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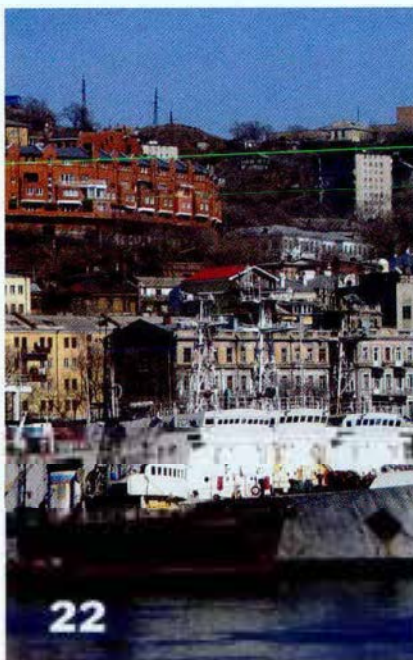
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Road Ice Article Not a Lobbying Piece

While I appreciate a dialogue on cutting-edge legal issues — including whether or not our courts ought to recognize that our municipalities are actively using anti-icers on our roadways, and holding them to that standard of care — Mr. Cooley's letter to the editor in the April issue of *Bar News* ("Road ice article needs to be taken with a grain of salt") represented that my reason for publishing the history of the use of anti-icers on our roadways was to influence the Washington State Supreme Court on a pending petition for review. No such petition for review was ever filed in any case I have handled, and none is pending in the Supreme Court.

The sole purpose of my article was to provide a background for bench and bar into the history of the use of anti-icers over the course of the past several years, rendering our antiquated "reactive" sanding cases now irrelevant. My intent was also to discredit the blind reliance upon *stare decisis* in ignoring the current use of anti-icers in setting the proper standard of care. In fact, contrary to Mr. Cooley's letter, *virtually every municipality in the state of Washington — including the state itself — uses anti-icers on our roadways*. Mr. Cooley can argue "salt is bad." Explain that to all of the public works departments across the state who are using it. The issue isn't whether anti-icers should be used — they are being used throughout the winter months throughout the state — but rather whether our courts should recognize anti-icers as an essential ele-

ment of our municipalities' winter road maintenance programs, and therefore the standard of care in cases where roads have been allowed to become icy due to a municipality's neglect.

For many years we pro-environment Washingtonians fought against salt. We didn't make the decision to use it — our municipalities did. That debate is long over.

It is disingenuous at best for a municipality to argue that it should be held to a reactive standard of care, responding

with sand only after an ice-caused fatal accident, when in fact it actively uses anti-icers to prevent ice from forming on its roadways — if it happens to be paying attention.

Mr. Cooley correctly points out that Galileo's scientific revelation that the Earth revolves around the Sun was not well received at the time. But, as with the fact that anti-icers prevent ice from forming, it was true, wasn't it?

Keith L. Kessler, *Hoquiam*



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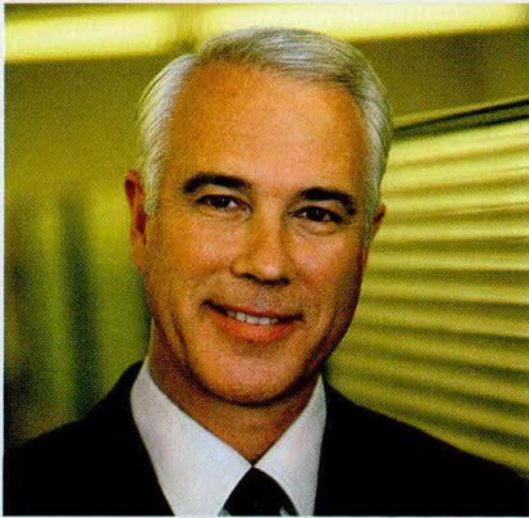
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Ideas About Justice Leave Much to Be Desired

Reading David L. Evans' letter in the March 2005 issue of *Bar News* made me want to vomit. While I recognize many people share his political/economic philosophy, it really has little relevance to the administration or the practice of law in our society.

By his measure only those who lifted themselves up from poor circumstances or who were born with substantial wealth are entitled access to our courts to resolve their disputes. It's sort of an "if you can't afford it you can't have it" attitude that represents a political/economic philosophy but does not equate to justice.

But Evans' view is not what justice is. While I believe the concept of justice is inherent in the Constitution, even if I am wrong about the place of justice within the Constitution, I believe that not every principle worthy of pursuing within our legal system must have its genesis in the Constitution.

The notions of justice and equal access to justice are such overriding principles that whether they derive from the Constitution or not they remain imbued within our legal system. Our legal system dating back to early English courts has recognized that fairness is integral to administration of the law. Principles of equity as evidenced in the creation of courts of equity arose from the recognition that administration of justice required the idea of fairness as opposed to strictly formulated rules of common law. The very definition of equity includes that recognition. *Black's Law Dictionary* 484 (5th ed. 1979).

Black's defines justice as: "proper administration of laws. In jurisprudence, the constant and perpetual disposition of legal matters or disputes to render every man his due." Everyone is entitled to his/her day in court if our society is to claim that justice is the base of our legal system. That value judgment was made centuries ago and is inherent in our state's legal system. It is what we were taught while in law school. Unfortunately, David Evans has either never heard, never learned or has forgotten that.

Yes, justice demands equal access

to justice. That's what President Ron Ward was saying in his January column. Its only connection to poverty and/or welfare recipients is the fact that circumstances, whether self-imposed or not, leave some people without the financial means to pay for someone (a lawyer) to help them negotiate the legal system.

I am certain that is why our State Supreme Court adopted RPC 6.1 that says: "Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay."

That's not a new idea. It's not revolutionary. It's just right.

Lewis H. Zieske Jr., Chehalis

Reminders on Professionalism Are Always Timely

I have never previously responded to the author of an article in the *Bar News*. However, after reading Ron Ward's well-written article in the February issue, I decided that I wanted to congratulate him and, in doing so, to personally vent about the subject matter.

I just want to thank Ron for addressing a subject that is extremely important, but rarely discussed. I have been dismayed with the lack of professionalism, ethics and fair play exhibited by many of the attorneys that I have had to deal with over the years. I hope

that articles like Ron's will cause our profession to seriously consider these issues and recognize their potential ramifications.

Like President Ward, I feel that being a lawyer holds you to a higher standard of conduct in both the community and your business practices. However, that is not what the public, nor I, observe in the actions of many lawyers. Several years ago, I became so disillusioned with the antics of the pit bulls that I seriously considered quitting the practice of law. I was frustrated at being taken advantage of when I played by the rules and freely extended professional courtesies (such as agreeing to waive deadlines, etc.).

I also did/do not like being viewed by the general public as someone who would do anything, no matter how morally corrupt, simply to make a buck. In the eyes of many, I am guilty merely by association. Even my mother (in Wisconsin) had to defend me because of my profession. She told me that a 90-year-old lady in her church had asked her what I did and, after hearing my mother's reply, said incredulously, "How could that nice boy have become a lawyer?" I think that my mother went to her grave embarrassed about that.

I am still practicing law and hoping that, by setting a good example, maybe some of the public will realize that not all lawyers are like the pit bulls that

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get so much of the publicity. There are many of us that are not driven by greed or the need to prove our self-worth by bringing our adversaries to their knees. I still want to believe that this is a noble profession that is helping to make this world a better place to live in generally and for each of our clients. I just hope that we can keep the pit bulls from destroying our profession.

Mark C. Mostul, Seattle

Diversity Efforts Should Start Sooner

I read Ron Ward's article on "Why Diversity?" in the April issue of *Bar News*. Under the section — "What Can We Do?" — a bullet point that I would add is the need to encourage young people of color to select the law as a profession. Secondary, elementary and middle school are good places to begin. Good grades in high school start to determine what college you get admitted to, and subsequently which (if any) law school you are admitted to. At Williams, Kastner & Gibbs we have long been committed to a diverse work place. It is a specific element of our Strategic Plan. We have had successes and failures along the way, but I do not believe that we have lacked intention. As we actively recruit attorneys of color I am sometimes seized with the notion that hiring an attorney away from another firm may add to our diversity, but at the same time it detracts from the firm who loses the person and in the end, the overall mix has not been changed. I think that one important source of advancing the goals of your article is on the "supply side." As part of that strategy we participated in Junior Achievement this year and had young people shadowing our attorneys in a daylong orientation. My comments are not meant in any way to detract from any of the points Ron Ward made, but rather to add to the equation. I hope that my thoughts may be helpful. Thanks to Ron for writing the article and for listening to my ideas.

Bill Viall, Seattle

It's All a Sham

I was extremely encouraged by the start of President Ward's April 2005 *Bar News* column. "Diversity," wrote President Ward, "aspires to the full enfranchisement, economic and otherwise, of all elements of the legal community and our society." At last, I thought, a leader who sees diversity as something more than simply racial or gender number counting.

But my euphoria was brief. It quickly became clear that President Ward's concept of diversity was only concerned with a very limited portion of the palate of physical attributes, principally race, color, and gender.

It is nice for President Ward to opine that "all segments of society have a right to representation by a profession that includes their peers." But as I look around this profession, I see no representatives of the peer group of those without the intellectual ability to succeed in school and college. I see few representatives of the peer group of those disabled by the regular use of illegal drugs. I see few representatives of the peer group of white supremacists. I see few convicted felons. I even see few representatives of the quite sizeable peer group that hangs avidly on every word uttered by Rush Limbaugh.

Am I kidding? Only slightly. The reality is, folks, that the legal profession does not, and does not want to, give all segments of society representation by a profession that includes their peers. We insist on three years of law school (or four years of clerkship) and passage of the bar exam precisely because we do not want representatives of all segments of society in our august midst. We impose a "moral character and fitness" requirement on applicants for the bar exam precisely because we do not want representatives of certain segments of society to be allowed into our esteemed (don't we wish) company.

As my father in law used to say, let's cut the crapola. We do not want a diverse bar fully representing all segments of society. We are an elite group, and we try hard to make sure that we remain so. This may be a good thing

for society. I'm not arguing here that we should be admitting those who lack the intellectual ability to do college work (though I have met some high school drop-outs with more common sense and moral integrity than some of the most educated of my peers), or who have been in and out of prison for years. But please, let's not pretend that we want to be a body which includes peers from all segments of our society. Because the reality is that we most definitely don't. And to say otherwise is simply not to tell the truth.

Lawyers are, Mr. Ward says, noted as creatures of logic. We should also be noted as creatures of truth. Shouldn't we?

Christopher Hodgkin, Friday Harbor

Licensing Nonlawyers Is a Bad Idea

The Washington State Bar Association should reject most if not all of the efforts to permit non-lawyer "legal technicians" to become licensed and essentially practice law as is being proposed.

Historically, non-lawyers who have advised family law clients have done so with devastating negative effects. After the non-lawyer resolves their case, many parties later discover that they have unknowingly waived their rights to their portion of a six figure military retirement. Others have found out months after their divorce is finalized that they have no enforceable visitation rights with their children. In short, non-lawyer's involvement in dissolution cases while photocopying, filling out and selling low cost forms has been an unmitigated disaster.

Most family law attorneys and judges cringe when they first review an "uncontested" dissolution that has been prepared by a non-lawyer who has filled out some forms and filed the case in Lincoln County, which has permissive local rules.

I have found it is far more time consuming for the attorney and expensive for the client to try to fix the egregious errors committed by the "legal techni-

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cians" than simply hiring an attorney in the first place.

Yet, often an error is committed that can never be remedied. For example, military spouses' failure to apply for a survivor benefit for a military pension within a year will cause it to be waived. Failure to comply with this one federal rule may very likely subject the military spouse to a lifetime of poverty.

Thus, despite the fact that family law uses forms, complex issues are raised regularly and identifying subtle yet important issues should not be delegated to the "legal technicians" any more than surgical procedures should be performed by a "medical technician" who took a health class.

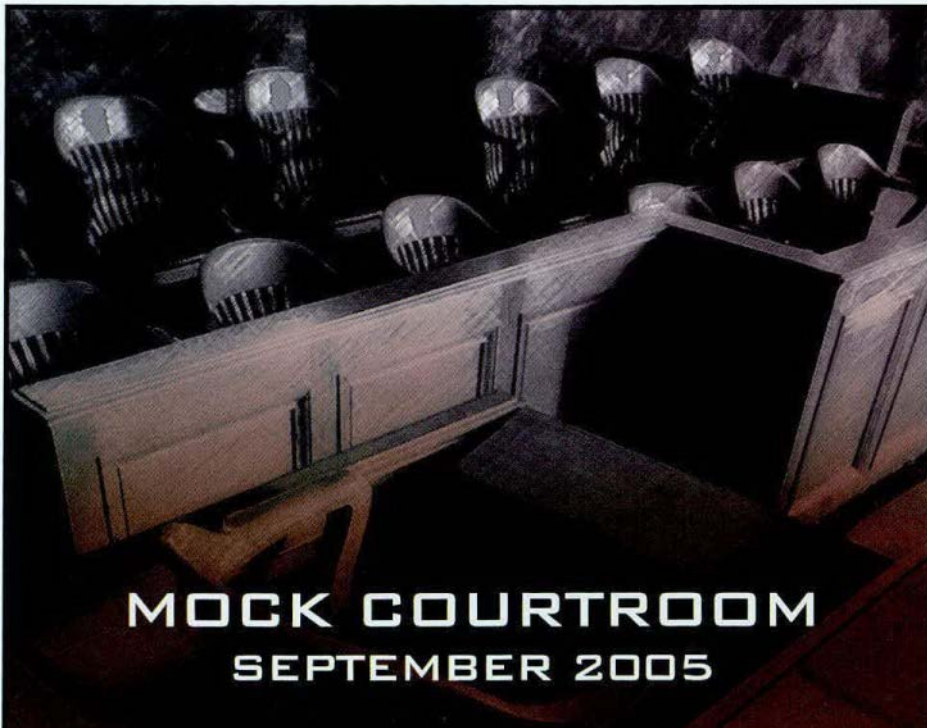
Despite the great consumer need in the health care field, the medical community does not permit medical technicians to attempt to perform surgery.

Yet, there is often more at stake from the client's perspective in a family law case than in medical cases. Will all of the assets be identified or only the assets the other party reveals? Will the client have enforceable visitation rights? Will the private or public pension be divided correctly or at all? Will the client be able to stay in his or her house? Will the client be fully informed as to their rights before finalizing the divorce or will they be pressured to sign prepared documents in order to save legal fees? Attorneys have a difficult enough time dealing with these issues. Non-lawyers have neither the skill, experience nor knowledge of the law to address these critical issues facing the client. Nor do they often have the skills to identify when a complex issue is present. They are not attorneys.

The fact that family law uses forms bears no relation whatsoever to the skill required to competently advise, represent, and yes, fill in forms for a family law client.

Instead of endangering additional family law clients with the incompetence of non-lawyer "legal technicians" the state bar should focus on improving attorney skills in serving clients more efficiently and competently.

Erik Bjornson, Tacoma



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In the 2005-2007 biennium, \$5 million has been allocated from the new account to provide adequate representation to parents in dependency and termination actions. The goal is to have the state assume 100 percent of this responsibility historically borne by the counties. Pilot projects in Pierce and Benton/Franklin Counties have shown that adequate funding coupled with caseload and other standards greatly improves the system

by enabling more reunifications and by a reduction of continuances, thereby resolving the permanent placement for these vulnerable children earlier.

Indigent Defense.

Second Substitute House Bill 1542 passed both houses of the legislature. It was designed to provide a state "down payment" of \$25 million on woefully inadequate criminal indigent defense funding, albeit with "null and void" language if funding wasn't provided. Although major funding was not provided, \$1.3 million was allocated in the 2005-2007 biennium to the Washington

State Office of Public Defense to provide intensive training to new public defenders, to give legal and expert services to those public defenders, particularly in isolated areas around the state, and to work with public defenders as they enter into appropriate contracts with local government. There is \$1 million to fund a pilot project as well. In future years, we will be seeking additional state funding for this major responsibility currently borne entirely by the counties.

Civil Equal Justice. The budget contains \$3 million for civil equal justice funding in the upcoming biennium. In addition, the legislature passed Substitute House Bill 1747 to establish a state Office of Civil Legal Aid (OCLA) under the judicial branch, similar to the state Office of Public Defense. After the Supreme Court's Task Force on Civil Equal Justice Funding published the Civil Legal Needs Study, support has increased dramatically in recognition that real justice does not exist in a system unless we all have access to the courts.

Documenting that 87 percent of the one million low-income and vulnerable people in Washington have legal needs that go unmet each year in such critical areas as housing and domestic violence, the Civil Legal Needs Study put a face to the injustices the poor and vulnerable experience in our state. As you are well aware, when unrepresented people come into our trial courts, the system slows as we try to process their requests. Through direct legal services (lawyers) and through various programs providing practical legal advice and information, the efficiency of our courts will be increased and justice will be more secure.

Benefits to the Counties/Cities. The counties and cities are major beneficiaries of our work. In your continuing efforts to improve the courts at the local level, you will be able to cite the direct benefits to the counties of the Justice in Jeopardy package when submitting your budgets.

Through these efforts of the judicial branch of government, local government has gained perhaps one of the most significant fiscal benefits from the state legislature in their history: almost \$20 million to the local general funds from the user fee increases and a state



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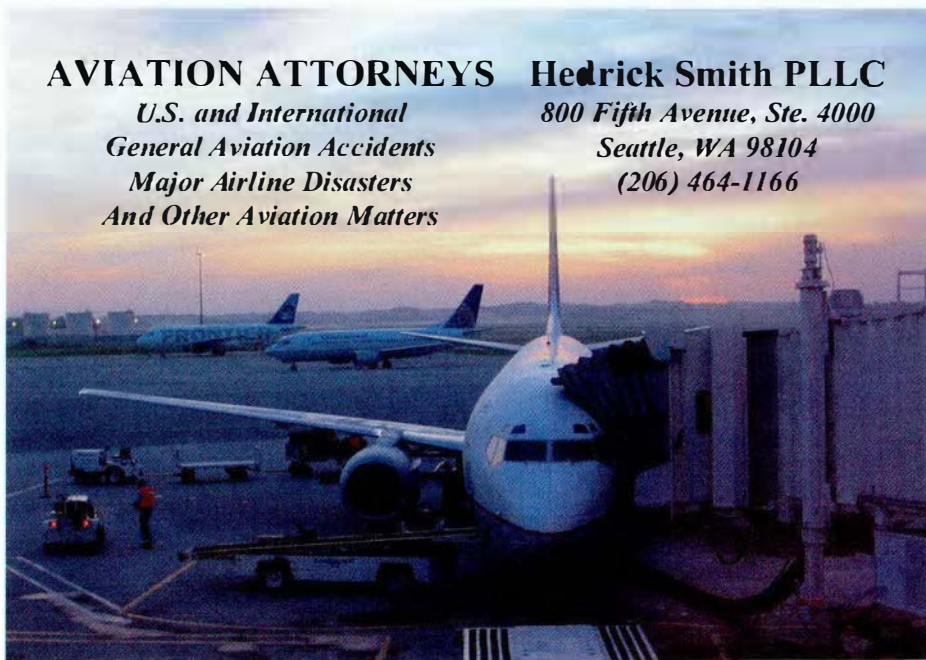
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contribution that will equal roughly 25 percent of the cost of district and qualifying municipal court judges' salaries. In addition, for the first time other than the pilot projects, the state will contribute \$5 million to the cost of parent representation in dependency and termination of parental rights cases and will also fund a pilot project to address the significant indigent defense problems existing in many counties.

Support. First, real credit goes to legislators from around the state — they listened and then acted responsibly to provide crucial funding for the trial courts, indigent defense, parent representation and civil equal justice. We also want to acknowledge our legislative liaisons in the Justice in Jeopardy coalition for their fine efforts in shepherding our bills and budget requests through the legislature: Jeff Hall, Executive Director of BJA, Martha Harden from the SCJA, Melanie Stewart from the DMCJA, Pam Daniels from the WSACC, Gail Stone from the WSBA, Sandy Swarhout from the Equal Justice Coalition, Sophia Byrd from WSAC, Tammy Fellin from AWC and Joanne Moore, Director of OPD.

We want to thank you for your invaluable help in contacting your legislators and county commissioners or council members, attending pre-session legislative dinners, and contacting your local newspapers. With E2SSB 5454, we had the full support of the counties through their associations, as well as the support from the Association of Washington Business and the Collectors' Association, all of which was critical to our success. We appreciate the coverage by the print media both in editorials and in articles.

Ron Ward, President of the WSBA, and John Cary, President of the King County Bar Association, both co-chaired Task Force Work Groups and also maintained a constant drumbeat through their monthly columns, advising the bar of the need and of our efforts. We have had the professional guidance and support of the Administrative Office of the Courts and particularly appreciate the efforts of Janet McLane, our Court Administrator, and Mary McQueen, our past Court Administrator. We are deeply indebted to Wayne Blair who selflessly

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Douglas Cowan is a Trial Attorney with experience defending over 5,000 DUI and Criminal cases. Board Certified in DUI Defense, National College for DUI Defense*; Co-Author, textbook for lawyers, *Defending DUI's in Washington*; Co-Founder, former member of the Board of Regents, current Fellow and past Dean, National College for DUI Defense; Recipient, Richard Erwin Lifetime Achievement Award, National College for DUI Defense; Guest Lecturer on DUI Defense in 19 states; Certified NHTSA Standardized Field Sobriety Tests, Named a Superlawyer by *Washington Law & Politics*; Founder, Washington Foundation for Criminal Justice (President 1989-1998); Founding Member, Washington Association of Criminal Defense Lawyers; (Board of Governors 1987-1989); Member, National Association of Criminal Defense Lawyers, Washington State Bar Association, Seattle-King County Bar Association, East-King County Bar Association (Board of Trustees 1976-1978, President, 1979)

Vernon Smith is a Trial Attorney with experience defending over 3,000 DUI and Criminal cases. Board Certified in DUI Defense, National College for DUI Defense*; Graduate, National Institute for Trial Advocacy; Guest Lecturer, numerous DUI Defense seminars; Certified, NHTSA Standardized Field Sobriety Testing; Staff Attorney, Seattle-King County Public Defenders Association 1987-1989; Founding Member, National College for DUI Defense; Member, Washington Foundation for Criminal Justice, Washington Association of Criminal Defense Lawyers (Board of Governors 2001-2002), National Association of Criminal Defense Lawyers, Washington State Bar Association

William Kirk Named a Super Lawyer and a Rising Star, *Washington Law and Politics*; Graduate and Guest Lecturer, National College for DUI Defense; Graduate, DataMaster Certification Program; Certified, NHTSA Standardized Field Sobriety Testing; Graduate, Mastering Scientific Evidence in DUI Cases, Atlanta, GA; Deputy Prosecuting Attorney, King County Prosecutors Office; Member, National College for DUI Defense, Washington Foundation for Criminal Justice (Secretary-2003), Northwest Academy of DUI Defense (President-2002), Washington State Trial Lawyers Association, Washington Association of Criminal Defense Lawyers, Washington State Bar Association, American Bar Association

Garth O'Brien is a trial attorney with The Cowan Smith Kirk Law Firm; Graduate, National College for DUI Defense; Certified, NHTSA Standardized Field Sobriety Testing; Graduate, *Mastering Scientific Evidence in DUI Cases* Atlanta, GA; Graduate, *Theory of Science of Evolutionary Breath Alcohol Testing* National Patent, Mansfield, OH; Graduate, Drug Recognition Enforcement Investigation Technique; Named a Rising Stars by *Washington Law & Politics*; Named one of Seattle's Top Lawyers by *Seattle Magazine*, 2005; Former Assistant Seattle City Attorney, Prosecutor; Northwest Defenders Association, Public Defender; Prosecutor; Member, National College for DUI Defense, Washington Association of Criminal Defense Lawyers, Washington State Bar Association

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contributed hundreds and hundreds of hours to the Task Force effort as well as the approximately 100 people who diligently worked over two years to gather information, analyze data and develop recommendations.

The more we have reflected on the Task Force recommendations, the more firmly convinced we are that we have developed the best approach in the nation. In time, we expect the state to assume a share of the funding responsibility for those items mandated by statute or the constitution. Unlike the fate of our neighboring state courts

to the south which sought full state funding, these items are unlikely to be cut by the Legislature. Paradoxically of course, these are the very items that local government would also be least likely to cut either, leaving the courts' administrative expenses still vulnerable at the local level. That is where our Trial Court Improvement Accounts will help — they are intended to be used to improve court operations, allowing each locality to test new innovations, efficiencies and pilot projects.

Consistent with the BJA's goal of "speaking with one voice" to increase

our effectiveness, we have involved other judicial branch partners in this effort, including the bar and the equal justice community, to our joint benefit in areas of indigent defense, dependency representation and civil equal justice.

The report, *Justice in Jeopardy: The Court Funding Crisis in Washington State*, charts a sound course to provide adequate and stable funding for our trial courts. You can view the report on the courts' website, www.courts.wa.gov (click on "Boards and Commissions"). BJA has created the Court Funding Implementation Committee, co-chaired by us with Wayne Blair as vice-chair, to pursue full implementation of these critical improvements to funding the trial courts over several biennia. We will keep you advised on the progress and we will be calling on you as we continue the implementation process.

Sincerely,

Gerry L. Alexander, Chair
Deborah Fleck, Member-chair
Board for Judicial Administration



Well, there you have it. All of us in the justice community should pause for a well-earned sweet moment to savor this accomplishment. Just a moment. There is an enormous amount of work still to do. It is worth every iota of our effort. Let's get to it. *z*

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 206-624-8844 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, Attn: Letters to the Editor, 2101 Fourth Ave., Ste. 400, Seattle, WA 98191-2330.

NOTES

¹ Board of Judicial Administration, "Justice in Jeopardy," Chief Justice Gerry Alexander, Honorable Deborah Fleck.

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WSBA's Sponsored Insurance Programs

by WSBA Executive Director Jan Michels

As part of our programs to serve members, the WSBA sponsors professional liability, medical, and automobile insurance programs. Additionally, the WSBA is a sponsor of the ABA Group Retirement Program. Following is a summary of these benefits.

Professional Liability

In the 80s, when professional liability carriers were shrinking and many Washington lawyers were unable to secure liability coverage, the WSBA worked with a brokerage firm to sponsor a professional liability program for members. This action served to keep a carrier available to members and to design an insurance policy that met members' needs. In the years since then, the WSBA has continued to sponsor a liability insurance program. By Board policy, the WSBA's Insurance Committee must, on a minimum of a six-year cycle, thoroughly review the program and broker. Governors Mike Pontarolo and Mark Johnson, co-chairs of the Insurance Committee, working with the full committee and General Counsel Bob Welden, have completed a lengthy and thorough RFP process. Their goal was to ensure that our program provides a high-quality, cost-competitive, accessible product; our members are well served (including those with high-risk areas of practice who have had difficulty getting coverage); and the WSBA itself is well-served as an institutional "client" and affinity sponsor. The Insurance Committee recommended changing the broker/

administrator to USI and the program carrier to CNA.

In January, the Board of Governors adopted the committee's recommendation. USI is the nation's largest administrator of bar association lawyers' professional liability (LPL) programs and so brings both superior expertise and market strength to the table. Its long-time association clients include the New York and Pennsylvania Bar Associations, and the University of Washington and Washington State University Alumni Associations. USI's Seattle office has served customers statewide for nearly 50 years and is already the insurance broker of choice for many of our members and law firms. USI has a dedicated, experienced team, and they are pleased to expand their relationships with our members and their firms. CNA is an "A" rated carrier (by A.M. Best) and the seventh-largest U.S. commercial lines insurer. It has been in the insurance business for over 100 years, in the LPL market for over 40 years, and serves 125,000 lawyers.

You will hear more from USI as we launch this new program together. In the meantime, if you need assistance with your professional liability coverage, please call Katie Holmes at USI at 800-422-4710 or 206-695-9173.

Other Sponsored Insurance Programs

In 2002, the Board of Governors created a Membership Benefits Task Force to explore other possible member benefits and insurance programs. Under the able leadership of, first, Dale Carlisle,

and, later, Joe Nappi Jr., the task force investigated many possible member benefits, including affinity cards, sponsored insurance programs, product and group purchase agreements, car rental, hotel/motel sponsorships, and technological services and products. It became evident that some products and services were easily obtained by members outside of WSBA sponsorship or were already available to members through bar programs. In the end, in addition to the existing professional liability insurance program, the WSBA developed sponsored programs for medical insurance and auto insurance, and agreed to be a sponsor of the ABA Group Retirement Program.

Medical Insurance

In the early 2000s many members, especially those in Eastern Washington and in smaller firms, were unable to obtain medical insurance. The task force worked with Marsh to develop a sponsored medical plan with Group Health. Although this plan had a few coverage gaps, it was a benefit to many members, and Marsh brokered the plan for the first year. At a special meeting on May 3, the Board of Governors reviewed and adopted the Insurance Committee's recommendation that sponsorship of the Group Health plan be moved to USI and, further, that the WSBA work with USI to investigate the possibility of developing a true group plan for WSBA members.

Members enrolled through Marsh can renew through USI, and other members interested in this plan can

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Automobile Insurance

The WSBA has negotiated a sponsorship of automobile insurance through GEICO. The rates are competitive and members receive a 20 percent discount over usual rates for this insurance. To learn more or get rate quotes, call GEICO at 800-368-2734. Be sure to identify yourself as a WSBA member.

Retirement Investment Plan

The WSBA has agreed to be a sponsor of the ABA Group Retirement Program, available to all WSBA members (whether they are ABA members or not). The ABA program offers a number of turnkey retirement programs tailored to attorneys. It also offers a variety of investment options for funds held in a firm's retirement account, ranging from investing in pooled funds, which are professionally managed by the program, to investing in individual stocks and bonds just like one might do with one's personal investments. The program's managers are compensated by fees earned from managing the pooled funds, so participating attorneys do not pay separate management or other fees for plan administration. "It's an exceptional program, providing a simple, low-hassle, low-cost way for attorneys to set up and administer retirement plans, with strong customer service," notes Carl Carlson, former governor and member of the task force, and proponent of the value of this retirement program. To learn more about the program visit www.abanet.org/abra.

Other Future Possibilities

The Insurance Committee continues to review possible disability and long-term care insurance options. In reviewing member benefit insurance options, the WSBA's goal remains to offer programs that help members. Members may see occasional advertising for these programs from the broker and will always have the option to remove themselves from such mail. ✉

WSBA Executive Director Jan Michels can be reached at janm@wsba.org.

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The Rule of Law in Russia: A Report from Vladivostok

BY FREDERICK M. LORENZ

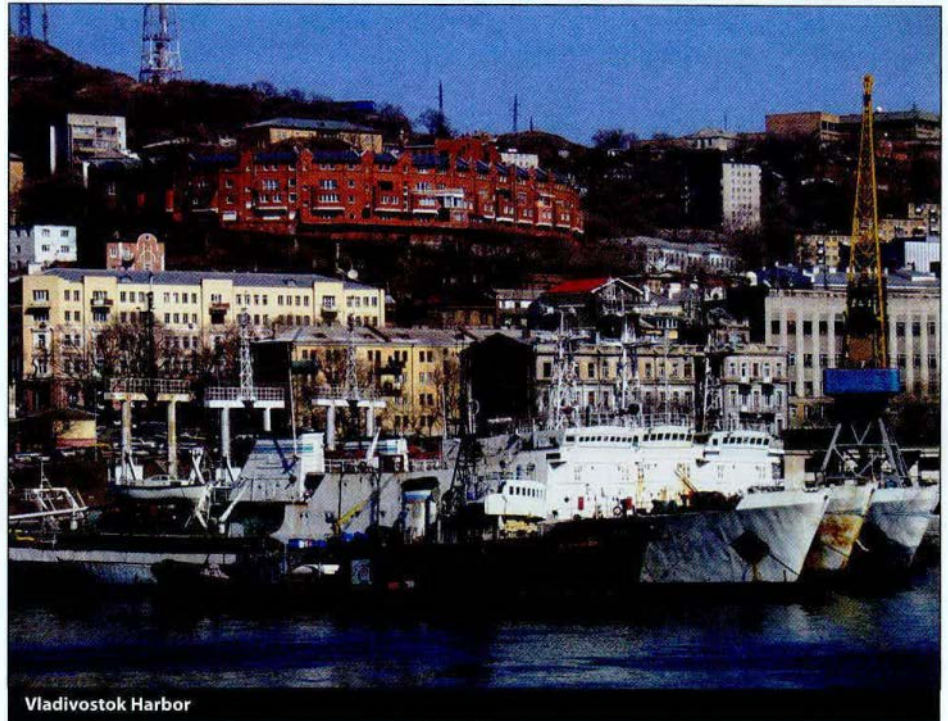
Gazing out at the Bay of Amur, I watched two young men hop across breaking ice flows just before sunset. This is apparently a spring ritual in the Russian Far East. Having a few beers before the event fortifies the participants but makes it no less dangerous. This is Vladivostok, where the realities and challenges of modern life in Russia can be seen first hand.

Background

In March 2004 I made a two-week visit to Vladivostok, my first to the Russian Far East. My previous experience in Russia was primarily in Saint Petersburg; in 1998-99 I was a Fulbright Senior Scholar there for 10 months, lecturing at the Faculty of International Relations and the Law Faculty at Saint Petersburg State University. In addition, for the past three years, I have been back to Saint Petersburg each March as a guest lecturer, sponsored by the U.S. State Department. At Seattle University School of Law (SU Law) in the past three years, my fall courses have been open to Russian students, and 15 students in Saint Petersburg have been awarded law school credit and SU Law certificates for completing the SU Law program. The request for my Vladivostok visit was initiated by the Law Institute of Far Eastern National University (Law Institute), through the local U.S. Consulate in Vladivostok.

The Law Institute of Far Eastern National University

Far Eastern National University (FENU) was established in 1899, and the Law Institute took its current name in 1992. Within the Law Institute there are five



faculties — International Law, State Law, Prosecutors and Judges, Legal Science, and Business Law. Rector Vladimir Kurilov (equivalent to president) of FENU also serves as the dean of the Law Institute. In Russia the basic law degree is considered undergraduate education, so the law students are younger and less experienced than their American counterparts. There is a growing program of exchange between the Law Institute and SU Law, including a series of visits by Law Institute faculty to the United States last October. Former SU Law Dean Rudy Hasl visited Vladivostok as part of a Seattle delegation and received an honorary law degree.

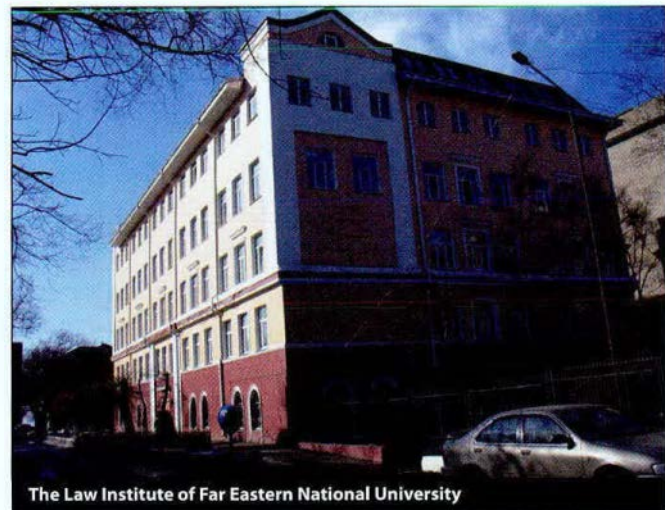
During my time in Vladivostok, I presented a series of lectures at the Law Institute, as well as a number of additional lectures to other institutions

in Vladivostok. The students were polite and receptive, with a good level of class participation. I made it clear that I would use the interactive approach not common in the Russian education system, particularly during Soviet times. Overall, I was impressed with the students; one group of six was equal to my best students in Saint Petersburg. They posed good questions, showing a high level of understanding of the material, all of it presented in English. When one student asked me a question about the choice of law in a particular case, a subject not mentioned in my lecture, I could provide only a general answer. The rest of the class was typical of my experience in Russia: about one-third of the class seemed to understand the lecture but were reluctant to use their English to comment or ask questions;

another third seemed to be having some difficulty with the language, and did not return for the second class.

In the second week I gave a series of lectures at the Far Eastern State Technical University (FESTU). Tsar Nicholas II established the FESTU the same year as FENU; it was formerly part of the same institution. There seems to be a rivalry between the schools for the reputation of oldest and best institution in the Russian Far East. I met the director of FESTU's Institute of Law and Politics, Natalia

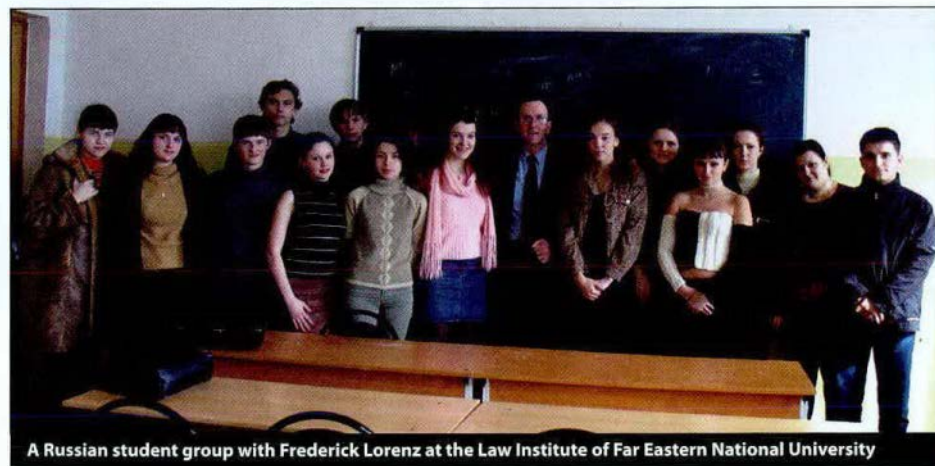
always a controversial one with a Russian audience, and I have yet to find a Russian who is a devoted supporter of U.S. policy. I made an attempt to review the basic objectives of U.S. foreign policy, the war on terrorism, and the current situation in Iraq. On my last day in Vladivostok I lectured at FESTU in a large hall with more than 70 students in attendance. Although I don't believe any of them changed their fundamental views, I think they left with a better understanding of possible areas of common interest between the United States and Russia.



The Law Institute of Far Eastern National University

Observations

Russia today is a land of contradictions and contrasts, a place where the roads can be crowded with expensive SUVs while old women spend the day in the cold selling a dollar's worth of mushrooms on the street corner. Like Saint Petersburg, the central streets are filled with women in



A Russian student group with Frederick Lorenz at the Law Institute of Far Eastern National University

Menshenina, who was a Fulbright visiting scholar eight years ago at Washington State University. My first lecture was to a group of 62 students; the topic was "Law 101," based on the fundamentals of U.S. law and legal systems. I found their level of comprehension and participation to be excellent. My final lectures at both the Law Institute and FESTU concerned current U.S. foreign policy with an emphasis on Iraq, subjects I cover in my classes at the University of Washington. This subject is

expensive fur coats, and conspicuous consumption is *de rigueur*. It has always been fascinating to watch beautiful young women, dressed to the nines, with impossibly spiked heels, navigate icy streets with perfect poise. Brands and labels are everything; Toyota Land Cruisers with 12-inch "Land Cruiser" legends along the side are the most popular vehicles. But on the side streets the grinding poverty that most of the population has to survive is evident. Parts

of the Vladivostok city infrastructure are in serious deterioration, and health care is below international standards. During my visit, a number of apartment buildings above FESTU had no water service, and most of the city had service only two hours per day. Recent reports indicate that the situation has improved.

Social programs in Vladivostok for the old and the young are rare. A small program provides shelter for homeless children, funded by an international relief organization. I watched an old man, wearing a Navy veteran insignia, struggle to get off the bus; he was fitted with a well-worn wooden leg. One aspect of Russian culture seems to be

patience and long-suffering; the occupants of the crowded busses never seem to be ill tempered. In Russia I always try to use the public transportation: a bus ride in Vladivostok is still five rubles, about 15 cents. Residents with less money can save two rubles and ride the creaking trolley across town. I was told that when the city tried to raise the transit fares in early 2004, a small citizen revolt resulted; perhaps there are some limits on the riders' patience.

Major contrasts between Saint Petersburg and Vladivostok can be noted; I found a sense of isolation in Vladivostok, with the vast distance to

Vladivostok Delegation Members (October 2003)

David Anderson, attorney, Anderson, Connell & Murphy Attorneys at Law

Rudolph Hasl, dean, Seattle University School of Law

Charles Johnson, Washington State Supreme Court justice

Kathryn Kim, deputy prosecuting attorney, Criminal Division, King County Prosecuting Attorney's Office

John McCarthy, Pierce County Superior Court judge (former Seattle Port Authority commissioner)

Dean Morgan, Washington State Court of Appeals judge (formerly a defense attorney)

Jack Nevin, Pierce County District Court judge

Jeffrey Ouimet, attorney

Lana Rich, coordinator, "Development of Sister-Bar Partnerships and Judicial Administration Partnerships" project, Seattle University School of Law

William Robinson, attorney, William T. Robinson Law Offices

Georges Yates, attorney, Perkins Coie

the center of Russian power and finance. Positions at the American Consulate in Vladivostok are considered hard to fill, even with a reasonable living allowance. Visits by Americans under the Fulbright or similar education programs are not frequent. Heads turn on the street, on trains, and in restaurants when locals hear someone speaking English. A Russian student told me that only one of the teachers of the "English First" commercial language training program is a native speaker. Having a good command of the Russian language seems even more important than in the European part

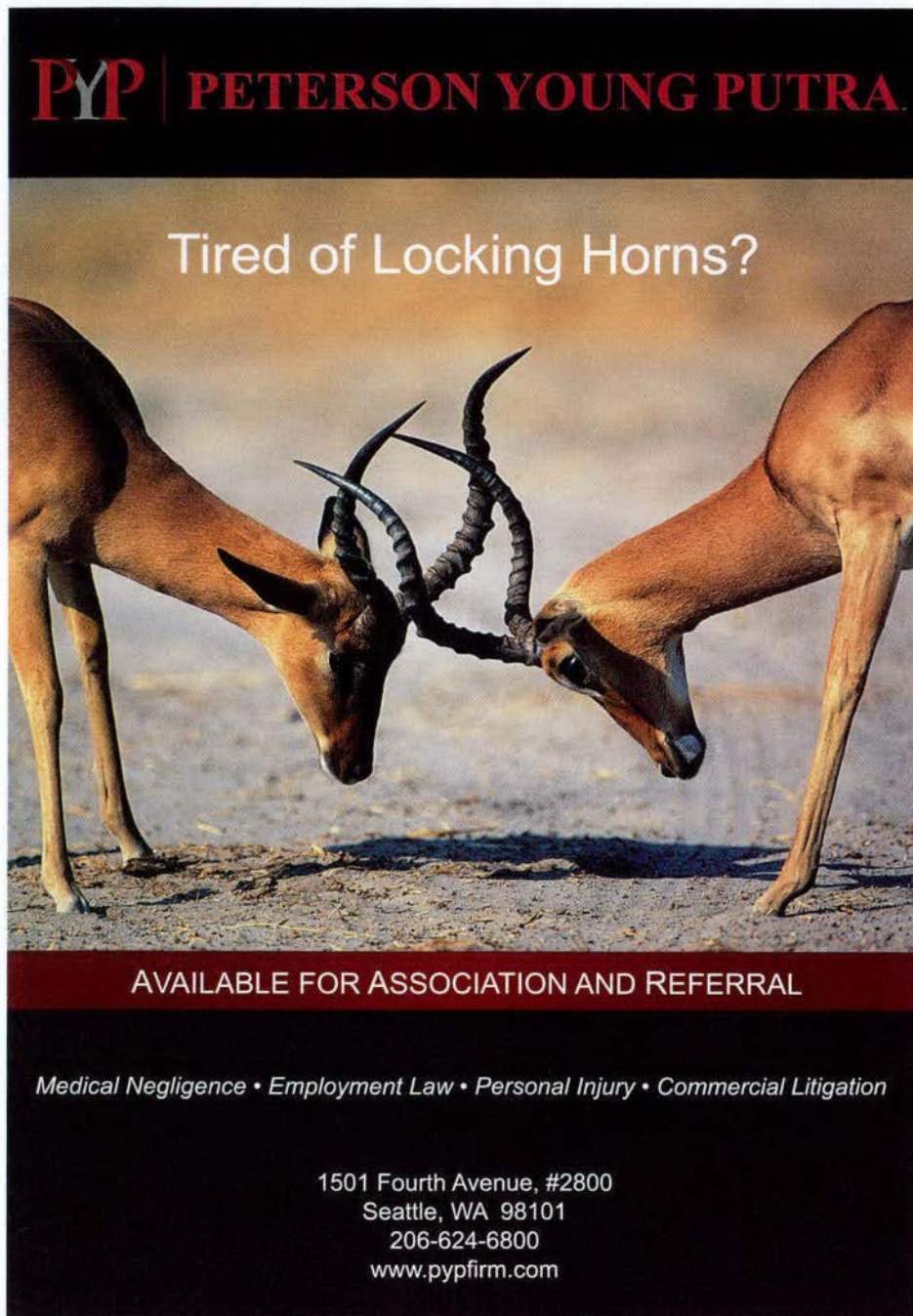
of Russia, particularly for an extended stay. But even with my limited Russian language skills, I felt comfortable and used both the bus and trolley to travel around town. Some familiarity with the Cyrillic alphabet is necessary to read the maps.

For an American, life in Vladivostok could be challenging; many modern conveniences we take for granted in the United States are simply not available. There are a few good, inexpensive restaurants, and new grocery stores provide a reasonable selection. In Vladivostok, crime seems to be no worse than

in a major American city. Alcoholism is a serious problem throughout Russia, affecting perhaps 30 percent of the male population. Recent news reports present some disturbing statistics concerning birth and mortality rates in Russia, and the population of the Russian Far East seems to be in decline as people move to major population centers. Despite these problems, my contact with students was very positive; they are eager to learn, and working hard to improve their lives. Faculty and administrators at FENU and FESTU are eager to develop contacts with American universities, and they welcome opportunities for exchange. The future leaders of Russia can be found in the schools, and efforts by U.S. lawyers and educators can lead to long-term benefits for both countries. A prosperous, stable, and democratic Russia is in everyone's interest.

Rule of Law

This subject is moving to the forefront in working with countries in transition from communism and socialism to democracy. Although Russia is making progress, there is much to be done. In Vladivostok, an American resident told me that the local courts are essentially unable to protect the interest of foreign investors, and that is a major reason why the regional economy is weak. Corruption and organized crime are real problems, although I was told that things are much worse in other Russian regions in the Far East. When I brought this subject up in class, my students seemed to agree that the current state of the court system did not foster the confidence of the people. President Putin seems to recognize the depth of the problem; he mentions in his public statements that "dictatorship of law" is to be one of his major objectives. Legal education can be one component of a rule of law program, but contact with courts, judges, prosecutors, and police should bring more immediate return. Preaching about the virtue of the American system is not the answer, but I believe that Russians are open to interaction and external support to improve their own system. The U.S. State Department now generally favors "Russification" of assistance rather than attempting to directly impose U.S. values and systems.



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Jury Trials in Russia

Over the past three years, jury trials in Russia have been held on a limited basis. For the first time since the 1917 revolution, Russian law allows juries in criminal cases, and gives the accused a right to demand jury trial in the most serious crimes. Recent articles in English on Russian jury



A Lecture at Far Eastern State Technical University

trials pose fascinating questions of comparative law. On March 14, 2004, a video-conference between SU Law and the Law Institute in Vladivostok on the subject of jury trials was held. The chief judge of the regional Russian court answered questions for the American audience. In the Primorsky Region, including Vladivostok, only seven jury trials were requested in 2003, the first year of the new jury law. Five of those were held (two accused persons withdrew the request), and one of those

was reversed after it was revealed that two of the jurors improperly influenced the jury to acquit. Russians apparently have deep skepticism about the viability of jury trials; the chief judge seemed to prefer the old Soviet system with people's representatives participating in the ruling of the judge. With no history and culture of jury service in Russia, it has been very difficult to get jurors to serve. The chief judge stated that Russian citizens are reluctant to leave work, they are not always compensated for their time, and some jurors may fear retaliation from the families of the accused. In the long term, it seems that jury trials in Russia face numerous obstacles, and, even if successful, the use of juries is not likely to im-

compact some of the more difficult issues of independence of the judiciary, organized crime, and government corruption. In my judgment, U.S. assistance and exchange with Russia can better be focused on the more critical issues.

Presidential Elections

I was in Russia for the March 2004 presidential elections. Only candidates for the national office were on the ballot, and polling places were open from 8 a.m. to 8

p.m. on a Sunday. The associate director of the Law Institute, Sergei Knyazev, now serving his third term as the director of the Primorsky Election Commission, invited me to visit polling places with him in the afternoon. We visited a local polling place where about 50 sailors had apparently been marched in uniform to vote. A number of incentives were used to get citizens to vote; young people who were first-time voters were offered tickets to clubs or given small prizes. Classes at the University with high voter turnout win prizes, and one of my students was asked by her professor to call all her classmates in the morning to be sure that they voted. There was a press report that citizens were not admitted to a hospital on Sunday without proof that they had already voted. Under Russian law, there needs to be a 50 percent turnout for the election to be valid, so the government was making a substantial effort to turn out the vote. At the second polling place we visited, there was a concert at 5 p.m. for all those who had voted that day. A number of outside observers have criticized the Russian system, which may exert subtle (or more direct) influence on behalf of the incumbent.

Legal Education

The Law Institute is eager to develop exchange programs with SU Law, and SU Law is working to identify additional sources of funding. My own course at SU Law this past fall in International Humanitarian Law was open to students from the Law Institute. Four students successfully completed the course as a distance-learning project; they submitted some excellent papers in English, and received certificates of completion from SU Law. Students are also interested in commercial, maritime, and private law subjects. Like their counterparts around the world, Russian law students are primarily interested in subjects that will lead to jobs after their graduation from law school.

Developing Programs

A real potential exists for additional programs in Vladivostok — legal education can be just one part of a broader program of assistance and exchange with the local Russian court and legal system. Three years ago, I visited Petrozavodsk, in the Karelia region north of Saint Petersburg, where the State of Vermont-Karelia Re-



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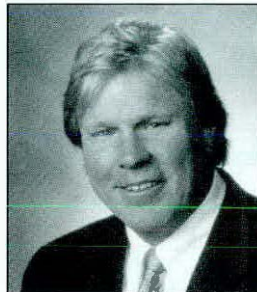
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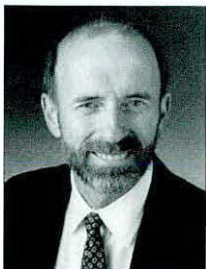
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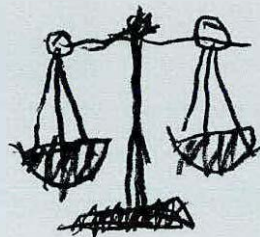
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gion partnership has been functioning for the past nine years. Some lessons can be learned from the Karelia program and applied to a program of expanded cooperation between Seattle-area institutions and Vladivostok. Karelia hosts a successful law clinic at the law school, sponsored by Vermont Law School, which celebrated its fifth anniversary during my visit. A jurist association, similar to a local bar association in the United States, operates in Petrozavodsk with a Russian executive director position funded by Vermont. There are regular exchanges of educators

and judges between Vermont and Karelia, and major funding has been obtained under federal grants. But the key element in the program is based on the personal relationships developed over the years by a few individuals, including Justice Dooley of the Vermont Supreme Court. When I toured the courts and spoke to local judges in Karelia, it seemed clear that U.S. efforts had had a major impact in developing the rule of law in the region.

The Way Ahead

Former Dean Rudy Hasl of SU Law took a

personal interest in developing a program of assistance and exchange for students and faculty of the Law Institute. The new dean, Kellye Testy, has stated an intention to continue the program. Potential resources can be tapped in the Seattle area, including judges and prosecutors, as well as law-enforcement experts who may assist in addressing questions of corruption and organized crime. In October 2003 a delegation from Seattle visited Vladivostok; the list of participants appears on page 23. All programs should be coordinated through the U.S. Consulate in Vladivostok, because they will need to be consistent with current programs in Vladivostok sponsored by the U.S. Agency for International Development.

My March 2004 trip to Vladivostok was funded by the Fulbright Senior Specialists Program. Details on the program can be found at www.cies.org/specialists. American lawyers can apply to be on the Specialists Panel, and after approval they can be available to respond to requests from around the world. Under the Senior Specialists Program, funding is available for two- to six-week visits, while the traditional Fulbright program (www.cies.org) requires a minimum five-month commitment. The deadline is August 1, 2005, for applications for the traditional program for the 2006-07 school year. Lawyers do not necessarily need a law-teaching background to apply for a position. Last year about 70 worldwide positions in the traditional program were available to lawyer applicants. The U.S. Fulbright Commission in Moscow is particularly interested in receiving Fulbright applications for the Russian Far East, where there have been very few American Fulbright scholars. ✍



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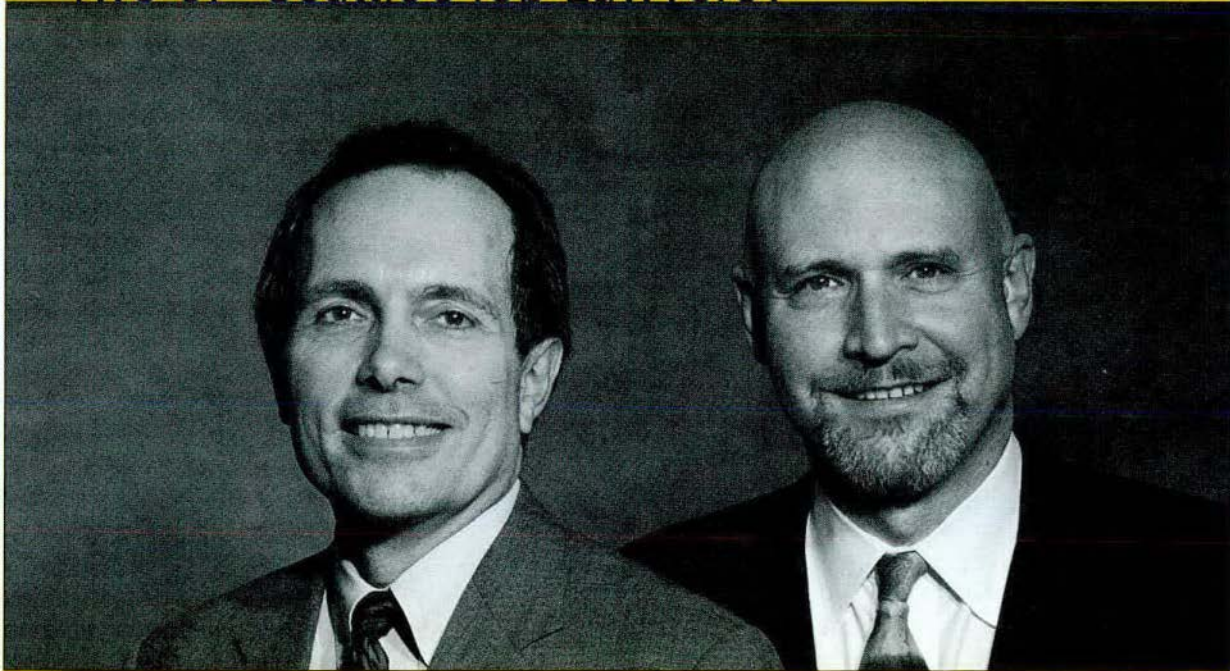
Frederick M. Lorenz is an adjunct professor at Seattle University School of Law and a longtime Bar News contributor. For those who would like more information about the Fulbright program, or the Seattle University School of Law program of exchange with the Law Institute in Vladivostok, the author can be reached at fmlorenz1@aol.com.

Additional Reading: Courts and Transition in Russia: The Challenge of Judicial Reform, by Peter H. Solomon Jr. and Todd Fogelson (Westview Press, 2002).

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Words About Words

BY ROBERT C. CUMBOW

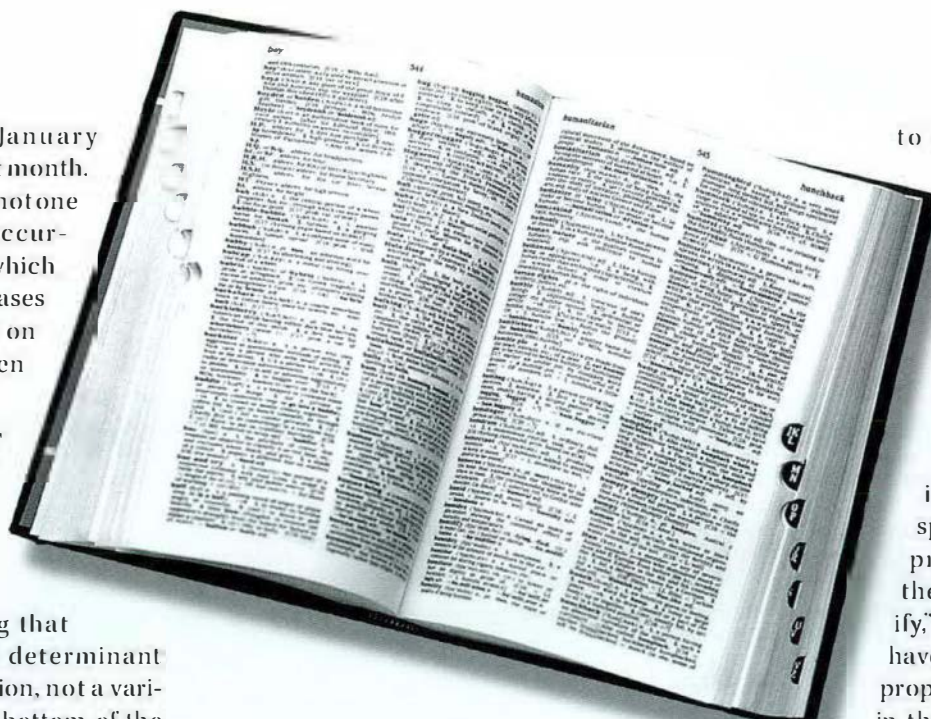
This past January was a great month. It brought not one but two occurrences of an event for which I'd been waiting years: cases whose outcome turned on the distinction between "which" and "that."

Here in Washington, our Division III Appellate Court found in a criminal sentencing matter that a plea bargain agreement "supports the trial court's finding that the parties intended a determinant 90-month recommendation, not a variable number tied to the bottom of the standard range." The court cited the language of the agreement, which referred to "a joint recommendation to an exceptional sentence downward of 90 months incarceration, *which* is 5 months below the low end of the standard sentencing range ..." [emphasis in original].

The court's analysis: "A restrictive adjective clause would not contain a grammatically incorrect comma and read, ... *that* is 5 months below' ... Although 'which' and 'that' are both relative pronouns, 'that' is used solely with restrictive clauses while 'which' is usually preferred in nonrestrictive clauses." *State v. Lathrop*, 125 Wn.App. 353 at 362 (Wash. App. 2005) [emphasis in original].

At issue in the other case, in Pennsylvania, was a board's removal of one of its members. The authority for the action was a statute that read:

... the board of directors may declare vacant the office of a director if he is



declared of unsound mind by an order of court or is convicted of a felony, or for any other proper cause which the bylaws may specify ...

The dismissed member challenged the board's action on the grounds that he had not been declared of unsound mind or convicted of a felony, and there was no other proper cause specified in the organization's bylaws that justified his removal. The board argued — and the court held — that the phrase "which the bylaws may specify" was nonrestrictive language that merely permitted the bylaws to enumerate such cause, but did not limit the terms under which a board member may be dismissed.

Citing Strunk and White's *Elements of Style*, Judge Mary Hannah Leavitt of the Court of Common Pleas of Pike County, Commonwealth of Pennsylvania, held that "the word 'which' is a nondefining, nonrestrictive pronoun ... not essential

to defining 'proper cause.'" *Lutz v. Tanglwood Lakes Community Association, Inc.*, No. 571 C.D. 2004 (Pa. Cmwlth., January 12, 2005).

In other words, if the statute had specified "any other proper cause that the bylaws may specify," the board would have had to point to a proper cause specified in the bylaws in order to remove the member; but the use of the term

"which" made the clause a nonrestrictive one that, rather than stating an additional requirement, merely provided the nonessential information that the board could specify proper causes in their bylaws if they wished. Thus the phrase beginning with the word "which" need not have been present at all, at least for the purpose of determining the board's authority to dismiss its member. Articulation of a proper cause was sufficient; that cause was not required to be specified in the bylaws.

A dissenting judge, also citing Strunk and White, pointed out that nonrestrictive clauses are supposed to be set off by commas, and there was no comma between "proper cause" and "which the bylaws may specify," so the "which" should be treated as if it were a "that." But the majority opinion correctly recognized that the judges' job was to interpret the meaning of the statute as written, not

to correct its grammar; and construing the words "according to rules of grammar and according to their common and approved usage," as required by Pennsylvania's Statutory Construction Act, led to the necessary conclusion that the bylaws need not specify a particular cause in order for the board to remove a member for that cause.

Of course it is possible, as the dissenting judge argued, that the legislature was mistaken when it chose to write "which" rather than "that" in the statute in question. And it may be that the plea bargain agreement in *State v. Lathrop* intended to identify a sentence five months below the low end of standard, and not a determinant 90-month sentence, and the parties were simply mistaken when they chose to write "which" rather than "that." But the point is this: There are consequences to such choices.

The board argued — and the court held — that the phrase "which the bylaws may specify" was nonrestrictive language that merely permitted the bylaws to enumerate such cause, but did not limit the terms under which a board member may be dismissed.

And the larger point is that, while in most situations the intended meaning is clear even if the chosen word, grammar, usage, or style is wrong or cumbersome, there are cases in which the choices made by writers will have significant impact on the meaning, interpretation, and application of what has been written. Indeed, in our profession that is very often the case; so we must make a habit of choosing our words carefully.

Now in writing this column I may use the word "correct" from time to time for rhetorical impact. But it's not really the purpose of this column to preach "correctness" in the schoolmarm sense. We should all appreciate the richness, flexibility, and versatility of our ever-growing, always-changing language. The trick, though, is for those whose livelihood depends (like ours) on an effective use

of the written and spoken word to walk a fine line between being rigid, stuffy, and always "correct," on the one side, and being too laid-back and loosey-goosey on the other. When I write about "correct" usage, what I really mean is not correctness according to some objective set of rules but rather correctness in the sense of effectiveness.

That's not to suggest that there are no rules, or that rules should be ignored. Rules become rules because they work; they serve a purpose. That doesn't mean they can't and shouldn't be broken from time to time. But not because language should be unchained from rules for its own sake, for language without rules ceases to be language. Rather, it's because there are times when communication is more precise and effective if it breaks rather than adheres to a rule.

Return to the Island of Lost Distinctions

What makes the English language so great is the fact that it has drawn from and assimilated words, expressions, idioms, and constructions from numerous other languages, giving it a richness and subtlety that few languages ever attain. The gift of a language that has many different words for similar or related concepts is that we are able to achieve a fineness of distinction that enables us to communicate with greater precision and effectiveness. Think, for example, of the words waterfront, wharf, pier, and dock, all of which pertain to the same general area, but have specific differences in meaning. We want to preserve those differences when it really matters. If people use those terms interchangeably, most of the time it won't matter. But if they do it so much and so carelessly that the distinctions among those terms are lost altogether, then we lose the ability to differentiate conceptually, and that harms not only our ability to express but also our very ability to think.

If a dictionary dutifully records all possible meanings of a word, including the ones that blur the word's original distinction, it should also do us the favor of indicating which definition is faithful to the precise meaning of the word, and which definitions are corruptions or revisions of the original sense of the word. Dictionaries that do not do this

impoverish rather than preserve our language's unique ability to provide fine distinctions.

For example: Prone means lying on one's front; supine means lying on one's back. That's a distinction worth having. But so many people use one or both words incorrectly that now many dictionaries will identify both words as meaning, generally, lying down. This lessened literacy means that writers and speakers, in order to make sure they are being clearly understood, must now use a phrase ("lying on his stomach") instead of a single economical adjective ("prone").

Or consider the words podium and lectern. The first one means what a speaker stands on (the "pod" part coming from Latin for "foot"); the second one means what a speaker stands at or reads from (the "lect" part coming from Latin for "to read"). Here's what a dictionary says:

po·di·um (pō´dē-əm) n. pl. po·di·a (-dē-ə) or po·di·ums. An elevated platform, as for an orchestra conductor or public speaker. A stand for holding the notes of a public speaker; a lectern.

Most people don't appreciate the distinction between the words, and use them interchangeably, and that's fine in most contexts. But once dictionaries codify that interchangeability, people take it as correct, and soon we have lost the ability to make the distinction by choosing the correct (or best) single word; instead, we have to explain ourselves by using a phrase or even a whole sentence. We lose economy, flexibility, and precision — all qualities that make the difference between skillful, effective, clear communication and fuzzy, uncertain communication (or even, in some cases, no communication at all). And I didn't even mention all the wonderful choices we lose if we don't preserve fine distinctions among such related words as rostrum, dais, and pulpit!

A laissez-faire approach to language might dictate a rule whereby we assume that if a distinction is important, speakers and writers of the language will honor it by preserving it in the way they choose their words; and if we don't try to preserve the distinction between "prone"

and "supine" or between "podium" and "lectern," it must be because they aren't really that important to us.

But in fact most of us, when speaking, and often even when writing, use our language in a lazy way — not sloppy so much as merely relaxed — and that's fine because most situations don't call for more than a casual use of language.

However, sometimes it does matter. If everyone uses "prone" to mean simply "lying down," the distinction will be lost — not only in casual communication but in formal communication as well. The consequences are that, next thing

you know, in a situation in which the distinction is important (in a medical emergency, for example, or in taking evidence for a criminal trial), we no longer trust the single word. We can't be sure the EMT or innocent bystander or witness or jury really knows what "prone" means, so we resort to a four- or five-word phrase instead. That makes certain that we convey the correct information; but it also makes our use of language more cumbersome, more time-consuming, more burdensome to the listener, less economic and razor-sharp, and consequently less likely to have any impact beyond merely

imparting information.

Our business is never just to impart information. Our business is to persuade. Whether we are addressing a judge, a jury, opposing counsel, a client, or a party we are negotiating with, our job is always to present a viewpoint and persuade the listener to understand it, consider it, take it seriously, and — with luck — adopt it as her own. We can't do that if we use any but the best, clearest, sharpest language. Indeed, the loss of any distinction between meanings of the words in our language, however subtle or esoteric, is the loss of an important tool of our profession, and therefore diminishes us. Never send to know for whom the bell tolls.

L'Envoi

So when I write about "correct" and "incorrect" uses, I don't mean uses that adhere to some single-minded view of the one and only one meaning that any word is allowed to have. Rather, I mean uses that preserve the ability of the word to communicate with specificity, and to distinguish its meaning from those of other words that may be similar or related.

Then who's to judge? It always must be the literate, thoughtful writer or speaker, who chooses his words carefully because he knows his audience and because he is passionately dedicated to clear and effective communication. The more that writer/speaker knows about words — their origins, their older and newer meanings, the subtle or not-so-subtle distinctions among them — the better equipped that person is to do the job of communicating — and persuading.

What I try to do in this column is to share some of what I've learned from a lifetime of studying and using words. I hope others will share theirs with me. *z*

Robert C. Cumbow thanks Kelly Mann and Doug Ende for calling the Lathrop and Lutz opinions to his attention. Cumbow is a shareholder with Graham & Dunn, Seattle, where he counsels clients in beverage, food, communications, entertainment, and other businesses on trademark, copyright, advertising, media, and alcoholic beverage law. He teaches at Seattle University Law School, and writes and lectures on law, film, and language.

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Show Me the (Canadian) Money: Collecting Judgments from Debtors in Canada

BY MICHAEL BERTOLDI

For clients, victory in litigation lies in the collection rather than the decision. While initially clients may be impressed with trial results, in the end their "bottom line" is satisfaction of their judgment. Collection can be difficult and time-consuming if the debtor, or the debtor's assets, are located outside your jurisdiction.

Collecting U.S. Judgments in Canada

Here are some important tips for collecting on your judgment in Canada.

When British Columbia or Canada is the jurisdiction of collection, counsel for a judgment creditor faces certain hurdles in enforcing and collecting on their client's judgment. These requirements arise from both common law and relevant legislation, which in British Columbia is mainly the Court Order Enforcement Act (the COEA). Although the legislation in other provinces varies, most, if not all, have similar procedures to those outlined below.

In our experience, we most often satisfy a U.S. judgment in British Columbia by registering it with the Supreme Court of British Columbia. Although using statutory processes for registration gives the U.S. judgment "... the same effect as if it had been a judgment given originally in (BC) on the date of the registration,"¹ even when a U.S. judgment is registered through other processes, the effect is much the same.

Reciprocating Jurisdictions

Collecting on a client's judgment in British Columbia is simplest when the original judgment comes from a reciprocating jurisdiction. Under the COEA, there are currently six reciprocating jurisdictions in the United States: Washington, Alaska, California, Oregon, Colorado, and Idaho.²

It is important to note that, at the time of writing, federal circuit judgments — including bankruptcy judgments — are not

enforceable under the reciprocating jurisdiction rules (though see below for other ways to enforce such judgments).

Reciprocity in Enforcing Judgment

Strategically, the best way to begin enforcing a judgment in British Columbia is usually by applying for a desk order (without hearing, and in this case, without notice to the judgment debtor). This can be done pursuant to the Rules of Court and the COEA. The time limit for applying to register a judgment is six years after the date of original judgment.³

To register a judgment without giving notice to the judgment debtor, a party must meet all three of the following criteria:

1. The court documents in the original action were personally served on the debtor.
2. The debtor either appeared before the original court, or defended the action, or otherwise submitted to the jurisdiction of the original court.
3. Any appeal in the original jurisdiction, if made, must have been disposed of, or, if not made, must be out of time.⁴

The documents required to proceed by way of desk order include:

- An affidavit setting out various facts about the judgment.⁵
- A certified copy of the judgment under the seal of the original court, attached as an exhibit to the affidavit.⁶
- A certificate signed and sealed by a judge or clerk of the original court setting out particulars of the judgment.⁷

Registration, Notice, and Cancellation

Once the judgment is registered in British Columbia without notice, the judgment creditor has one month from the date of registration to give the judgment debtor notice of such registration. The judgment debtor then has one month from receipt of

notice to apply in British Columbia to have the registration cancelled.⁸ The scope of grounds for cancellation is limited. Some of the grounds include:

- The original court acted without jurisdiction.
- The judgment debtor would have a good defense if an action were brought on the judgment.⁹

Enforcing in the Absence of Reciprocity

While the above process is perhaps the most convenient, a judgment creditor from a non-reciprocating jurisdiction also has recourse. Recent decisions of the Canadian courts have simplified the process of enforcing non-reciprocating judgments.¹⁰

In British Columbia, there are two ways to enforce such a judgment: starting a new British Columbia Action, and starting an Action for Enforcement of a U.S. Judgment.

Starting a New B.C. Action

When collecting on a judgment from a non-reciprocating state, a judgment creditor can sue on the debt in British Columbia using the U.S. judgment to evidence the debt. Further or new evidence of the debt would be allowed if necessary, but this opens the door for the debtor to dispute the debt.

Starting an Action for Enforcement of a U.S. Judgment

The other option for a judgment creditor is to begin an enforcement action in British Columbia for the U.S. judgment. This provides results similar to enforcing an original B.C. judgment.

Enforcement of a U.S. judgment from a non-reciprocating (such as federal) jurisdiction requires a real and substantial connection of the action with the original jurisdiction. In other words, the original jurisdiction need not have been the best place for determination of the matter, as long as there is a real and substantial connection between the issue and the jurisdiction.

Real and substantial connection cannot be defined easily, but some indicia of a real and substantial connection include:

- A contract at issue was formed in the jurisdiction.
- A choice-of-forum clause was exercised.
- Goods were sold or services were provided in that jurisdiction.
- The events concerned took place in that jurisdiction.
- Both parties to the action resided or carried on business there.

The Bottom Line

Collection can be the most labor-intensive part of the litigation. When the judgment debtor does not reside or carry on business in the jurisdiction or leaves the jurisdiction, collection can be more difficult. The good news is, if the debtor is located in British Columbia or elsewhere in Canada, collection in many cases is still quite feasible.

If your client has obtained a judgment from a reciprocating jurisdiction, the process in British Columbia is fairly simple, and the U.S. judgment likely can

be registered quickly and without notice to the judgment debtor.

If the jurisdiction involved is non-reciprocating, your client has two choices: He can either use the U.S. judgment as proof of the debt, or he can try to have the judgment recognized in British Columbia. If there is a real and substantial connection between the original jurisdiction and the cause of action, the U.S. judgment will likely be recognized in British Columbia for enforcement.

In summary, to collect on your client's judgment in British Columbia, you will need:

1. The identity of the jurisdiction where the judgment was obtained;
2. The identity of the jurisdiction where the cause of action arose;
3. An affidavit setting out specific facts surrounding the judgment; and
4. A certified copy of the judgment under the seal of the original court (to be exhibited to the affidavit). *z*

Michael Bertoldi practices law in Vancouver, British Columbia, with a focus on debt collection. Send your questions regarding the enforcement of U.S. judgments in Canada to mike@bert-law.com.

NOTES

- ¹ COEA s. 33(a).
- ² States can be added or removed at any time by Order in Council of the Lieutenant Governor. Check with a B.C. lawyer prior to collection for the most up-to-date list.
- ³ COEA s. 29(1). A currently unproclaimed legislative amendment might alter this time limit to 10 years.
- ⁴ COEA s. 29(2).
- ⁵ B.C. Rules of Court (ROC), Rule 54(3). See *Neutsche Nemelectron GmbH v. Dolker* (1984), 51 B.C.L.R. 162 and *Lornal Construction Ltd. v. Lawrence* (1984), 47 C.P.C. 99.
- ⁶ *Ibid.*
- ⁷ COEA s. 29(3).
- ⁸ ROC 54(6) and COEA s. 34.
- ⁹ For an exhaustive list, see COEA s. 34(2).
- ¹⁰ See *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077 and *Beads v. Saldanha*, [2003] 3 S.C.R. 416 and recently *Uninet Technologies Inc. v. Communication Services Inc.*, 2005 BCCA 114.

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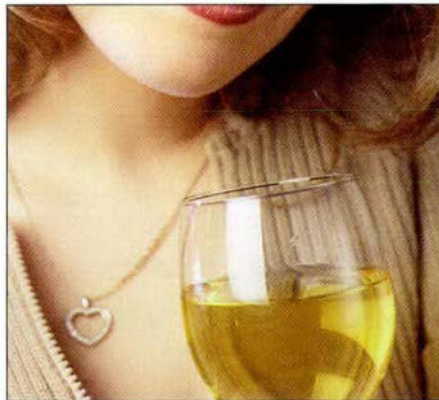
BY ELLEN A. BEGLEY, PH.D.

Research data gathered over the past 20 years suggest that U.S. attorneys struggle with substance abuse more than the general population of the United States. In this article I will focus on one of the more common problematic drugs — alcohol. Estimates for alcohol abuse among attorneys range from 18 percent¹ to 30 percent.² Prevalent studies of alcohol dependence for attorneys include estimates of from 10 to 15 percent³ and 15 percent.⁴ In contrast, estimates for alcohol dependence in the general population range from three to 10 percent.⁵

For attorneys struggling with addictive behaviors, the journey from problematic substance use to abstinence and recovery can be made more difficult by both real and perceived obstacles particular to the legal profession. To the practicing and actively substance-using attorney, concerns about professional reputation, privacy, credibility of work, fear of disciplinary action, and one's status in the inherently adversarial profession of law can make the process of acknowledging a problem and seeking help seem like a personal and professional minefield. While working as a psychologist and addictions specialist in the WSBA Lawyers' Assistance Program (LAP), I have realized how these issues can impede individuals getting the help they need. In this article I hope to demystify the recovery process, address some of the misconceptions and fear surrounding the transition out of active addiction, and provide some of the latest information regarding psychological issues that frequently accompany addiction problems.

With the above concerns in mind, I interviewed two attorneys about their journey from maladaptive substance use to sobriety while maintaining their

careers as attorneys. Both of these individuals volunteer for the LAP, assisting attorneys who struggle with substance abuse and other problems. In this article I will give the story of one attorney who struggled with a number of issues that frequently complicate an individual's path to recovery, including psychological struggles, professional concerns, and apprehension about aspects of the sober-support community. The second attorney's story, which will follow in an upcoming issue of *Bar News*, illustrates the culture of alcohol use among attorneys, the complexity of an attorney dealing with relapse, and the importance of Alcoholics Anonymous (AA).



Caroline's story: "...spending a lot of my time thinking about how to drink."

The first attorney I interviewed was a woman in her mid-50s who started practicing law in the 1980s and has been abstinent from alcohol for 19 years. For this article I have given her the pseudonym Caroline. Caroline first began to wonder if she might be drinking too much in law school. She tried to decrease her alcohol consumption by drinking Diet Pepsi between alcoholic drinks, starting to drink later in the day, eating a lot of food before drinking, and nursing one drink slowly. She noted, "I was spending a lot of my time thinking about how to drink." She knew she drank a lot and wanted to change this, but she did not consider stopping altogether.

During her first job, Caroline was often expected to testify in court, and this "terrified" her. She drank more and more in the afternoon. She was alarmed when she began to consider even more drinking. "I

started to think it would be a good idea to drink in the morning before court. Then I wouldn't be so scared.... I thought alcohol would give me courage." Her coworkers did not notice her increasing alcohol use. Overall, she functioned well at work and her employer gave her positive feedback about her performance. Nevertheless, she had "no confidence" about her work or herself, and was beginning to consider suicide. Depression and anxiety were closing in on her.

Alcohol's impact on Caroline's work performance became more apparent as she began to make personal and professional decisions while under its influence. "I left my marriage and law firm with about five minutes' notice, on the same day." However, the role of alcohol in these impulsive decisions was not clear to her at the time. "I thought I was leaving because of my marriage and because I was in love with another man."

Seeking Help

After suddenly leaving her job, and separating from her husband, Caroline's sister expressed concern that she might lose custody of her four-year-old child. In response to her sister's alarm, Caroline decided to seek out a therapist. "I knew something was wrong but I didn't know it was alcohol. I thought I was crazy." By the second session the therapist told her that alcohol was the problem. Caroline accepted this information readily, as it helped her understand her own inexplicable behavior.

To Caroline, it seemed impossible to work as a lawyer without the sedating effect of alcohol. "I didn't think I could practice because it was too scary to go to court." Initially, she was not particularly concerned about people in law knowing about her ceasing drinking alcohol. However, her therapist expressed concerns about Caroline's privacy. Caroline remembers the therapist saying, "if you go to an AA meeting someone might see your car out there." The therapist recommended she enter inpatient treatment instead. However, already afraid of losing her child, she did not believe she could leave her son for the duration of a program. Instead she found her own path. She did her own readings, found Jean Kirkpatrick's books on recovery, and grew interested in the

sober-support group called Women for Sobriety (WFS). She found a similar group in her area. This local group adapted the principals from WFS but was not officially affiliated with the national group. Of this group, Caroline stated, "I loved it right away." In these meetings, women's issues relating to relationships and sexuality could be discussed openly. She attended weekly meetings for five or six years until the group disbanded.

After the women's group ended, Caroline began to consider attending AA meetings. Her preconception was that AA was a highly religious organization. She is a life-long atheist and did not want to enter any organization that was based in religion. Even with this reservation, she tried AA. Its amazing availability made it worth looking into. As her direct experience of the AA fellowship grew, her concerns about its religious roots were addressed. She grew to believe one's "higher power" can be anything one wants it to be — the group, nature, friends. The overall message for her was: I'm not alone in the world — there are things and people who can help. She became very comfortable with the AA process. No one had a problem with her beliefs, and no one tried to convert her.

Integrating Recovery into Work Identity

After regaining her footing, Caroline returned to work as an attorney. At times she feared bosses would think less of her if they knew she was a recovering alcoholic. In her first new job following her cessation of alcohol use, she did not reveal that she was in recovery. While at a work party the inebriated relative of a coworker kept insisting Caroline have a drink and went so far as to press a drink into her hand. Caroline's response to this awkward situation was: "You know I'm driving home and I'm not drinking," effectively ending the interaction. Over time, she revealed why she did not drink to some colleagues. She discovered that the people she feared would think less of her did not. In fact, after making her recovery status known to her employer and coworkers, she was asked to help a coworker approach a relative about her drinking problem. Ironically, this was the

same person who had previously pressured Caroline to drink at a party. Contrary to her therapist's fear of her being "found out," she never experienced negative consequences related to other attorneys knowing she was in recovery.

Of her current practice, she states, "I'm doing well and I think I'm a better lawyer due to recovery." She feels she knows better how to help others because of her own recovery process. "I don't feel superior to

Definitions

Alcohol Abuse: A maladaptive pattern of alcohol use manifested by recurrent and significant adverse consequences, related to the repeated drinking behavior.

Alcohol Dependence: A cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues use of alcohol despite significant substance-related problems. Physiological symptoms include tolerance or withdrawal.

my clients." Caroline attends one weekly AA meeting for attorneys only. She sponsors others in AA and volunteers to help attorneys struggling with addiction. She has attended her own individual therapy and reads literature related to recovery. She has structured her life in a way that helps her "work on problems I see in myself as soon as I can."

Caroline recalls romanticizing her drinking during her 20s. She identified herself with public figures, artists, and great writers who have also struggled with substance abuse. This may have delayed her realization that she had an alcohol problem. She believes it is important for people who wonder about their substance abuse to seek someone's help to assess it. Of attorneys drinking to cope with the stress of the profession, she says: "They don't realize that all those things they already worried about won't be a problem . . . They won't worry about the missed calls, other mistakes, and of smelling like alcohol. . . They won't have to worry about not making it to the bar if they work late. They won't have to worry about hiding the alcohol they keep at the office." A person won't have to worry about not being in top

form because of being under the influence or recovering from his or her last binge. Caroline's work, which includes public speaking, has been much less stressful since she stopped drinking. "The practice of law gets nothing but easier when you stop . . . There is no aspect that isn't better."

Caroline's story brings up several issues that are often intimately related to alcohol dependence. Caroline discussed her increasing anxiety about public speaking as one of the emerging crises that led her to make dramatic changes in her life and eventually reach out for help. Research indicates that there is a strong relationship between anxiety and alcohol use. There is some controversy about causation, but I will avoid the chicken-and-egg question here (see G. Vaillant's *The Natural History of Alcoholism Revisited* (1995), pp. 77-79, for a succinct discussion). The overall literature points to the fact that (whether or not alcohol is the cause of anxiety, vice versa, or not) once someone has an anxiety

disorder, alcohol is a terrible form of "treatment." Instead, alcohol acts as an avoidance strategy, and avoidance breeds more anxiety. Avoidance in the form of alcohol sedation prevents direct exposure to the feared event and the distressing feelings it generates. Alcohol may seem like a short-term solution, because it temporarily dampens anxiety around the event. However, this prevents the individual from learning that he or she can tolerate being fully present for the event, as well as all the negative feelings and physiological reactions he or she has about that event. Repeated exposure leads to a gradual lessening of the anxiety response over time. In contrast, the person using a substance avoids this exposure, and experiences some short-term relief reinforcing the avoidance behavior and increasing his or her apprehension. All too often, an individual makes the disastrous assumption (as did Caroline) that more and more alcohol is needed to deal with the increasing anxiety. This spiral accelerates the development of both the addiction as well as the anxiety problem, with each feeding the other. Often it is

only after abstinence has been established for an extended period of time that the question of which condition (anxiety or addiction) is primary can be answered.

During the height of her alcohol use, Caroline experienced profound loss of confidence and thoughts of suicide — strong indicators of depression. Chronic alcohol use more often creates depression rather than depression leading to more alcohol use (Vaillant, pp. 80-85). Furthermore, there is alarming evidence of a connection between alcohol dependence and suicide. Consider that 25 percent of suicides are committed by people with alcohol dependence, and an estimated seven to 15 percent of alcoholics commit suicide. In summary, alcohol use simply makes anxiety and depression worse, sometimes with fatal results.

Caroline's story illustrates many of the issues that I often hear from individuals struggling with substance abuse. Her effort to find help exemplifies the highly individual nature of a person entering recovery. Caroline sought support particular to her needs related to her gender, psychological issues, and profession. She made good use of a range of tools — individual therapy, a women's sober-support group, and a 12-step meeting exclusively for attorneys. ✍

Ellen A. Begley, Ph.D. is a clinical psychologist currently working as the addictions specialist for the WSBA Lawyers' Assistance Program.

NOTES

¹ Benjamin, Darling, & Sales, "The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers," 13 *International Journal of Law and Psychiatry*, 233-246 (1990).

² Frances, Alexopoulos, & Yondow, *Lawyers' Alcoholism: Alcohol and Drug Abuse in the Affluent*, Barry Stimmel, M.D. ed. 59-66 (1984).

³ *Ibid.*

⁴ Drogin, E., "Alcoholism in the Legal Profession: Psychological and Legal Perspectives and Interventions," 15 *Law & Psychology Review* 117, 127 (1991).

⁵ Schuckit, M., *An Introduction to Diagnosis and Treatment of Alcoholism*, Alcohol Medical Scholars Program (2000).

Support Resources for Attorneys in Washington State

The WSBA Lawyers' Assistance Program (LAP) offers individual therapy and referral services for addiction problems and other mental health issues. LAP office: 206-727-8268. Addiction specialist Ellen A. Begley, Ph.D.: 206-733-5988.

Abstinence-Based Sober-Support Resources

The following are some abstinence-based, nonprofit organizations that offer support to those struggling with addictions. They each offer a unique philosophy for achieving a sober, healthy life. This list is intended to give a sampling of the range of options available to individuals.

Alcoholics Anonymous (AA): 509-758-2821, www.alcoholics-anonymous.org. AA is the most established, accessible, and prevalent sober-support organization in the world, and originated the 12-step method more than 60 years ago. In addition to the many meetings officially listed, there are many unofficial meetings for particular sub-groups such as attorneys, doctors, professionals, gay/lesbian/transgendered individuals, specific race/cultural groups, and others.

Narcotics Anonymous (NA): www.na.org. NA applies a 12-step program and AA structure to help those attempting to stop the use of drugs of any kind. Derivatives of NA include Cocaine Anonymous, Marijuana Anonymous, and others.

Women For Sobriety (WFS): www.womenforsobriety.org. WFS is the first national self-help program for women alcoholics. Started in 1976, it is well-established and has a spiritual component.

Non-Religious Sober-Support Resources

LifeRing Secular Recovery: 510-763-0779, service@lifering.org. Started in 1985 (formerly known as Secular Organization for Sobriety), LifeRing encourages the use of reason and the scientific method to understand alcoholism. It focuses on prioritizing sobriety above everything else.

SMART Recovery: 440-951-5357, www.smartrecovery.org. Facilitated support groups that offer cognitive behavioral tools to abstain from alcohol and other drugs.

Religious/Spiritual Sober-Support Resources

Alcoholics for Christ: 800-441-7877, www.alcoholicsforchrist.com.

Jewish Alcoholics, Chemically Dependent Persons and Significant Others (JACS): 212-397-4197, www.jacsweb.org.

White Bison/Wellbriety Movement: 719-548-1000, www.whitebison.org (Native American spiritual focus).

Buddhist 12 Steps: www.buddhist12steps.com.

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Putting Professional Ideals into Practice

ProBono Publico Services by WSBA Members in 2004

BY ANDREW A. GUY

Kudos! Let's hear it for the lawyers whose names are listed in this issue of *Bar News* as recipients of the WSBA recognition award for contribution of 50 or more hours of *pro bono publico* services in 2004. Think of the clients they helped. Think of the impact their unselfish contributions made to our communities and to the profession. An ovation is appropriate. Each of these volunteers also will be receiving a personalized recognition certificate issued by the WSBA.

2004 was the second year that a form for reporting *pro bono publico* services was included in the WSBA's annual licensing materials, as provided in RPC 6.1, the *pro bono publico* rule. That rule, as amended in 2003, was patterned after the ABA's model rule 6.1, which has been adopted in some form by at least 16 states. The amended rule proclaims that it is the professional responsibility of each WSBA member to assist in providing legal services for those unable to pay, and establishes an aspirational minimum goal of 30 hours of *pro bono publico* services each calendar year. It provides for the voluntary reporting of *pro bono publico* service hours to the WSBA in the annual licensing materials, and for a recognition award to be presented by the WSBA to those who report 50 or more *pro bono publico* hours during the preceding calendar year. (A copy of the rule is printed at the end of this article for easy reference.)

What the Numbers Show

Because reporting is voluntary, it is likely that other lawyers contributed substantial *pro bono publico* services last year and

chose not to keep track of the hours or to report them to the WSBA. That, of course, means that the statistics obtainable from the reporting forms most likely underestimate the total hours of services rendered by Washington lawyers.

Although data collected over just two years are not sufficient to show meaningful trends, a review of the two years of reporting history reveals some interesting information. Figure 1 shows comparative numbers

limited means, or organizations in matters designed primarily to address the needs of persons of limited means.)

The ratio of reported RPC 6.1(a) service hours compared to the total *pro bono publico* hours reported each year held steady at approximately 13 percent each year. The number of members reporting 50 or more *pro bono publico* hours increased by 284 — 23 percent higher than 2003. However, the number reporting between 30 and 50

hours declined by 19, representing a three percent decrease from 2003.

Types of Services Performed

Comments from respondents on the completed 2005 forms indicate that lawyers provided free legal services in a number of settings and through a wide variety of legal services providers and *pro bono* client referral sources. These included legal clinics providing help in the areas of family law, elder law, and immigration law. Specific programs identified included Clallam County

Pro Bono Lawyers, King County Bar Association's Housing Justice Project, Snohomish County Legal Services, the Northwest Center, the Northwest Justice Project, the NAACP, the Red Cross, the Court Appointed Special Advocate (CASA) program, Chaya, Northwest Women's Law Center, the Eastside Legal Assistance Program, the Unemployment Law Project, Alaska Legal Services Corporation, the Northwest Immigrant Rights Project, and Habitat for Humanity.

Members also reported that they had provided *pro bono* representation to clients

Figure 1	2004	2003
Total hours reported	236,098	202,900
6.1(a) hours reported	124,068	107,823
6.1(b) hours reported	112,030	95,077
Percentage of 6.1(a) hours to total hours	53%	53%
Total number of WSBA members	28,953	28,043
Number of members reporting	3,743	3,678
Percentage of membership reporting	13%	13%
Number of members reporting 50-plus hours (including anonymous members)	1,531	1,247
Number of members reporting 30-50 hours	713	732
Total meeting or exceeding goal	2,244	1,979
Number of anonymous members reporting 50-plus hours	458	177

from each of these years.

The table shows that approximately the same number (roughly 3,700) and percentage (13 percent) of WSBA members chose to report their time in both 2003 and 2004. The total *pro bono publico* hours reported in 2004 was 33,198 higher than the number reported in 2003 — a 16 percent increase.

Significantly, the number of reported RPC 6.1(a) service hours increased by 16,245 in 2004, or 15 percent over the number reported in 2003. (RPC 6.1(a) services are free legal services provided to persons of

in cases involving family law, criminal law, and civil rights, and engaged in alternate dispute resolution, including a mediation involving the tent city for homeless persons in Seattle.

Activities reported under RPC 6.1(b) included representing theaters and other community nonprofit organizations, serving as a member of the Access to Justice Board, writing sections in legal deskbooks, and participating in law school mock trials.

Comments on the form also indicated that, in addition to Washington, services were performed in or benefited people or organizations located in California, Oregon, Alaska, and Colorado.

What's Wrong with This Picture?

The statistics are fine as far as they go, but a nagging question arises from reviewing them: Why are only 13 percent of WSBA members reporting their *pro bono publico* hours?

The WSBA's *Pro Bono* and Legal Aid Committee was hoping that the number of members reporting *pro bono publico* services in 2004 would increase significantly, as RPC 6.1 just became effective in September 2003. That effective date, being rather late in the calendar year, did not give lawyers or firms a lot of time to compile information for the first annual reporting period, which ended on December 31, 2003. However, as noted above, the number of lawyers reporting remained roughly the same, and the percentage of the WSBA membership reporting stayed at 13 percent each year. Why?

Cynics might respond to this question by suggesting that only 13 percent of WSBA members are actually rendering *pro bono publico* services. Surely, that isn't the case, and other factors are at play. For example, comments placed on a few of the reporting forms indicate that some members simply resist the concept of reporting *pro bono publico* hours, even on a voluntary basis. Another likely reason is that most of us don't like to complete forms and skip the ones we can avoid. Or we don't keep track of *pro bono* service hours expended with the same rigor as hours that are going to be billed, so we don't know how many hours to report. Also, some lawyers and firms do not have billing codes that correspond to the categories of matters reportable under RPC 6.1, so at the end of the year it becomes a challenge to compile all of the time spent

on *pro bono* matters during the course of that year. Even the firms that do have a "pro bono" and/or a "civic and charitable" billing code in their time-accounting systems may include matters that are outside of the RPC 6.1 definition of *pro bono publico* services or do not distinguish between the particular types of services described in RPC 6.1(a) and (b), respectively.

To facilitate tracking and reporting *pro bono publico* services, the *Pro Bono* and Legal Aid Committee encourages lawyers and organizations where they practice (including firms, government agencies, corporate in-house law departments, etc.)

to do the following:

1. Record the time spent in *pro bono publico* service. Don't fail to record it merely because it isn't billable.
2. Implement a system to track *pro bono publico* hours in a way that distinguishes between those services described in RPC 6.1(a) and 6.1(b), which will make reporting RPC 6.1 hours a snap.

Why Report?

Having more comprehensive data regarding the *pro bono publico* services WSBA members contribute on an annual basis

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should help improve the public image of Washington lawyers. It will also help the WSBA recognize all those — including the currently unsung — members who are upholding the standards of our profession and performing *pro bono publico* services. In addition, broader statistics will assist the WSBA, the Access to Justice Board, and other organizations in planning future programs designed to meet the civil legal needs of low-income persons.

Getting Your Name on the Recognition List

RPC 6.1 prompts each of us to assess at least annually what we are doing in the way of

“service for the public good.” We need to ensure that we are meeting our professional ethical responsibility to provide such services. There remains a tremendous unmet need in our state, with some 70 percent of those needing legal help in civil matters in Washington not receiving it because they can’t afford a lawyer. We need more lawyers to perform more *pro bono* services for persons of limited means.

For lawyers who aren’t performing *pro bono* work at all, it is time to start doing it. For those who are performing less than 50 hours per year, the recognition award should provide some incentive to move up to that level of service. If your name doesn’t

appear on the recognition list this year, make sure it does next year.

How? There are many avenues to finding meaningful and worthwhile *pro bono* work. Any attorney who wishes to assist *pro bono* clients through one of the legal services organizations designated by the WSBA as “qualified legal services providers” may contact Sharlene Steele, WSBA access to justice programs liaison, at 206-727-8262, or sharlene@wsba.org. She will find a program that is right for you.

Congratulations again to those receiving the recognition award for performing 50 or more *pro bono publico* services in 2004. And here’s hoping that the list will be substantially longer next year. ✍

Andrew A. Guy is the chair of WSBA Pro Bono and Legal Aid Committee and can be reached at aaguy@stoel.com.



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Douglas Weinmaster, J.D.

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Washington Rule of Professional Conduct 6.1

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

(a) provide legal services without fee or expectation of fee to: (1) persons of limited means or (2) charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

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OPPORTUNITIES FOR SERVICE

Practice of Law Board**Application deadline: June 24, 2005**

Four positions on the Practice of Law (POL) Board will be up for appointment effective September 2005 for three-year terms. At least one of these appointments must be a nonlawyer. Persons interested in seeking nomination by the Board of Governors for appointment to the POL Board should submit letters describing their background and qualifications for Board membership to Practice of Law Board, 2101 4th Ave., Ste. 400, Seattle, WA 98121-2330. Applicants should have a demonstrated commitment to the POL Board's purposes as set out in General Rule 25. Members of the POL Board are not compensated for their services, but are reimbursed

for necessary expenses consistent with the policies of the WSBA. The Board sets its own meeting schedule, and currently meets the second Friday of each month. Please submit letters seeking nomination by June 24, 2005. More information is available at www.wsba.org/practiceoflawboard, or contact POL Board Administrator Julie Shankland at julies@wsba.org or 206-727-8280.

Supreme Court Ethics Advisory Committee**Application deadline: August 26, 2005**

The WSBA Board of Governors will be nominating one member who is appointed by the Supreme Court to serve a two-year term on the Ethics Advisory

Committee commencing November 1, 2005. A written expression of interest and a résumé are also required for any incumbent seeking reappointment.

The Committee is designated as the body to give advice with respect to the application of the provisions of the Code of Judicial Conduct to officials of the Judicial Branch as defined in article 4 of the Washington Constitution and shall from time to time submit to the Supreme Court recommendations for necessary or advisable changes in the Code of Judicial Conduct (GR 10).

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

Spokane Nonprofit Attorney Andrea Poplawski Receives Myra Bradwell Award

The Gonzaga University School of Law Women's Law Caucus has presented its 13th Annual Myra Bradwell Award to **Andrea Poplawski**, a Gonzaga University Law School alumna and Spokane attorney dedicated to providing access to justice for low-income women and children. Poplawski is an attorney with the Center for Justice, a Spokane nonprofit law firm dedicated to helping low-income individuals access legal services. The award is presented annually to an outstanding alumna of Gonzaga Law School in honor of Myra Bradwell who, in 1872, was denied the right to practice law on the basis of gender.

WSBA Sections to Contribute to Student Loan Repayment Assistance Program

Several WSBA sections will be contributing money to the newly established Student Loan Repayment Assistance Program (LRAP). Many thanks to the **Administrative Law** Section contributing \$1,500, the **Family Law** Section giving \$1,000, and the **Labor and Employment**

Law Section donating \$2,500. The LRAP was established last year to offer loan-repayment assistance for WSBA members in public- or legal-service jobs and will be administered through the Washington State Bar Foundation. The LRAP hopes to begin accepting applications later this year. Please check the WSBA website and *Bar News* for updates. Other groups interested in contributing may contact Paula Littlewood at 206-239-2120.

IRS Announces Changes Affecting Insolvency Cases

Effective June 13, 2005, the IRS will be assigning all Chapter 7 no-asset cases (filed after March 13, 2005) and post-confirmation Chapter 13 cases for Washington, Oregon, Alaska, Hawaii, Idaho, and parts of Northern California to the Philadelphia campus. Payments for these cases should be sent to P.O. Box 21125, Philadelphia, PA 19114. All other correspondence should be sent to P.O. Box 21126, Philadelphia, PA 19114. Payments for Chapter 11 cases should continue to be sent to the local offices. A call center has been established and can be reached at 800-913-9358 from 4:00 a.m. to 7:00 p.m. Pacific time. For more information,

contact Matt Armony at 503-326-6666.

King County Bar Association Elects New Officers

The King County Bar Association has elected new officers and members of the Board of Trustees for terms beginning July 1, 2005. **Gary A. Maehara** was elected president; **John R. Ruhl**, first vice president; **Eileen M. Concannon**, second vice president; **James A. Andrus**, treasurer; and **J. Mark Weiss**, secretary/trustee. New Central District trustees elected to three-year terms are **Andrew W. Maron** and **L. Song Richardson**; the South District trustee is **Mark J. Hillman**; and the new East District trustee is **Loretta S. Story**.

CLE Publications Announces 2005 Member Appreciation Online Summer Sale

Shop the WSBA-CLE online store beginning July 18 through July 29 for great discounts on audio seminars, coursebooks, and deskbooks. Stock up on A/V credits for your MCLE reporting and expand your practice library. Visit the online store at www.store.yahoo.com/wsbastore

and choose from dozens of titles on sale — in a variety of practice areas — and at substantial discounts!

Just Released — The 2003-2004 Case Law Update: Bankruptcy Case Law Digest for Washington State (3d ed.)

WSBA-CLE Publications and the WSBA Creditor-Debtor Section proudly present the long-awaited 2003-2004 case law update to this valuable resource. This two-volume set with searchable CD contains summaries of bankruptcy cases (U.S. Supreme Court, 9th Circuit Court of Appeals, 9th Circuit BAP, 9th Circuit District Courts, and the Washington Bankruptcy Courts) from 1996 through 2004, with a linked topical index, case list, code, and rules. The Digest is published by the Creditor-Debtor Law Section and the WSBA. To order, go to www.wsba.org/lawyers/groups/creditordebtor/bankruptcy_digest.htm or call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

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. For more information or to receive a brochure, contact Sharlene Steele, 206-727-8262, sharlenc@wsba.org (Access to Justice Conference); or Jerri Ninesling, 206-727-8239, jerrin@wsba.org (Bar Leaders Conference). The brochures are also on the WSBA website at www.wsba.org.

Senior Attorneys Discussion Group — A Matter of Connection

The group is meeting on a quarterly basis this year. If you're interested in an early-September meeting, please contact Jenny Favell, Ph.D., 206-727-8267.

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 al-

ternative 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/directory/Register-drPro.cfm.

Job Seekers Discussion Group



Looking for a job or making a transition? Join the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The group discusses where to look for jobs, how to use your network of contacts, strategies for résumés and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. For more information, contact Rebecca Nerison, Ph.D., at 206-727-8269 or rebeccan@wsba.org.

Computer Clinic



The 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, July 11, 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 May 2005 was 3.177 percent. The maximum allowable interest rate for June is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988 to June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

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 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.

Upcoming Board of Governors Meetings

June 2-3 — Bellevue
July 29-30 — Bellingham
September 15-16 — Seattle

With the exception of a one-hour executive session the morning of the first day, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required.

Please contact Donna Sato at 206-727-8244 or donnas@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

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.

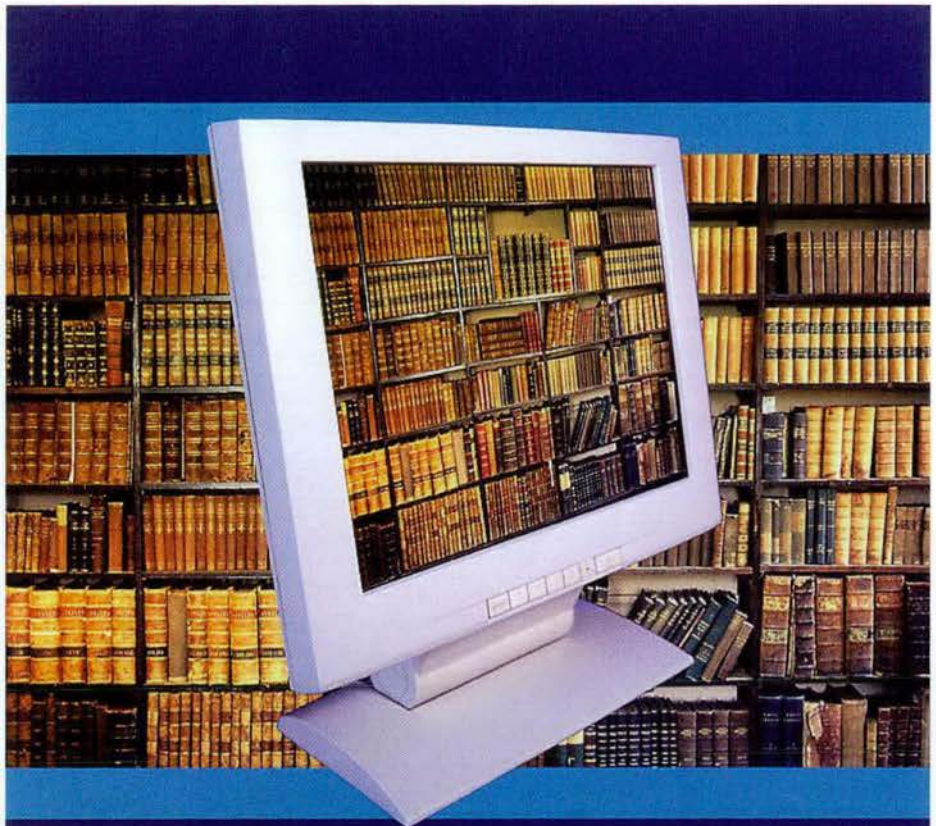
Visit the WSBA Online Store

Go to www.wsba.org and click "WSBA Store" in the left navigation bar to purchase Cutter & Buck polo shirts, 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; ballpoint pen — \$12; luggage tag — \$7. Prices include shipping and handling. Sales tax (8.8 percent) will be added to orders shipped within Washington.

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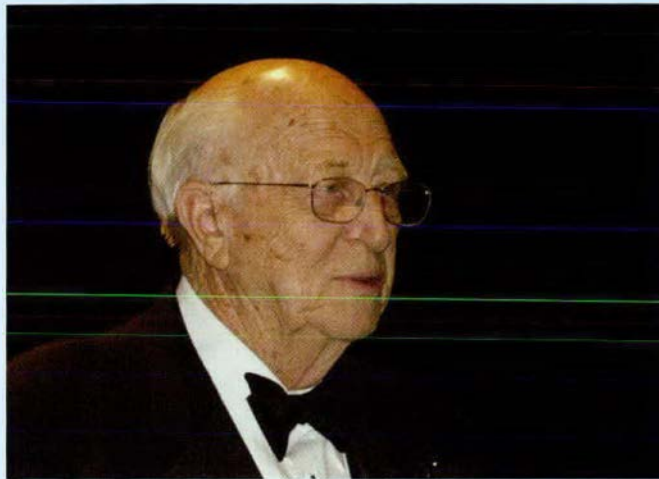
The WSBA Law Office Management Assistance Program (LOMAP) office maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff are available to provide materials, answer questions, and recommend options. To make an appointment, contact Pete Roberts at 206-727-8237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



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William Gates and James Ellis Honored by *The American Lawyer Magazine*

Prominent Seattle attorneys **William Gates** (left) and **James Ellis** (right) are featured in the May issue of *The American Lawyer* as recipients of the Lifetime Achievement Award. This is only the second time in its history *The American Lawyer* has awarded the honor, which Gates and Ellis received March 30 in a gala event at the Waldorf-Astoria in New York City. Recipients of the Lifetime Achievement in the Law Award are leaders who contribute both professionally and personally to their community. Gates, now retired, is active as the co-chair of the Bill & Melinda Gates Foundation. Ellis made his mark as a stalwart civic activist in his efforts to provide for Seattle's citizens.



Pictured are (front row left to right) Stephanie Henderson, Judge Amber Finlay, Judge Jim Sawyer, Judge Victoria Meadows, Judge Toni Sheldon, and Stephen Henderson, and second row left to right are Mason County Bar Association President Jeanette Boothe, Ben Settle, Rob Wilson-Hoss, and Jim Hungerford.

Professional Committee Members Visit Shelton

On May 9, WSBA Professionalism Committee members (and father and daughter team) **Stephen Henderson** and **Stephanie Henderson** visited Shelton, where a Creed of Professionalism plaque presentation ceremony was held. Steve, a former member of the WSBA Board of Governors, said: "I pretty much started off my practice in Mason County and learned the ropes there for the first three years from 1975 to 1978. The day of the plaque ceremony was my 30th anniversary of being sworn in as a lawyer so it was special to do this event with my daughter." Stephanie, currently serving as a WYLD trustee, talked about how important the Creed is to the young lawyers as a symbol of appropriate behavior.

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The Board's Work

BY LINDSAY THOMPSON

Spokane, April 22, 2005

Another short meeting. Changes in the agenda resulted in the usual Saturday morning session being dropped entirely. But it's always fun to go to Spokane: lots of construction downtown, people moving back into town, interesting stuff going on. Thanks for the Get Lit literary festival in nearby Cheney (Seattle hasn't been able to come up with anything remotely like it in quality of programs and caliber of guest speakers, ever); writer David Sedaris and former NPR anchor Bob Edwards were in town.

Sadly, President **Ron Ward** wasn't, having been felled a few days earlier by a gallbladder attack that required surgery. President-elect **Brooke Taylor** presided over the Spokane meeting, reporting that President Ron emerged in fine fettle and will be back on the job after a week or so's rest.

Originalism vs. The Living Evidence Code: Court Rule Committee Chair **David Swarling** brought the BOG a policy question his group has been pondering: Have the comments to the Evidence Code become outdated since they were adopted in 1979? Should they, therefore, be deleted? Six members of the committee wanted to keep them, 10 didn't. Some thought case law is sufficiently well developed and easy to find, that they aren't needed any more.

The question spurred a lively debate that ran about 40 minutes. There were motions and amendments and motions to table and a fine time was had among the parliamentarians in the group. In the end, the Board decided this is the sort of question on which member input ought to be sought, and deferred further consideration to their June meeting. In the meantime, you can read more about the proposals on the WSBA website, www.wsba.org/lawyers/groups/courtrules.

Circuit breakers: Of the making of proposals to split the 9th U.S. Circuit Court of Appeals there is no end, it seems. The Board heard the pros and cons of doing it (there are two bills in Congress, one to split it two ways; the other, three) from Spokane

attorney **Les Weatherhead** (con), federal judge **William Fremming Nielsen** (pro), and federal judge **Robert H. Whaley** (con). Each side wanted the BOG to adopt a resolution supporting his position.

General Counsel **Bob Welden** minuted the Board on past actions on the subject. In 1971, they voted to support a proposal by Judge **Eugene Wright** to create a new circuit headquartered in Seattle. In 1982, the Board voted unanimously to support legislation by Senator **Slade Gorton** to create a new Northwest Circuit, and declined, a month later, to reconsider, 5-3-1. The last time the matter came up was in 1989, when Senator Gorton and Judges **Betty Fletcher** and **James Browning** debated the idea before the BOG. They voted 6-4 to retain their previous position that time.

Fifteen years on, the arguments



haven't really changed. Those who want to break up the Circuit say it's too big, too liberal, and too slow. Opponents say no it isn't; the Circuit works well and efficiently; and a split circuit would still result in a massive California Circuit, would likely force the creation of an intermediate court below the Supreme Court to harmonize decisions of so many circuits, and that it would cost a hundred million dollars to break up the 9th.

Attorney Weatherhead posed an interesting idea: Instead of arguing the 9th Circuit is too big, maybe we ought to wonder if some of the other, more eastern circuits are too small. Maybe we have too many, not too few, he added. Governor **Katie O'Sullivan**, who drew on experience of clerking at the D.C. and 9th Circuits, drew some interesting comparisons on law life on each coast and noted that in 1989, then WSBA Governor **Ron Gould** favored a split, citing his clerkship in the

smaller, more collegial 6th Circuit. Now, O'Sullivan commented, Judge Gould sits on the 9th Circuit and opposes the split, as do most of the rest of the judges.

Running through the discussion was a meditation on the acrimonious debates in Congress on a federal judiciary run amok, and whether the split-up bills are payback for things like the Pledge of Allegiance decision. Opinions differed on that as well, but in the end, governors' opinions seemed to coalesce around the idea that with so much background noise in the national debate, now's not the time to do something as dramatic as splitting the Circuit. They voted, unanimously, to oppose a split. President-elect **Brooke Taylor**, presiding, chuckled and told the gathering, "It's not very often I get to tell two federal judges when they can talk and how long."

Process, we've got process: Seattle U. law professor **John Strait** and Spokane County Deputy Prosecutor **Steve Garvin** appeared before the Board to ask for a waiver of a BOG rule that WSBA sections can't take positions contrary to a Board decision without getting advance approval. The requirement is intended to keep the Bar Association speaking with one voice on things like court rule changes, and making sure if there is going to be a difference in views, everyone knows about it.

Strait and Garvin appeared for the WSBA Criminal Law Section executive committee. They wanted to comment to the Supreme Court on a change to RPC 8.3, approved by the BOG last year as part of the omnibus revision of the Rules of Professional Conduct, requiring lawyers to report misconduct by opposing counsel when they see it. The change was made in an amendment offered by former Governor **Jon Ostlund**. Adopted, it overruled the recommendation of the Ethics 2003 Committee to leave the rule discretionary.

Strait told the BOG his group was concerned that in the criminal law arena, where passions run high and many of the lawyers are relatively new, a mandatory misconduct reporting requirement would likely be used as a gotcha tool against each other. Garvin said he'd seen that sort of thing in California, where he worked before moving north. Strait argued that

the section relied on an understanding that the ethics recommendations would be adopted as presented by the committee, and since the amendment of this rule came from a governor on the floor of a BOG meeting, they were shut out of an opportunity to comment.

A fairly lengthy roundtable discussion followed. Although the question was whether to grant the exemption, much of the comment seemed to gravitate back to the merits of the rule itself. It became apparent that some governors would have liked a chance to rethink their vote on the merits. Others thought the Section had been well wired into the drafting process and could have commented plenty. Strait replied, well, we didn't on this because when it came to you it reflected our position, but it came out the opposite, so how could we?

In the end, the BOG voted 9-5 to let the executive committee comment on the rule to the Supreme Court. Some governors indicated a desire to formally reconsider the reporting requirement at the next meeting, but others pointed out that by then the Supreme Court's comment period will have closed, so what good will it do if we take a contrary position? That question went unanswered, and there the matter lies.

Former Governors **Jon Ostlund** and **Bill Hyslop** of Spokane then gave the BOG a report on the work of the Committee on Public Defense, a new body intended to rationalize the public-defense system in Washington. The report was informational; since the committee is at an embryonic stage there's not much concrete to tell here, and now.

Gotta start somewhere: Breaking for lunch, the BOG had one of its "listening lunches" with a handful of Spokane County Bar members and leaders to find out what sorts of issues there are, if any, in terms of the diversity of their Bar membership, and how bias issues may impact lawyers' ability to thrive in practice in the region. The past and current presidents of the County Bar spoke, as did two Hispanic students at Gonzaga Law School. **Bill Maxey** summarized the arrivals and contributions of members of various ethnic groups in the county's legal culture,

and President-elect Taylor subbed some remarks for President Ward.

All in all, it was an interesting and informative meeting, but it would have been nice to have more local lawyers there.

Olympia wrap up: Legislative Liaison **Gail Stone** reported to the Board by telephone, as the Legislature was breathing heavily against a goal of adjourning on time and was therefore likely to be putting in long hours over the weekend. Because the budget hadn't been passed, the question of funding for legal services was up in the air. WSBA-sponsored bills fared well this session, Stone said.

The president-elect of the Washington Defense Trial Lawyers Association gave the Board what-for over what he felt was insufficient process in the BOG's taking of decisions on the various tort reform



measures in the Legislature this year. Not hardly, several members responded, recounting how they'd bent over backwards to process the thing to death, but when things move fast, sometimes you gotta just decide and move on to the next thing.

The colloquy was inconclusive, as debates about tort reform always are. You're on one side, or you're on the other. It's a cat vs. dog issue, endlessly debated, ultimately irresolvable, and remarkably divisive.

A hard-working group hang up their hats: The next item was a hearty thanks for former Governor **Joe Nappi Jr.**, who, having chaired WSBA's Member Benefits Task Force the last four years, bringing a variety of insurance products to members, recommended that the task force be disbanded. There were congratulations all around for a job well done, and Nappi was given an award by the board for his service leading the task force.

A mid-afternoon snack of more

process: Governor **Mark Johnson** presented the results of another task force, one charged with codifying the operating rules of WSBA's Character and Fitness Committee. It's where applications for admission — or readmission — go when either appears problematic. Johnson told the Board the committee's rules have been a bit like the English Constitution — a random collection of memos and decisions and the institutional memory of a few people who handle those sorts of cases, and could result in similarly situated people getting opposite results from the committee on the same day. The task force's goal was to produce the best set of rules of their type in the United States, and after some discussion the BOG voted to postpone action to no sooner than July and to make the proposed rules available to members.

Money: Treasurer **Joni Kerr** presented a request from the Business Law Section to overspend its budget via a \$40,000 tap on its reserves. They want to produce an RCW sourcebook. Good idea, the BOG agreed. Kerr also presented two information technology projects to help finish the upgrade of WSBA's computer and data systems. The \$90,000 cost would come from about \$900,000 that has already accrued in savings as a result of the modernizations to date. Everything passed unanimously.

WYI.D update: Young Lawyers Division President **Steve Marsalis** gave the Board a 10-minute update on their work, which continues, as usual, in a hundred directions at once, and always productively.

More mandatory ideas: An idea championed by General Counsel **Bob Welden** is to require WSBA members to disclose in some manner whether they have professional liability insurance. The thought is that this will assist the public in choosing lawyers. A draft rule to that effect was floated, but the discussion hung up over (1) "What, another mandatory thing?" and (2) what form(s) the disclosure requirement might take. Visions of large and tacky disclosure language on one's letterhead began forming in some minds. It got tabled for another day.

And that's it for Spokane. I'm outta here. ☺

Bradley T. Jones

Known for his sharp mind and infectious sense of humor, Bradley Jones was a founding partner of the Howe, Davis, Reese & Jones law firm — now known as Davis Wright Tremaine — retiring in 1990 after 38 years of practice.

Jones graduated from the University of Washington School of Law in 1941, and then joined the firm he would call home for the rest of his legal career. He married (having turned down a Rhodes Scholarship) and later shipped off to the Pacific to serve with the U.S. Army in World War II. After the war, he moved to Mount Vernon with his family to serve as vice president of Pictsweet Foods, then returned to his law firm in 1956. He served as president of the Seattle-King County Bar Association, and later the Washington State Bar Association from 1980-1981.

Jones's practice focused on business law, and many of his clients were in the food-processing and building-materials industries.

"He was a professional's professional," said Jim Judson, his former law partner. "He was good at bringing in clients and exercising good judgment. He was recognized by his peers as a quality lawyer and a quality person."

At his retirement dinner, Jones reminisced about his legal career, and said what he remembered most fondly were not the intricacies of the deals made or victories won, but the lasting relationships he had built with his colleagues and clients.

"He instilled in me the understanding that the client comes first," said attorney Parry Grover, to whom Jones was both a friend and a mentor. "As long as you're behaving ethically you can't go wrong. That's what he instilled in the young lawyers around him."

Jones is survived by two sons, Tyler and Robert; a daughter, Carolyn Dewald; and five grandchildren. His wife, Phyllis, preceded him in death.

Bradley Jones was born in South Dakota, June 24, 1917, and died April 8, 2005, aged 87.

Michael H. Rosen

Graduating from Fordham Law School in 1964, Michael Rosen couldn't wait to leave

New York, and moved to Seattle the same day he took his final law school exam, where he lived the rest of his life.

Rosen spent the summer of 1965 working for the civil rights group Lawyers Constitutional Defense Committee in Jackson, Mississippi, and later as a staff attorney and then executive director of the American Civil Liberties Union of Washington.

Rosen cofounded the Abused and Betrayed Children's Defense and Education Fund (ABCDEF). Partially funded by his own lawyer fees, ABCDEF supported projects that aided and protected the rights of abused women in Washington state.

Rosen is survived by his wife, Annie; his brother, Kenneth; two sons, Darrek and Joshua; his daughter, Caitlin; and two grandchildren. The family asks that tax-deductible donations be sent to the ACLU of Washington Foundation: 705 Second Ave., Ste. 300, Seattle, 98104.

Michael Rosen was born in New York City, June 6, 1938, and died April 19, 2005, aged 66.

Kim C. Pflueger

Kim Pflueger, a devoted family man, displayed a passion for the little joys in life — listening to music, tending his garden, maintaining his ever-expanding wine cellar, and, most of all, riding his beloved Vespa on sunny days.

Pflueger, a graduate of the Yale School of Forestry and Environmental Science and the University of Washington School of Law, was a partner with Floyd & Pflueger.

Pflueger is survived by his wife, Virginia; his two sons, Max and Nathan; his mother; his sister, Joan Strentz; and many beloved friends and colleagues. Remembrances may be made in Pflueger's name to establish a memorial fund at the University of Washington School of Law. Send to: Floyd & Pflueger, P.S., 300 Trianon Building, 2505 Third Ave., Seattle, 98121.

Kim Pflueger was born in Ortonville, Minnesota, February 2, 1954, and died on April 8, 2005, aged 51.

Russell A. Austin Jr.

Russell Austin Jr. was born in Seattle, March 4, 1930, and died on February 12, 2005, aged 74. He is survived by his wife, Barbara Ann Fortnum.

George A. Ferrell

A graduate of Benjamin Franklin High School in Portland, Oregon, George Ferrell received his Bachelor's degree from Portland State University in 1984 and graduated *magna cum laude* from the University of Puget Sound Law School (now Seattle University) in 1989.

Ferrell was a partner at Bogle & Gates and later at Dorsey & Whitney. In 2001, Ferrell opened his own practice, George Ferrell, P.C. He had served as an adjunct professor at Seattle University School of Law since 2000. Ferrell loved golf, cycling, music and art, and spending time with his family. Donations may be sent to the George A. Ferrell Memorial Fund at the American Heart Association, 1280 S. Parker Rd., Denver, CO 80231, or visit www.americanheart.org.

Ferrell is survived by his wife, Sung Mi "Tracy" Ferrell; his mother, Gloriosa M. Ferrell; sisters, Ann Franze, Bryce Brendle, and Melinda Smith; and his brother, Stephen Elliott.

George Ferrell was born in Klamath Falls, Oregon on June 8, 1962, and died April 20, 2005, aged 42.

Howard E. Phillips

Howard Phillips attended the University of Washington and received his teaching degree from State Normal School in Cheney. He became a teacher with the Okanogan School District in 1926, where he taught in a two-room schoolhouse in Riverside and coached the basketball team.

Phillips received his J.D. from Gonzaga Law School in 1934, returning to Odessa that same year to open his law practice, eventually serving as prosecuting attorney for Lincoln County from 1939 to 1943.

Working with the late Washington State Senator W.C. Raugust, Phillips helped establish the Odessa Veterans Memorial Hospital, one of the first rural hospitals in the state and the first in the Inland Empire. He retired in 1987, after practicing law for more than 50 years.

Phillips was preceded in death by his wife, Juanita, and their children Neal and Sandra. He is survived by their remaining children, Suzanne Huff, Nancy Burris, Kathleen Kennell, and Ned Phillips.

Howard E. Phillips was born in Odessa on July 14, 1907, and died on November 30, 2004, aged 97.

John L. Valentine

John Valentine was born on February 18, 1945, and died on March 18, 2005, at Johns Hopkins Weinberg Cancer Center in Baltimore, Maryland. He is survived by his wife, Cleosa, two sons, two daughters, two grandsons, three brothers, and 10 sisters. Memorial contributions may be made to the Multiple Myeloma Research Foundation, 51 Locust Ave., Ste. 201, New Canaan, CT 06840.

Harvard Palmer

At Broadway High School in Seattle, Harvard Palmer's rich bass singing voice made him one of the more popular singers in the Broadway A Capella Choir, and later became an instrument that could intimidate business adversaries.

Despite winning accolades for his singing, Palmer decided to pursue the law, and graduated from the University of Washington Law School in 1940. He got his first job working for the law firm of Falknor, Emory & Howe on bank-related cases, and later joined the trust division of Seattle First National Bank. In 1970, he left the bank to become vice president of Clise Properties.

Palmer was a dedicated family man and sailor who felt most at peace working on his boats. He is survived by his sons, Harvard Jr. and Greg. His wife of 50 years, Gertrude, preceded him in death.

Harvard Palmer was born in Carlinville, Illinois, on September 17, 1914, and died on April 15, 2005, aged 90.

Alfred J. Bianchi

The son of Italian immigrants and an attorney for more than five decades, Alfred Bianchi's roots were deep in Seattle's Italian community, and he was a minor celebrity in the city's legal circles. Bianchi could have lived anywhere in Seattle, but chose instead to live in the same small two-bedroom house in the Rainier Valley in which he was born.

Bianchi attended neighborhood schools and Seattle University before his education was interrupted by military service. After his discharge, he returned to school and graduated from Gonzaga Law School in 1951.

Bianchi began as a deputy King County prosecutor. Then came a job as an assistant

state attorney general in Seattle, followed by a long and storied career as a trial attorney with his own law firm. Always a proud and active member of the local Italian community, Bianchi was for many years president of the Italian Benevolent Society.

He is survived by his son, George; a daughter, Paula; three grandchildren; and his ex-wife, Anabel Jensen Bianchi, with whom he remained close.

Alfred Bianchi was born in Seattle on December 19, 1921, and died on March 29, 2005, aged 83.

John T. Gorrell

A graduate of the University of Texas and Baylor Law School, John "Jack" Gorrell spent his final years in Washington. He lived in Port Townsend for 15 years, where he spent much of his time building sailboats, and then moved to Port Angeles in 1994 to open the Swan Café, finally settling in Seattle in 1996.

He is survived by his life partner, Michael Maxwell; his sister, Jane Glass; his niece, Katy Stansifer; and his nephew, Jerry Glass.

John Gorrell was born in Odessa, Texas, on April 7, 1937, and died on March 28, 2005, aged 67.

Nelson T. Lee

Nelson Lee attended the University of Washington while working in the Seattle shipyards, eventually earning a law degree from the University of Washington School of Law. In 1945, he cofounded the law firm of Lee, Smart, Cook, Martin & Patterson. He practiced law in Seattle for 39 years.

For the past 40 years, Lee lived and ranched in Bothell, and spent the winter months in Yuma, Arizona. He is survived by his wife of 62 years, Atha; their children, Mike, Diana, Thomas, and Darrell; and 10 grandchildren.

Nelson Lee was born in Pontiac, Illinois, on March 7, 1920, and died on December 13, 2004, aged 84.

Edward D. Jones

This remembrance was sent in by Jones's close personal friend of 60 years, Robert C. Bibb.

Edward Jones was the epitome of the small-town lawyer and community leader in Stanwood for 50 years. Jones hopped a freight train from his home in Illinois to

Washington in 1933, at the depths of the depression. He worked in the wheat and apple harvests, winding up in Stanwood where he found work in Alaska fish canneries and then on a halibut schooner. He enlisted in the Marines after Pearl Harbor and served from Guadalcanal to Iwo Jima, where he was wounded and received the Silver Star. He had attended the University of Washington in 1939, and entered the law school upon returning from World War II, graduating and starting a solo general practice in Stanwood in 1950. He married Katherine in 1947, and they raised five children during their 57 years together. He was a lover of vocal music, everything from opera to barbershop quartets.

From the beginning, Jones immersed himself in the affairs of the community as well as developing his practice. He was Stanwood city attorney for many years, a founder of the Stanwood-Camano Area Foundation, and served the Stanwood community as well as Snohomish County in many capacities, typical of small-town lawyers at the time.

Edward Jones died in his home on Camano Island on October 1, 2004, aged 89.

H. Frank Stubbs

During World War II, Frank Stubbs served his country as a B-24 bomber pilot. After the war, he earned his law degree in 1948 from the UW. In 1949, he commenced his lifelong career as an accomplished trial attorney, and established his practice in Tacoma in 1951. Stubbs loved practicing law, primarily because of his unyielding dedication and passion for helping people in need. He proudly and honorably represented thousands of injured workers and other injured persons for over 50 years. He was a true champion and pioneer in the fight for the protection of his clients' rights and the pursuit of justice. Stubbs will be remembered for his remarkable intelligence, compassion, generosity, energy, and respect for the dignity of all people.

Stubbs is survived by his wife, Joy, seven children, three sisters, one brother, seven grandchildren, and several nieces and nephews.

H. Frank Stubbs was born in Lilloet, British Columbia, in 1924, and died in Tacoma on March 16, 2005.

Disciplinary Notices

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

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

Note: 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 another WSBA member; however, all discipline reports should be read carefully for names, cities, and bar numbers.

Disbarred

Sarah Louise Hurst (WSBA No. 29489, admitted 1999), of Berks, England, was disbarred, effective December 23, 2004, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on her conduct between 2001 and 2003 involving unauthorized use of funds belonging to two law firms and to an organization for which she served as president and treasurer.

Between 2001 and 2004, Ms. Hurst was successively employed as an associate by two Everett law firms. While employed at both firms, Ms. Hurst deposited fees received from clients into her personal checking account rather than a firm account.

In 2002 and 2003, during her tenure as president and treasurer of a local chapter of a statewide law-related organization, Ms. Hurst issued a number of checks from the organization's account to herself. Ms. Hurst also used the organization's funds to purchase \$1,200 in money orders payable to a personal creditor. Ms. Hurst additionally reported that a \$2,000 scholarship awarded by the organization had been paid in 2003, but she did not in fact provide the funds to the recipient until 2004. Ms. Hurst did not have the organization's authority to use its funds for her personal expenses.

Ms. Hurst's conduct violated RPC 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, deceit, fraud, or misrepresentation; and RPC 8.4(n), which prohibits a lawyer from engaging in conduct demonstrating an unfitness to practice law.

Linda B. Eide represented the Bar Association. Ms. Hurst represented herself.

Disbarred

Bruce Stewart (WSBA No. 6483, admitted 1976), of Honolulu, HI, was disbarred, effective January 27, 2005, by order of the Washington State Supreme Court reciprocating discipline imposed by the Hawaii State Supreme Court, which disbarred Mr. Stewart by consent in 1987. This discipline was based on Mr. Stewart's 1987 conviction in the state of Hawaii of two counts of rape in the first degree.

Felice Congalton represented the Bar Association. Mr. Stewart did not appear in the proceeding either personally or through counsel.

Suspended

Alfredo Lopez (WSBA No. 17502, admitted 1987), of Seattle, was suspended for 60 days, effective February 10, 2005, by order of the Washington State Supreme Court following a hearing. The discipline was based on his conduct between 1997 and 2000 involving repeated failure to file a client's appellate brief, failure to take steps on termination of the representation to protect the client's interests, and failure to respond as directed by an order to show cause. For additional information please see *In re Discipline of Lopez*, 153 Wn.2d 570, 106 P.3d 221 (2005).

Between 1996 and 1997, Mr. Lopez represented a client in the U.S. District Court for the Eastern District of Washington. The client pleaded guilty and was sentenced to 70 months imprisonment, after which the client asked Mr. Lopez to file a notice of appeal.

Mr. Lopez timely filed the notice of appeal, and the 9th Circuit set a July 29, 1997, deadline for the opening brief. Mr. Lopez failed to file the brief. On January 23, 1998, the 9th Circuit entered a notice of default instructing Mr. Lopez to correct the deficiency within 14 days and

file a motion for relief from default. Mr. Lopez timely filed a motion for relief from default and an extension of time to file an opening brief until March 20, 1998, attributing his delay to an extremely busy trial schedule. The 9th Circuit granted the motion and extended the deadline to April 20, 1998. The order warned that "[a]ny further requests for extension of time for filing the opening brief are strongly disfavored."

Mr. Lopez did not file the opening brief by April 20, 1998, and on August 13, 1998, the 9th Circuit entered an order reiterating the instructions and warnings contained in its previous notice of default. Mr. Lopez timely filed a second motion for relief from default and an extension of time requesting until September 8, 1998, to file an opening brief. Mr. Lopez's accompanying declaration attributed the delay to an extremely busy trial schedule and recent office relocation. The 9th Circuit granted an extension to September 8, 1998. The order noted that Mr. Lopez had missed two previous deadlines and that failure to timely file the opening brief may result in his removal as counsel and may subject him to monetary sanctions. Mr. Lopez did not file the opening brief before September 8, 1998.

In a letter dated September 25, 1998, another lawyer informed Mr. Lopez that he had been hired to represent the client on appeal. He requested the file and enclosed an authorization for release of legal information signed by the client. Mr. Lopez transferred the file to the new lawyer on September 29, 1998, and by letter requested that the new lawyer immediately inform the 9th Circuit of his retention. The new lawyer did not file a notice of appearance or a notice of substitution at that time. Mr. Lopez took no steps to ensure that he was no longer deemed counsel of record in the 9th Circuit or to ensure that the new lawyer had appeared on the client's behalf.

On March 10, 2000, no opening brief having been filed, the 9th Circuit issued an order to show cause requiring Mr. Lopez, within 10 days, to show cause in writing why he should not be sanctioned in an amount not less than \$500 for failing to comply with the court's rules and orders. Shortly after Mr. Lopez received the order

to show cause, his assistant called the 9th Circuit to inform the court that Mr. Lopez was no longer the attorney of record. In May 2000, upon receiving further correspondence from the court referring to him as the client's "retained counsel," Mr. Lopez instructed his assistant to draft a letter to the court explaining that he had been discharged and the entire file had been provided to another lawyer.

On May 25, 2000, the client's subsequent lawyer filed a notice of appearance and a declaration requesting an amended briefing schedule. The 9th Circuit issued an order granting the request for an amended briefing schedule and stated the court's order to show cause regarding sanctions against Mr. Lopez would be resolved separately.

On June 28, 2000, the 9th Circuit entered an order finding that Mr. Lopez had failed to respond to its March 10, 2000, order to show cause and imposing a \$500 sanction. Mr. Lopez timely paid the sanction and filed a motion for reconsideration, which was denied. Ultimately, the 9th Circuit affirmed the client's sentence.

Mr. Lopez's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence in representing a client; RPC 1.15(d), requiring that a lawyer take reasonably practicable steps to protect a client's interests upon termination of representation; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interest of the client; and former Rule for Lawyer Discipline 1.1(b), prohibiting a lawyer from willfully disobeying or violating a court order.

Douglas J. Ende represented the Bar Association. Kurt M. Bulmer represented Mr. Lopez. Waldo F. Stone was the hearing officer.

Reprimanded

Gerald G. Burke (WSBA No. 17773, admitted 1988), of Tacoma, was ordered to receive reprimand on September 24, 2004, following a hearing. This discipline was based on his conduct in 1995 involving the communication of incorrect information to a client about the amount of fees owed. (*Mr. Burke is to be distinguished from Jerry L. Burk of Yakima.*)

Commencing in December 1992, Mr. Burke represented clients in a lawsuit alleging employment discrimination. The fee agreement required payment of an initial \$10,000 fee to commence the representation. The agreement specified a \$125-per-hour rate of compensation for attorney fees, but further specified that payment of any attorney fees incurred beyond \$10,000 was contingent on Mr. Burke obtaining a monetary recovery in the lawsuit. In addition to paying the \$10,000, over the course of the representation the clients advanced sums to Mr. Burke to be disbursed for costs, which he deposited into his trust account.

In August 1995, Mr. Burke wrote the clients stating that the \$10,000 fee had been fully expended and additional fees and costs were continuing. He further stated that, although the initial \$10,000 had been earned, he was continuing to work on the case in anticipation of all legal fees being paid. He indicated that a total of \$19,355.90 in attorney fees and costs had been expended, enclosed a document titled "Time Account" indicating that he had accrued \$18,587.50 in attorney fees and \$768.40 in costs, and he asked the clients to meet with him in order to "reach some agreement as to how the outstanding balance will be addressed." Neither the letter nor the Time Account reflected any offset for the client's prior payments nor did either credit the clients with amounts held in Mr. Burke's trust account. The clients interpreted Mr. Burke's letter as a request for payment of additional attorney fees that were not then due under the fee agreement.

When the clients failed to meet with him, Mr. Burke terminated the representation and withdrew. Approximately one year later, the clients obtained a new lawyer, who settled their claim in March 1998.

Mr. Burke's conduct violated RPC 1.4, requiring a lawyer to keep a 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.

Douglas J. Ende and Joy B. McLean represented the Bar Association. Mr. Burke represented himself. Teena M. Killian was the hearing officer.

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

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

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

Business Law

Drafting Key Business Documents

June 8 — Vancouver, June 15 — Seattle.
CLE credits pending. By WSBA-CLE; 800-
945-WSBA or 206-443-WSBA.

Data Under Siege: Legal Issues in the Protection of Digital Information

June 8 — Seattle. 6 CLE credits. By
WSBA-CLE; 800-945-WSBA or 206-443-
WSBA.

Mergers and Acquisitions: What a Deal Lawyer Must Know

July 27 — Seattle. July 28 — Spokane.
CLE credits pending. By WSBA-CLE;
800-945-WSBA or 206-443-WSBA.

Construction Law

Construction Law Midyear

June 17 — Seattle. 6 CLE credits, includ-
ing .5 ethics. By WSBA-CLE; 800-945-
WSBA or 206-443-WSBA.

Creditor/Debtor

Bankruptcy and Its Effect on Your Case

June 1 — Portland. By WA Defense Trial Lawyers; 206-749-0319.

Effects of the New Bankruptcy Reform Act

June 8 — Seattle. 1.5 CLE credits. By JAMS; 206-622-5267.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Now What?

June 17 — Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Dispute Resolution

Four-Day Intensive Mediator Training Program

June 14-17 — Seattle. 40.5 CLE credits, including 2.5 ethics. By Alhadef Mediation Services; 206-281-9950.

Estate Planning

Real Property, Probate, and Trust Section Midyear

June 10-12 — Spokane. 11.5 CLE credits, including 3 ethics. Application is being made for Washington Insurance Continuing Education credit. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Advanced Probate — Special Issues in Administration

July 21 — Seattle. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics

The Lawyers' Toolbox: Family Law (a.m.)

June 7 — Seattle. 3.25 CLE credits, in-

cluding .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Lawyers' Toolbox: Estate Planning (p.m.)

June 7 — Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Lawyers' Toolbox: Residential Real Estate (a.m.)

June 21 — Seattle. 3.25 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Lawyers' Toolbox: Criminal Law Issues (a.m.)

July 19 — Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Lawyers' Toolbox: Civil Litigation (a.m.)

July 29 — Seattle. 3 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Employment Law

Workers' Compensation

June 10 — Seattle. CLE credits pending. By WSTLA; 206-464-1011.

Family Law

Family Law Section Midyear

June 24-26 — Ocean Shores. 14.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

General

WDTL Annual Convention and Meeting (CLE)

July 28-30 — Winthrop. By WA Defense Trial Lawyers; 206-749-0319.

WSTLA Annual Convention with Keynote Speaker: David Ball

July 28-30 — Harrison Hot Springs, BC, Canada. 10 CLE credits, including 2 ethics. By WSTLA; 206-464-1011.

Law Office Management

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June 21 — Sequim

June 22 — Silverdale

June 23 — Port Orchard

July 12 — Moses Lake

July 13 — Wenatchee

4 CLE credits, including 2 ethics. By WSBA Law Office Management Assistance Program; 800-945-WSBA or 206-443-WSBA.

Litigation

Litigation Section Midyear

June 24-25 — Chelan. 6.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Real Property

Real Property, Probate, and Trust Section Midyear

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Tribal Law

Emerging Northwest Tribal Economies Seminar

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The Seattle office of Eisenhower & Carlson, PLLC, is accepting résumés for an associate attorney with at least two years' litigation experience, preferably in areas of commercial civil litigation and insurance defense. The firm offers competitive salaries, a generous benefit package, the opportunity to grow and develop skills as a

commercial trial lawyer, and the opportunity to build a solid legal career with one of the most respected law firms in the Puget Sound region. Submit résumés to Carol Nyegaard, Eisenhower & Carlson, P.L.L.C., 601 Union St., Ste. 2830, Seattle, WA 98101. All responses will be kept confidential.

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The independent judiciary in a democracy

BY GUEST COLUMNIST RICHARD P. GUY

Democracy exists in many different forms. Its essential feature is the rule of law. All democratic countries' foundation documents reflect the political, historic, and cultural experience of the people to be governed. Foundation documents establish and provide the powers for executive, legislative, and judicial divisions to function by the sharing of governmental responsibility.

The executive function is to lead the country with policies and initiatives to the legislature, and to oversee the day-to-day operation of government. This is a political position, and the executive has an agenda that the executive and the people who support him or her agree upon.

The function of the legislature is to enact laws for the public good, to provide funding legislation for government activities, and to interact with the executive. Both divisions of government have legitimate political agendas which include receiving majority public support in elections.

It is the third division of government that is often least understood. That is because fairness, or "justice," as we call it, requires judges to be independent without political agenda so as to render impartial decisions based on open-minded and unbiased application of the facts and the law in each case. Judicial independence does not mean a lack of judicial accountability, however. The rule of

law requires that judges be independent from external political and economic influence and control, not independent from public accountability.

The benefit of judicial independence to a democracy is to assure the people that government is responsible, and that those holding positions of public trust must comply with the laws they admin-

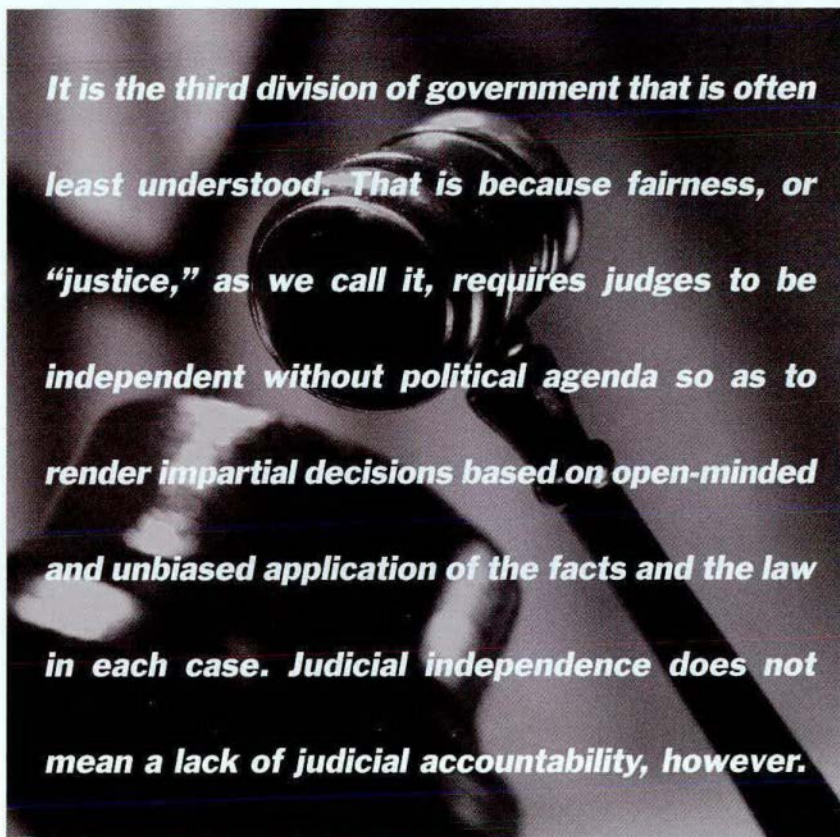
forum, the citizen is treated as an equal to the government.

When people lose confidence in the integrity of their judicial forum, eventually a democracy will fail. Where the judiciary is treated as an agency of the executive, people recognize that government will always prevail and thus can be arbitrary and oppressive. A free-market economy requires

a fair and independent judiciary. Business, buyers, and sellers need to know the rules and that their contractual benefits and obligations will be impartially and consistently enforced in accordance with those rules. No business is willing to place its contracts and activities into the hands of a corrupt or politically motivated judiciary, and no legitimate business will operate successfully in such an environment.

An independent judiciary is the cornerstone of any democracy, and will preserve and enhance it. An independent judiciary provides legitimacy to a government, since the people know there is a fair place to seek redress

if government is thought to be unfair or oppressive. Without an independent judiciary, an unfair battle arises between the government and the governed with no acceptable means of resolution. *z*

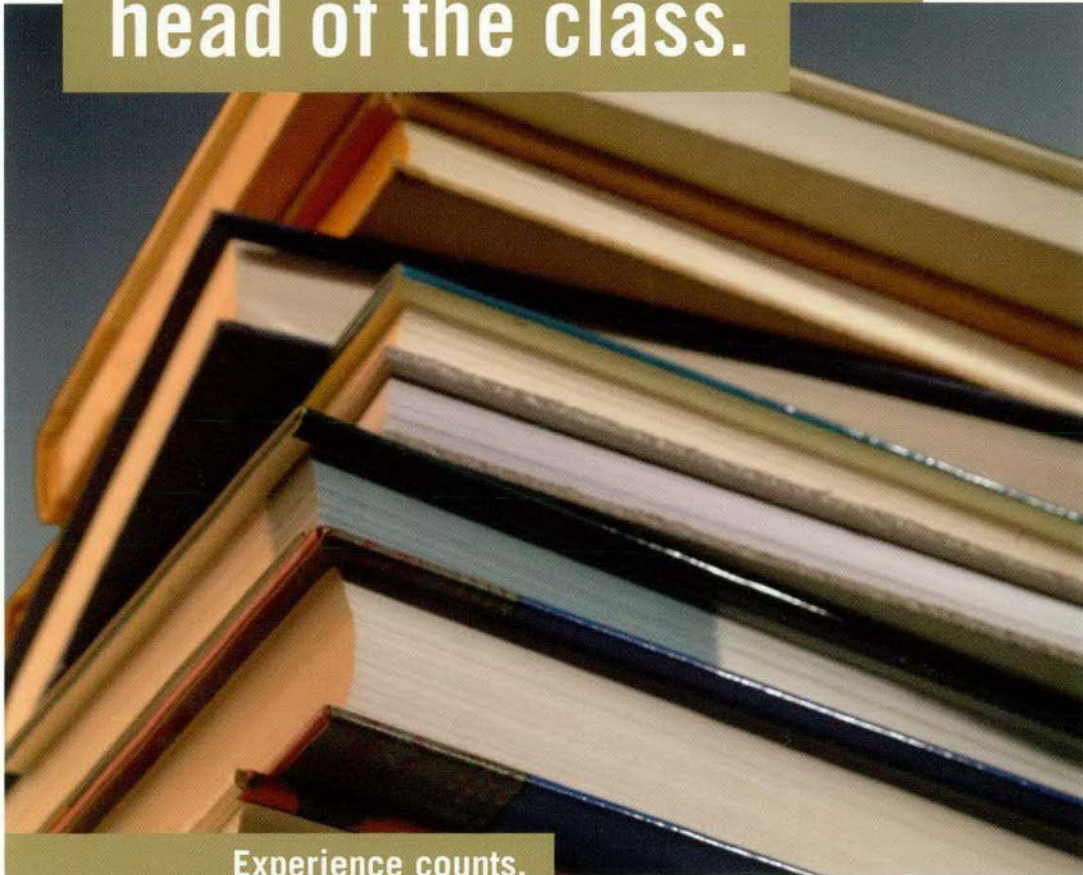


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ister. Political institutions are suspect by the people. Not every citizen agrees with governmental policies or legislation. It is the judiciary that provides to the people a forum where a citizen may claim that an interest or right has been disregarded by government, or where a business dispute may be resolved. In that forum, every citizen is presumed to be as important as every other citizen. In that

Retired Chief Justice Richard P. Guy served on the Washington State Supreme Court from 1989 to 2001.

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