps's conduct violated RPC 1.7(b), prohibiting a lawyer from representing a client if the representation may be materially limited by the lawyer's own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after a full disclosure; RPC 1.8(k), prohibiting a lawyer from having sexual relations with a current client; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (namely, child molestation and assault) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice; and former RLD 1.1(a), which prohibits a lawyer from, *inter alia*, committing any unjustified act of assault or any act which reflects disregard for the rule of law.

Sachia Stonefeld Powell represented the Bar Association. Mr. Phelps represented himself. Ronald A. Roberts was the hearing officer.

Disbarred

Curtis A. Shelton (WSBA No. 9629, admitted 1979), of Vancouver, was disbarred, effective September 15, 2004, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct in 2001 involving failure to avoid multiple conflicts of interest; testifying untruthfully under oath; advancing prohibited financial assistance to a client; violating the oath of attorney; and using means that had no substantial purpose other than to embarrass, delay, or burden a third person.

Mr. Shelton represented Client A, who had been charged in two matters with multiple criminal offenses involving, *inter*

alia, possession and delivery of methamphetamine in Clark County Superior Court. Mr. Shelton also represented Client B, who had been charged in two matters with multiple criminal offenses involving manufacturing, possession of, and delivery of methamphetamine in Clark County Superior Court. Prior to commencing either representation, Mr. Shelton knew that Client B regularly supplied Client A with methamphetamine.

Over a period of several months, before and during Mr. Shelton's representation of them, both Client A and Client B supplied Mr. Shelton with controlled substances, including methamphetamine, for his personal use. Mr. Shelton used illegal controlled substances, in his office and elsewhere, with Client A and Client B.

In April 2001, Mr. Shelton represented Client A at trial in both matters. In each instance, Client B paid Mr. Shelton to represent Client A.

Following the trials, another lawyer appeared in both matters on behalf of Client A. The lawyer filed motions for new trial in both cases. The court ordered new trials because Mr. Shelton's simultaneous representation of Client A and Client B, when their legal positions and interests were likely adverse, resulted in a conflict of interest. Mr. Shelton had not disclosed to Client A the material facts regarding possible conflicts of interest, nor did he obtain the client's written consent to the conflicts.

In June and July 2001, while representing Client B, Mr. Shelton paid Client B's landlord $1,300 for rent, which payments constituted loans to Client B.

In July 2001, Client B was charged in federal district court with possession of methamphetamine with intent to deliver. At an arraignment in August 2001, Mr. Shelton appeared on behalf of Client B. Attorneys for the United States filed a motion for an *in camera* hearing regarding Mr. Shelton's ability to represent Client B. In October 2001, the federal district court conducted an *in camera* hearing to address the issue of Mr. Shelton's conflict of interest. During the *in camera* hearing, Mr. Shelton untruthfully testified under oath that he and Client B had never used methamphetamine in Mr. Shelton's office, that he had never used methamphetamine in the presence of Client A, and that Client B had never provided him with methamphetamine for his own personal use. At the conclusion of the *in camera* hearing, the court found a possible conflict of interest, discharged Mr. Shelton, and appointed a new lawyer for Client B. Mr. Shelton had not disclosed to Client B the material facts regarding possible conflicts of interest, nor did he obtain the client's written consent to the conflicts.

In August 2001, while representing Client B, Mr. Shelton telephoned one of the lawyers who had substituted as counsel for Client A. During the course of the telephone conversation, Mr. Shelton made a number of gratuitously offensive, abusive, and scurrilous remarks to the lawyer.

Ms. Shelton's conduct violated RPC 1.7(a) and (b), prohibiting a lawyer from representing a client if the representation will be directly adverse to another client or if the representation may be materially limited by the lawyer's responsibilities to another client or the lawyer's own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after a full disclosure; RPC 1.8(e), prohibiting, except in specified circumstances, a lawyer from advancing or guaranteeing financial assistance to a client in connection with contemplated or pending litigation; RPC 1.8(f), prohibiting a lawyer from accepting compensation for representing a client from one other than the client (unless the client consents after consultation, there is no interference with the lawyer's independence of professional judgment or the client-lawyer relationship, and confidential client information is protected); RPC 3.3(a), prohibiting a lawyer from knowingly making a false statement of fact or law to a tribunal; RPC 4.4, prohibiting a lawyer, in representing a client, from using means that have no substantial purpose other than to embarrass, delay, or burden a third person; RPC 8.4(b), prohibiting commission of a criminal act (namely perjury, false swearing, and false declaration) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting conduct involving dishonesty, deceit, fraud, or misrepresentation; RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice; and former RLD 1.1(c), subjecting a lawyer to discipline for violation of his or her oath or duties as a lawyer.

Randy Beitel and Sachia Stonefeld Powell represented the Bar Association. Mr. Shelton represented himself. Peter A. Matty was the hearing officer.

Disbarred

Diane L. VanDerbeek (WSBA No. 11884, admitted 1981), of Mercer Island, was disbarred, effective November 24, 2004, by order of the Washington State Supreme Court following a hearing. This discipline was based on her conduct over an extended period of time in the 1990s involving a pattern of billing misconduct. For additional information, see *In re Discipline of VanDerbeek*, 153 Wn.2d 64, 98 P.3d 444 (2004).

Ms. VanDerbeek opened a solo practice in family law in 1986. Her husband, who has a J.D. degree but never took the bar examination, managed her practice's bookkeeping and accounting. In 1995, 28 former clients sued the VanDerbeeks for charging excessive fees. Ms. VanDerbeek signed a declaration in June 1996 declaring that she was in the process of changing her billing software to remedy client complaints about her billing practices. The lawsuit settled in 1996. Ms. VanDerbeek did not change her billing software until May 2000.

During the time period at issue, Ms. VanDerbeek engaged in the following conduct that established grounds for discipline:

- Intentionally charging excessive and unreasonable fees to 11 clients;
- Billing seven clients for attorney fees and costs incurred in attempting to collect the clients' outstanding fees, where the fee agreement did not authorize her to charge for such activities;
- Recording attorney liens on the proceeds of the sales of real property owned by three clients in an attempt to coerce the clients into paying disputed fees, and charging those clients for fees and costs incurred in connection with placing the liens;
- Refusing to provide clients with itemized bills upon request and failing to keep back-up documentation in order to properly respond to such requests;
- Failing to supervise her firm's nonlawyer bookkeeper/accountant to ensure that his billing practices, which included

adding charges to client bills without explanation and billing legal assistant time at Ms. VanDerbeek's rate, did not violate the Rules of Professional Conduct.

Ms. VanDerbeek's conduct violated RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information; RPC 1.5(a), requiring that a lawyer's fee be reasonable; RPC 5.3(a), requiring a lawyer to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of nonlawyer employees or assistants is compatible with the professional obligations of the lawyer; RPC 5.3(b), requiring a lawyer with direct supervisory authority over a nonlawyer to make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Jonathan H. Burke and Rebecca A. Neal represented the Bar Association. Kurt M. Bulmer represented Ms. VanDerbeek. Nancy K. McCoid was the hearing officer.

Disbarred

Paul White, a.k.a. Krishan Kumar (WSBA No. 26511, admitted 1996), of Jaipur, India, was disbarred, effective November 30, 2004, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in 2002 and 2003 involving the submission of false material information on applications for admission to the Hawaii State Bar Association and the Law Society of British Columbia, failure to notify the Washington State Bar Association that he had changed his legal name, and failure to cooperate with a disciplinary investigation. *(Mr. White is to be distinguished from Paul Joseph White of Golden, Paul R. White of Ephrata, and Paul S. White of Spokane.)*

Mr. White, then named Krishan Kumar, was admitted to practice law in India in May 1992. He unsuccessfully applied for admission to the State Bar of California six times between 1993 and 1996. He was admitted to practice law in the state of Washington in December 1996 under the name Krishan Kumar. Between 1997 and 2003, he maintained an office and practiced law in Seattle.

In April 2001, identifying himself as a King County resident, he changed his name to Paul White in King County District Court. In May 2001, Mr. White changed his membership record with the Washington State Bar Association to reflect his new name.

In June 2001, Mr. White was suspended from the practice of law in the state of Washington for 30 days for violations of the Rules of Professional Conduct.

In January 2002, Mr. White submitted an application for enrollment in the Law Society of British Columbia using the name Krishan Kumar. Although declaring under oath that the information in the application was true, accurate, and complete, Mr. White omitted material facts in responding to questions concerning changes of name and use of other names, other admissions, and prior residences and employment. Specifically, he did not disclose his use of the name Paul White, his membership in the Washington State Bar Association, or his employment or residence in Washington. Mr. White withdrew his application after the Law Society of British Columbia instituted a character and fitness hearing based on the omitted information.

In July 2002, Mr. White submitted an application for admission to the Hawaii State Bar Association using the name Krishan Kumar. Although representing that he had answered all questions candidly, fully, frankly, and truthfully, and that the answers were complete and to the best of his knowledge, Mr. White omitted material facts in responding to questions concerning use of other names, admissions in other jurisdictions, membership in other bar associations, applications made in other jurisdictions, prior discipline, prior employment, and prior residences. Specifically, he did not disclose his use of the name Paul White, his admission to practice in Washington, his membership in the Washington State Bar Association, his applications for admission in California and Washington, his 30-day disciplinary suspension in Washington, or his employment or residence in Washington. (In October 2002, Mr. White amended his answers to indicate that he had applied for admission in "California/Washington" in "1993/1994" but was not admitted because he failed the bar examination.) In January 2003, Mr. White withdrew his application after the Hawaii Board of Examiners questioned the veracity of his application.

In March 2003, Mr. White changed his name back to Krishan Kumar in King County District Court. In July 2003, the Washington State Bar Association opened a grievance to investigate Mr. White's statements in connection with his applications for admission in other jurisdictions. Between July and October 2003, disciplinary counsel endeavored to obtain Mr. White's response to the grievance. Although Mr. White notified the Bar Association that he had returned permanently to India, he did not designate a resident agent for service as required by APR 5(e), nor did he respond to the grievance.

Ms. White's conduct violated RPC 8.1, prohibiting a lawyer in connection with a bar admission application from knowingly making a false statement of material fact or failing to disclose a fact necessary to correct a misapprehension known to have arisen in the matter; RPC 8.4(b), prohibiting commission of a criminal act (namely, false swearing) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting conduct involving dishonesty, deceit, fraud, or misrepresentation; RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice; RPC 8.4(n), prohibiting a lawyer from engaging in conduct demonstrating an unfitness to practice law; and ELC 5.3(e), requiring a lawyer to promptly respond to any inquiry or discovery request made in connection with a disciplinary investigation.

Sachia Stonefeld Powell represented the Bar Association. Mr. White represented himself. Scott M. Ellerby was the hearing officer.

Suspended

Phillip L. Weinberg (WSBA No. 18622, admitted 1989), of Woodinville, was suspended for two years, effective September 17, 2004, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in 2003 and

2004 involving failure to return unearned portions of client fees in four matters and his violations of the conditions of two suspended misdemeanor sentences.

Matter 1: In August 2003, Mr. Weinberg was hired to represent a client charged with second-degree murder in Snohomish County. He was paid a $12,000 fee by the client's parents. He subsequently told them that he would require payment of up to an additional $8,000 for investigative costs and to associate with another lawyer. Shortly thereafter, the client terminated the representation and requested an accounting and a refund of any unearned portion of the fee. Mr. Weinberg never provided an accounting. Although he had not filed a notice of appearance, Mr. Weinberg claimed he had visited the crime scene, visited the client at the jail, and reviewed discovery materials. At the time of entry into the disciplinary stipulation, Mr. Weinberg had agreed to refund $9,000 but had repaid only $3,250.

Matter 2: Following his conviction of two counts of unlawful manufacture of methamphetamine in Thurston County, a client, whose conviction was on appeal, hired Mr. Weinberg in obtaining an appeal bond. In January and February 2004, the client's brother wired Mr. Weinberg a total of $10,000. Mr. Weinberg subsequently contacted the client's appointed appellate counsel, who had already filed the Brief of Appellant, and stated that he would be taking over the appeal and would prepare and file appropriate paperwork. Mr. Weinberg never sent such paperwork and never appeared as counsel in the appeal.

In March and April 2004, Mr. Weinberg spoke to the prosecuting attorney by telephone on a number of occasions about the procedures for obtaining an appeal bond. The prosecuting attorney suggested that he file a written motion and contact the judge's assistant to schedule a hearing. Mr. Weinberg told the client's brother that a hearing would be held on March 12, 2004. During the course of a series of telephone conversations between Mr. Weinberg and the judge's assistant, the projected date changed several times. Mr. Weinberg never filed a written motion to obtain an appeal bond. When a member of the client's family learned that no hearing had been noted, the client terminated the representation and demanded a full refund. At the time of his entry into the disciplinary stipulation, Mr. Weinberg had agreed to refund $9,000.

Matter 3: Commencing in December 2003, Mr. Weinberg represented a client charged with driving under the influence and possession of marijuana in Lynwood Municipal Court. The client paid Mr. Weinberg $2,500. In January 2004, Mr. Weinberg filed petitions for deferred prosecutions in both matters. At a hearing in March 2004, Mr. Weinberg failed to submit paperwork needed to demonstrate that the client was in treatment. Mr. Weinberg failed to appear for a second hearing in March 2004. At a hearing in April 2004, the client terminated the representation in open court. In May 2004, with the assistance of a public defender, the client succeeded in obtaining a deferred prosecution. At the time of his entry into the disciplinary stipulation, Mr. Weinberg had agreed to refund $500.

Matter 4: Mr. Weinberg was hired to represent a client charged with driving under the influence in Bothell Municipal Court. The client paid Mr. Weinberg $1,000 of an agreed $2,500 fee. Mr. Weinberg appeared at the client's arraignment in April 2004, but failed to appear at a May 2004 hearing until well after the client had been heard, and advised the court that he had been unable to contact Mr. Weinberg at any of his known telephone numbers. Shortly thereafter, by letter, the client terminated the representation and requested a refund of unearned fees. Mr. Weinberg asked the client to allow him to continue the representation at a reduced fee, and he proposed that the client meet him the next day. Mr. Weinberg failed to appear for the meeting or for the client's June 2004 pretrial conference. At that time, the client again terminated the representation. At the time of his entry into the disciplinary stipulation, Mr. Weinberg had agreed to refund $800.

Matter 5: In June 2002, having been charged with driving under the influence, Mr. Weinberg pleaded guilty to an amended charge of first-degree negligent driving in Pierce County District Court. Mr. Weinberg received a 90-day suspended sentence. A condition of the suspended sentence was that Mr. Weinberg have "no further violations for one year." Less than one year later, in April 2003, Mr. Weinberg was charged with domestic violence malicious mischief in the third degree in Snohomish County District Court. In November 2003, Mr. Weinberg pleaded guilty to that charge and received a 365-day suspended sentence. Conditions of the suspended sentence included Mr. Weinberg's having "no charge/conviction of any criminal offense" and completion of a specified treatment program. Mr. Weinberg did not complete the treatment program, and in January 2004 he was charged with domestic violence in Snohomish County Superior Court.

Mr. Weinberg's conduct violated RPC 1.5(a), requiring that a lawyer's fee be reasonable; RPC 1.15(d), requiring that a lawyer take reasonably practicable steps to protect a client's interests upon termination of representation (including refunding any advance payment of fee that has not been earned); RPC 8.4(i), prohibiting, *inter alia*, any act which reflects disregard for the rule of law; RPC 8.4(j), prohibiting a lawyer from willfully disobeying or violating a court order directing him or her to do, or ceasing to do, an act which he or she ought in good faith to do or forbear; and RPC 8.4(k), prohibiting a lawyer from violating his or her oath as an attorney (namely, "abide by" the laws of the State of Washington).

Linda B. Eide represented the Bar Association. Mr. Weinberg represented himself.

Reprimanded

William R. Brendgard (WSBA No. 21254, admitted 1991), of Everett, was ordered to receive a reprimand, effective November 19, 2004, following a stipulation approved by the hearing officer. This discipline was based on his conduct in 2002 and 2003 in failing to act with reasonable diligence and promptness, failing to communicate with the client, failing to pursue the client's objectives, and failing to make reasonable efforts to expedite litigation.

In June 2002, Mr. Brendgard was hired to obtain post-dissolution financial relief against a client's former spouse. In August 2002, when the client contacted Mr. Brendgard to inquire about progress on the matter, Mr. Brendgard assured her that he would present her claims and provide her with copies of the papers, but he failed to do so. In late August 2002, the client's former spouse filed a motion for contempt, alleging that the client had failed to comply with a parenting plan. Mr. Brendgard repre-

sented the client at a hearing on the motion in September 2002, after which the court found the client in contempt and assessed $500 in attorney fees against her. Although Mr. Brendgard telephoned the client shortly thereafter, he failed to inform her that she had been found in contempt or that costs had been assessed against her.

In January 2003, the client's former spouse filed a second motion for contempt, and the matter was scheduled for hearing on January 27. Although the client attempted to communicate with Mr. Brendgard before the hearing, he did not respond to her inquiries until January 31. Meanwhile, Mr. Brendgard obtained a continuance to acquire information from the client. At a hearing on February 6, the court again found the client in contempt and assessed $1,000 in attorney fees against her. Mr. Brendgard failed to inform the client of the outcome. For several months following the hearing, the client attempted to contact Mr. Brendgard, to no avail.

In April 2003, the client reached Mr. Brendgard by telephone. He informed her that he had moved and that her documents and information must have become lost. He assured her that he would contact her the next day about them. After that conversation, Mr. Brendgard had no further communication with the client. He did not send her any information or inform her of the result of the February 6 hearing. He did not commence action on the client's post-dissolution claims, nor did he refund the fee the client had paid. He filed a notice of intent to withdraw from the case in November 2003.

Mr. Brendgard's conduct violated RPC 1.2, requiring a lawyer to abide by a client's decisions concerning the objectives of representation; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; and RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client.

Nataleа Skvir represented the Bar Association. Mr. Brendgard represented himself. Carolyn A. Lake was the hearing officer.

Reprimanded

Jeffrey J. Duggan (WSBA No. 18382, admitted 1988), of Kealakekua, HI, was ordered to receive a reprimand, effective August 31, 2004, by order of the Washington State Supreme Court imposing reciprocal discipline based on an order of the Disciplinary Board of the Hawaii Supreme Court. This discipline was based on his conduct between 1999 and 2002 involving making false statements and failing to correct misapprehensions known to have arisen in connection with applications for bar admission.

In November 1999, Mr. Duggan applied for admission to the Hawaii State Bar Association. In the signed and notarized application, Mr. Duggan represented that he had read the application and the required forms; that all questions had been answered candidly, fully, frankly, and truthfully; and that the answers were complete and true to the best of his knowledge. He further represented under oath that he understood that the application was of a continuing nature and that he would notify the Board of Examiners of the Hawaii Supreme Court in writing of any change in the information.

In responding to three application questions, Mr. Duggan failed to disclose material information or provided false answers.

In November 2000, Mr. Duggan again applied for admission to the Hawaii State Bar Association. Except for the signature page, the November 2000 application was a duplicate of the November 1999 application.

In May 2001, Mr. Duggan again applied for admission to the Hawaii State Bar Association. Except for the signature page, the May 2001 application was a duplicate of the November 1999 application.

In August 2001, while the May 2001 application was pending, Mr. Duggan was arrested. In December 2001, the charge was dismissed with prejudice. Although the information regarding his August 2001 arrest was pertinent to one of the application questions and should have been provided as supplemental information, Mr. Duggan failed to supplement his pending application with that information.

Having passed Hawaii's June 2001 bar examination, Mr. Duggan was admitted to the practice of law in the state of Hawaii on January 25, 2002.

Mr. Duggan's conduct violated Hawaii Rule of Professional Conduct (HRPC) 8.1(a), prohibiting an applicant for bar admission from knowingly making a false statement of material fact; HRPC 8.1(b), prohibiting an applicant for bar admission from failing to disclose a fact necessary to correct a misapprehension known to have arisen in the matter; HRPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and HRPC 8.4(a), designating as professional misconduct a violation of the Rules of Professional Conduct.

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

Reprimanded

Ray Hayes (WSBA No. 1577, admitted 1949), of Surprise, AZ, was ordered to receive a reprimand, effective November 29, 2004, by order of the Washington Supreme Court imposing reciprocal discipline based on a July 22, 2004 order of the Supreme Court of Arizona. This discipline was based on Mr. Hayes' disclosure of confidential client information and use of confidential client information to the disadvantage of a former client without consent.

In 2001, Mr. Hayes was hired by the beneficiaries of an estate to probate a will. One of the beneficiaries subsequently hired another lawyer in the matter. Without client consent, Mr. Hayes told a funeral home that the beneficiary had received life insurance proceeds sufficient to pay the decedent's funeral expenses. Following his withdrawal, without obtaining the former client's consent, Mr. Hayes represented an assisted living facility in preparing a creditor's claim against the estate, and he contacted a banking institution to ensure that the bank had filed a claim against the estate. Mr. Hayes's conduct did not result in client harm.

Mr. Hayes' conduct violated ER 1.6(a) of the Arizona Rules of Professional Conduct, prohibiting a lawyer from revealing information relating to representation of a client unless the client consents after consultation, and ER 1.9(a), prohibiting a lawyer from using information relating to the representation to the disadvantage of a former client except as ER 1.6 would permit with respect to a client or when the information has become generally known.

Randy Beitel represented the Bar Association. Mr. Hayes represented himself.

Reprimanded

Kyle W. Nolte (WSBA No. 27073, admitted 1997), of Spokane, was ordered to receive a reprimand, effective December 3, 2004, following a stipulation approved by the hearing officer. This discipline was based on his conduct in 2003 in providing false information on a questionnaire and failing to make full disclosure during an interview in connection with a background check conducted by the Air Force.

Mr. Nolte, while serving as an officer in the Air Force Judge Advocate General's Department, was selected for an assignment that required a background check. While undergoing the background check, Mr. Nolte falsely answered one of the questions on a background questionnaire and failed to make full disclosure about another matter to the special agents with whom he interviewed.

Mr. Nolte afterwards voluntarily disclosed these actions to senior Air Force personnel. Following an investigation, Mr. Nolte received a nonjudicial punishment in the form of a reprimand and a $1,000 fine. He was subsequently advised that his service with the Air Force would be terminated. Mr. Nolte submitted his resignation, and he was ultimately discharged "under honorable conditions." He was required to repay over $20,000 in educational benefits received during his last years of service.

Mr. Nolte's conduct violated RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Linda B. Eide represented the Bar Association. Kurt M. Bulmer represented Mr. Nolte. James M. Danielson was the hearing officer.

Nondisciplinary Notices

Suspended Pending Outcome of Disciplinary Proceedings

Joseph P. Whitney (WSBA No. 24073, admitted 1994), of Port Gamble, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.2(a)(2), effective January 20, 2005, by an order of the Washington State Supreme Court. This is not a disciplinary action.

RUSSIAN MATTERS

Yevgeniy Knizhnikov

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Elena V. Yushkina

Russian licensed attorney with 15 years' experience available for referral, consultation, or association on issues and matters relating to Russian law, including corporate law, entity formation, litigation, expert testimony, and document retrieval. Washington State Bar licensed foreign law consultant on Russian law.

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Calendar

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

Alternative Dispute Resolution

13th Annual NW Dispute Resolution Conference
April 29-30 — Seattle. 9.75 CLE credits, including 3.25 ethics. By UW-CLE; 800-CLE-UNIV.

Animal Law

3rd Annual Animal Law Conference
April 14 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Business Law

Business Law Section Midyear
May 20 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Construction Law

Laps, Cracks, Water Rot: What's New and What's Hot with Construction Defects
April 21 — Portland. 6.5 CLE credits. By The Seminar Group; 800-574-4852.

Criminal Law

Excelling in Expert Witness Examination Involving the MMPI
April 6 — Seattle. 7.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Essentials of Criminal Law Practice in Courts of Limited Jurisdiction
April 15 — Seattle; April 27 — Spokane. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Elder Law

Long Term Care: Solutions, Strategies and Safety Nets
April 20 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Employment Law

12th Annual Employment Law Institute
April 1 — Seattle. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

7 Deadly Sins of Washington Employers
April 21 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Investigating and Litigating an Employment Discrimination/ Harassment Case
May 26 — Seattle. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Environmental and Land Use Law

Environmental and Land Use Law Section Midyear
May 5-7 — Lake Chelan. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics

Lawyer Ethics and Professionalism: Popular Culture vs. Professional Regulation
April 6 — Seattle. 1 ethics credit. By UW-CLE; 800-CLE-UNIV.

The 2005 Ethics in Civil Litigation Institute
April 7 — Seattle. 6.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Myth of Moral Justice: A Breakfast Debate with Novelist, Attorney and Holocaust Scholar Thane Rosenbaum
April 8 — Seattle. 2 ethics credits. By Emerald Education Group; 206-985-4351.

Hardball Ethics for Litigators (Pit Bull Ethics, Part II)
April 8 — Seattle. 2 ethics credits. By Emerald Education Group; 206-985-4351.

Negotiation Ethics for Attorneys
April 22 — Seattle. 2 ethics credits. By Emerald Education Group; 206-985-4351.

The Ethics of Deception: What Every Advocate and Legal Negotiator Should Know
April 28 — Seattle. 2 ethics credits. By Emerald Education Group; 206-985-4351.

Legal Ethics in Public Life: The Ethics of Privacy, Secrecy, Security & Sacrifice
April 29 — Seattle. 4 ethics credits (separate 2-credit registrations available). By Emerald Education Group; 206-985-4351.

The Ethics of Global Outsourcing: Why Should/Must an Ethical Attorney Care?
April 29 — Seattle. 2 ethics credits. By Emerald Education Group; 206-985-4351.

The Ethics of Aspiration: How to Serve Clients Better & Enjoy Your Life More
April 29 — Seattle. 2 ethics credits. By Emerald Education Group; 206-985-4351.

Family Law

Using Child Development and Divorce Research to Develop Age-Appropriate Custody and Visiting Arrangements
April 15 — Seattle. 3 CLE credits. By UW-CLE; 800-CLE-UNIV.

General

Annual Senior Lawyers Conference
April 22 — Seattle. 6.25 CLE credits, including 1.25 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Instant Eloquence: Advanced Presentation Skills for Attorneys
April 22 — Seattle. 4 CLE credits. By Emerald Education Group; 206-985-4351.

Negotiation Science, Psychology and Ethics for Attorneys
April 22 — Seattle. 4 CLE credits, including 2 ethics credits (separate ethics registration available). By Emerald Education Group; 206-985-4351.

Indian Law

Eastern Washington Indian Law Symposium
April 1 — Spokane. 6.5 CLE credits, including 1 ethics. By UW-CLE; 800-CLE-UNIV.

17th Annual Indian Law Conference
April 29 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Law Office Management

LOMAP . . . On the Road, The 2005 Traveling Seminar!
April 19 — Oak Harbor
April 20 — Bellingham
May 5 — Spokane
May 18 — Seattle
May 24 — Tacoma
4 CLE credits, including 2 ethics. By WSBA Law Office Management Assistance Program; 800-945-WSBA or 206-443-WSBA.

Attorneys' Fees: It Ain't All About the Money!
May 12 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Practical Business Management for Attorneys and Legal Administrators (LOMI).
May 19 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Litigation

The 2005 Ethics in Civil Litigation Institute
April 7 — Seattle. 6.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Finding the Heart of the Story: Discovering the Images that Drive Jurors' Gut Decisions, with Joshua Karton and Robert Bailey
April 8 — Seattle. CLE credits pending. By WSTLA; 206-464-1011.

Hardball Ethics for Litigators (Pit Bull Ethics, Part II)
April 8 — Seattle. 2 ethics credits. By Emerald Education Group; 206-985-4351.

Traumatic Brain Injury Litigation
May 9-10 — Seattle. 10.9 CLE credits. By Contemporary Forums; 800-377-7707.

Practice Blues? Painless Solution for Management Woes
April 21 — Seattle. CLE credits pending. By WSTLA; 206-464-1011.

Communication in the Courtroom
April 23 — Seattle. 7.5 CLE credits, including 1 ethics. By Emerald Education Group; 206-985-4351.

Trial Lawyers' Greatest Hits, with Judge Coughenour, ACTL Fellows, *et al.*
April 28 — Seattle. 6 credits (separate 2-credit registrations available). By Emerald Education Group; 206-985-4351.

The Ethics of Deception: What Every Advocate and Legal Negotiator Must Know
April 28 – Seattle. 2 ethics credits. By Emerald Education Group; 206-985-4351.

Winning without Trial
April 29 — Seattle. 6.5 CLE credits, including 1.25 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Damages
May 19 — Seattle. CLE credits pending. By WSTLA; 206-464-1011.

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If you have questions, please contact Amy O'Donnell at 206-727-8213 or amyo@wsba.org.

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Looking for the will of Philip A. Holmes. Please call Julie Dickens; Gordon, Thomas, Honeywell; 206-676-7506; or e-mail jdickens@gth-law.com.

Seeking will of Albert Robert Doerr. Born 1/6/1922, died 7/2/2004. Longtime Bellevue resident. Believe will was executed in Bellevue prior to 1980. Alternatively seeking name/address/phone of attorney(s) with offices on or near 140th or 148th in Bellevue in 1960s or 1970s who may have drafted it. Please contact John S. Palmer, 1611 116th Ave. NE, Ste. 107, Bellevue WA 98004; 425-455-5513.

Seeking the wills of Elizardo Rodriguez Jr. and Kathryn Anne Rodriguez of Burien, WA. Please contact Kenneth S. Kagan at 206-622-8020.

Seeking the original will and other personal and/or estate-planning documents of Larry Kiyoshi Furusbima of Seattle, WA. DOB 03/03/1922. DOD 1/12/2005. Please contact attorney Michael Longyear, 206-624-6271.

Seeking the original will and other personal and/or estate-planning documents of Howard R. Pulley of Edmonds, WA. DOB 12/01/1921. DOD 12/22/2004. Please contact attorney Michael Longyear, 206-624-6271.

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Miscellaneous

Enjoy the Methow: Three-bedroom home on the river with valley views and trail access. Rates and details for WSBA members. Contact Chris at 425-827-8757 or cfox@wflr.com.

Vacation in Sun River, OR: 250-plus vacation rentals — studios to seven bedrooms. Year-round lodging specials; pet-friendly homes; ski/golf discounts. Sunset Realty, 800-541-1756; www.sunriverlodging.com.

One or two steps forward, then, maybe, another

BY *BAR NEWS* EDITOR LINDSAY THOMPSON

This year some legislators in Olympia caused a flurry of headlines by introducing a bill to petition Congress to divide Washington down the ridgeline of the Cascades, making one state into two.

The consensus among the panel shows and editorial pages has been that the idea's more than a bit daft, and won't go anywhere. That's too bad. It would be interesting to see a "what if we did it?" study. *Then* you'd have something to talk about. We'd be able to get beyond normative evaluations of one side being too liberal, the other side too dependent on tax transfers, or whether Spongebob Squarepants is really gay, or just drawn that way.

All really interesting ideas start out looking and sounding odd, or even threatening. Machiavelli famously commented that reformers are always at great risk, because on the one hand are those who profit by the existing order, and want to keep it that way. On the reformers' other side are those who fear the unknown effects of change, and so oppose it.

Combine human nature with the modern mania for process and you find there are so many ways to kill off ideas, it's a wonder anything ever gets done. I've lost count of the retreats, gatherings, workshops and small-group sessions I've attended where over-scheduling, facilitators who steer toward outcomes rather than help participants find their own, and the tyranny of butcher-paper brainstorming skew results toward the status quo.

Butcher-papering is the worst. It gives the impression that all will have a say in the outcome. Literally, of course, they do. Every idea gets thrown up on a sheet.

But then comes the winnowing. Sometimes it's arbitrary: "You have to agree on three priorities." Other times it's small groups having to combine their lists into those of other small groups. They always result in a bland, middle of the road set of choices. It's planning as purée.

A newer idea for where to send ideas to die is that of the "parking lot." All you need is an easel and more butcher paper. Anything that occurs to someone that's off topic, off agenda, or off the wall, goes to be written up on the parking lot. Those things will be brought up later at an appropriate time, one's told. But they rarely are. The parking lot is a space of exile, where things are sent that the majority doesn't want to bother with. Over time, things stop getting written there, because everyone has figured out the lot has no exits.

Like all human institutions, WSBA suffers at times from change anxiety. When the Board of Governors was looking to revive WSBA's long-moribund foundation, they settled for a cautious, uninspiring route. There's nothing wrong with how it operates, mind you, it's just that no one looked for the opportunity to find something really innovative to do. Similarly, my impression of the task forces looking at WSBA governance is that they are tending toward incremental, easy solutions that will leave the structural problems of, say, how we elect presidents, uncured.

Having said that, however, I have to give WSBA good marks where they are earned. Over the last decade WSBA leadership has evolved to a point where the old "nothing should ever be done for the first time" knee doesn't automatically jerk at the unveiling of every idea. Leadership has shown an increasing willingness to address hard topics like making the Board of Governors more broadly representative; trying to tackle the student loan problem for young lawyers in Washington; trying to move lawyers with fixable problems into diversionary programs to make them whole and productive again instead of just running them all through the disciplinary chute; and trying to do something real about meeting unmet legal needs in ways that are not just hand-wringing about unauthorized practice of law. When the Practice of Law Board brought the BOG a concept for addressing unmet legal needs by a licensing of "legal technicians," the BOG didn't freeze up and have to reboot. They talked for 90 minutes about "what if we did this, how would it work?" They have in mind giving it some more study this summer.

I don't know if the Practice of Law Board's ideas will work. They are certainly thinking outside the box. They may be beyond where boxes exist at all. And that's good. There ideas lie — some fanciful, some eccentric, some completely unworkable, and some that may be extraordinarily successful, given time for study and growth.

Lindsay Thompson can be reached by e-mail at tradelaw@hotmail.com.

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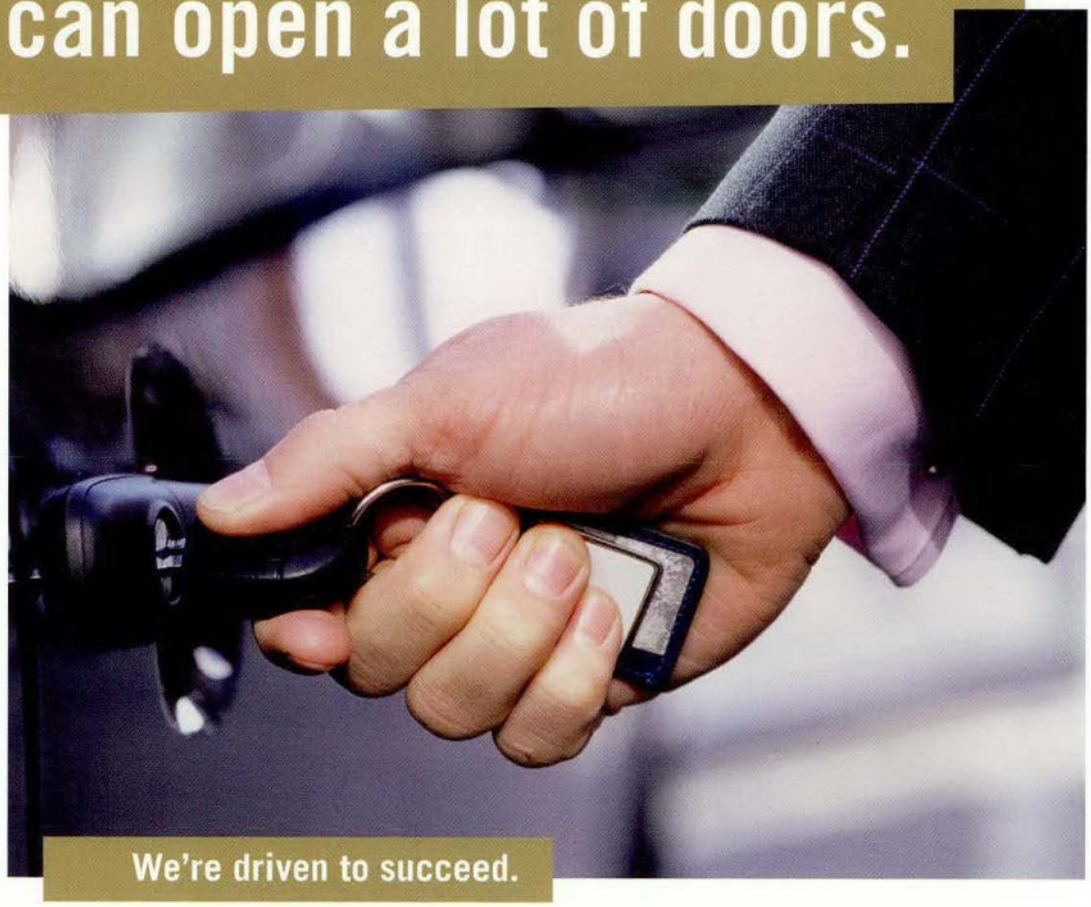

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