

Washington State Bar  
Association



# NWLawyer

## 50 SHADES *of* GREEN



SEP 2015  
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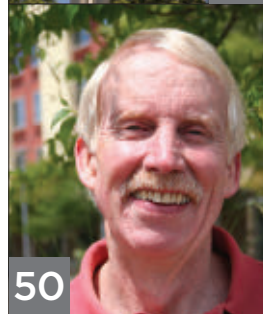
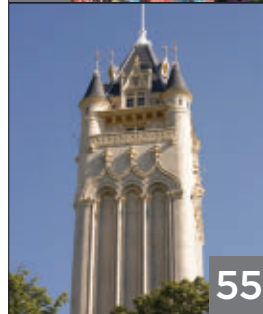
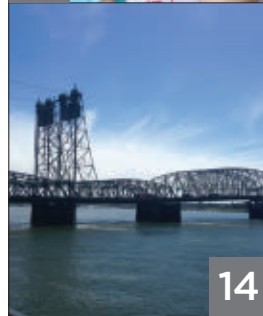
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# NWLawyer

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*NWLawyer* will inform, educate, engage, and inspire by offering a forum for members of the legal community to connect and to enrich their careers.

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## Inbox

Let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to [nwlawyer@wsba.org](mailto:nwlawyer@wsba.org). *NWLawyer* reserves the right to edit letters for clarity and space. *NWLawyer* does not print anonymous letters, or more than one submission per month from the same contributor.

## NOT A CHOSEN LIFESTYLE

A reader of the JUL/AUG edition of *NWLawyer* weighed in opposed to LGBT peoples' civil rights advancements, denounced the "chosen lifestyle" of those he equates with the "repugnant" practitioners of "incest, bigamy, pedophilia, prostitution, and drug dealing," and denies that faith-based professionals who oppose civil rights for LGBT people "desire to discriminate." The dominant class always constructs a social reality to support its domination (e.g., the Assad regime, slave holders in the U.S. South, Jim Crow), so the denunciation — here based on late-Bronze-Age religiosity — is not remarkable.

However, it might be useful to observe that homosexuality is not a "chosen lifestyle." I'm not sure what "lifestyle" the reader imagines we gay married couples have: three dogs, a house with a dishwasher, two older cars, going to the office five days a week, paying taxes, voting — it is no different from any other middle-class family's lifestyle. But as to the "chosen" part: homosexuality is not "chosen," any more than, for example, left-handedness is chosen. (Now religion, that's chosen: you can change your religion if you want to — you don't have to accept, say, the part of your religion that says it's okay to keep black people in slavery.)

Ignorant bigots do indeed "have a right" to express their ignorance and bigotry; if they do express themselves they should expect to be the objects of disapprobation.

*Daniel Warner, Bellingham*

## THE AG AND DIVERSITY

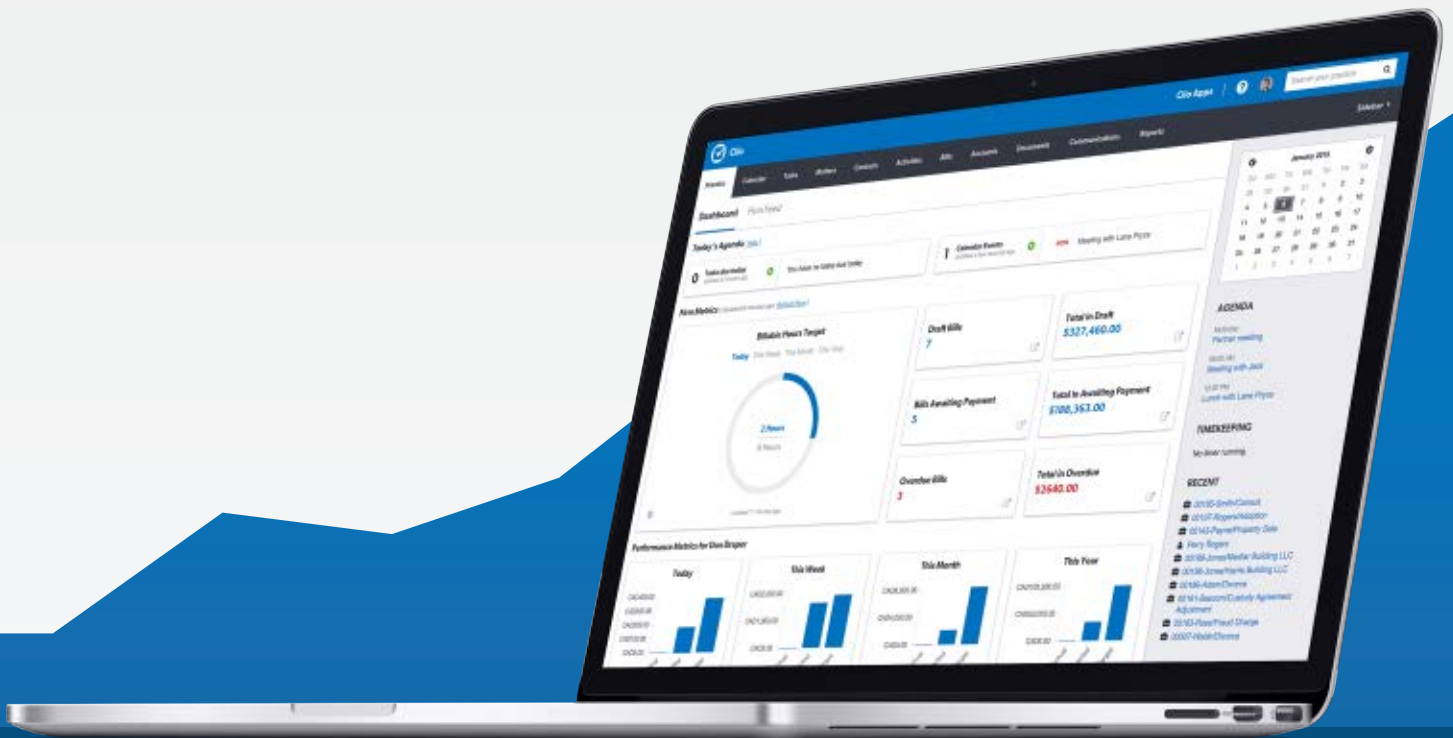
I read with great interest Elijah Forde's recent article ("The Sunny Side of the House," JUL/AUG *NWLawyer*) about his career path, which included his experiences as an Assistant Attorney General during the administration of one of my predecessors. Mr. Forde notes that, in his time with the Attorney General's Office (AGO), "the lack of diversity was also a huge issue for me."

This is indeed an area of challenge for many legal offices, both public and private, but it's also one in which the AGO is mak-

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ing a concerted effort and getting results. Since becoming Attorney General in 2013, one of my focuses has been working toward a more diverse and inclusive work environment. This is reflected in our office's revised value statement, creating a diversity plan for managers, providing more diversity and inclusion training, increasing the focus and transparency of our recruitment efforts, and adopting a policy supporting the creation of affinity groups within our office.

These efforts are showing progress. Since Mr. Forde's time with the AGO, the representation of self-reported diverse ethnicities within the ranks of Assistant Attorneys General, and among managing AAGs, has risen substantially. While these statistics show we are moving in the right direction, there remains much work to be done. A diverse and inclusive workforce brings different and valuable perspectives that make an office stronger, and my office will continue this effort from the recruiting process, through mentoring, training, retention and promotion within the ranks. Those wishing to learn more about working in the AGO and the efforts we are taking to become a more inclusive environment can contact Erika Uhl, Deputy Attorney General in charge of attorney recruitment and hiring, at [erikas@atg.wa.gov](mailto:erikas@atg.wa.gov).

I encourage your readers to recommend service with the Attorney General's Office to colleagues in or entering the legal profession. Diversity within the chief legal office of the state benefits all communities.

*Bob Ferguson, Attorney General, Olympia*

## WRONG ABOUT WRIGHT

I was stunned and upset to see "The Old School Lawyer" article authored by Emily Wittenhagen in the JUL/AUG *NWLawyer*. Wittenhagen initially asks "There are some of you who probably remember Elias A. Wright . . ." I remember him very well. He was my grandfather. Elias Wright came to Seattle from Nebraska in about 1904 to join a law practice with his brother, Samuel Wright. Later he had two sons who joined the Wright & Wright firm, my father, Eugene A. Wright and, my uncle, Wayne Wright. My brother Gerald A. Wright and I also became lawyers. It wasn't a trait unique to my grandfather; we were all dedicated to our careers.

Like his father, retirement was not an option for Eugene A. Wright. He continued to serve on the 9th Circuit Court of Appeals until his death at age 89, often stating "It's a lifetime appointment and that's how long I

intend to serve."

Wittenhagen's article says: "There's no arguing Wright was certainly a character." Well, I'd certainly argue with that; growing up in a sod house in Nebraska and working his way through law school while working as a railroad fireman certainly did not make my hard-working grandfather a "character." He was not unlike thousands of others from humble beginnings who struggled to obtain an education and achieve some degree of success. Many of my grandfather's clients were truck farmers from South Seattle who 'trucked' their produce to the Pike Place Market when it opened in 1907. His legal fees were often paid in vegetables. Elias Wright provided pro bono representation to many who could not afford to pay him long before RPC 6.1 existed.

What really galled me was Wittenhagen's statement: "Stories like this make it easy to understand how he turned out to be the kind of guy, who like all the best grandpas, makes churlishness look so charming." Elias Wright was not churlish and he certainly was not a "guy." He was an intelligent and generous lawyer, and a gentleman.

*Meredith Wright Hutchins, Olympia*

## COE-CONSPIRATOR

Douglas Pierce has written in the JUL/AUG *NWLawyer* that the Community Protection Act of 1990 was created specifically for the (Spokane) South Hill Rapist [Kevin Coe], convicted in 1981. I disagree. The 1990 law was created in response to different outrageous events that occurred much later. The new law provided that a jury could send a person to a mental institution if he met predatory criteria, regardless of whatever happened in the prosecution of a crime.

On May 20, 1989 in a Tacoma park, Earl Kenneth Shriner raped, mutilated, stabbed and left for dead a 7-year-old boy. In particular, Shriner had cut off the boy's penis. Shriner had a 25-year history of sexual assault charges.

The Tennis Shoe Brigade, a victims advocacy group, raised public pressure to toughen the law. Helen Harlow, the mother of the boy, was in the group. Governor Booth Gardner appointed a Task Force chaired by King County Prosecutor Norm Maleng to explore the law. This Task Force included Ida Ballasiotes (elected 1992 State Representative), the mother of a woman who had been killed in 1988 by a violent sexual predator on work release in King County.

As Attorney General I had asked lawyers in the office to draft a civil commitment law which would ensnare Shriner — we handed that draft to the Governor's Task Force. The Legislature later enacted the first "sexual predator law" which allowed the indefinite lock up of sexual crime perpetrators if a "mental abnormality" causing someone to commit another sex crime can be attested.

At meetings of the National Association of Attorneys General held in 1990 through 1992, I promoted the idea of Sexual Predator laws to other states. Many such laws were adopted, and in the instance of Washington State, the U.S. Supreme Court ruling in support of our statute came in the case of *Seling V. Young*, 531 U.S. 250 (2001).

Norm Maleng wrote in the *University of Puget Sound Law Review* that the new law was "... born of personal tragedy, public outrage, and unspeakable cruelty . . ." but it was not created specifically because of the South Hill Rapist.

*Ken Eikenberry, Olympia*

## EXPANDING ETHICS

I was disappointed to read in the JUL/AUG issue that the MCLE changes did not include any changes to the ethics and professional responsibility requirement. I am in-house and among my responsibilities I oversee most aspects of ethics and compliance for a publicly traded company. For years I have asked and been denied ethics credit when I have attended seminars regarding corporate ethics and compliance. Instead, in order to get the necessary ethics credits I must attend CLEs that almost uniformly focus on ethics for lawyers practicing in firms, such as conflict of interest issues between clients, drafting appropriate fee agreements, etc. This was a missed opportunity to expand what constitutes ethics and professional responsibility training for all lawyers to cover things like FCPA compliance, handling whistleblower challenges, investigating compliance concerns raised by employees, etc. All of which apply both to in house and law firm attorneys.

*Rosemary Daszkiewicz, Seattle*

**WSBA MCLE MANAGER RENATA DE CARVALHO GARCIA RESPONDS:** The new MCLE rules were developed after many months of input from interested parties and consideration of comments to the Task Force, Board of Governors, and the Supreme

Court. They broaden the definition of ethics and professional responsibility by including conduct standards for lawyers with respect to the legal system. Consequently, a future course related to topics such as corporate ethics and compliance might be accreditable for ethics credits if it examines ethical problems or is relevant to your professional conduct as a lawyer (not as a corporate entity). Also, the new standards for approval are to be liberally construed in order to enhance lawyers' legal services to their clients. Please do not hesitate to submit future courses to be considered for ethics credit related to your professional conduct as a lawyer and your responsibilities for upholding an ethical legal system.

## PREDICTING THE FUTURE

The JUL/AUG issue of *NWL* turned to a crystal ball in an article by former WSBA President Patrick Palace, in which two primary models for the future of the profession are proposed. In the first the work of lawyers would be reduced to litigation while in the second lawyers are urged to adopt a "Full Market Model" that will reduce legal services to a commodity as opposed to the crafted and customized services that used to be considered an inseparable adjunct to the practice of law. What this approach to the future manifests is a profound mistrust in the value of what lawyers do combined with an apparent presumption that many legal problems are essentially fungible. Simply provide the right forms and access to research tools and a little online push and anyone can be a lawyer, at least as long as actual litigation is not involved.

We should all just open our eyes and roll over because the stars are against us. The legal life-line in our palms is a short one and our moon is in Scorpio. But as a last act of reparation and atonement we should cooperate in our own demise and admit that as gatekeepers we have collectively been charging excessive tolls and the game is up. But rather than return to the old model of the lawyer who once had time for his clients we are urged to adopt a fast-food approach to the practice of law (hold the pickles) before the ground is cut out from under us by those with a new business model. Technology and LLLT's and other legal service providers are the future and our former customized services are now a luxury rather than a common standard for all our legal work.

Apparently legal problems no longer require the vaunted judgment skills obtained at such a high price in law school and the finely

tuned distinctions of case law are really only there to provide fodder for law reviews and for ruminating scholars with tenure. In the real world law is simple and form practice the rule. Rather than resist market forces we are urged to say farewell to our romance with a full-service professional identity. Our future in law is analogous to a quick oil change, the client is out the revolving door with quarters still jingling in his pocket and if we are cheap enough he'll be back with any other little legal issue that can't be fixed by a free visit to

an Internet site or a blog. It may be hard to pivot on a dime what with student debt and running a business (after all even technology is not free) but we owe it to the world to cut to the bone. It's all part of globalization, open markets, and posturing too long in shiny shoes and fancy cars. Time to come down from the trapeze and into the sawdust, the circus has moved on for us and the crystal ball has spoken.

*Thomas Mengert, Keyport NWL*

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## 50 Shades of Green

**T**he Beatles had their "White Album," Picasso had his Blue Period, and you are about to enjoy *NWLawyer's*

**Green Issue.** The issue covers on the kind of "green" commonly talked about today — topics related to the natural environment; however, we've defined the term broadly, including such subjects as the state's blossoming marijuana industry, lessons a lawyer has learned from mountain climbing, and even advice to legal greenhorns. As the sultry summer of 2015 gives way to the reddening leaves of fall, we invite you to immerse yourself in the verdant lushness of our contributors' offerings.

"A Brief History of Environmental Law in Washington" (p. 57) by Katie Ludwick and "Getting Water to Where It's Needed" (p. 40) by Sarah Mack are what you would expect of a green issue. Ludwick provides a brief history of environmental law in Washington, centered on her observation that there simply wasn't much environmental law around here until the 1970s, when the now-familiar environmental regulatory system sprang to life in response to the green movement that took root in the previous decade. As Ludwick puts it, "Nature survived because we have a lot of it, not because we worked hard at protection." Meanwhile, Mack dives into an overview of water rights in Washington, an area of law that is bound up with the state's history but faces new challenges flowing from the record-low levels of water available from what we can no longer assume to be inexhaustible sources.

In "Greenhorns" (p. 29), Amy NeuBerger provides some advice and encouragement for legal greenhorns, namely new law school graduates and recently li-

censed attorneys. NeuBerger's piece features her interview with Dan Crystal, WSBA Lawyers Assistance Program manager and clinical psychologist. They discuss how to handle stressful situations commonly faced by those trying to get started in a profession that's demanding enough even for more seasoned practitioners.

Meanwhile, in "Head of the Class" (p. 36), I interview Priscilla Selden, one of the first members of a whole new profession — the limited license legal technician. Selden is one of the first people to complete training and pass the licensing exam in Washington's LLLT program. The program is the first in the nation in which independent legal paraprofessionals are licensed to give legal advice. Selden recounts her adventures as a pioneering LLLT student, which include participating in an online class session from her car and taking a course final exam from Costa Rica.

Two other articles should spark conversation on an entirely different aspect of green-ness: Washington's now-year-old legal recreational marijuana industry. In "Practicing Law in the Cannabis Industry" (p. 24), Harold E. Snow Jr., Scott G. Warner, and Andy Aley of Seattle-based Garvey Schubert Barer share what they have learned so far as lawyers representing clients in this out-of-the-ordinary and still-evolving field. Additionally, in this issue's installment of the Literary Lawyer (p. 26), I review *Turning Green to Gold: Tips on Starting a New Legal Marijuana Business*, an e-book authored by Bellingham lawyer Heather Wolf. I include a Q&A with Wolf, who discusses the joys and challenges of representing clients in an industry that metaphorically sprung up overnight.

While it's now legal to figuratively get high on green stuff around here, many Washingtonians — including a seemingly disproportionate number of lawyers — enjoy getting literally high on

the green, white-topped mountains that surround us. In "Taking Professionalism to New Heights" (p. 19), WSBA member Steve Sieberson, a mountain climber and book author who practiced law in Seattle for 25 years before becoming professor of law at Creighton University in Omaha, Nebraska, offers a list of lessons he learned while climbing peaks that equally apply to the practice of law. Just a few examples: *Plan your route, but be flexible. Be bold in the conception, conservative in the execution. Embrace technology, but don't be too dependent on it. Find good partners and communicate with them.* I would add that while mountaineering axioms carry over well to the practice of law, there is little crossover in the equipment used. In particular, crampons really play havoc with conference room carpeting, and I've found that most clients prefer that you not be holding an ice axe while dispensing advice.

Finally, I encourage you to read "Leaving the World A Better Place" (p. 50) by Seattle writer/attorney Robin Lindley. Lindley passes along the words and wisdom of attorney Bob Dickerson, who chose to dedicate the remainder of his career to humanitarian causes after being diagnosed with a terminal illness. Dickerson died in May. This piece doesn't strictly fit with the issue's "green" theme. Then again, the ability of life's lessons to regenerate by being handed down generation to generation, as even an ancient tree's leaves return every spring, is as life-givingly green as it gets. **NWL**



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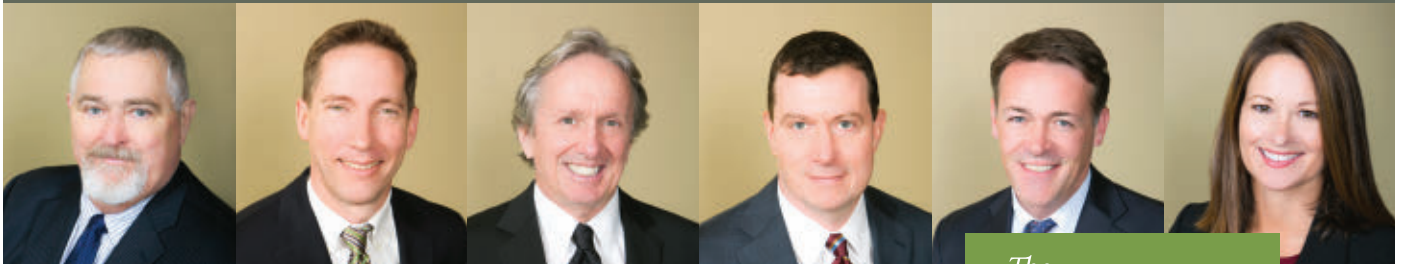
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# A Year in the Life

## The Work Continues

### Where Have We Been This Year?

**W**e recently sent a broadcast email to the members that talked about the details of what we have accomplished at the WSBA this year, and I will not rehash them all here. I do want to highlight two initiatives that have consumed much of my time as president. The first is the efforts to reshape how our Board functions to make it more nimble and responsive, and the second is diversity and inclusion.

#### Governance

Over the last two years, the WSBA has been reviewing the structure and needs of the organization and how it is governed. Following the Governance Task Force recommendations, the Board of Governors has worked this entire year to review and respond to the proposals. Some of these proposals are far-reaching, including adding non-attorney members to the Board. In the coming year, after receiving Supreme Court input, it is likely that the Board will recommend Bylaw changes to help bring the Board into alignment with many of the task force's recommendations.

In addition, the Board has changed how it administers its meetings in order to free up time and space to address some of the policy issues that require its attention. This includes changing how the agendas are put together, providing training to board members on best practices for governance and board management, creating generative policy discussion time at every board meeting to start new discussions on problems facing members and how to solve them, and, for the first time in its history, engaging in a self-evaluation to provide input on how the board is doing its work. All of these efforts have had the focus of shifting the culture of the Board and the WSBA to better meet the needs of the public and its members.

#### Diversity and Cultural Competence

In the past year we have made significant progress on diversity, inclusion, and cultural competency — at the Board level and in the WSBA as a whole. We set out this year to have a conversation about persistent problems in diversity and inclusion, to educate the members on cultural competency, and to discuss what leadership role the WSBA is best able to play in this field.

As part of that discussion, we have included monthly columns in *NWLawyer* (usually multiple columns in every issue) from diverse members of the profession who weigh in on topics affecting them and the inclusivity of the WSBA. As I have spoken around the state on the topic on at least a monthly

basis, I can see attorneys engaging in these debates with new energy, and they are hungry to start getting to the substance of the solutions.

Phase II of the Membership Study is currently in process. The original 2012 study provided a wealth of data about members, especially our members from traditionally underrepresented populations. The new phase of data will energize the debate further by providing, among other things, a detailed example of intersectional forces at work within our diversity communities as the boundaries between discrete groups begin to blur. By this time next year, “intersectionality” and what it means should be well understood by everyone.

At the Board level, we have conducted multiple diversity training seminars for the Board of Governors that have been well received. This included an excellent session on “Implicit Bias in Decision Making” and how to combat it, led by the WSBA's diversity staff. This session was so successful that the Board asked to see more such trainings in the future, and the WSBA has been asked to provide versions of this training around the state for other stakeholders and partners.

Finally, we have been engaging the Board in an open dialogue about what diversity means for the WSBA and what goals we are striving to achieve. These generative discussion topics were started in April and will continue through September. The product of these discussions is to set some policy goals for the Board that will help chart the next series of initiatives. This discussion is intended to continue into the next year by focusing on some discrete diversity and inclusion issues for regular discussion at BOG meetings.

### Where Do We Go Next?

For all the progress made, there remains significant work to be done, and our efforts this year have been the start of a process of transformation for our bar that will take years to accomplish. On governance issues, we will continue to conduct training and restructuring the Board, but we will also be conducting reviews of how the WSBA's primary relationships will work in the future. This includes the ongoing discussions about how the WSBA works with minority, local, and specialty bar associations, and reviews of our WSBA sections and how we can improve our mutual work as equally vital components of the WSBA.

On diversity specifically, I do not want our progress this year to suggest that we have reached all the goals we set for the year. Our efforts have been far from perfect — even with significant contributions to the cause from both the Board and WSBA staff. We still have a lot of work to accomplish on





diversity, inclusion, and cultural competence. As an organization, we should be seeking more funding for our work on diversity, inclusion, and cultural competence, because it is a central tenet of our mission. In addition, we should look to whether our sources for funding are matching our mission. We also still need to devise an effective statewide diversity platform that can adequately fill the gaps and support our growing minority attorney population in the rural parts of our state. Whether that is the WSBA alone in partnership with others, a statewide footprint is needed for forward progress.

The WSBA needs to address the problems that remain to identify how the WSBA can best help to tackle the problems, and to continue to support our partners (in the minority bar associations, local and specialty bars, and other key allies) to promote the needs of our profession and make it ready for the diverse future that is around the corner. If

the progress achieved already is not pushed to the next level, efforts will stagnate and the WSBA will lose its privileged platform to lead in this area. If that happens, the changing face of the public and the members will render the WSBA irrelevant in the discourse of diversity and cultural competence. But I am hopeful we can avoid that by doubling down and investing in big solutions to get us to the next phase.

## My Gratitude

It has been my pleasure to serve. I am grateful for the opportunity to have led the State Bar, and to have worked with such an outstanding group of Board members and staff. Without



such a talented team of volunteers (on the Board and member volunteers) and WSBA staff, we would be unable to perform the multitude of duties our members and the public require of us. And it is not easy. As anyone who has worked in-depth with us can tell you, the WSBA is a large and complex association with broad mandates to govern, regulate, and guide our profession and to protect the public. Despite being at times unwieldy, it is a marvelous platform for change in our profession.

As I hand over the reins to Bill Hyslop, I conclude with gratitude to others because it is a central principle of my spiritual tradition, and expressing gratitude to others is acknowledging our shared commitment.

To my guest writers for *NWLawyer*: Mario Cava, Naoko Shatz, QingQing Miao, Francis Adewale, Nicole McGrath, Elijah Forde, Barb Rhoads-Weaver, Dean Kellye Testy, Dean Annette Clark, Dean Jane Korn, Karen Denise Wilson,

and RaShelle Davis. With your willingness to sign on to this project, you helped to start a dialogue on multiculturalism that got a lot of attention. I have had leaders from all over the country read these articles and comment positively to me, including more than a few who want to use the same approach. The guest writer program is proof that great ideas can flourish when you give privileged space to others to express themselves.

To my Board Members: Bill Hyslop, Patrick Palace, Ken Masters, Brad Furlong, Jill Karmy, Jerry Moberg, Paul Bastine, Keith Black, Ann Danieli, Barb Rhoads-Weaver, Andrea Jarmon, Elijah Forde, Phil Brady, Karen Denise Wilson, Mario Cava, and Robin Haynes. The Board I have led this year is the most diverse in our 125-year history. I am also pleased that they chose to walk

with me as we discussed some of the most serious issues facing our profession: Ongoing struggles with diversity and inclusion, lack of opportunity, changing how we do business as a board, struggling with the problems of new and young lawyers, the changing nature of legal practice, and retooling our governance structure for the future. I have asked a lot of my Board, and they have worked to exceed my expectations (even when we did not always agree on how to get there). Also, a special thanks to the spouses, partners, significant others, and families of our Board members who give up a lot of time with their loved ones so that we are able to serve.

To the staff at the WSBA: the WSBA has about 140 members of staff, and I could not name them all here. Suffice it to say that each of them have contributed to my successes as president by providing support (often unseen and unacknowledged), information, and expertise in areas that the rest of us simply do not have time to master. I have worked closely with our executive director Paula Littlewood and the executive management team, and they all know my appreciation for them.

**It has been my pleasure to serve. I am grateful for the opportunity to have led the State Bar, and to have worked with such an outstanding group of Board members and staff.**

However, for my last written word as president, I want to personally thank some of the people who do not often hear the appreciation for the volunteers: to Holly, for keeping us supplied in coffee and refreshments during our meetings at the WSBA offices; to Steve, for a friendly hello at all times for anyone he greets; to Jennifer and Todd at *NWL*Lawyer, for making all our writing look good; to Joy and Robin, who work tirelessly in the community and inside the WSBA to promote tolerance, inclusion, and cultural competence; and to Margaret, Ashka, and Pamela, for handling the countless details that allow our Board to function every day.

Finally, to the Supreme Court: The WSBA is tasked by the Supreme Court to regulate the profession, serve and protect the public, and represent member attorneys in the issues that affect the legal system. Over this year we have had many competing forces driving changes in our profession: How we work, who provides legal services, changing technology, a court funding crisis with shrinking budgets, and the perennial problem of our system of services not matching the faces of our citizens and not meeting their needs. It has been my pleasure to work with a Court that has been very dedicated to addressing all these issues and works with the WSBA to provide leadership and direction for solutions.

To all of you, thank you.

With sincere regards, Anthony **NWL**

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The WSBA Listening Tour this year covered the I-5 corridor to the south of Seattle and culminated in the geographic center of our state. The five stops along the way included Vancouver, Centralia, Kent, Yakima, and Wenatchee. Due to an emergency in the President's family, this year's Listening Tour included appearances by each of the

officers who pitched in to help cover the stops along the way. So a special thank you to all of the officers along with WSBA Legal Community Outreach Specialist



Sue Strachan, who worked with bar leadership in all of these communities to plan these wonderful gatherings. We also had a number of current and former members of the Board of Governors join us this year — thank you to current Governors Jill Karmy, Andrea Jarmon, and Elijah Forde and Board alumni Brian Kelly and James Armstrong.

The turnout was great all along the way — thank you to all of you who took the time to come out and share your ideas! The groups we met with ranged from 12 people to 35, with topics of interest including the WSBA's 125th anniversary, details on many of the WSBA's new member benefits, the new mandatory continuing legal education requirements that will go into effect January 1, and the status on the Board of Governors review of the WSBA governance structure.



1. President Anthony Gipe meets with the largest turnout of lawyers and judges this year with the Clark County Bar Association in Vancouver. 2. Immediate Past President Patrick Palace joined the Listening Tour in Centralia at the beautiful venue atop the new Walton Science Center building on the Centralia College campus.

3. President-elect Bill Hyslop dialogues with members of the Yakima County Bar Association during an evening reception.

4. Governor and Treasurer Ken Masters shares a cup of coffee at a breakfast with members of the South King County Bar Association in Kent. 5. President-elect Bill Hyslop (center) presents the Local Hero Award to (l. to r.) high-school students Devyn Reddick and Chad Cummings, and attorneys Greg Bell, Frank Brandt, and Tracy Brandt for their work on creating a mock trial program for Wenatchee High School and Westside High School. 6. President-elect Bill Hyslop talks with WSBA members in Wenatchee. 7. WSBA member Colin McHugh with President Anthony Gipe in Vancouver. 8. The I-5 bridge spanning the Columbia near Vancouver.







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We received many questions about the Limited License Legal Technician (LLLT) program, heard ideas for improving the WSBA's website, and discussed with many of the groups the difficulties for new lawyers entering the practice given debt loads and a tight job market. Casemaker and the Legal Lunchbox series continue to be popular with all of you as is the webcasting of our CLE programs.

As with the prior three Listening Tours, we appreciate the amazing members we have and the amazing state we live in! Thank you again to all of you who took the time to come out and share your ideas. **NWL**

**PAULA C. LITTLEWOOD** is the WSBA executive director and can be reached at paulal@wsba.org.

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182 Wn.2d 168, 339 P.3d 972 (2014)  
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***Moore v. Health Care Authority,***

181 Wn.2d 299, 332 P.3d 461 (2014) (addressing methodology for assessing damages in class action)

***Woods v. HO Sports Co., Inc.,***

183 Wn. App. 145, 333 P.3d 455 (2014)  
(defeating application of parental immunity doctrine in negligent operation of speed boat)

***In re the Marriage of Larson and Calhoun,***

178 Wn. App. 133, 313 P.3d 1228 (2013), review denied, 325 P.3d 913 (2014) (successfully addressing property division issues in one of the largest dissolution cases in Washington State history)

***Eubanks and Gray v. Brown,***

180 Wn.2d 590, 327 P.3d 635 (2014)  
(addressing venue issues in gender discrimination action against deputy prosecutor)

***In re Bracken Estate,***

175 Wn.2d 549, 290 P.3d 99 (2012) (application of estate tax to qualified terminable interest trusts)

***Washburn v. City of Federal Way,***

178 Wn.2d 732, 310 P.3d 1275 (2013) (city liability in service of anti-harassment order)

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by Ken Masters

**N**ext month, my terms as treasurer and governor will end. It has been both an honor and a pleasure to serve you over the last three years. In doing so, I have benefitted immeasurably from the support and guidance of the WSBA's outstanding Executive Director Paula Littlewood and executive staff, including COO Ann Holmes, Controller Tiffany Lynch, and the rest of the WSBA staff. You have a most dedicated and professional group of hard-working people focused on serving you, protecting the public, and championing justice.

This month, the Board of Governors will vote on the FY2016 budget. Before introducing next year's budget to you, I'd like to share some observations about the tremendous, positive changes that I've seen at the Bar during my term of service.

## Rolling Up Our Sleeves

Since the 2012 referendum cut license fees by 28% — from \$450 to \$325 (the fee charged in 2001-2002) — the WSBA has worked tirelessly to deliver value to you while maintaining a high level of regulatory effectiveness. We covered the shortfall by increasing operational efficiencies, expanding non-license-fee revenue, and using WSBA's reserves. We implemented a management reorganization, reduced the number of staff, and cut expenses, employing a variety of cost-saving measures. We also invested in technology, achieving work and space efficiencies.

As I have previously reported, these changes enabled us to consolidate our operations and conference center into one location at Puget Sound Plaza. We reduced our overall footprint by 7,700 square feet, and extended our lease through 2026 on extremely favorable terms (calculated to save more than \$3 million over the life of the lease compared to our next best alternative). The renovation (financed by a generous tenant allowance from our landlord) is in full swing and is going well — our staff has been terrific in maintaining our services (and their morale) while working in a construction zone. We are all particularly excited about ADA accessibility and technology upgrades, and we hope you can join us at our open house this fall.

## Providing Much More for Less

During this same time, we've also managed to introduce, expand, and enhance our programs that support you. Today, your WSBA membership gives you access to all this and more:

- Over 156 credit hours each year of free and low-cost CLE programs, webcast for your convenience
- Free help from our confidential Ethics Line
- Free employment tools, including Job Seekers Group
- Free legal research on Casemaker, including expanded cite-checking ability
- Free mentorship resources
- Free law practice management guidance on technology, marketing, financial management, practice transition, and other areas, all designed to help you achieve and maintain a successful practice
- Discounts on ABA publications and retirement plans; professional liability insurance; systems for billing, document management, file sharing, conflict check, cloud practice management and merchant accounting; daily legal summary service; editing software; and live virtual receptionist services
- WSBA Connects, a 24/7 confidential, statewide wellness benefit to help you address issues related to mental health and addiction, career management, family, care-giving, daily living, health and well-being, and more
- Public service programs and training (Moderate Means and Call to Duty)
- Financial accommodations through the WSBA Hardship Option and Payment Plan

In short, through our increased focus on listening to your needs, we have successfully increased our services to you, maintained our regulatory systems to protect the public, and held the line on administrative costs.

## Moving Forward In FY 2016

The FY2016 budget assumes expenses of \$18.6 million supported by \$16.4 million in revenues and up to \$2.2 million in reserves. The chart on the next page identifies how each \$1 of license fee supports the WSBA in 2016. Take a care-

... through our increased focus on listening to your needs, we have successfully increased our services to you, maintained our regulatory systems to protect the public, and held the line on administrative costs.

ful look at that chart — I am constantly amazed at how much we can do for so little in administrative costs.

I also want to point out several necessary budgetary changes. First, the budget reflects the Board's decision last year to increase license fees in 2016 and 2017 to \$385 — the first increase since the 2012 referendum. Your 2016 license fee is equivalent to fees you paid 10 years ago. The increase will enable us to slow down our use of WSBA reserves, while continuing to provide regulatory and member services at reasonable value to our 37,000 members.

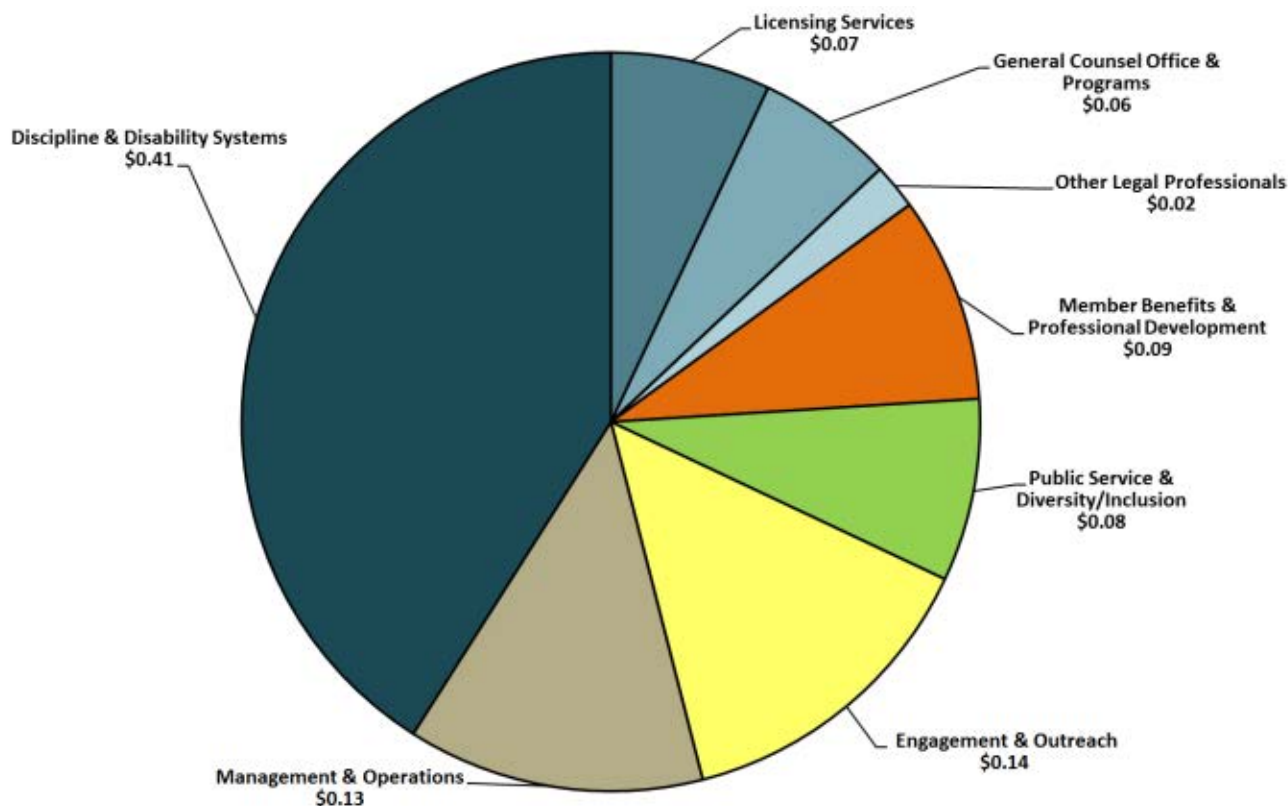
Second, while the Bar has historically absorbed members' credit-card transaction fees, we can no longer justify having our entire membership absorb that cost. This year, it is likely to reach \$275,000. Effective Oct. 1, 2015, the credit card companies will charge you a 2.5% service fee on all WSBA credit card transactions. And of course, you can still pay by check to avoid their transaction charge.

Please don't hesitate to contact me if you have any questions. **NWL**



**KEN MASTERS** is the WSBA governor from the 1st District and the WSBA treasurer. The founder of Masters Law

Group, he has been litigating civil appeals for about 23 years. He can be contacted at [ken@appeal-law.com](mailto:ken@appeal-law.com).



### How \$1 of License Fee Revenue Will Support the WSBA in FY2016<sup>1</sup>

- DISCIPLINE & DISABILITY SYSTEMS:** Costs to handle consumer inquiries and written grievances through disposition (including disciplinary counsel, hearing officer, and disciplinary board costs); administer the WSBA audit program; and educate members, law students, and legal professionals about legal ethics, trust account compliance, and the lawyer discipline system.
- LICENSING SERVICES:** Costs to process forms, license and respond to inquiries for 37,000 members, and maintain and respond to questions about members and their public membership information.
- GENERAL COUNSEL OFFICE AND PROGRAMS:** Legal representation to the WSBA, Board of Governors, and other boards, task forces, and committees; records request and litigation management; oversight, interpretation, and analysis of WSBA Bylaws and other legal issues; and investigation of unauthorized practice of law complaints.
- OTHER LEGAL PROFESSIONALS:** Development costs for the Supreme Court-mandated Limited License Legal Technician (LLLT) and Limited Practice Officer programs. Once implemented, the LLLT program is intended to be self-supporting; revenues generated will be credited back to cover these costs.
- MEMBER BENEFITS & PROFESSIONAL DEVELOPMENT:** Costs for Ethics Line, Ethics School, Law Office Management Assistance Program, Lawyers Assistance Program, and Mentorship Program, as well as WSBA-sponsored benefits. This category also supports new and young lawyer education, training, and leadership, and staff support to nearly 900 WSBA volunteers.
- PUBLIC SERVICE & DIVERSITY/INCLUSION:** Supports the Access to Justice Board and the WSBA's public service programs, including the Moderate Means Program, Call to Duty Initiative, and other pro and low bono initiatives. Additionally includes the WSBA's efforts to advance diversity and equality in the legal profession, as guided by the 2013 Diversity and Inclusion Plan. These activities are supported in part by a grant from the Washington State Bar Foundation.
- ENGAGEMENT & OUTREACH:** Member support through the Service Center; dedicated staff outreach to local, county, and specialty bars; member communications through *NWLawyer* publication; *NWSidebar*; *WSBA.org*; *WSBA Career Center*; and legislative support provided to WSBA leadership and sections.
- MANAGEMENT & OPERATIONS:** WSBA leadership, management, and internal support functions.

<sup>1</sup> This chart reflects WSBA activities supported in any way by member license fees. It does not include income-generating services or programs that cover – or more than cover – their own costs (e.g., Mandatory CLE services, Admissions/Bar Exam, etc.).



# 50 SHADES *of* GREEN



# Taking Professionalism to New Heights

## Mountaineering Lessons for the Practice of Law

by  
Steve  
Sieberson

PHOTO ILLUSTRATION BY TIM GUTHRIE



**M**y legal career and my life as a recreational mountaineer started in the summer of 1975, when I moved from Iowa to Seattle just a few days after graduating from law school. Since then I have devoted far more time and energy to law than to climbing, but the peaks and glaciers have always been calling my name.

It occurred to me recently that I have not been suffering from schizophrenia. There are striking similarities between mountaineering and the practice of law. Both are highly demanding and require training, focus, and commitment. Neither should be undertaken lightly. Both are risky, but they offer big rewards.

There are many lawyer-climbers in the Pacific Northwest, and we have discovered that mountaineering offers lessons that also apply to our legal careers — to our professionalism, success, and well-being. I would like to share a few of these lessons.

## PLAN FOR YOUR SUCCESS

### Plan Your Route, but Be Flexible

You don't just look out, see a lofty mountain, and set out to conquer it, although once I met a trio who had done just that. High on the slopes of Mt. Adams, I noticed a group who were climbing in street clothes and tennis shoes. They had no knapsacks, ice axes, or even jackets. When I went over to ask how they were doing, one of them gestured expansively and said, "Man, this is nothing like L.A." Out on a road trip, they had seen Adams from a distance, driven to its base, and decided to give it a go. Luckily for them, the weather was stable and they were on a non-glaciated route.

If we are prudent climbers, we will study maps and route descriptions, call the Forest Service for current conditions, and check the weather forecast. We will consider how to alter our course in case conditions change. Likewise, as a lawyer you won't last long unless you carefully organize your caseload. But even after completing your meticulous planning, you should be prepared to change directions as circumstances evolve.



### Train to a Higher Level of Skill than You Think You Need

Every climber knows that a Class 3 route will quickly turn into Class 4 or 5 if it starts raining. A slope that is easy in daylight can be treacherous in the dark. If someone suffers an injury, the situation becomes exponentially more complicated. There is a reason for learning rescue techniques and wilderness first aid. If we haven't trained for the contingency, we may be out of luck.

Law practice demands constant learning and the ability to deal with legal issues that you hope will not arise

in your case. It's great to have experts down the hall, but you need to know enough to realize when you should call them. If you think about all of the complexities swirling in our legal system, you just might be thankful for Bar sections, *NWLawyer*, and mandatory continuing legal education.

### Be Bold in the Conception, Conservative in the Execution

On Jan. 14, 2015, when Kevin Jorgeson and Tommy Caldwell completed their 19-day siege on El Capitan's Dawn Wall in Yosemite National Park, it was the fulfillment of a daring dream — the world's hardest multi-pitch route. And yet, they were far from reckless. They had planned and trained for this climb for five years. They had rehearsed every move, pre-determined every bivouac, and separately climbed each section over and over.

To a non-climber, a mountaineer may appear as a crazed thrill-seeker, but the fact is that most climbers are inherently conservative. We enter a vertical world filled with hazards, but we try to be as safe as possible at all times. In the same sense, lawyers should be both daring and cautious. You must be creative in navigating the legal minefield, but your ingenuity must be tempered by sobriety. From the first day of law school you are taught to see many sides to an issue, and that is why you should always challenge your own assumptions by asking, "But what if . . . ?"

## EQUIP YOURSELF FOR THE TASK AHEAD



### Don't Carry Too Much

One of the recurring themes in Cheryl Strayed's best-selling book *Wild* is her constant struggle with an overloaded

backpack as she hikes along the Pacific Crest Trail. Seasoned climbers have learned that it is indeed possible to have too much gear, and that going light can enhance agility and conserve energy.

If you want to succeed as a lawyer, you should know that you can call too many witnesses, raise too many issues on appeal, and have too many words in a letter or document.

### Keep It Neat

In rock climbing, it is critical to keep your equipment rack precisely organized. When you are hanging by one hand, you want to know exactly where that chock or stopper is attached to the sling, so you can efficiently retrieve it, insert it into a crack, and clip in. Likewise, you need to know where the first aid kit is stashed in your pack, and exactly how it is organized. When confronted with blood, you don't want to be fumbling around looking for a compress.

In my opinion, there is no greater sin — nor one committed with more frequency — than a messy work space. Unfortunately, the modern law firm response to clutter is to have all conference rooms segregated from the lawyer offices, so clients will never see how disorganized their expensive attorney is.

### Embrace Technology, but Don't Be Too Dependent on It

I grew up with compass, altimeter, and maps, and I'll admit to being slow in buying into GPS devices. They are impressive and they can be potentially life-saving. Likewise, cellphones can be invaluable in an emergency. But what happens if there is no signal or the battery dies? If you have hiked along, looking down and marking waypoints on your screen, have you noticed the actual physical landscape? Your brain doesn't die after 10 hours of use.

As a lawyer, can you have a meeting with a client at which you make eye contact instead of just typing notes onto a laptop or tablet? And at that closing or during that trial, doesn't it make sense to carry knowledge in your head rather than only in a device? Modern technology offers so much information-retrieval capacity that practicing law the old-fashioned way seems, well, old-



fashioned. But surely there must still be a role for thinking on your feet.

## FORM A TEAM

### Find Good Partners and Communicate with Them

Caldwell and Jorgeson formed what proved to be a perfect team and they knew how critical it was to stay in constant contact. After 19 days on the Dawn Wall, they were hoarse from shouting at each other to be heard around outcroppings and over the noise of the wind.

I have always been fortunate to have colleagues, including support staff and service providers, who are smart and dedicated. My clients (and now my students) have truly benefited from the folks I work with. Nevertheless, just sharing office quarters with talented people is of little good if you and your colleagues do not communicate effectively. It always starts with you and your willingness to listen.

### Ask Others to Check Your Equipment

It is good mountaineering practice to check out each other's tie-in, rappel rig, or belay set-up, especially when you have been climbing for many hours and are getting tired. Good teammates also consult on route-finding, anchor placement, and other ongoing decisions. If you can't accept the fact that two heads are better than one, you might as well be flying solo, and then, when you peel off the cliff with no belay, you will be.

Why work with other people in a law office or legal department if you won't take the time to consult with them? Again, throughout my career I have gained so much from the people I work with — from their encouragement, but



also from their questions and skepticism. One of the best sources of advice has been my assistants. I am not too proud to ask, "Does this make sense to you?"

### Swing Leads to Share the Effort

On an extended rock climb, the usual practice is for one person to lead the first pitch, belayed from below. Then she sets a new belay, brings up the second, and the second plays through and

leads the next pitch. They continue to alternate, "swinging leads." This is not only efficient, but also a wonderful way to share the responsibilities between partners.

In law practice, being part of a team means that others can shoulder part of the load. Some lawyers are reluctant to divide up their work, on the theory that "by the time I explain what I need, I can do it myself." This is sadly short-sighted.



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Sharing the effort is a necessary part of training new team members and it creates a stronger team.

## MANAGE THE RISKS

### Stay Alert and Recognize the Warning Signs

When travelling to a new city or country, you are often advised to “be aware of your surroundings.” Hikers and climbers should be alert to whether they need water or carbs, and whether their feet are developing any “hot spots” — the sign of an imminent blister. They should also be aware of their environment. A lens-shaped lenticular cloud appearing suddenly over a nearby summit foretells unstable weather. Falling air pressure means a storm is on the way.

There are warning signs for lawyers as well. When your inbox fills up; when clients, colleagues, or opposing counsel send you repeated requests for information or documents; when you fall behind in your timesheets — it’s clear that trouble is brewing. When you see these things happening to one of your colleagues, ask yourself if he or she might be struggling with substance abuse or psychological problems. Whether it’s about you or a co-worker, consider calling the WSBA Lawyers Assistance Program.



### Know When to Turn Back

There are times when you have to abandon a climb. Deteriorating weather, illness, injury — there are many reasons to call it a day. It is said, “There are old climbers and bold climbers, but no old, bold climbers.”

As a lawyer, you can’t win every argument or negotiating point, and sometimes you will lose your case or see your transaction fall apart. You are willing to go to the mat, but you owe it to your client

to explain when it may be the best course of action to concede or settle. Topps doesn’t issue lawyer cards with your photo on the front and your lifetime statistics on the back. Success in a legal career can be defined in many different ways.

### When Disaster Happens, Do Your Best

Everybody who climbs has been involved in difficult situations and some of us have witnessed tragedies. We train in first aid and rescue techniques, yet in the face of an accident, we feel inadequate. I have learned that under the pressure of an awful event, you need to take a deep breath, clear your head, and set definable tasks for yourself and your teammates. Do what is manageable and don’t berate yourself for lacking super powers.

Every lawyer will experience some failure, and a few of us will be involved in a true disaster, such as the collapse of a law firm. As in a mountain incident, it does no good to blame yourself for not being able to fix everything. Rather, maintain your professionalism, do what you can under the circumstances, and get on with your career. Seek professional help from the WSBA Lawyers Assistance Program, colleagues in the Bar, or other advisors. They can help you maintain your perspective and set a strategy for going forward. Hard as it may seem at the time, today’s failure can make you stronger for tomorrow.

## RISE TO THE CHALLENGE

### Accept the Fact that It’s Mostly Plodding

Most mountain photos are taken at the summit, showing big smiles and raised fists. But take it in perspective: In a one- or two-day climb, maybe 20 minutes are spent on top. The rest consists of long approaches under heavy packs, coiling and recoiling rope, and generally trudging along. It’s a lot of effort, and the overall character of a mountain outing is not ecstasy, but patience and discipline.

Legal programs on television leap from one dramatic moment to the next — an intense confrontation during an interrogation, the zinger question on cross-examination, the reading of the verdict. True life for lawyers is simply not a highlight reel. You must deal with hours, days,

and weeks of grinding it out. At least it can be said that law school prepares you for this life.

### To Stay in Balance, Keep Moving

In climbing, we speak of a “dynamic move” in which you pass over a nub of rock or bit of ice that won’t support you for more than a second. You can’t stop there, so you flow through to something more substantial. In such a situation, staying in balance means staying in motion.

Lawyers get stuck sometimes. It may be because they are on unfamiliar ground (a daily occurrence for new lawyers), because they are over-thinking a problem, or as a result of outside stresses. In any event, a bout of uncertainty is a normal human condition that need not stop you in your tracks. You can use your anxieties to spur yourself onward and even to improve your performance, but you must keep moving.



### When It’s Time to Take a Leap, Go for It

On rock, you can lunge for that handhold that is just out of reach, as long as you think it through and set protection to limit your fall if you miss your target. Caldwell and Jorgeson fell many times, reconnected with the rock, and tried again. The crux of their ascent proved to be a few critical leaps to miniscule finger holds, but they had trained and had the courage to go for it.

There are no guarantees of success in law practice. There will be times when you have to roll the dice and hope for sevens. Be sure to consult with your client before doing so, and then let loose. If legal affairs were totally mechanical and predictable, there would be no need for lawyers: LegalZoom would cover everything.



## TAKE JOY IN WHAT YOU DO

### Don't Complain . . . Ever

Mountain climbing is strenuous, but you have chosen to do it, and you should never complain. If you need to adjust your socks or your pack straps, just say so and then do it. No need to grumble. I have a pretty strict rule about this: I will climb with a whiner only once and never again.

Every lawyer has a heavy workload and receives insufficient praise, so why complain about it? To be sure, if you suffer harassment or discrimination, you should speak out and seek redress, but on ordinary things, do you want to be known as a person who is never happy? Some squeaky wheels seem to get greased, but everyone remembers the squeaking.

### Lighten Up Once in a While

Even though mountaineering is an avocation for most climbers, it is serious business, and it can wear us down. We need a bit of levity now and then. I once saw a photo of some people who carried a keg of Coors to the top of one of Colorado's Fourteeners, and I regret that I was not on that summit that afternoon. It's great when climbers wear something loud or zany — I used to put on a summit necktie; why not a tutu?

If ever there was a profession that should have Mandatory Continuing Recreation, it is the practice of law. We need other things in our lives. Yoga is wonderful, but so are child-raising, making music, and acts of charity. Tennis, anyone? Choose what you will, but do it regularly, or your legal career will consume you. Also, is there a rule that says lawyers can't have a little flair? I'm not impressed by a Lexus, but how

about some argyle socks, a pocket square, chandelier earrings, or five-inch heels?

### Enjoy the Summit, and a Job Well Done

Those of us who climb mountains do so because we can't imagine not doing it. We are drawn to the fresh air, the breathtaking scenery, and things we can't even articulate. We take satisfaction in doing something difficult. We are grateful for our teammates. We revel in reaching the summit, and even more in making it back home at the end of the day. Climbing brings us joy.

As lawyers, we are called to the Bar and commissioned to play a vital role in ordering society. We have the honor of being entrusted with our clients' most difficult problems and helping them achieve their dreams. We are privileged to do what we do. We have so much to celebrate.

If I have spent more time lawyering than climbing, it is because I know which of the two is more important. But I am glad that I have done both. **NWL**



**STEVE SIEBERSON**, a WSBA member since 1975, practiced law in Seattle for 25 years before becoming professor of law at Creighton University in Omaha. A longtime climber, he is the author of *The Naked Mountaineer — Misadventures of an Alpine Traveler* (University of Nebraska Press). Sieberson's webpage is [www.stevesieberson.com](http://www.stevesieberson.com) and he can be reached at [stevesieberson@gmail.com](mailto:stevesieberson@gmail.com).

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# Practicing Law in the Cannabis Industry

## What We've Learned One Year Later

by

Harold E.  
Snow Jr.,  
Scott G.  
Warner, and  
Andy Aley



**I**t has been more than a year since the first sales of recreational cannabis in Washington under I-502, the voter-approved

initiative that legalized recreational cannabis under state law in Washington. Today medical cannabis is coming in from under the bushes and will soon join recreational cannabis as a well-regulated industry in Washington. Shortly after the passage of I-502, several of us at Garvey Schubert Barer (GSB) reviewed the landscape and decided it was worth the effort to represent our existing clients and new clients as they traversed the new and barren landscape of legalized cannabis in Washington. Below are some key takeaways that we have found after a year of practice in this area.

### Obtaining Consensus about a Cannabis Practice Takes Effort

Those of us who thought entering the practice area made sense decided to

treat the cannabis practice much like those of other regulated industries such as beer, wine, or distilleries. Since we already served clients in these industries, representing cannabis businesses seemed to be a natural extension of our existing experience.

Next in the development of the practice area was the problem of convincing our partners that it was an acceptable area of practice. This was really a two-part problem. First was the question of whether GSB should be in this area of work at all. Was it proper for our firm to represent clients in the cannabis industry? What type of reputation would we have?

Second was the question of how to be involved with the marijuana industry. What should be the scope of the representation? Do we represent only ancillary service providers and not licensees? If we represent licensees, do we represent only producers and processors, not retailers? That was a major point of discussion and initially the decision was to represent only producers and processors and not retail licensees.

In addition to our internal discussions of how to appropriately represent those in the cannabis industry was the issue of what our existing clients might think about the new practice. Would we lose the opportunity to service existing clients by working in the cannabis industry?

In the end, our clients helped out in this area immensely. We asked the opinion of some of our major clients and they did not appear very concerned, if at all, that we were working in this new practice area. Further, we found some of our existing clients had either applied for licenses or were beginning to offer goods and services to the recreational cannabis industry and asking us for assistance. This latter development certainly helped push the process along.

### Organizing the Representation and Scope of Services Requires Care

A big question early on was how we could ethically advise clients in connection with activities that violate the federal Controlled Substances Act (CSA). Counseling a client to break the law is, simply, not permitted (RPC 1.16, Comment 2). Fortunately, guidance from the Department of Justice, the Washington State Bar Association, and bar associations in other states helped us cross this hurdle and move forward.

Next was the issue of the engagement letter, the description of services, and the reminder or warning that the venture the client was proposing to embark upon was a violation of federal law.

Another sub-issue within the issue of violating federal law was how far this potential violation could reach. Many of our clients provide goods and services to the cannabis industry, but do not directly participate in the industry. Are they co-conspirators with the licensees in the violation of the CSA? Are these providers of goods and services subject to having their assets seized along with the licensee if federal authorities initiate legal proceedings against the licensee? Firms considering their own cannabis practice should think of addressing this point in their own engagement letter.

There were two more interesting

points in this area: First, what happens when a licensee applicant walks in with cash for the retainer, you take it to your bank for deposit in your IOLTA, and your bank refuses to accept the deposit because it is associated with the cannabis industry?

Answer: You work very hard to find another bank that will work with you! It is likely that banking issues will remain a sticking point for many of those operating in these early days of the cannabis industry, including law firms.

Second, what is the scope of the background check your firm should undertake in order to become comfortable with a potential client? Do you rely on the material the client provided to the Liquor and Cannabis Board (LCB) in connection with its application and the report the LCB produced, or do you conduct your own investigation?

We chose to go with reserving the right to conduct our own investigation as well as obtaining copies of the material the potential client provided to the LCB. We sometimes undertake background checks for potential clients in other industries, and this has not been a roadblock to representation.

The attorneys in our team include many who practice in licensing and regulatory work, intellectual property, transactional, entity formation, criminal law, land use, employment litigation, taxation, asset protection planning and federal import export licensing, to name a few. The breadth of expertise has been a valuable asset when it comes to navigating a complex and rapidly evolving marijuana industry.

### Working with the Client Requires Communication

Another interesting challenge has been working with the clients in this industry and helping them understand the nature of the practice and the value of legal services. Many of these clients are new to the business world and need to be educated on the value of legal services and what, in fact, constitutes legal services.

Advising clients in the cannabis industry is complicated and explaining the complexities and the possible consequences of various actions they might undertake has sometimes been

a challenge. This has been especially true when the clients are on a fixed budget.

A great deal of care must be taken to identify the scope of work and budget expectations from the outset. Often the scope of work changes during the course of the representation. The attorneys involved in the representation and the client need to remain aware of the financial cost of such changes in scope.

### The Cutting Edge

The cannabis practice is a new area of law and provides daily new and unique challenges and opportunities. While there are a great deal of questions and internal discussions for a firm to resolve about wading into the marijuana industry, there is also a great deal of satisfaction to be had assisting the development of new law on the cutting edge of a new practice area. **NWL**



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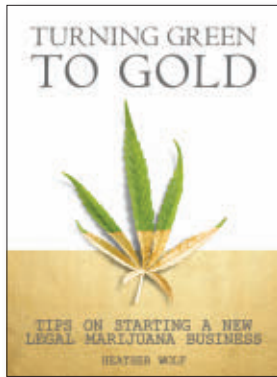


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## ***Turning Green to Gold: Tips on Starting a New Legal Marijuana Business***

Heather Wolf, author  
\$4.99, e-book, available to  
purchase online at <http://bit.ly/greengoldebook>

REVIEWED BY MICHAEL HEATHERLY

**I**t's rare that an entire industry springs up virtually overnight. But on July 8, 2014, Washington state rolled out legal recreational marijuana, and by the end of the year, total sales had reached over \$65 million, with tax revenues to the state of more than \$16 million. Of course, there's nothing new about peddling weed. Your cousin Bud has been doing it out of his VW van since Woodstock, and there's that one house down the block that always seems to get way more driveway traffic than it should. But it's now a legal, legitimate enterprise, and business people — along with their legal advisors — want to know how it works.

Bellingham attorney Heather Wolf has some answers in this concise (20 pages) self-published e-book. In that space, Wolf addresses 10 fundamental topics, including how to get licensed to produce, process, or sell marijuana; what state and local regulatory hurdles you're likely to encounter in establishing a marijuana-related business; the complications and restrictions of financing a marijuana business; and the many as-yet-unsettled issues relating to the fact that marijuana production and sale remains illegal under federal law (thus, no federal tax deduction for business expenses, ongoing risk that feds will back away from current non-enforcement policy regarding state-

legal marijuana businesses, etc.).

*Turning Green to Gold* does not purport to be a legal textbook. Instead, it is targeted toward anyone who might have an interest in or be affected by the business aspects of the industry. This, of course, would include lawyers with clients involved in the industry in any fashion. It's a straightforward, clearly written introduction to a controversial fledgling industry that presents novel business and legal challenges, the implications of which are a story still being written.



Author Heather Wolf is a partner with the firm of Brownlie Evans Wolf & Lee, LLP, in Bellingham. Her practices focuses on recreational marijuana business law, real estate, and land use law. She received her J.D. from the University of Washington School of Law. When not advising clients, Heather can be found mountain biking or trail running on Galbraith Mountain in Bellingham.

I spoke with Heather Wolf and she answered some of my questions.

### **How did you first get involved in representing clients seeking to enter the marijuana business?**

I was approached by existing clients in the fall of 2013 who wanted to know if and how they could develop their property for I-502 use. At the time, Whatcom County had just begun working on its zoning rules related to I-502. Given my land use background, it was natural for me to work with clients in regard to zoning and I-502. This also led me to famil-

iarize myself with the new rules regulating recreational marijuana businesses and thereafter assisting licensees with siting of their I-502 facilities and advising on other regulatory issues. Our firm also has a strong transactional business practice, which has been very helpful for I-502 clients as they have also needed advice and assistance with corporate entity formation, financing instruments, etc.

### **Why have you decided to focus your practice in this area of law?**

It is exciting and challenging and allows me to use the skills that I have developed over the years to work in a brand-new legal area. Also, I have always been strongly in favor of the legalization of marijuana and I very much want I-502 to succeed. I hope that I can contribute a small part to its success.

### **How much of your practice is now devoted to representing clients in the marijuana business?**

The majority of my practice is now devoted to advising legal marijuana businesses. I do, however, still maintain my existing real estate and business practice.

### **Even though recreational marijuana has been legalized, have you felt any personal stigmatization by fellow lawyers or others when they find out you practice in this area of law?**

No, I have only found support from my colleagues. I think that other attorneys



are pleased to have someone to whom they can confidently refer these clients.

**Do you believe a significant number of additional states will legalize recreational marijuana in the foreseeable future?**

Yes, I think we will continue to see other states legalize marijuana. Legalization could next possibly occur in California, Nevada, Arizona, and Maine. What will really be interesting is to see which Native American tribes will legalize marijuana and become involved in the industry in other ways, such as entering the marijuana banking services industry.

**How about the federal government? Do you believe it will eventually remove marijuana from Schedule I or otherwise decriminalize it nationwide, steps that might also boost the industry by freeing up tax advantages and financing opportunities that are prohibited now? If so, do you have a guess as to when that might happen?**

I am hopeful that eventually the federal government will declassify marijuana as a Schedule I drug, but when that will happen is anyone's guess. The new bill that has been introduced in Congress, which would allow for the use of medical marijuana in states where it is legal, would certainly be an improvement over the current situation. The current status of marijuana as a Schedule I drug presents a huge obstacle to those businesses operating legally at the state level in terms of being unable to open bank accounts, seek bankruptcy relief, claim federal tax exemptions and deductions, etc.

**As alluded to in the introduction to your book, a few years ago it was almost unimaginable that recreational marijuana use and production would be legalized. Many people are surprised at how relatively easily the process has gone so far. Why do you think legalization has encountered surprisingly little organized opposition?**

A majority of the American population supports legalization, so support for marijuana legalization shouldn't be a surprise. What is surprising is the number of jurisdictions in Washington state

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## **Robert N. Gellatly inducted into the International Academy of Trial Lawyers**



*Robert  
Gellatly*

Robert Gellatly was inducted into the International Academy of Trial Lawyers on March 20, 2015 at its annual meeting in Santa Barbara, CA. The Academy limits membership to 500 Fellows from the U.S., and only invites lawyers who have attained the highest level of advocacy. A comprehensive screening process identifies the most distinguished members of the trial bar by means of both peer and judicial review. Mr. Gellatly was evaluated by his colleagues and the judges in his jurisdiction and was highly recommended by them as possessing these qualifications and characteristics.

Mr. Gellatly is also a Fellow in the American College of Trial Lawyers, and has been chosen by his peers as one of the **Best Lawyers in America®** for many years.



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that have enacted moratoria prohibiting these otherwise legal businesses from operating. The local bans and moratoria have become a hindrance to the success of I-502 and the legal marijuana market.

**Because it's brand-new as a legal enterprise, a lot of marijuana shops have sprung up across the state. Do you believe many of those will survive, or will market forces and regulation weed out (I just couldn't make it through this whole thing without a play on words) a lot of competitors?**

I do think that some licensees went into this business without sufficient capitalization and wherewithal to comply with both state regulations and the ever-changing local zoning regulations. I am hopeful that if the Legislature does bring the illegal medical marijuana market into the I-502 fold and provides some tax relief to marijuana businesses, many of these businesses will in fact survive.

**Might the strict regulation of marijuana financing (e.g., requiring owners and investors to be Washington residents; limiting the number of licenses one entity can hold, etc.) also maintain more of a mom-and-pop nature to the industry and resist large-scale corporatization?**

It may keep the market small-scale, but it may also keep the legal market from reaching its full potential. Because marijuana businesses can't obtain bank financing, they are limited to finding private financing. The state's residency requirement for investors makes it that much more difficult for marijuana businesses to find financing and restricts the pool of investors. Similarly, the prohibition on vertical integration (i.e., producers can't also be retailers) precludes those with expertise in both areas from using their knowledge and experience to benefit the entire marketplace. Although some of these rules may have been well-intentioned, they have made it very difficult for marijuana businesses to operate and compete with the black market. **NWL**

**MICHAEL HEATHERLY** is the editor of *NWLawyer* and can be reached at [nwlawyer@wsba.org](mailto:nwlawyer@wsba.org) and 360-312-5156.



# GREENHORNS

## Managing Stress at the Beginning of Your Career

by Amy NeuBerger

“**Y**ou’ll get there.”  
“**You’re still learning.**”  
“But you need experience to get experience!” “Hang in there.” “It’s tough out there.” The list goes on.

If you’re a new graduate or a newly licensed attorney, these phrases sound all too familiar to you, and you may have just wanted to yell, “Stop! I’ve heard this all before!” as you were reading that list. Being a newbie is a promising and exciting time, but is also extremely stressful and it’s certainly not easy to get on that path to success.

### Are You a Greenhorn?

“Greenhorn” is a word that gets thrown around when describing new attorneys. Generally, a greenhorn is someone “who lacks experience and knowledge.” I know what you’re probably thinking. “Great. I spent four years as an undergrad, three years in law school, passed a bar exam, and now I’m told I lack experience and that I’m unknowledgeable? What is that about?”

It seems like we’ve worked a lot to get into the exclusive club that is the legal profession, and now that we’re in it, we are a bit dismayed to learn there is still a lot of work to be done. We can take solace knowing, however, that this overwhelming, anxious feeling is not exclusive to greenhorns. Talk to any experienced attorney and you’ll learn that attorneys of all ages and experience levels — from newbies to gray-haired senior partners — must confront new topics and concepts to learn and solve challenging problems. (For many, it is *the reason* we became lawyers.)

### Lawyers Are Stressed

Stress and mental health issues are prevalent among attorneys, and much more so than other professions. An article by the University of Pittsburgh Law Review explained how lawyers have a high rate of depression, which is close to four times the rate of the general population, and that the incidence of substance abuse is higher for lawyers than the population as a whole.<sup>1</sup>

What is worse is that in our profession, the consequences for poor mental health are significant when compared with other professions. When mental health, stress, or substance abuse get out of hand, they affect our ability to act as lawyers, serve clients, and maintain the high standards of conduct required under the Rules of Professional Conduct.

These are alarming facts. While we take our profession seriously, we should also take ourselves and our health seriously, too. We have put great time, education, and energy into our careers and will, presumably,





continue to do so. In the same manner, we should contribute time and energy into maintaining our own well-being.

### The Stressed Greenhorn

In many ways, the stress and anxieties greenhorns feel are valid: the training wheels we wear fresh out of law school, our lack of a considerable depth of professional experience, and the notable learning curve that is our burden to carry can place us at a considerable disadvantage in the job hunt. And within the law firm hierarchy, it is no secret that we are the bottom rung, carrying the burden of grunt work. And if you're not already within a firm, then there's the other not-so-small-challenge of the career search. Being a junior attorney certainly presents us with many firsts and many obstacles.

### Handling Stress

But we shouldn't quit the "school of hard knocks" yet. Certainly a lack of experience is something we can change over time and the stress that comes with it is something for which we can prepare ourselves. I interviewed WSBA Lawyers Assistance Program manager and clinical psychologist Dan Crystal for information about how to handle the stressful situations we often encounter as a greenhorn just entering the legal profession.

#### *Could you provide a little background on yourself and your work for readers?*

I've been at the WSBA for six years. I educate the membership on issues surrounding self-care, mental health, addictions, and the job search by way of CLEs, the website, and our e-newsletter "In Balance." I also manage the diversion program for the WSBA Office of Disciplinary Counsel.

#### *What are some of the most common problems and stressors you see with new graduates and newly admitted attorneys in your work as a psychologist?*

Early-career attorneys often put the law on a pedestal and do not know how to step into the identity of being a practicing lawyer. Adding stress to this equation is a tight job market, firms that do not want to train lawyers, student loans, and of course the competence and ethical responsibilities that a practicing attorney

**... IT IS NO SECRET  
THAT WE ARE THE  
BOTTOM RUNG,  
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WORK.**

is expected to demonstrate.

#### *What would you say are some of the most common causes of stress for these members of the legal community?*

Anxiety, depression, and addiction, to name a few. Early career attorneys can be perfectionists about their work product and this is a recipe for anxiety. Finding a job, or knowing what kind of job you want, is tough. When an attorney struggles to resolve this dilemma, they will often turn on themselves as the problem. This kind of hopelessness is where depression preys. In addition, law school fosters a culture of alcohol consumption and attorneys drink at about twice the rate of the general population.

#### *It's unfortunately true. I've seen the battle people have had to endure with addiction while simultaneously trying to tackle school and jobs. What advice do you have for attorneys regarding mental health, well-being, and stress?*

Abundant self-care. When we are younger, we are more willing to sacrifice our needs to do well in school or on a particular test, but this logic will not make your legal career very satisfying and it will overwhelm your personal life. I find attorneys really appreciate psychotherapy as a forum to help clarify their thoughts. And don't be afraid to ask for help!

#### *What are specific activities, relaxation methods, etc., that new attorneys can do to manage their stress?*

Compartmentalize your life effectively and you will be more efficient. Hold your calls, re-arrange your schedule, and close Outlook when you are writing a brief. Put your phone down when you are resting at home. Nurture other identities when you are not at work: yogaphile, woodworker, culinary genius, Little League coach, etc. Remember, there is more to you than your thoughts are telling you at any given moment.

#### *What can young attorneys do to help them feel in charge and in control of the job hunt and stress?*

Most jobs are not found online. You have to really — sorry, I hate to say it — network. Attorneys who get jobs do one to two informational interviews every week. Over time, you will develop a knack for describing who you are and what you do.

#### *What are some signs new attorneys can look for that stress is becoming a problem in their life? What kind of foresight could you offer to them to spot stressors and stop them before they occur or become out of hand?*

I tell clients that anxiety won't kill you, but avoidance possibly could. If you avoid dealing with an enduring dilemma, it will only get worse and ultimately lead you to live a life you do not necessarily want for yourself — whether it is ignoring an unsatisfying, or even abusive, work environment or dragging your feet in networking your way to a job. Some warning signs for burnout include impairments in concentration, procrastination, insomnia, drinking or drugging, or not prioritizing your life out of work.

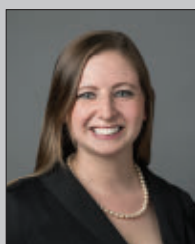
#### *What resources are available in the legal community for people to handle the stress of being a new lawyer?*

WSBA Connects is a member benefit providing free psychotherapy to attorneys in their community. [Contact them at 1-800-756-0770, option 1.] The WSBA Lawyers Assistance Program organizes some great trainings

and a job search group. In general, I recommend having an inner circle of individuals you can turn to for advice to shepherd your career — law school colleagues, attorney mentors, buddies from kindergarten, siblings or parents, etc. But don't postpone expressing your dilemmas as you look for solutions.

### The Takeaway

The legal profession can be a highly stressful one, and as newly licensed attorneys, we need to take care of ourselves. Many of us joined the legal profession to make a difference for the better and to serve others. As freshly minted attorneys, let's continue to aim high and strive for our goals and to do our best, but to reach those heights, we must be aware of the stresses and anxieties and the management required, lest we lose sight of the big picture entirely and miss out on this prestigious profession. Whether "greenhorns" or experienced attorneys, we need to always keep in mind that to serve others, we must also learn to serve ourselves, too. **NWL**



**AMY NEUBERGER** is a native of Chicago and is licensed to practice law in Illinois and, as of May 2015, Washington.

She holds an LL.M. in information technology and privacy law and is fascinated by the intersections of technology and business. She is currently job-hunting and is excited to plant roots in the Seattle area — she has fallen in love with the sights and surrounding nature — and to start her legal career. If you don't find her with her nose in a sci-fi novel or running on the waterfront or through any of Seattle's picturesque parks, then you can email her at [aneuber2@gmail.com](mailto:aneuber2@gmail.com).

### NOTE

1. Rothstein, Laura. "Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual." *University of Pittsburgh Law Review* 69.531 (2008): 531-33.

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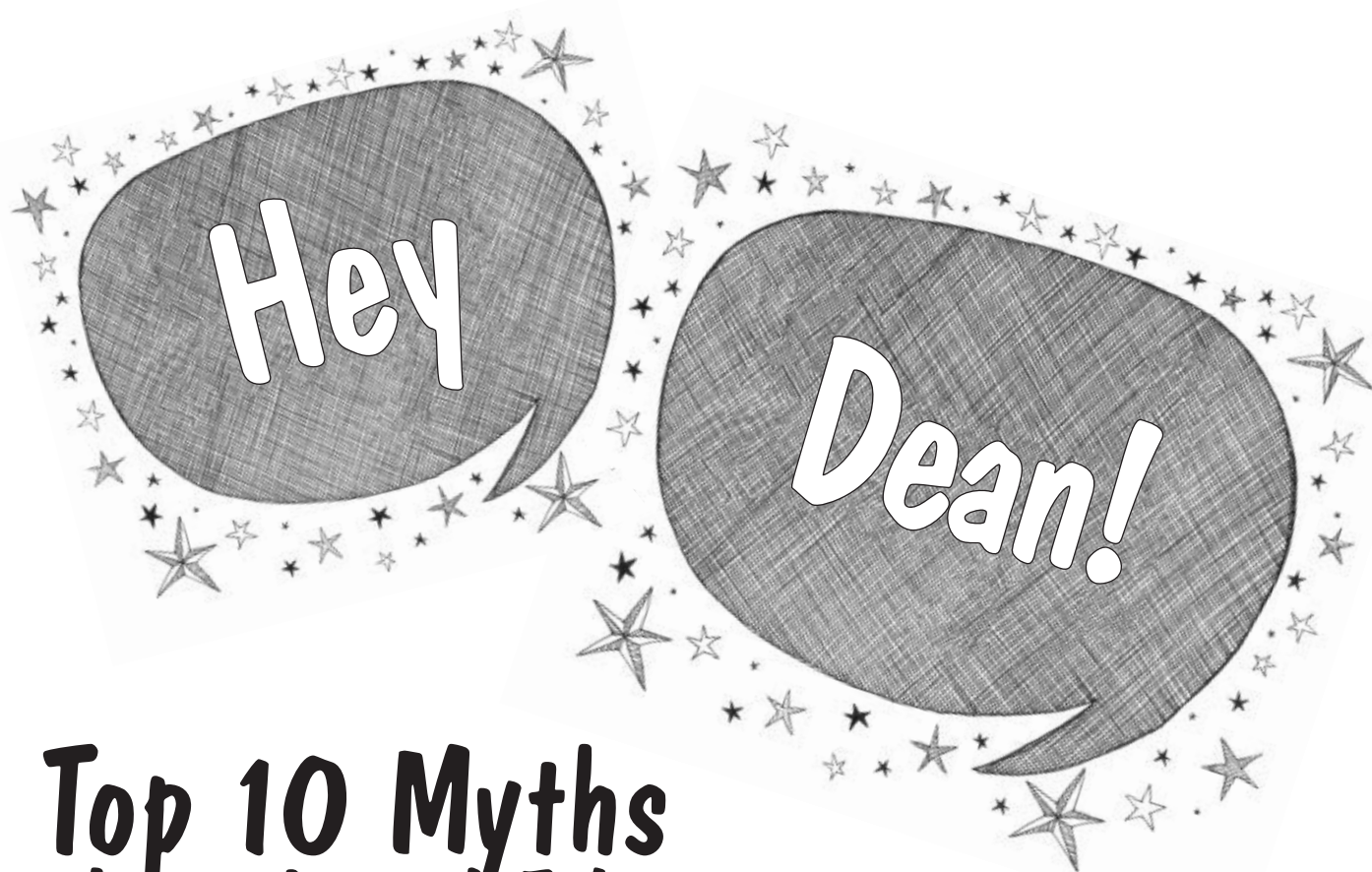
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# Top 10 Myths about Legal Education

by Dean Annette Clark and Dean Kellye Y. Testy

**A**s the legal profession continues to evolve amid rapid technological innovation and global market convergence, pressure has mounted for legal education to adapt to the changed environment. As calls for reform have come fast and furious, those of us in legal education have come to realize that many of the would-be reformers have a vision of legal education that is more akin to their own experiences in law school rather than legal education as it actually exists today. There is no question that law schools still have a great deal of work to do as we endeavor to keep pace with disruptive technologies, globalization, and fundamental shifts in how lawyers work and the skills they need to be competent, effective practitioners. In order to ensure that the discussions of additional needed reforms start from an accurate factual base, this essay discusses the top 10 myths about legal education from our perspective as deans. These myths are often presented in the form of very well-intended, but uninformed, advice to us about suggested changes to legal education.



## 1. Hey dean, you should start a law clinic.

Law schools nationally have been incorporating legal clinics into their curricula for at least the past 20 years, providing a range of opportunities for students to learn while serving real clients under the tutelage of experienced law professors who are also top-notch lawyers. Most students today take at least one clinic before they graduate, usually during the third year of law school. Law schools offer a wide range of clinical courses that provide students the opportunity to hone their practice skills during law school in numerous practice settings, including both litigation and transactional areas. These clinics provide students with outstanding skills education and also contribute hundreds of thousands of hours in pro bono legal services to communities that are often underserved by the practicing bar and by legal services organizations that are stretched far too thin.



## **FUTURE OF THE PROFESSION**

continues the discussion initiated at the WSBA's Mission Possible: Choose the Future of Your Practice forum and will appear in each issue throughout the year. Your participation in the conversation is welcome and encouraged.



### **2. Hey dean, you should offer skills courses so students**

**are “practice ready” when they graduate.**

This is the area in which we’ve seen the biggest sea change in legal education in the last 15 years. A significant portion of the curriculum of virtually every American law school is now devoted to skills education: negotiations, mediation, client counseling, pretrial and trial advocacy, legal research and writing, drafting, externships, clinics, and more. In addition, educators now place great emphasis on the importance of these courses when advising students, and we are all striving to provide our students with a comprehensive and appropriately sequential curricular pathway for skills development. Reflecting this increased emphasis, the ABA mandates that every student take a certain number of skills credits as part of her courses of study, and most students eagerly choose to exceed the ABA minimum.

Our challenge is not to create skills education, which is already firmly rooted in modern legal education. Rather, the challenge is to keep up with the ever-increasing demand from our students for additional skills courses while still ensuring that they have the strong doctrinal foundation that has always been a hallmark of our legal education system. A further challenge is to offer skills courses that cover a wide range because our graduates do not all pursue the same career choices – they enter a wide variety of careers in all areas of law, business, and public policy.

### **3. Hey dean, you should eliminate the third year of law school.**

The days are long gone when the 3L year looked exactly like the first two, with doc-

trine, doctrine, and more doctrine being taught in standard classroom settings. Students now regularly use the third year as a bridge to practice, taking clinics, externships, and other simulated and experiential courses that help them build important skills for their careers. Furthermore, the ABA (our accrediting body) mandates that law schools require the equivalent of 83 semester credits for graduation, so it’s not an option to just lop off an entire year of legal education. Some schools have experimented with compressing the three years into two, but in our view, this compressed option, while appropriate for some, does not well serve most students, who derive great benefit from having the time to do legal work in the summers. As employers increasingly seek to hire graduates who have had live client-based legal experience while in law school, a compressed curricular design that makes it harder for students to work in the summer or during the academic year potentially impedes their market competitiveness.

Compressed or shortened programs of legal education also make it more difficult for students to take the credit-intensive, skills-based courses that many employers (and reformers) believe are important. Finally, although we understand the importance of preparing our students for practice, we also need to give our students time to engage in deep learning about themselves, the nature of the legal profession and their role as lawyers within that profession, perspectives on the role of law in society, and legal history, to name just a few areas of study. Our obligation, as we see it, is to graduate thoughtful, well-rounded, and well-educated lawyers, and that takes time.

### **4. Hey dean, you should reduce the cost of legal education.**



We can all agree that legal education and our students are facing significant obstacles in terms of cost, access, student debt load, and employment opportunities, and we’re working hard to develop models that will address each of these issues. At the same time, law schools across the country are getting smaller as the demand for legal education has declined, leading to a reduction in tuition revenues and/or funding from state legislators. The largest portion of a law school’s budget is personnel – faculty,

librarians, and staff – and this infrastructure is there for a reason. Legal education has long been respected for its intensive engagement in the classroom – for its reluctance to “just lecture” or otherwise sacrifice the quality of education for cost savings. Further, law firms have reduced their investment in training new lawyers, expecting a higher level of skills upon graduation that is now left to the law schools to inculcate. Clients are no longer willing to pay for an apprenticeship; as a result, firms and companies are no longer willing to give new graduates time to learn on the job. We are continually being asked to do more, and rarely can an industry do more for a lower cost if quality remains a steadfast value.

### **5. Hey dean, you should get rid of those tenured faculty.**



Tenure is an important protection for scholarly freedom so that faculty can advocate for legal change without fear of employment jeopardy, but it is also important for a more complex reason: long-term shared governance of our educational mission. Without tenure, faculty do not have the incentive to invest in the long-term welfare of the school, its students, and the rule of law. Tenure protects the very fabric of American legal education – the rival of every other nation. Furthermore, tenure is a contractual obligation that runs from the institution to tenured faculty, and that legal obligation is not easily broken, nor should it be.

### **6. Hey dean, you should hire some real lawyers to teach your students.**

Most law schools employ a substantial number of adjunct faculty members who teach practice-based and specialized law courses. Best practices suggest that one-third of the instructional hours over the three years can come from adjunct faculty and two-thirds from the full-time faculty. The involvement of lawyers from our communities in our law schools has accelerated, not just in the classrooms, but also in critically important advising and mentoring roles. Our students benefit enormously from the current perspectives, career advising, and professional networking that our adjunct faculty mem-

bers provide as a service to the next generation of lawyers.



### **7. Hey dean, you should require some writing courses so your graduates know how to write.**

Virtually all law schools now require year-long legal research and writing courses in the first year as well as completion of one or more upper-level legal writing courses. In another marked change from years gone by, these courses are no longer taught by upper-division students, but rather by highly skilled professors of legal writing whose life's work is to teach law students how to research, analyze, and write well. The writing curriculum has expanded to include appellate advocacy, drafting courses, advanced writing courses, advanced research courses, and other forms of specialized legal writing, such as habeas practice or advanced seminars in substantive areas. Students also write extensively in their clinics and externships, and many also participate in law review, moot court, trial advocacy, and other co-curricular programs that add significantly to their writing and research experience. Finally, law schools commonly offer tutoring in legal writing and other forms of academic support for students who may not have come to law school with as much writing skill and experience as we would hope. As with all professional skills, writing abilities will mature over time as graduates gain experience and mentoring in their careers.

### **8. Hey dean, you should offer an orientation program to help your students get the most out of law school.**

Gone are the days when the dean welcomed the class by asking students to “look to your left, look to your right, only one of you will be here at the end of the year.” Instead, schools offer supportive and motivational orientation programs that span from a couple days to more than a week. These programs help students get to know one another before starting class, introduce students to the many support offices in the school (career services, mental health counseling, academic advising, etc.), offer trainings in

important areas such as diversity and inclusion, and provide insights into what to expect in the first year of law school and how to thrive. Faculty, alumni, members of the bench and bar, and upper-level students all work together to help welcome the entering class, not only into the law school but also into the profession.

### **9. Hey dean, your faculty should not rely only on the Socratic method or on one issue-spotter exam for the entire grade.**



Agreed, and largely they don't. Law faculty members today employ a wide range of pedagogical approaches to their teaching, mixing lecture, discussion, Socratic dialogue, problem-solving, teamwork, and a host of other teaching methods into their courses. Importantly, many faculty members are also “flipping the classroom,” a phrase that describes the use of technology to help students achieve a baseline of doctrinal learning on their own outside of class so that class time can be used for more advanced and in-depth exploration and discussion. Just as faculty members employ a wider array of teaching methods, they also use a wider variety of assessment instruments, including periodic writing assignments, mid-terms, and exams that have a variety of question types, and performance-based projects that permit students to learn to work in teams.



### **10. Hey dean, you should help your students find jobs and launch their careers.**

Agreed, again, and yes, we do. Law schools have professional career services offices that are staffed by experienced career coaches, many of whom are also lawyers themselves. These offices offer individual counseling as well as a wide variety of programs designed to assist students in their professional development. Programs include topics such as résumé writing, networking, interviewing, leadership development – and even professional etiquette. Career services offices also

act as a vibrant clearinghouse for employment opportunities, helping to match employers who have openings with students and graduates who are looking for work. Probably the biggest change in this area over the last several years has been the reduced reliance on law firm OCI (on-campus interviews) as the primary mechanism for helping students find employment. While OCI programs continue to be an important part of what law schools offer, we now also host public service career fairs, training and mentoring for individuals who are interested in solo practice, programs for students who wish to pursue non-traditional career paths, and speed-networking events in different practice areas, to name just a few. Where in the past career services may have been somewhat of an afterthought, it is now a primary component of legal education, as it should be.

In writing this essay, it is not our goal to suggest that legal education is perfect, only that it has evolved into a dynamic and ever-changing enterprise, one in which innovation and entrepreneurialism are increasingly encouraged and valued. We are both members of the WSBA's Future of the Profession Work Group precisely because we want to ensure that our law schools are key players in charting the future of our noble profession. It's a challenging time to be a law school dean, but it's also an exciting time, and we look forward to continuing the dialogue on how legal education can best respond to a changing profession and world. **NWL**



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# HEAD of the CLASS

A Q&A with LLLT Graduate  
Priscilla Selden

by Michael Heatherly



**S**even Limited License Legal Technician candidates have passed the first-ever licensing exam in Washington, the

first state to establish a program in which independent legal paraprofessionals are licensed to give legal advice. We have previously published articles about the establishment of the program (for recent updates, see “The Practice of Law in Transition,” July/August 2015 *NWLawyer*, and “Supreme Court Adopts Changes to Rules of Professional Conduct to Recognize Limited License Legal Technicians,” June 2015 *NWLawyer*). We wanted to get the perspective of one of this new group of practitioners. Priscilla Selden of Wenatchee, the only approved-to-practice LLLT so far, talks about her experiences as a pioneer in the field, which included participating in an online class session in her car and taking a course final from Costa Rica. She also discusses the present and future of the LLLT program and how it may affect the practice of law in general.



At a gathering to honor the first LLLT graduates, Priscilla Selden poses with Washington Supreme Court Chief Justice Barbara Madsen.

**Michael Heatherly: What was the nature of your career in the legal field before you decided to enter the LLLT program?**

**Priscilla Selden:** I have worked in the paralegal field in Wenatchee for 25 years, for private firms, sole practitioners, nonprofit legal aid organizations, Seattle University Law School, and the AG’s office. I have worked primarily in the areas of plaintiff’s personal injury and employment litigation, real estate, Indian law, bankruptcy, estate planning, and probate. I was also a CASA volunteer and served on the Practice of Law Board (POLB), created by the

Washington State Supreme Court and administered by the WSBA. I was administrator for the Washington State Paralegal Association from 1992–95. My commitment to my profession has been a mainstay of my career, which has not always been straightforward where understanding of the unique role and skills of paralegals is not familiar. I feel I succeeded in my mission, and my professional development has taken an overall upward trajectory.

## LLLTXAM RESULTS

Congratulations to the seven candidates who passed the first Limited License Legal Technician exam on May 11, 2015. Of the nine candidates who sat for the exam, seven (77.8%) passed both the Professional Responsibility Exam and Domestic Relations Practice Area exam. Those candidates are:

Leisa Bulick, White Salmon  
Christine Carpenter, Auburn  
Michelle Cummings, Auburn  
Kimberly Lancaster, Shoreline  
Melodie Nicholson, Auburn  
Priscilla Selden, Entiat  
Angela Wright, Granite Falls

Candidates must meet additional requirements before admission, including 3,000 hours of paralegal experience. When licensed, a legal technician will be able to provide limited legal services and legal advice to clients on family law matters. More information is available at [wsba.org/LLLT](http://wsba.org/LLLT).

### What led you to pursue LLLT education and licensure?

Having served for three years on the POLB and being a member when the rule passed in 2012, I was well-acquainted with the rule and its development. When I was laid off from a paralegal position in 2013, and the practice area classes were slated to start up, I could see that the next logical step for me professionally was this licensure. I wanted to continue to be a part of this profound change in service delivery, I wanted to experience how the rule worked in practice and I decided to follow the path as far as I could.

### How did you receive your LLLT education?

LLLT candidates are required to have underlying paralegal coursework adhering to a specific curriculum. There is also a temporary option, a “limited time waiver,” requiring 10 years’ work as a paralegal, and current certification based on national testing — grandfathering in. I earned my Legal Assistant Certificate in Edmonds Community College’s ABA-approved program in 1989. I already had a B.A. in political science from the University of Vermont, so was only required to take the core subjects to earn my certificate.

Historically, there has been confusion about the terms “legal assistant” and “paralegal,” which are used interchangeably, as well as “legal secretary,” because there is no regulatory scheme. There is a well-known inside joke of the “Poof. You’re a paralegal” way of being granted the title by law firm partners. Courts and the ABA have, however, come up with a definition of paralegal, which includes education or training, substantive nature of the work performed — which is key — and supervision by licensed attorneys. The National Federation of Paralegal Associations, the Washington State Paralegal Association, and the ABA are good sources for up-to-date information.

My courses from Edmonds did not perfectly align with the LLLT curriculum — more of some credits, less of others. So even though I earned my certificate from their ABA-approved program, I opted for the limited time

waiver, which I was granted. It’s important for those looking into the license to do their research, now that curricula are being aligned.

The “practice area classes” are the classes my cohort just completed, which are specific to this first LLLT license in family law. They were taught via livestream Internet by attorney instructors from Washington law schools, practicing attorneys, and from other disciplines. As the first class, we were test subjects using the technology. It made for some interesting and challenging moments! I live in a rural area of north central Washington where my only Internet access at home, via satellite, doesn’t allow for livestreaming. I was fortunate that my local library system and my small community of Entiat provided locations for me to take the twice-weekly classes over three quarters using their high-speed Internet. Once, due to Internet connectivity problems, I had to take the class in my car!

I also had to take my third-quarter final exam while on a trip to Costa Rica

with my family. There was no flexibility scheduling the trip. Fortunately, no connectivity issues there! I would like to go back to Costa Rica one day, when I can truly relax and enjoy it.

### Did you find the LLLT education fulfilling?

The Edmonds CC paralegal program is comprehensive, thorough, and suited to the practice, and gave me a great foundation I still return to. It is among the oldest and largest in Washington, and has been ABA-approved since 1976. It is widely recognized for its content and rigor.

The practice area courses we just completed were very dense, practical as well as theoretical, and well-taught. The attention to curriculum was evident, and included in-depth study of the ethical rules as well as the family law subjects. We students often had suggestions along the way, and it was gratifying when they were incorporated. We were a lively group! I didn’t have much back-

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ground in family law, and, along with my volunteer work at NJP Wenatchee with their family law practitioners, I feel the classes gave me a solid base for my practice moving forward.

#### How was the experience of studying for the LLLT exam?

I think I over-prepared for the exam, although I can't be sure of that, as we

weren't told our scores — only pass/fail. I almost made myself sick, as it was my exclusive focus for several months. This being the first exam, we didn't know what to expect. It's probably similar to studying for a bar exam. The Board provided study materials consisting of a list of about 100 questions or topics we needed to be familiar with. It was daunting, but in the end, I'm glad I studied as hard as I did.

#### How did you feel when you learned you had passed the exam?

A mix of relief, exhaustion, and elation. My first words to my husband were "Thank you," and "I'm sorry." We put our families through a lot getting through this program and the exam.

#### What is your current work?

I work part-time with Lacy Kane, PS, a small, busy litigation firm in East Wenatchee that focuses on plaintiff's personal injury and employment law, as well as a general practice. They were my first paralegal employer in 1989. I answer discovery for them. I set my own schedule, working a lot from home and meeting with clients at the office. Answering interrogatories can be a dreaded task, but I've developed a system that works and I enjoy the client interaction.

#### Are you putting your LLLT education and credentials directly to use at this point?

I have satisfied all the criteria on my end for the license. Finishing touches are being put on the licensing regime, and I will be ready to go. I am in talks with a couple of local public organizations who are interested in contracting with me to provide my services to low- and moderate-income clients. With one, Chelan-Douglas County Volunteer Attorney Services, we are planning a pilot project, and a contract should be drafted shortly.

I will also be setting up my own sole practice, and I am already receiving requests for my services. Until the malpractice insurance piece is in place, which I understand the LLLT Board is working hard to finalize, I won't be able to practice unless it is under an employer's policy. So, basically I am waiting for these final pieces to fall into place. Then I'm ready to go — and am eager to get started.

#### What do you envision yourself doing in your career a year or two from now?

For sure, I want to have a sole practice. I have worked largely independently before, managed a client caseload, and

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had a very small sole proprietorship as administrator for the Washington State Paralegal Association, though I will establish a PLLC to practice under this license. I want the autonomy not only of running a practice, but also establishing fees. My thought is to incorporate a sliding fee schedule. Though I'm not ignorant of the challenges, I feel I have the experience to be successful in a sole practice. I'm hoping I'll be busier than I can even imagine. At this time, I am the only LLLT candidate at this stage in Eastern Washington. Soon, others will join me, and I look forward to welcoming them.

**How do you feel the existence of LLLTs will affect the overall practice of law in the coming years, both for legal professionals and for clients?**

The hope is, of course, that we will make a dent in the unmet need. While it's clearly not the entire solution, I do believe it is an additional important tool. Hopefully, LLLTs can reduce the bottlenecks in the courts that arise when parties who need professional assistance and advice try to handle their cases without it.

I don't think fears that LLLTs will cut into attorneys' client base in significant measure will materialize. The Civil Legal Needs Study and other indicators show that over 80 percent of family law litigants conduct their cases on their own. Many people find the cost of an attorney prohibitive. Due to the shorter, less costly education, the expectation is LLLTs can or will charge less than an attorney. While LLLTs still need to refer some issues in a family law matter to an attorney (for example, advice and documents to divide real estate of a divorcing couple), clients should experience significant savings using an LLLT. This referral process also likely will result in new work for attorneys.

**What do you expect to see in the near future regarding the growth and public acceptance of LLLTs?**

I do believe that in short order LLLTs will become accepted, much as nurse practitioners are in the medical field. As a result, demand and the market will grow.

**Being in the first class of LLLTs to get licensed, do you feel that the pressure of making the LLLT concept work falls disproportionately on you?**

Not disproportionately. But yes, all of us in this first class are well aware of the focus on us and the significance of being pioneers in this new field. I have complete confidence in my fellow classmates that we will demonstrate

by our competence and ethics the viability of this new license and its effectiveness in addressing at least some of the unmet need. **NWL**

**MICHAEL HEATHERLY** is the editor of *NWLawyer* and can be reached at [nwlawyer@wsba.org](mailto:nwlawyer@wsba.org) and 360-312-5156.



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**In Memoriam**

**Steve Memovich**

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We are truly saddened at the passing of our friend, partner, and mentor.

Steve's guidance, kindness, and leadership throughout many years will be greatly missed.

by  
Sarah  
Mack

The Boulder River in  
Washington's Boulder  
River Wilderness.

# Getting Water to Where It's Needed

## Opportunities and Risks Under Washington's Water Rights Laws

Since May 2015, the entire state of Washington has been under a drought emergency declared by Governor Jay Inslee and Department of Ecology Director Maia Bellon.<sup>1</sup> This year's record-low snowpack has caused record-low flows in most rivers; water shortfalls have already affected irrigated agriculture, domestic water supplies, and fisheries throughout the state.

Water rights in Washington are based on the prior appropriation doctrine, illustrated by the principle "first in time, first in right." The first person to appropriate water and put it to beneficial use obtains a right to that water source that is "senior" or superior to that of subsequent appropriators. The Legislature codified this principle in 1917, when it established a permit system for obtaining rights to surface water.<sup>2</sup> In 1945, the surface water permit system was extended to groundwater.<sup>3</sup> The Department of Ecology has set minimum instream flows in numerous rivers and streams to protect fish. In many instances, those minimum flows prevent new water rights from being issued, but the minimum flows can also be trumped by senior water rights for out-of-stream beneficial use.

In times of water scarcity, many people turn to already-established water rights in an effort to satisfy various water demands for people, farms, and fish. Changing or transferring existing water rights in Washington involves a complex web of statutory provisions, common law doctrines, and agency policies.



## Basic Requirements for Changing Existing Water Rights

In general, any change to an existing water right must be approved by the Department of Ecology or a county Water Conservancy Board (although Ecology has veto power over Conservancy Board decisions). Appeals of decisions to approve or deny water right changes are heard by the Pollution Control Hearings Board.

A valid surface water right that has been put to beneficial use may be transferred to another place of use, may be switched to a different point of diversion, or may be applied to a different purpose of use, provided the change would not injure any other existing right.<sup>4</sup>

The rules are slightly different for groundwater rights, which need not have been put to beneficial use before they can be changed.<sup>5</sup> The groundwater change statute allows changes to the place of use, point of withdrawal (well location), and “manner of use” of a groundwater right, provided the change meets the same four-part test required to obtain a new water right: 1) availability of water; 2) a beneficial use; 3) no injury to existing rights; and 4) no detriment to the public welfare.<sup>6</sup>

## Changing the Purpose of Use of Groundwater Rights

Suppose you are an orchardist who wants to buy a groundwater permit originally issued for a neighbor’s domestic supply and use it to irrigate your fruit trees. Can you? It depends on whether the water right has been used. The Legislature’s use of the terms “manner of use” in the 1945 groundwater change statute and “purpose of use” in the 1917 surface water change statute has engendered much consternation. The Department of Ecology’s position, based on dicta in a 1999 Washington Supreme Court opinion,<sup>7</sup> is that “manner of use” as used in the groundwater change statute does not mean the same thing as “purpose of use” under the surface water change statute, but if a groundwater right has been perfected (i.e., put to beneficial use), its purpose of use may be changed by utilizing the surface water change statute. In 2003, a former chair of the Pollution Control Hearings Board observed:

Under Ecology’s theory for changing the purpose of a groundwater right,

## WATER RIGHTS IN WASHINGTON ARE BASED ON THE PRIOR APPROPRIATION DOCTRINE ...

one must look to RCW 90.03.380 if the right is perfected — notwithstanding RCW 90.44.060 or an existing statute (RCW 90.44.100) in the Groundwater Code pertaining to changes. If the change is to an inchoate groundwater right, however, one looks to RCW 90.44.100. If the change in the inchoate groundwater right is for purpose of use, it won’t be allowed, unless of course, the change is in the manner of use — whatever that may be, and it also happens to be within the purpose of use. Heaven help us. Rube Goldberg never served in the Washington State Legislature to the best of my knowledge.<sup>8</sup>

But this is only one of many potential sources of exasperation in the quest to change an existing water right.

## Changing Irrigation Rights Issued Under the Family Farm Water Act

Suppose you are a property owner with an unneeded irrigation water right and you want to sell it to your neighbor for domestic supply. Or suppose you want to donate the right to the State Trust Water Right program to help sustain streamflows. Can you? It depends on whether the water right was issued subject to the Family Farm Water Act, an initiative enacted by the voters in 1977 to prevent large agribusiness interests from gobbling up irrigation water rights.

Prior to 2001, the only constraint on transferring a water right issued under the Family Farm Water Act was that the transferee could not own or control more than 2,000 acres of irrigated agricultural lands. Legislative amendments in 2001 increased the acreage limit to 6,000 acres, but imposed significant new constraints on changing irrigation water rights issued under the act.<sup>9</sup> The

act allows “temporary” leases as a possible workaround, but “temporary” is not defined. As more and more family farmers are unable to sell their water rights or put their own property to different use, perhaps the Legislature will consider whether the Family Farm Water Act has outlived its usefulness.

## “Use It or Lose It” — The Risk of Relinquishment or Abandonment

Before a water right can be changed, Ecology or a water conservancy board must make a tentative determination of the right’s extent and validity — in essence, to ensure that the right has not been abandoned or relinquished through non-use.<sup>10</sup> Abandonment is a common law concept requiring non-use coupled with intent to abandon the right.<sup>11</sup> A water right may be subject to relinquishment (sometimes referred to as statutory forfeiture), regardless of intent, if the water right holder voluntarily fails to beneficially use the right for a period of five consecutive years.<sup>12</sup> If relinquishment or abandonment occurs, the risk to the water right holder is not just denial of the change application, but loss of the water right itself — in whole or in part.

The party asserting statutory relinquishment of a water right — usually the Department of Ecology — has the burden of proving non-use of water. Once non-use is established, the burden shifts to the water right holder to prove that non-use is excused by one of the statutory grounds (or “sufficient cause”) or exemptions from relinquishment. “Sufficient cause” for non-use of water can include drought or other unavailability of water, as well as many other circumstances; however, all exceptions to relinquishment are narrowly construed.

A 2007 decision by the Pollution Control Hearings Board illustrates the potential for harsh results under the relinquishment statutes. A couple purchased property in Okanogan County with an existing irrigation diversion on a creek. After the purchase closed, the husband wrote to the Department of Ecology to request that the water right be changed to their names. An Ecology employee responded that he was unable to find any record of a water right associated with their property, and stated: “If we cannot come up with any water right, water use



will have to be curtailed.” The Ecology employee did further research but still failed to locate any water right appurtenant to the property.

The owners stopped diverting water from the creek, believing that they were legally prohibited from using water. They also did their own research in Ecology’s files, eventually locating a water right certificate covering their property. However, the point of diversion described on the certificate was different from the existing diversion point. When the owners applied to change the point of diversion of the water right, Ecology staff responded that due to staffing limitations, their application would not be processed “for some time” and said, “I regret that a decision on your application cannot be made sooner and strongly advise against investing further in your project unless you are issued a water right permit.” The Pollution Control Hearings Board found that the property owners interpreted this letter to mean that their right to divert water from the creek was still in question,

and that they were not authorized to use water until they received Ecology’s approval. By the time Ecology finally acted on their change application — 10 years after it was filed — the owners had not used their irrigation diversion for more than five consecutive years. Ecology found that the water right had been relinquished, and the PCHB agreed.<sup>13</sup>

### Temporary Relief Under The Drought Emergency Declaration

The May 2015 statewide drought emergency declaration created some flexibility for Ecology to provide immediate relief to public agencies and private property owners. In particular, during the drought emergency Ecology has authority to issue emergency permits for water and approve temporary transfers of existing water rights in order to alleviate some of the effects of drought conditions.

Ecology’s emergency authority may help smooth the path for some water right holders and applicants during the 2015 drought. Over the

longer term, the process of changing water rights remains complicated, uncertain, and risky. **NWL**



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environmental law, natural resources, and land use. Her practice focuses on water rights, project permitting, environmental review, and administrative and judicial appeals. She lectures and writes frequently on water resource law and policy issues. She can be reached at [mack@tmw-law.com](mailto:mack@tmw-law.com).

#### NOTES

1. See [www.ecy.wa.gov/drought/images/pdf/05212015-droughtorder.pdf](http://www.ecy.wa.gov/drought/images/pdf/05212015-droughtorder.pdf).
2. Chapter 90.03 RCW.
3. Chapter 90.44 RCW.
4. RCW 90.03.380.
5. *R.D. Merrill Co. v. Pollution Control Hearings Bd.*, 137 Wn.2d 118, 129-30, 969 P.2d 458 (1999) (allowing amendment of unperfected groundwater permits under RCW 90.44.100); *Cornelius v. Ecology*, 182 Wn.2d 574, 344 P.3d 199 (2015) (allowing amendment of unperfected certificates for municipal water supply under RCW 90.44.100).
6. RCW 90.44.100.
7. *R.D. Merrill Co. v. Pollution Control Hearings Bd.*, 137 Wn.2d 118, 130, 969 P.2d 458 (1999).
8. *Familigia LLC v. Ecology*, PCHB No. 03-072, Summary Judgment Concurrence and Dissent (Oct. 31, 2003), n.11 ([www.eluho.wa.gov/global/renderpdf?source=casedocument&id=717](http://www.eluho.wa.gov/global/renderpdf?source=casedocument&id=717)).
9. RCW 90.66.065. *High Dunes Vineyard v. Ecology*, PCHB No. 01-189, Order Granting Summary Judgment (Oct. 31, 2002) ([www.eluho.wa.gov/global/renderpdf?source=casedocument&id=799](http://www.eluho.wa.gov/global/renderpdf?source=casedocument&id=799)).
10. *Public Utility District No. 1 of Pend Oreille County v. Ecology*, 146 Wn.2d 778, 794, 51 P.3d 744 (2002).
11. *Okanogan Wilderness League v. Twisp*, 133 Wn.2d 769, 947 P.2d 732 (1997).
12. RCW 90.14.160, .170, .180.
13. *Welke v. Ecology*, PCHB No. 07-013, Order Granting Summary Judgment (Sept. 20, 2007) ([www.eluho.wa.gov/global/renderpdf?source=casedocument&id=397](http://www.eluho.wa.gov/global/renderpdf?source=casedocument&id=397)).

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by  
Justin P.  
Walsh



## The Care of and Law Surrounding Urban Chicken Farming

# Raising Chickens Is for the Birds

**I did not have the option when it came to whether we would get chickens, I was told.**

Throughout the house-hunting process, my partner, Pam, and I had several requirements. I had to have a formal dining room; she wanted a room for crafting. We both agreed the house had to be built before 1920. Last, but not least, we wanted a yard, a place for our dogs to play, and there was another reason — chickens.

Now, I had never had any pet more complicated than a dog. Save for one summer spent on a wheat farm in Montana, my rural exposure was limited. Like any lawyer, rather than focus on actually learning how to take care of chickens, I decided to focus on the law and figure out what needed to happen to ensure we would be within the bounds of the law and not have to turn our new birds over to the chicken equivalent of

CPS (Chicken Protective Services).

Not only is the information needed to raise chickens readily available if you know where to look, so is the patchwork of laws and ordinances put in place to ensure your urban farming adventure does not negatively impact your neighbors.

First, you should know that raising chickens is not a short endeavor. Most breeds live approximately eight years, laying up to age four-and-a-half. Like humans, they have a limited supply of ova. If you plan to raise them for food, this will not be an issue, as you will slaughter them long before they finish their egg production.

If you are thinking about getting chickens, there are several places to start. I enjoyed *The Urban Homestead: Your Guide to Self-Sufficient Living in the Heart of the City*, by Kelly Coyne. Another good book is *Storey's Guide to Raising Chickens*, by Gail Damerow, which includes not just the basics, but advanced topics.

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## The Birds

One of the first considerations should be how many and what type of birds you would like. Chickens are social creatures, and you should always get more than one. Most local granges will have birds during the spring. Do your research, as there are a large variety of birds that vary in size, color, laying ability, and demeanor.

Breed is important for health and wellness. Some breeds do better in dry climates; some are able to handle cold much better than others. Know whether you want bantams or full-sized fowl. Two of our first birds were Plymouth Rocks — which, it turns out, do not do well in the Pacific Northwest, and often end up with health problems. Since then, we have shifted half of our flock to Orpingtons, which are better suited for Washington. Other fun breeds include the Easter Egger, a hybrid breed that varies in looks, but produces beautiful green or blue eggs; Silkies, whose long puffy head feathers give Flock of Seagulls a run for their money; and Polishes, who have a large tuft of head feathers that would not be out of place at the Kentucky Derby or high tea. Whatever the breed, know whether it will work for where you are located.

Like most things in law, local codes vary as to how many birds you can have. In the City of Seattle, you may have up to eight birds (SMC 23.42.052(C)).<sup>1</sup> No roosters are allowed (SMC 23.42.052(C)(2)). In Issaquah, chickens are only allowed on lots over 6,000 square feet, and then you are allowed one chicken per 2,000 square feet (IMC 18.07.140(A)(4)).<sup>2</sup>

Most chickens are purchased when they are only a few days old as chicks, though you can sometimes find young teenagers (pullets), as well. Until the chickens have a full complement of feathers, they are unable to regulate their heat. Keep them in a box with a heat lamp. Keep them in a box with a heat lamp, food, water, and roost. Be sure you have something to place over the top, as the young chicks are surprisingly agile little escape artists.



The author's chickens (top) and coop (bottom).

## The Coop

You will need a chicken coop. Chickens are fairly defenseless against the Northwest's panoply of predators. Even housecats have been known to take out smaller birds. I have heard horror stories of a cougar sneaking into an unsecured coop and taking out a flock of 50 hens. If you do one thing right, build a solid chicken coop. You'll want one nest box for every three chickens. A coop should have a roost that can be sealed off separate from the run.

When building, you need to be aware of zoning regulations. Single-family homes generally have a setback provision governing where any additional buildings need to be created. In Seattle, for instance, coops can only be 12 feet high at the tallest point (SMC 23.42.051(A)(7)(b)). They must also be located at least 10 feet away from dwellings on adjacent lots (SMC 23.42.052(C)(3)). They are also subject to other building rules for accessory buildings and cannot be located in

front yards.

In the City of Issaquah, where I raise

## PROSCIUTTO QUICHE WITH CARAMELIZED LEEKS



Fresh eggs are a boon for the aspiring chef. Below is my favorite brunch treat, which has won over guests. For vegetarians, omit the prosciutto and double the leeks.

1 refrigerated pie crust  
6 eggs (whole)  
1½ cups heavy cream  
2 leeks, sliced (white and light green parts only)  
2 tbsp. white sugar  
½ lb. prosciutto, cubed  
2 tbsp. minced garlic  
¾ cup shredded Gruyère cheese  
¾ cup shredded Swiss cheese

Get a hot pan ready with butter or bacon fat. Add leeks and sauté until soft and the rings separate. Add sugar and continue cooking until some leeks develop a crispy brown edge. Add the prosciutto and garlic and cook for an additional two minutes. Remove from heat and set aside. In a medium bowl, combine eggs and cream and whisk until thoroughly blended. Add prosciutto-leek mixture and cheese into pie crust. Pour the egg mixture over the top. Cook in a preheated 375-degree oven for 35–45 minutes. Use a toothpick or fork to test if done.



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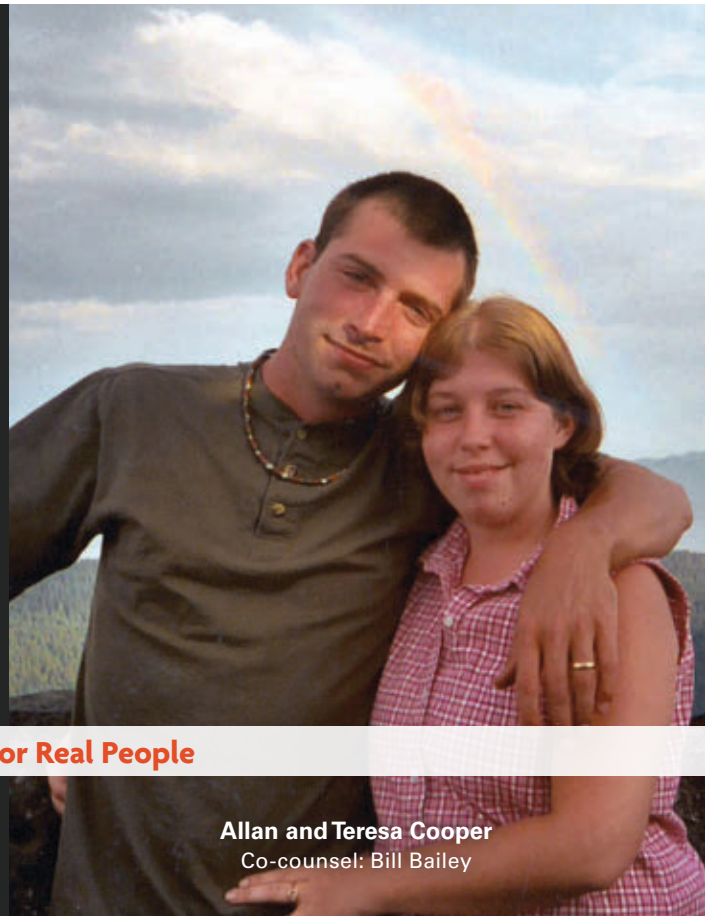


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*No other Sun has lightened up my  
heaven; No other Star has ever shone  
for me; All my life's bliss from thy  
dear life was given – All my life's  
bliss is in the grave with thee.*

*~ Emily Brontë*

A concrete pumping hose whipped and killed  
Teresa's childhood sweetheart.



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my flock, the rules allow a structure up to 15 feet high and it cannot be in the front yard (IMC 18.07.110(B)(1)). If over 200 square feet, a permit is required (IMC 18.07.110(B)(2)). If in a side setback, written permission from the neighbors has to be recorded with the county (IMC 18.07.110(B)(4)). All buildings are subject to mandatory setbacks (IMC 18.07.360). Even if not kept in a coop, if the birds are

kept within five feet of a property line, a solid fence is required (IME 18.07.140(A)(2)). Regardless of the requirements, talking with your neighbors is a good idea, as hens do make a bit of noise (ours crow proudly anytime they lay). Having a fence may help to mitigate the noise.

### Conclusion

Raising chickens is a rewarding experi-

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## RESOURCES

(this list implies no specific endorsements by the author or the WSBA)

### URBAN CHICKEN LAWS IN WASHINGTON

[www.seattlehomestead.com/resources/washington-chicken-laws](http://www.seattlehomestead.com/resources/washington-chicken-laws); [www.backyardchickens.com/tag/washington-ordinances/articles](http://www.backyardchickens.com/tag/washington-ordinances/articles)

### CHICKEN FAQs FROM SEATTLE TILTH

[www.seattletilth.org/learn/resources-1/city-chickens/citychickensfaqs](http://www.seattletilth.org/learn/resources-1/city-chickens/citychickensfaqs)

### WSBA ANIMAL LAW SECTION

[www.wsba.org/legal-community/sections/animal-law-section](http://www.wsba.org/legal-community/sections/animal-law-section)

### URBAN AGRICULTURE LAW

[www.urbanaglaw.org](http://www.urbanaglaw.org)

### URBAN LIVESTOCK

[www.urbanfarmonline.com/urban-livestock](http://www.urbanfarmonline.com/urban-livestock)

### PROS AND CONS OF RAISING CHICKENS

[www.backyardchickens.com/a/the-pros-and-cons-of-raising-chickens](http://www.backyardchickens.com/a/the-pros-and-cons-of-raising-chickens); [www.ouroneacrefarm.com/pros-and-cons-of-backyard-chickens](http://www.ouroneacrefarm.com/pros-and-cons-of-backyard-chickens)

ence. Not only do you get to eat plenty of high-quality eggs (and give them to hosts in lieu of a bottle of wine), you get to spend your time with new pets that have hilariously distinct personalities. Like any pet, there will be a learning curve and some scares along the way, but it's that commitment that makes it worthwhile. **NWL**



### JUSTIN P. WALSH

is a founding partner of Issaquah Law Group, PLLC, where he practices litigation defense, as well as business formation, transac-

tions, and litigation. He graduated *cum laude* from Seattle University School of Law in 2008. He chairs the King County Civil Rights Commission and the Seattle University Law Alumni Board Mentoring and Professional Development Committee. He is a member of the City of Issaquah Planning Policy Commission. Contact him at [justin@issaquahlaw.com](mailto:justin@issaquahlaw.com).

## NOTES

1. This can be increased depending on the amount of property you have and its use. See SMC 23.42.052(C)(1).
2. For a great resource compiling most county and municipal laws, see [www.seattlehomestead.com/resources/washington-chicken-laws](http://www.seattlehomestead.com/resources/washington-chicken-laws).



by  
Randy Trick



# Saving the Spotted Owl

## Is It Justified to Kill Other Owls to Save the Species? A Moral Question Posed by Wildlife Conservation

**T**he controversy to protect the northern spotted owl tops the list among infamous wildlife conservation issues in the Pacific Northwest.

And the situation has evolved to a point where the question before federal resource managers could take a lesson from Thomas Aquinas' doctrine of double effect.

Aquinas developed the doctrine of double effect to morally reconcile homicidal self-defense. Put simply, the doctrine states that an action that will have foreseeable harmful effects, which is practically inseparable from the good effect, is justifiable if 1) the nature of the act is itself good, or at least morally neutral; 2) the actor intends the good effect and not the bad effect; and 3) the good effect outweighs the bad effect in circumstances sufficiently grave to justify causing the bad effect.<sup>1</sup>

In the 1990s, the dramatic decline of the northern spotted owl's population in federal timberland

prompted first the listing of the species as threatened in 1990, followed by a federal injunction barring logging in the owl's habitat the next year. In response to the injunction, and to reopen the national forests to some logging, stakeholders came together to create the Northwest Forest Plan, a federal land management policy.

The plan, implemented in 1993, established large blocks of forest land surrounding the known roosting sites of owls that were off-limits to logging as a way to preserve the owl's habitat. Other forestland could be selectively logged, but not to the same extent as before. Every five years, the Northwest Forest Plan is reviewed by the U.S. Forest Service and updates are reported in terms of owl population, available habitat, socioeconomic impact on local communities, and tribal relations.<sup>2</sup> The plan covers 24 million acres of federal land in western Washington and Oregon, and northern California.

Before the spotted owl listing, 4.5 billion board feet of timber was annually harvested off federal land. Now, under the plan, the "Probable Sale Quantity" from covered federal lands is 805 million board feet (including a 70 percent increase



between 2009 and 2012). And so far, the agencies are not quite meeting that goal. In 2001, there were more than 100,000 jobs in the counties heavily affected by the plan area in timber-related sectors, including logging, primary and secondary processing. By 2012, however, the number of jobs in those sectors dropped by nearly 40 percent to 65,000 jobs<sup>3</sup> — foreseeable harmful effects on the economy practically inseparable from protecting the owl that

federal regulations determined were necessary to avoid a more grave bad effect, as Aquinas might put it.

The five-year update released this May, with data current as of 2013, shows that the habitat for spotted owl declined 1.5 percent in the last five years. Gross losses came from wildfire (5.2 percent loss, or 474,300 acres), timber harvesting (1.3 percent loss, or 116,100 acres), and from insects and other causes (0.7 percent loss, or 59,800 acres). The gross

loss is offset by the growth of second- or third-growth forests into habitat suitable for the owl. The plan in 1993 assumed habitat would not decline greater than five percent per decade from wildfire and timber harvesting combined.<sup>4</sup>

But clues as to another culprit for the spotted owl's continued decline came in the last Northwest Forest Plan, released in 2010, and since then the conversation about the conservation of the spotted owl has moved in a whole new direction — a more homicidal self-defense direction.

Another owl, the barred owl, is pushing the northern spotted owl out of its habitat, stressing the populations and limiting reproduction, and is thriving in areas where the spotted owl once roosted.

The two owls could not be more different. The spotted owl mates for life and is timid. At about 1.5 feet tall, it is not a large owl, and thus its prey is limited to smaller rodents and small birds. It needs space in which to hunt, and therefore mating pairs of owls stay away from each other. The barred owl, however, is larger and significantly more aggressive. It hunts the same prey as the spotted owl, but with more aggression and in greater amounts. The barred owl is a bully.

This playground turf battle raises an ethical question: should one species of owl be hunted and killed to protect another? So far, the government has answered yes.

In July 2013, the U.S. Fish and Wildlife Service published an environmental impact statement (EIS) for the "Experimental Removal of Barred Owls to Benefit Threatened Northern Spotted Owls." The plan proposed either concerted efforts to track and kill the owls or capture and keep the owls in captivity over the next six years, then evaluate the effectiveness of the plan.

In the lethal option, the barred owl would be attracted by recorded calls, and then sharpshooters would eliminate the bird. This method, compared to having hunters track the owls and shoot them where they find them, reduces the risk of collateral damage to the spotted owl, the EIS states, because a spotted owl is not going to respond to a barred owl call. Otherwise, the marksman must distinguish between the two species of owls after tracking them.<sup>5</sup>

The non-lethal option would have re-

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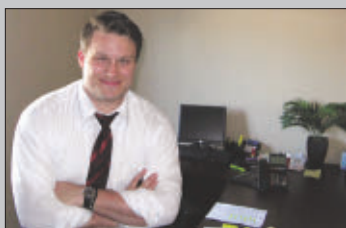
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searchers lure and then trap the owls and transport them out of the forest — to a zoo or research facility. However, the EIS makes clear that owls may only be captured when there is a place for them to go so they don't spend time in limbo. But, the EIS states, there is also significantly less demand than there are opportunities to capture them. Ultimately, the Fish and Wildlife Service has chosen a combination of approaches — capture when possible, kill when needed.

The barred owl versus spotted owl is not the first time the federal government has wrestled with the doctrine of double effect. At the mouth of the Columbia River, sea lions are killed to protect salmon. Foxes in Alaska are killed to protect ducks. The National Park Service has removed 1.1 million lake trout in Yellowstone Lake to benefit the native cutthroat trout.<sup>6</sup>

It is emotional to think of one owl being killed, but to consider the loss of an entire species changes the perspective and the calculation. "On the one hand, killing thousands of owls is completely unacceptable. On the other hand, the extinction of the spotted owl is completely unacceptable," says Bob Sallinger, conservation director of the Audubon Society of Portland.<sup>7</sup>

But killing thousands of barred owls a year, year after year, is not sustainable. And that is where Friar Aquinas would shake his head. To justify the harm of a harmful act, Aquinas pictured a single act, a single decision. Killing a single owl is a single decision, but Aquinas may have a hard time reconciling that decision over and over. That may be hard to justify. **NWL**



**RANDY TRICK** graduated from Seattle University School of Law in 2012. He predominantly practices criminal law in the Puget Sound area. He can be reached at [randy.trick.esq@gmail.com](mailto:randy.trick.esq@gmail.com).

#### NOTES

1. For a good and accessible discussion of the doctrine, read the entry in the Stanford Encyclopedia of Philosophy, available at [www.plato.stanford.edu/entries/double-effect](http://www.plato.stanford.edu/entries/double-effect).
2. *Northwest Forest Plan — The First 20 Years (1994–2013)* is published online in sections, available at [www.reo.gov/monitoring/reports/20yr-report](http://www.reo.gov/monitoring/reports/20yr-report).
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5. Experimental Removal of Barred Owls to Benefit Threatened Northern Spotted Owls — Final Environmental Impact Statement, U.S. Fish and Wildlife Service, July, 2013, available at <https://federalregister.gov/a/2013-22556>.
6. Cornwall, Warren. "There Will Be Blood," *Conservation*, University of Washington, Oct. 24, 2014.
7. *Id.*

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# LEAVING THE WORLD A BETTER PLACE

The Words and Wisdom of Attorney and Humanitarian Leader Bob Dickerson

by Robin Lindley

**Life's most urgent question is: What are you doing for others?**  
— Dr. Martin Luther King, Jr.

**O**n April 4, 2015, the World Peace Through Law Section (WPTL), in partnership with the WSBA, presented a continuing legal education program featuring the life and work of Seattle attorney Bob Dickerson: “Working to Deadline: A Lawyer Making His Last Years Count.” Seattle attorneys John Rapp and Randy Winn (a former chair of the WPTL Section) organized this special event. Bob discussed his law career and his decision to “make the world a better place” after learning he had a terminal illness. This lively and poignant CLE program will be available online.

Bob died at home on May 31, 2015. His wife Nancy and other family members were at his side. A few weeks earlier, Bob sat with me at his Seattle home and generously talked about his career, his humanitarian efforts, and his inspirations. To the very end of his life, Seattle attorney and humanitarian leader Bob Dickerson worked with a fierce urgency to make the world a better place. He told his friend Lesley Reed of PATH,

a nonprofit global health organization, “I don’t have the right to give up when there are children and poor people dying and suffering.”

When you mention Bob now, people who knew him will likely recall his career as a brilliant litigator and his tireless work as an activist who was known internationally for his efforts to end poverty. And they will also remember how, when he was diagnosed with a terminal illness, he gave up his flourishing law career to help others. As Bob said, “I wanted a death without regrets.”

## Inspired to Do Good

Bob’s father was an Army officer who traveled from posting to posting, so Bob never spent more than two or three years at any one school. As a child, Bob saw firsthand the ravages of poverty. People begging. People starving. People without homes. “It became obvious to me early on that, by an accident of birth, you may end up a prince or you may end up begging for your life, not knowing if you’ll have food for the next day,” he said. “Since we had food and a nice place to live, it only seemed fair that we would do whatever we could to help people who didn’t have those things.”

Bob’s high school U.S. history teacher, Mr. Peterson, who shared the reality of America’s complicated past and worked

on projects to help others, became a role model. Bob loved history and, inspired by Mr. Peterson, he planned to become a history teacher. But, after a stint in the Army, he considered a career in law.

When he entered law school at the University of Washington School of Law, he said, “I was very much an idealist. That’s not to say I planned to be a human rights lawyer. I’m so simple that I was affected by TV lawyer shows and in those days the TV lawyers like Perry Mason always won. It also seemed like law would be intellectually challenging.”

Bob attended his first RESULTS meeting in 1989. There he met the organization’s founder, Sam Daley-Harris, who explained the organization’s goal to end poverty at home and abroad. What he learned would shape his later life. “I knew hunger was a problem, but had no idea how bad it was or how simple it was to reduce it,” Bob said. “My greatest strength — and weakness — is that I’m logical and rational, and what they were doing was very logical and that really appealed to me.”

Within weeks of that meeting, through intense lobbying and 75 editorials in papers such as *The New York Times* and *Los Angeles Times*, RESULTS succeeded in changing U.S. policy and essentially



saving the U.N. Food and Agriculture Agency and its efforts to address worldwide hunger and nutrition needs.

The RESULTS strategy deeply impressed Bob. “I thought that it was so clever to use the strength of U.S. democracy — freedom of speech and freedom of the press — to lobby the government . . . it was obvious to me that we could do the same thing on other issues. If we could bring enough attention to an issue, then whoever was in charge would be more likely to do what would make a difference for the poor.”

### Determined to Make the World Better

In the fall of 1999, Bob was diagnosed with cancer. After surgery, he learned that his cancer had metastasized. His physician told him that there was no way to “cure” his cancer and his prognosis for survival was from 1 to 20 years. Bob was determined “not to keel over at my desk.” He resigned from his firm in 2000, resolving to do what he could “to make the world a better place.”

For a year or so, he continued with some legal work and volunteered for an array of projects including literacy organizations, Make a Wish, and Habitat for Humanity. Bob was a natural teacher, and he said that literacy tutoring for “amazing” recent immigrants was especially rewarding. He soon realized, however, that he was stretched thin with all of his obligations, and decided to focus his energy.

### RESULTS — Making the Biggest Difference for the Most People

Bob had seen how RESULTS tapped into the energy of ordinary people and empowered them to work in their communities, in the media, and in the halls of government to advance programs and policies to address the root causes of poverty. He decided to commit to one pursuit: to work with RESULTS because that would “make the biggest difference for the most people.”


He soon became their Seattle group leader, the perfect outlet for his enthusiasm, skills, and inspired leadership. He succeeded in forming powerful coalitions and bringing media and political attention to initiatives aimed at improving global health, education, nutrition, and economic opportunity.

He was particularly moved by the plight of women and children who faced poverty as well as violence and cruel marginalization. He said, “I would never permit a child of mine to suffer,” and became a powerful voice for efforts such as the Children’s Survival Fund with resources earmarked specifically for the health, education, and welfare of children.

Bob shared his vision of a fairer world and urged other people he met to get involved in advocacy for the most

vulnerable. He challenged everyone, from political and business leaders to ordinary citizens, to live more meaningful lives, to decide if they wanted to be remembered for watching “8,000 hours of TV, and all the episodes of a particular series” or instead for taking action for the betterment of the world.

To advance these goals, Bob developed powerful ties with legislators, activists, scientists, the media and other leaders, including Professor Muham-



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*Utter v. Bldg. Indus. Ass'n of Washington*, 182 Wn.2d 398, 341 P.3d 1008 (2014); *Forest Properties, Inc.*, \_\_\_ Wn.2d \_\_\_, 340 P.3d 938 (2014); *In re Estate of Smith*, 182 Wn.2d 800 (2014); *Marriage of Valente*, 179 Wn. App. 817 (2014); *Fair v. Powers & Therrien*, 181 Wn.2d 117 (2014); *Anderson v. Dussault*, 177 Wn. App. 79, rev'd 181 Wn.2d 360 (2014); *Holmquist v. King County*, 181 Wn.2d 1008 (2014); *Expedia, Inc. v. Steadfast Insurance Co.*, 181 Wn.2d 1008 (2014); *LKO v. TCG*, 168 Wn. App. 862 (2014); *Tamosaitis v. Bechtel National, Inc.*, 182 Wn. App. 241 (2014); *Dellen Wood Prod., Inc. v. Dept. of Labor and Indus.*, 179 Wn. App. 601 (2014); *Marriage of Wright*, 179 Wn. App. 250 (2014); *Camicia v. Washington Wright Const. Co.*, 179 Wn.2d 684 (2014); *Muller v. Kenney*, 180 Wn. App. 772 (2014)

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mad Yunus, Nobel Peace Prize winner for microfinance; World Bank President Dr. Jim Kim; Dr. Paul Farmer, founder of Partners in Health; and executives of philanthropic and biotech organizations. He was an enthusiastic master of coalition-building, public speaking, persuasive writing, and mentoring others.

Bob said that, in his time with RESULTS, the world had seen “the glob-

al death rate of children under five drop from over 40,000 a day to about 17,000 a day. Too many, of course, but a remarkable improvement.” These successes in reducing preventable diseases were achieved with relatively inexpensive and simple measures such as oral rehydration salts and vitamin A capsules costing pennies, antibiotics for pneumonia, and measles vaccinations.

A major concern for RESULTS is hunger and childhood nutrition. According to Bob, “We learned that, of the approximately 17,000 children that die every single day, on average 45 percent of them die because of malnutrition or under-nutrition, so there’s a direct relationship to poverty. So we brought nutrition under the global health umbrella.”

Bob also promoted education for poor children. He noted that boys with an education were less likely to be involved in violence and was zealous in promoting education for girls. “Girls who get just a primary school education to sixth grade have half the rate of HIV of girls with no education,” he said. “Girls who have a high school education have a 75 percent lower rate of HIV. Educated girls also get jobs that pay more. The girls with an education have sex later, get married later, and have children later than girls who don’t go to school.”

Bob called for microcredit initiatives, small loans extended to the impoverished who may lack credit or steady employment. Successful microcredit programs have empowered women and uplifted entire communities. “With microcredit . . . women borrowers were far more likely to pay back loans and far more likely to use the profits on their family, while men were more likely to buy alcohol or some toy for themselves,” Bob said. “If the wife runs the business and has control of the money, it is more difficult for the husband to be abusive because he knows that’s where the money comes from. So there’s a powerful effect in so many ways.”

### An Acclaimed Humanitarian Leader

Bob devoted the last 15 years of his life as a leader and advocate for RESULTS. In this role, Bob led campaigns to expand access to education, end preventable childhood diseases, improve the economic situation of women and girls, and create a more just and equitable world. With his efforts, countless people emerged from impoverished circumstances.

In 2014, U.S. Rep. Adam Smith acknowledged Bob’s accomplishments on the floor of the House of Representatives. Rep. Smith remarked that Bob’s “passionate and ever-present voice for the powerless — especially children — is

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truly remarkable.” He added that Bob’s work had inspired members of Congress and volunteers from across the country to support efforts such as the Global Poverty Act; the Education for All Act; the Global Fund to Fight AIDS, TB, and Malaria; and the Global Alliance for Vaccines and Immunizations.

RESULTS honored Bob in 2014 with its prestigious Seeds of Hope Award for his “exemplary, innovative, and strategic work that extends health care, economic opportunity, education and hope to all the world’s citizens.” This past summer, RESULTS presented its first Bob Dickerson Grass Roots Leadership Award in recognition of Bob’s dynamic work to end poverty.

Senator Patty Murray knew Bob well and, at the 2014 RESULTS event, she recalled his tireless advocacy and many visits to her office. She said, “Bob never let me or my staff forget the plight of the poor at home and abroad.” With Bob’s ceaseless prompting, Murray supported initiatives for healthcare, education, opportunities for women, and other anti-poverty programs.

### The Legacy of Bob Dickerson

Joanne Carter, the executive director of RESULTS, wrote, “Bob’s legacy isn’t just the change he helped create in the world, but the change he created in the people around him. For so many, Bob was a mentor, a friend, and an inspiration. I know he was to me. He helped us be braver and bolder and to keep going, even when it got hard.” Bob seemed inexhaustible. Even as his health declined over the past year, Carter said, he “only worked harder, wanting to use every moment he had.”

Bob also gave hope to many who felt powerless to affect change and he inspired many volunteers. Karina Mazur, a public health nurse and RESULTS volunteer, was among the people he mentored. She recalled Bob’s warmth when she joined RESULTS and the hours he spent instructing her on effective activism and the intricacies of the poverty issues he so passionately addressed.

With RESULTS, Bob found an ideal vehicle for his desire “to make the biggest difference for the most people.” His perseverance and impatience with human suffering led to remarkable reforms

of law and policy that have improved conditions for countless struggling people at home and abroad.

Bob leaves a profound and inspiring legacy of idealism and courage as a voice of compassion and justice. He never sat on the sidelines. To the end, he was a champion for impoverished and vulnerable people as he urged others to transform their lives into something meaningful. **NWL**



**ROBIN LINDLEY** is a Seattle-based writer and attorney. He is a former chair of the WSBA World Peace through Law Section. Contact him at [robinlindley@gmail.com](mailto:robinlindley@gmail.com).



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## with Gov. Paul Bastine

**P**aul A. Bastine was elected to the WSBA Board of Governors in September 2012.

Now retired, Bastine's career spans decades in private practice before joining the bench in 1995 as a Spokane County Superior Court judge. He continues to serve as a pro tem judge, including private trials, arbitrations, and mediations. Bastine's volunteer work is extensive: he served on the Oversight Committee for the Office of Civil Legal Aid and numerous WSBA boards and committees. He is in his 51st year of WSBA membership. He lives in Spokane Valley with his wife of 49 years, Jan, and his two children, their spouses, six grandchildren, and one great-grandchild are close by.

### 1 Why did you want to serve on the WSBA Board of Governors?

After many years of involvement with various boards and committees of the WSBA, it seemed logical. I had retired, so I felt I had the time, a luxury most governors do not have. My predecessor, Nancy Isserlis, suggested I run and I agreed.

### 2 What is the most important lesson you have learned about WSBA members since you've been on the Board?

The lawyers in our state are dedicated professionals who care about our mission to provide justice and serve the public. However, most do not know much about all the complicated moving parts and aspects of the WSBA. For many, the WSBA is admissions and discipline. In reality, it is so much more with programs to support lawyers, to assist with access to justice for the public and professional good, and to advocate for courts and better laws and legal processes. When given the opportunity to reflect on such matters and to serve, I have learned that Atticus Finch is alive and well.

### 3 What decision or accomplishment are you the most proud of from



Gov. Paul Bastine with grandson Kaysen.

### your service on the Board?

Although it actually started before I came on the Board of Governors but has come to fruition during my time on the Board, I am most proud of the implementation of the Limited Licensed Legal Technician Program. This concept was developed when I was on the Practice of Law Board. It is an appropriate additional tool for the legal profession to assist low and moderate income persons to obtain legal assistance and, at the same time, make certain that it is done in a manner that protects the public. While this program is not a panacea for solving the unmet need for legal services, it will complement the services provided by courthouse facilitators, legal service providers, and volunteer lawyer programs in addition to the pro bono services lawyers provide every day.

### 4 What has been the most difficult decision you had to make as a governor, and why?

It concerned my participation in the Governance Task Force (formed to provide a

review of the governance of the WSBA). When the task force was assembled and I was appointed, it was not clear as to whether I was appointed as a member of the task force or as a liaison from the Board. My role never was clear, though I participated in the task force's discussions without a vote on any of their recommendations. The role of Board liaisons to any entity is ambiguous at best. Here, it was even less clear. The officers who came into office at that time had reservations about the matter, as did many of the governors. After the report was finalized, it became even more apparent that there was significant disagreement by members of the Board about the task force's recommendations. When a work group from the Board was formed to respond to the task force recommendations, I found myself in the position of having to decide whether and how to participate. I decided my active participation in the work group would be counterproductive. As a result, I made what I considered a difficult

decision to basically stand aside and refrain from being directly involved.

### 5 Can you share one thing we may not know about you?

In the early years of civil legal services in this state, programs were started in many counties, each operating independently from any other. I was part of a small group appointed to study how these programs might operate more efficiently, particularly given limited funds. It was concluded that a statewide legal services program would be more efficient, save money, and provide better legal assistance. That was the start of Evergreen Legal Services, for which I was the incorporator and its first secretary. Evergreen subsequently morphed into Columbia Legal Services and the Northwest Justice Project. **NWL**

**TAKE 5** lets you learn a little more about your Board of Governors. If you have further questions for Gov. Paul Bastine, he can be reached at [paulbastine@msn.com](mailto:paulbastine@msn.com).

# Spokane County Courthouse



In 1893, ground was broken to build a new Spokane County courthouse, hoping to stimulate the economy after a financial panic of that year. The Board of County Commissioners opened a design competition, and a prize would be awarded for the best plan. The winning architect was a 29-year-old named W. A. Ritchie. In 1894, building began, using locally manufactured brick for the walls and imported slate shingles for the roof. The building had its official opening on Nov. 20, 1895. The county's first public hanging took place in its courtyard five years later on March 30, 1900, when George Webster was hanged for an 1897 murder.

Many say that the courthouse closely resembles two 16th-century chateaux in France, the Chateau de Chambord and Chateau d'Azay Le Rideau. French Renaissance design is apparent in the grand towers and finely crafted iron and brickwork. In 2006, the center tower was renovated and the roof was replaced. Today, the courthouse houses the offices of the Board of County Commissioners, assessor, treasurer, auditor, clerk, and Superior Court courtrooms, offices, and support services. **NWL**

Source: Jaime Mahoney, "Spokane County Courthouse," *Spokane Historical*, accessed Aug. 14, 2015, [www.spokanehistorical.org/items/show/197](http://www.spokanehistorical.org/items/show/197).





# Memos

TO: SJA  
FROM: RDW  
DATE: October 1, 1991  
RE: PERSONAL PROPERTY TAX

Its that time of year again when the frost is on the pumpkin and Jack Frost twinkles on your toes, and we need a check payable to KING COUNTY FINANCE DIVISION in the amount of \$1669.84 for personal property tax. Due October 31, 1991.

## Remember memos?

As ledgers were the original Excel spreadsheets, so were memos the original emails, and there are many, many of them filed away in the archives. Some of them even date back to the late 1800s!

This relatively recent one from Oct. 1, 1991, is one of my favorites. It's short, sweet, funny, and to-the-point — like a good wedding speech. And somehow it makes the subject of a \$1,669 debt so lighthearted, it's almost like a punchline.

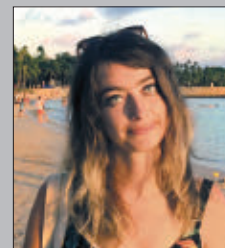
"In practically every collection of Smithsonian records I acquire and accession," writes Mitch Toda, an assistant archivist for the Smithsonian, "I can expect to find the humble memorandum" — an object, he says, that "can be both mundane as well as enlightening." Apparently, the Smithsonian's archives are also chock-full of memos that they don't know what to do with.

On the outset, the common everydayness of memos, written (at their height) on par with the frequency of modern email, could make a person wonder what the reason might be in keeping them, which in many offices was custom. But as the professor John Guillory wrote in a piece titled "The Memo and Modernity" in a 2004 issue of *Critical Inquiry*, that's exactly the point: "...the ubiquity of the memo belies its triviality, and raises questions about writing in modernity that cannot be answered by asking these questions only of figures such as Joyce, Freud, Darwin, or Heisenberg." Guillory suggests the memo was a new genre altogether, one that "precisely captures the situation of internal communication within an organization" and hence, constitutes "an organizational memory."

I never expected to find an academic paper on the subject of memos, but Guillory definitely got me thinking. If there is a historical hive mind to an organization, memos are the physical record of it; and it's true, the word "memorandum" itself comes from the Latin word *memorandus*, meaning, "to be remembered."

According to the State of Colorado's online memo writing guide, the business memo is "no-nonsense, nose-to-the-grindstone writing" that should be limited to a single topic, so that the reader can quickly get the message, and, if necessary, take action." So if we're to consider it a genre, the memo is in a sense the opposite of a lyric poem. As someone whose favorite work emails include at least a little bit of frost on the pumpkin, I enjoy evidence of a real live person on the other side. **NWL**

**From the Barchives**  
showcases some of the more intriguing items we've pulled from the WSBA's archives and the stories behind them.



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# Environmental Law in Washington State

environmental law

**H**ere's the thing about the history of environmental law in Washington state: There ain't much of one.

Despite the ever-present reminders we are one volcanic eruption away from sliding into the Pacific Ocean (thank you, plate tectonics; see "The Really Big One," [www.newyorker.com/magazine/2015/07/20/the-really-big-one](http://www.newyorker.com/magazine/2015/07/20/the-really-big-one)), the fragility of our state and its relationship with the environment was lost on our early lawmakers.

The relative dearth of environmental law makes the natural splendors we now enjoy on our daily commutes seem all the more wondrous. Early legislation left plenty of room for interpretation that was often exploited at the expense of Mother Nature; federal law worked to fill in the gaps, but it would take the state more than three-quarters of a century to pass any sort of meaningful, environment-friendly laws that had an eye to conservation instead of exploitation. Which is all to say, nature survived because we have a lot of it, not because we worked hard at protection.

## Article XVII, § 1

Pages behind the well-thumbed sections of Article I lies an oft-overlooked, two-section-deep Article XVII that declares state ownership of tidal lands. In 84 words, the State of Washington asserts its ownership "to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes..."<sup>1</sup>

If the Washington Supreme Court is to be believed, Art. XVII, § 1 represented a compromise to the "most vexing and politically sensitive problem" confronting the state constitutional convention: who owned, controlled, used, and disposed of the tidelands inherent to harbor use.<sup>2</sup> "No other problem was of more vital concern to the economic development of the state, for the tidelands in front of Seattle and other cities on Puget Sound and the ocean were of tremendous value."<sup>3</sup> So



contentious were negotiations regarding this specific issue that it was not until the final day of the convention that Article 17 was adopted.<sup>4</sup> Yet adopted it was, and subsequent case law interpreted not only Washington's heritage, but the English common law from which the law stemmed. The kernels of royal sovereignty, sown liberally throughout the state's history, allowed for the king (and thus the state), by virtue of his proprietary interest, to grant the soil so that it should become private property; but his grant was subject to the paramount right of the public use of navigable waters, which he could neither destroy nor abridge.<sup>5</sup> In every such grant, there was an implied reservation of the public right.<sup>6</sup>

So it was that Art. XVII, § 1 codified

a right of the people best known as the Public Trust Doctrine; a doctrine that has been a right of the citizens of this state since 1889.

## Trail Smelter Litigation and "The Polluter Pays" Principle

In 1926, a formal complaint was made by J.H. Stroh, an American farmer living in the northern part of Stevens County, against a Canadian smelter located in Trail, British Columbia.<sup>7</sup> Stroh complained of damage to his property thought to be caused by the Trail smelter, located approximately 11 miles north beyond the border with Canada.<sup>8</sup> While the subsequent court cases and specially convened arbitration panel are remarkable in and of themselves, what is also clear from the official arbitral report is that damage to Stroh's property and the surrounding area had been ongoing since at least 1896.<sup>9</sup> In fact, prior to 1908, the Canadian corporation that owned the Trail smelter had purchased "smoke easements" from 16 owners of land in the vicinity of Stevens County that covered 2,330 acres. By 1921, even as additional claims for damages were made, additional smoke easements were purchased from 34 own-

by

Katie Ludwick

ers of land covering 5,556.7 acres.<sup>10</sup>

Viewed through a 21st-century lens, the idea of one individual landowner being compensated for a “smoke easement” sounds preposterous, especially as it was the United States government that was eventually compensated for damage caused by such “fumigation.”<sup>11</sup> While the Trail smelter dispute may have started as a local state issue, it was quickly swept up by the federal government.<sup>12</sup> By agreement between the United States and Canada, a special arbitral panel convened to answer four specific issues, one of which was whether the Trail smelter caused damage in the state of Washington, and if it did, how much indemnity should be paid.<sup>13</sup> Following an exhaustive investigation, the panel ordered Canada to pay the United States \$350,000 “in payment of all damage which occurred in the United States, prior to the first day of January, 1932, as a result of the operation of the Trail Smelter.”<sup>14</sup> The case demonstrates one of the earliest applications of “the polluter pays” principle that currently underpins much of today’s government policy aimed at deterring greenhouse gas emissions.

The Trail smelter dispute also demonstrates two recurring threads in early environmental law: 1) environmental protection — or lack thereof — was too often a concern for individual landowners; and 2) the federal government was better placed to handle environmental disputes and legislation than local State government. Very little would change for over 30 years.

## 1949 — Hydraulics Code Guideline

Except for this. This happened.

## 1971 — Hope Springs Eternal with SEPA

Washington’s State Environmental Policy Act (SEPA) was enacted in 1971 to ensure effects on the environment were considered by state and local agencies during their decision-making processes. The lofty stated purposes of SEPA were:

(1) To declare a state policy which will encourage productive and enjoyable harmony between human-kind and the environment; (2) to promote efforts which will prevent or eliminate damage to the envi-

ronment and biosphere; (3) and [to] stimulate the health and welfare of human beings; and (4) to enrich the understanding of the ecological systems and natural resources important to the state and nation.<sup>15</sup>

SEPA was patterned after and came on the heels of its federal counterpart, the National Environmental Policy Act (NEPA).<sup>16</sup> However, perhaps more interesting than the two pieces of legislation was the series of environmental disasters that led to a public outcry in the 1960s for environmental reform. The decade really kicked off in 1962 with the publication of Rachel Carson’s *Silent Spring*.<sup>17</sup> The book condemned the overuse of pesticides, prompting President John F. Kennedy to charge his Science Advisory Committee to review the book’s claims; the committee would eventually report that, contrary to the chemical industry’s protestations, the conclusions in *Silent Spring* were generally correct.<sup>18</sup>

If *Silent Spring* lit the match, it was the events of 1969 that dumped gasoline on the campfire. On Jan. 28, 1969, an oil well blowout spilled over 200,000 gallons of oil into the ocean for 11 days straight off the coast of Santa Barbara.<sup>19</sup> The destruction and extreme pollution of the California coastline led directly to reforms in the energy industry, and is often credited with catapulting NEPA into being almost a year later. Of course, NEPA had help from a rather grisly visual in Ohio: On June 22, Ohio’s Cuyahoga River appeared to burst into flames when oil and chemicals floating on the surface caught fire, sending flames into the air over five stories high.<sup>20</sup>

Against this backdrop, Washington’s SEPA passed during the First Extraordinary Session of the Washington Legislature. It also signaled a flurry of state laws governing environmental issues: 1971 saw the passage of the State Shorelines Management Act and the Washington Pesticide Control Act; 1973 ushered in the State Water Pollution Control Act; and 1974 resulted in the State Forest Practices Act.

These laws reflect a profound shift in perspective. Whereas state policy once encouraged the expansion of agriculture, settlement, and big business at the expense of the environment, today, sustainability is key. The public outcry of the

1960s led to much-needed legislation in the 1970s that gave the environment a seat at the table. It is a seat that wavers depending upon the whims of the people, but it is a seat nonetheless — the culmination of Washington’s brief history of environmental law, but that was well worth the wait. **NWL**



**KATIE LUDWICK** is a deputy prosecuting attorney with the Island County Prosecutor’s Office, where she

enjoys a healthy dose of nature on her daily commute and considers it a win when it doesn’t end up splattered across her windshield. She also practices law. She can be reached at [katie.ludwick@gmail.com](mailto:katie.ludwick@gmail.com).

## NOTES

1. Washington Constitution, Article 17, § 1 (part).
2. *Hughes v. State*, 67 Wn.2d 799, 804, 410 P.2d 20 (1966), rev’d, 389 U.S. 290 (1967).
3. *Id.*
4. *Id.* at 805.
5. *Caminiti v. Boyle*, 107 Wn.2d 662, 667, 732 P.2d 989, 993 (1987) (citing *New Whatcom v. Fairhaven Land Co.*, 24 Wn. 493, 64 P. 735 (1901)).
6. *Id.*
7. Trail Smelter Arbitration (U.S. v. Can.), 3 R.I.A.A. 1905, 1917 (1938).
8. *Id.* at 1913.
9. *Id.* at 1915.
10. *Id.* at 1915–16.
11. *Id.* at 1907.
12. *Id.* at 1918.
13. *Id.* at 1911.
14. *Id.* at 1907.
15. RCW 43.21C.010.
16. Jay Derr and Tadas Kisieliuss, *Rethinking Washington’s State Environmental Policy Act*, Apr/May NWLawyer 50 (2014).
17. *Timeline: The Modern Environmental Movement*, [www.pbs.org/wgbh/americanexperience/features/timeline/earthdays](http://www.pbs.org/wgbh/americanexperience/features/timeline/earthdays) (last visited July 13, 2015).
18. *Id.*
19. *Id.*
20. *Id.*

## WSBA BOARD OF GOVERNORS MEETINGS

*June 12, 2015 — Wenatchee  
July 24–25, 2015 — Bellingham*

by Michael Heatherly

### JUNE 12, 2015 BOARD MEETING, WENATCHEE

**A**t the June 12, 2015, meeting in Wenatchee, the WSBA Board of Governors elected Spokane lawyer Robin Haynes as president-elect and chose Sean Davis, a Pierce County attorney, to fill the new/young lawyers' at-large position on the Board. The Board also conducted wide-ranging policy discussions regarding the future of the bar's CLE and diversity programs as well as approving a proposal to move the *NWL* editor position in-house.

#### President-Elect

The Board chose Haynes to serve as WSBA president-elect for the coming fiscal year and then succeed incoming President Bill Hyslop in the top post beginning in September 2016. In a secret ballot, the Board chose Haynes over fellow Spokane attorney Mark Kamitomo for the position. Both candidates received strong endorsements from past and current Board members and others.

Haynes and her supporters emphasized her knowledge of WSBA issues gained as a governor-at-large since June 2012. They noted she had been involved in a number of WSBA committees and had played a role in Board decisions on several key issues in recent years including response to the member fee referendum, conversion of the Young Lawyers Division to a committee, increased diversity on the Board, and response to the Governance Task Force's recommendations for significant changes in how the WSBA operates.

Haynes has been a litigation principal at Witherspoon Kelley since September 2013, having previously been a shareholder at another Spokane firm, Reed & Giesa, where she began as an associate in 2006.

Kamitomo and his supporters pointed to his long experience as a trial lawyer, his involvement in the Washington State Association for Justice (formerly Washington State Trial Lawyers Association)—including serving as president in 2011–2012 — and his leadership in youth-related activities in the Spokane area. Kamitomo began practice in 1989 and practices at The Markham Group, which he opened in 1997.

#### At-Large Position

Also by secret ballot, the Board chose Sean Davis, a deputy prosecuting attorney in the torts section for Pierce County, as the at-large member representing new and young lawyers. Davis had previously practiced in the torts and Labor and Industries divisions of the Washington State Attorney General's office, beginning in 2010. Davis is a captain in the U.S. Air Force Reserve and has served as judge advocate general in the Air Force's McChord Field Office in Tacoma since 2012. The opposing candidate for the at-large position was Kylie Purves, risk manager and prosecutor for the City of Poulsbo and a former president of the Young Lawyers Section of the Kitsap County Bar Association.

#### CLE Program

The Board heard the first reading of proposals regarding possible restructuring of the business models used to administer the WSBA CLE program. The issue was to appear again on the July Board agenda for further discussion and possible action. Ultimately, the board will need to make the following three major decisions:

- 1) Whether to maintain the current level of free and low-cost programming aimed at all WSBA members (such as the Legal Lunchbox series of short online-only CLE seminars), versus reducing or expanding those programs; although popular with members, the programs recover little of their cost;
- 2) Whether to continue in-house production of off-site CLE programs presented for the various WSBA Sections, which are geared toward specific practice areas and often serve as mini-conferences for members of the Sections, versus outsourcing production of those programs to reduce costs; and
- 3) Whether to continue subsidizing the Section CLE programming from WSBA funds, versus the WSBA recovering its full costs of such programming from the Sections.

The free and low-cost programming enjoyed strong support from the Board at the meeting. Those CLEs tend to draw large audiences and are praised by WSBA members, who are able to earn needed CLE credits at little or no cost. The Legal Lunchbox series has been a particular success, as it also requires no travel for members.

On the other hand, the proposals affecting section CLEs were more controversial. Regarding production of section CLEs, under current policy, the WSBA provides staffing and other support for off-site section CLEs and mini-conferences. To re-

duce costs, the Bar could choose to have independent seminar vendors perform that work or partner with such vendors.

A business planning workgroup of the WSBA CLE Committee issued a report supporting the concept of outsourcing to reduce costs and potentially improve efficiency, but the report acknowledged that questions remain regarding whether outsourcing might reduce the quality of the programming, add a layer of administrative work for WSBA staff in managing the vendors, and potentially confuse attendees as to who was producing the event. Several section leaders raised similar concerns. They also expressed to the Board their feelings that the proposals showed an underappreciation of Section members' uncompensated contributions in organizing and presenting the events.

Regarding WSBA subsidies of section CLEs, under current policy, the WSBA performs the administrative work for the section CLEs and partly reimburses itself for the costs by charging a percentage-based fee to the section. Where applicable, the WSBA in effect adjusts the subsidy by sharing any profit from a CLE with the section. Financial analysis shows that after the fee and profit-sharing adjustments, the section CLEs still generally require a significant subsidy from the WSBA. Projections for continuing the programs under the existing model show annual subsidies of anywhere from \$57,065 to \$180,248, depending on specifics such as how many programs are produced and what level of administrative fee the WSBA were to charge.

The report by the CLE Committee business planning workgroup concluded that the current subsidy model is unsustainable and recommended that the WSBA begin recovering 100 percent of its production-related costs from the sections. The recommendation brought objections from several section representatives, some of whom claimed the Board had not sufficiently included them in previous discussion of the proposals, which has been underway in various forms since fall of 2013. Some requested more detail on the level of subsidy required of specific programming, and such data was expected to be provided at the next Board meeting on July 24–25.

#### Diversity Program

The Board conducted an open-ended discussion involving the Bar's ongoing efforts to maintain diversity and inclusion throughout the organization and legal profession. Board members and others debated how the WSBA can best translate its ideals regarding diversity into concrete results. No official action was meant to be taken at the meeting, but Board members



informally supported WSBA President Anthony Gipe's summation at the end of the discussion, in which he suggested that the Bar needs to focus on accountability for its diversity efforts as well as metrics that would objectively measure the results.

Gov. Mario Cava, who holds one of the diversity at-large position on the Board, submitted specific policy considerations and proposals that helped frame the debate. Cava's plan contained four elements as follows:

- 1) Set a standing Board agenda item for a generative diversity policy discussion of at least an hour at each meeting for the coming fiscal year;

- 2) Encourage participation by members of the minority bar associations (MBAs) in an ongoing diversity discussion to occur over the course of the fiscal year;

- 3) Allocate funds for reimbursement of travel expenses for a representative of the MBAs to attend non-local meetings of the Board; and

- 4) Establish key performance indicators regarding results achieved through diversity programming and annually report the results in *NWLawyer*.

#### **NWLawyer Editor**

The Board approved a proposal debated at its April 24, 2015, meeting to make the editor of *NWLawyer* an in-house staff position rather than a contract position held by an independent WSBA member. The change is intended to make daily editorial operations more efficient. Meanwhile, responsibility for dealing with concerns regarding editorial decisions and policies will be shifted to the chair of the Editorial Advisory Committee, a Board-appointed WSBA member who is not an employee of the Bar.

#### **JULY 24-25, 2015, BOARD MEETING, BELLINGHAM**

**A**t its meeting on July 24-25, 2015, in Bellingham, the WSBA Board of Governors took action on three recommendations regarding operation of the CLE program, received the final report from the Escalating Cost of Civil Litigation Task Force, and previewed the proposed WSBA budget for FY 2016.

#### **CLE Program**

Following extensive debate of the issue at the June meeting, the Board approved three recommendations involving administration of the WSBA CLE program in the coming years.

**Recommendation 1:** The Board voted to continue using money from the WSBA general fund to support new lawyer education, public service programs education, section mini-seminars, and the Achieving Inclusion series. The vote also included continuing to produce the Legal Lunchbox series with proceeds from CLE fund revenues.

**Recommendation 2:** The Board approved the overall programming model that most closely resembles the 2015 CLE plan and would produce approximately 60 events, including the above-mentioned specific series and other half-day to multi-day CLE seminars and conferences. The Board chose not to discontinue WSBA production of offsite conferences produced in conjunction with the Bar sections. However, WSBA staff will continue efforts to find a vendor that could produce sufficiently high-quality offsite events at lower cost, at which point the Board could consider changing to that model.

**Recommendation 3:** The Board approved a plan to further address and eventually take action regarding sharing of costs for section-related CLE programming between the WSBA and the sections. At the September 2015 Board meeting, the Board will appoint a time-limited board and staff work group to draft revised section policies, including a revised policy addressing cost-sharing of section-CLE programming. Under a schedule included in the plan, draft policies will be circulated for comment by Dec. 31, 2015. Final draft policies will be presented to the Board for first reading at its March 10, 2016, meeting, and the draft will be up for action at the Board's April 15-16, 2016, meeting.

According to a staff report, in FY2014 the total cost to produce WSBA sections CLE seminars and conferences was \$966,001. The amount recovered from the sections under current cost-sharing policies was \$759,760, leaving a gap of \$206,241. To reduce or eliminate the gap, the Board will need to decide whether to adjust the cost-sharing policies or even shift the cost entirely to the sections.

#### **Cost of Litigation Task Force**

The Board heard the first reading of a report by the Escalating Cost of Civil Litigation Task Force, created by the Board in January 2011 to study the causes and possible solutions regarding the increased costs of pursuing and defending civil claims. The report contains the final version of 12 recommendations, some of which would require sweeping changes in how civil litigation is handled by the state courts throughout Washington. At the September Board meeting, WSBA President

Anthony Gipe, the two presidents-elect, and two other Board members will present a schedule to govern how the Board will consider the recommendations, a process that will include soliciting comments from stakeholders and eventual presentation of Board commentary or a Board version of the proposals. Ultimately, the proposals will require approval and implementation by the Supreme Court.

A few of the proposals contained in the task force report are as follows.

**Two-tier litigation:** All litigated civil cases would be categorized into one of two tiers. Upon filing, cases would be placed by default into Tier 1, which would feature a 12-month case schedule and relatively tight presumptive limits on the amount of discovery allowed. Parties could petition for the court to shift complex cases to Tier 2, which would have an 18-month case schedule and allow for more expansive discovery limits.

**Discovery limits:** Discovery in Tier 1 cases would be presumptively limited to 25 interrogatories, 40 requests for production, 25 requests for admission, 40 hours of fact deposition, and four hours of deposition per expert witness. For Tier 2 cases, discovery limits would be agreed upon by the parties or ordered by the court.

**Alternative dispute resolution:** Parties would be required to complete mandatory mediation within 60 days of party depositions, and earlier mediation would be recommended. Parties could be excused if mediation were not appropriate in particular cases.

**Mandatory disclosures:** Before formal discovery commenced, parties would be required to disclose certain fundamental information, such as the names and contact information of people with discoverable information supporting the disclosing party's claims or defenses; documents supporting the claims or defenses; the amount of damages involved and documentation of the damages; and information about any agreements with potentially liable insurers. In addition, in appropriate cases, information regarding expert witnesses would be subject to mandatory disclosure, and additional evidence-related disclosures would be required as trial approached.

**Proportionality and cooperation:** The scope of discovery would change from non-privileged information "relevant to the subject matter" to the narrower standard of information "relevant to any party's claim

or defense,” taking into consideration the needs of the specific case. In addition, all parties in a case would be made jointly responsible for securing the “just, speedy, and inexpensive determination of every action.” Courts would be permitted to sanction willful failures to cooperate during discovery.

## 2016 Budget

The Board heard a first reading of the initial draft for the FY2016 WSBA budget, which will be presented for action at the September 17-18 meeting in Seattle. The draft assumes general fund revenues of \$16,620,637 and expenses of \$18,847,826, leaving \$2,227,189 to be spent from reserves, an approach the Board has authorized since passage of the member referendum in 2012 that reduced license fees.

Recommendations representing key changes from the 2015 budget include the following:

- 1) The WSBA would no longer absorb credit card fees for transactions, a practice that cost the Bar \$250,000 (including \$200,000 from the general fund) in fiscal 2014.
- 2) Expenses for the Achieving Inclusion program (\$41,185) would be shifted from the CLE Fund to the general fund.
- 3) Expenses for the Legal Lunchbox series (\$156,455) would stay in the CLE Fund.
- 4) The Board would consider potential resource changes to support the type of activities addressed in the Board's discussion about diversity at its June 12, 2015, meeting.

In other business at the July meeting, the Board:

- Elected Governor At-Large Karen Denise Wilson as treasurer for the coming fiscal year. Wilson was elected to the Board in September 2013 and had a career in banking management before beginning her legal career.
- Was advised that the final version of the Board's response to the Governance Task Force recommendations to overhaul WSBA governing policies will be up for Board action at the September meeting.
- Continued its ongoing discussion with WSBA Young Lawyers Committee leadership and other interested parties regarding how the Bar can continue and improve its efforts to support new and young lawyers in getting integrated into the profession. Topics included how to expand opportunities for new and young lawyers to connect with each other across geographical and other bound-

aries and to bond with more established lawyers for mentoring and employment.

- Participated in an open-ended discussion with WSBA Chief Communications Officer Debra Carnes regarding the quality and usefulness of the WSBA website. No immediate action was proposed, but Board members' feedback was expected to be incorporated into future plans to improve the website. In commenting on the website, Board members particularly focused on the usability of the menus and search functions on the site as well as

the possibility of optimizing the site for mobile devices or possibly developing a WSBA app for such purposes as registering for CLEs. **NWL**

**MICHAEL HEATHERLY** is the *NWL* lawyer editor. For more information on the Board of Governors and Board meetings, see [www.wsba.org/bog](http://www.wsba.org/bog). To provide feedback to the Board of Governors, email [governance@wsba.org](mailto:governance@wsba.org).



Johnson Graffe Keay  
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*When reputation matters*



The law firm of Johnson, Graffe, Keay, Moniz & Wick, LLP is proud to announce that Rando Wick has become a Fellow of the International Society of Barristers.

He is the 20th attorney in the State of Washington to become a Fellow of the Society. This high honor is a reflection of the ethical and effective representation that Mr. Wick has provided to countless healthcare clients over the years. A careful vetting process for inclusion in this prestigious organization includes extensive input from co-counsel, opposing counsel, and members of the judiciary. Mr. Wick continues to maintain a very busy practice providing outstanding defense to health care providers.

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*This In Remembrance section contains brief obituaries of WSBA members. The list is not complete and contains only those notices that the WSBA has learned of through newspapers, magazine articles, trade publications, and correspondence. Additional notices will appear in subsequent issues of NWLawyer. Please email notices or personal remembrances to [nwlawyer@wsba.org](mailto:nwlawyer@wsba.org).*

## **Fabian N. Acosta**

Born in New York City, Fabian Acosta was raised in Newark, NJ, by his father, who emigrated from the Philippines. He attended The Juilliard School, Rutgers University, and earned his law degree from the University of Washington School of Law. He was a dedicated public defender and served his country as a Marine. He was a spirited pianist who loved classical music and opera.

Fabian Acosta died on March 24, 2015, at the age of 73.

## **Richard D. Atherton**

Richard Atherton was born in 1947 and spent his childhood in Sunnyside, WA. He served in the Air Force in Thailand during the Vietnam War. He graduated from the University of Washington and received his J.D. from Gonzaga University School of Law. He focused on criminal law and enjoyed being in the courtroom. He was a talented host, chef, and storyteller.

Richard Atherton died on April 20, 2015, at the age of 77.

## **Judge Robert C. Bibb**

Robert Bibb was born in Seattle and attended the University of Washington, earning his law degree in 1949. He served in the U.S. Army from 1943 to 1946 and was awarded the Purple Heart, the Bronze Star, and the Combat Infantryman Badge. He practiced law in Seattle and Arlington before being appointed as a judge to the Superior Court of Snohomish County in 1974. He established the Snohomish County Guardian Monitoring Program, which has been used as a benchmark nationwide. He loved classical and Dixieland music, read extensively, and kept informed on world history and politics.

Judge Robert Bibb died on July 1, 2015, at the age of 92.

## **Lucius H. Biglow Jr.**

Lucius Biglow Jr. was born in New Jersey and attended Phillips Academy, Yale University, and Smith College. His undergraduate education at Yale was interrupted by service in the U.S. Army, where he fought in the Battle of the Bulge. Resuming his studies, he graduated from Harvard Law School in 1952. He moved with his wife to Seattle in 1954, where he practiced law and was in-house

counsel for Puget Sound Power and Light. A longtime resident of Medina, he served on its planning commission and city council. He spent many hours in dedicated service to St. Thomas Church in Medina. His other interests involved sailing, lacrosse, and the Seattle Gilbert and Sullivan Society. Above all, singing was his passion, and he sang with the Andover and Yale choirs, the Yale Glee Club, and the Yale Whiffenpoofs.

Lucius Biglow Jr. died on June 8, 2015, at the age of 90.

## **John A. Bishop**

John Bishop was born in Seattle and raised in Kitsap County. He served in the Navy during World War II. He attended Olympic College and the University of Washington, earning his law degree there in 1951. He practiced law in Bremerton for 65 years. He was active in the Democratic Party, served on the Bremerton School Board, and was a member of the Bremerton Yacht Club.

John Bishop died on March 23, 2015, at the age of 88.

## **Eileen Collier Bouniol**

Eileen Bouniol was born in Huddersfield, England. Over her lifetime, she was a foreign languages teacher and a law librarian and earned five advanced degrees — a B.A. in education from Wayne Teachers College in Nebraska, an M.A. in French from Indiana University, a Ph.D. in French from the University of Missouri, a J.D. from St. Mary's School of Law in San Antonio, and a Master of Law Librarianship from the University of Washington.

Eileen Bouniol died on Jan. 22, 2015, at the age of 91.

## **Judge Warren Chan**

Judge Chan was born in San Francisco in 1922 and moved with his family to Seattle before he turned one. He graduated from Garfield High School in 1940 and served in the U.S. Army during World War II. He attended the University of Washington and was the first Chinese-American to graduate from its law school, placing fourth in his class. He was active in service to the Asian-American community throughout his career, as board president and member of the Wing Luke Museum and as a member of the Chinese Community Service Organization. He was appointed a Seattle municipal judge and became the first Asian-American judge elected in Washington when he won a seat on the King County Superior Court. He did charitable work for the Retired Judges of Washington, the James Washington Foundation, and the Seattle Chinese Garden. He received the Living Asian American Pioneer Award from Governor Gary Locke in 1999.

Judge Warren Chan died on June 15, 2015, at the age of 92.

## **John MacDougall Davis**

John Davis was born in 1914 and spent his first few years on Mercer Island. His family

moved to Spokane, where he thrived as a Boy Scout and Eagle Scout. Davis entered the University of Washington in 1932 and graduated from its law school in 1940, where he served on the *Law Review* and was president of the law school's student body. Davis began his long legal career at a firm that eventually became Davis Wright Tremaine. He served in several Bar Association roles and with numerous community organizations, including Mercer Island School Board, King County School Directors Association, The Mountaineers, Pacific Science Center, and Virginia Mason Hospital Association. His interests also led him to support the Seattle Gilbert and Sullivan Society, The Seattle Symphony, the Council for Washington's Future, the Nature Conservancy, and the Municipal League, among others.

John MacDougall Davis died on April 17, 2015, at the age of 101.

## **Jackie Ling Der**

Jackie Der grew up in Oakland, CA. She attended Yale and earned a law degree from George Washington University School of Law. She dedicated her career to public service at the federal, state, city, and university levels. She served in Olympia as director of medical policy affairs for the University of Washington School of Medicine, advocating for affordable healthcare and quality medical services. She enjoyed trips to Decatur Island, whale watching, traveling to Paris, and gardening.

Jackie Der died on March 2, 2015, at the age of 61.

## **Robert C. Dickerson II**

Being from a military family, Bob Dickerson grew up in California, Puerto Rico, and Washington. He graduated from the University of Washington School of Law in 1976 after serving in the U.S. Army. He had practiced law for several decades when he learned he had terminal cancer in 1999. Dickerson then retired from his legal career and devoted his time to making a difference in the world by working with RESULTS, a grassroots organization committed to eliminating poverty in the world. He became a champion and a voice for the impoverished, and was recognized for his work by being honored with the Thomas Wales Award for Passionate Citizenship and the RESULTS Seeds of Hope Award. RESULTS created the Bob Dickerson Grass Roots Leadership Award in his honor and it was presented for the first time this year.

Bob Dickerson died May 31, 2015, at the age of 68.

## **Barry J. Hasson**

Barry Hasson was born in Portland, attended the University of Oregon, and earned his J.D. at Willamette University College of Law. He practiced law for more than 40 years in Bellevue. He helped establish the Eastside Legal Assistance program, acted as president of the East King County Bar Association and



B'nai B'rith, and served on the board of Jewish Family Services.

Barry Hasson died on March 17, 2015, at the age of 71.

#### **Michael H. Hicks**

Michael Hicks was born in Vancouver and raised in Clark County. He attended the University of Washington and studied at Lewis and Clark Law School, where he earned his J.D. He practiced law in Clark County and environs for 42 years before retiring in 2014. He enjoyed entertaining, reading, trips to Maui, digging for razor clams, and doting on his cats.

Michael Hicks died on June 19, 2015, at the age of 72.

#### **Kathlin J. Persinger Kennedy**

Kathlin Kennedy was born in North Bend, OR, and grew up in Eugene. She attended the University of Oregon and graduated from its law school. She studied cooking at École de Cuisine La Varenne in Paris and worked for a short time in catering. She focused on construction law, worked with the Washington Women Lawyers Association, and served as clerk for King County Superior Court Judge Michael Fox. Kennedy enjoyed tennis, skiing, and swimming.

Kathlin Kennedy died on Jan. 3, 2015, at the age of 64.

#### **Frank R. Kitchell**

Frank Kitchell was born in Battle Creek, MI, and raised in Newburyport, MA. He attended Amherst College, served as a lieutenant commander in the Pacific Fleet during World War II, and graduated from Harvard Law School. He practiced law for many years as a partner in Seattle-based law firm Graham & Dunn. He remained active in the U.S. Naval Reserve and was involved in the Seattle waterfront, serving on the Seattle Port Commission. His charitable work involved The Helen Bush School, The Pilchuck Glass School, and the Seattle Artificial Kidney Center. He was an canoeist, skier, and loved spending time on Bainbridge Island.

Frank Kitchell died on Jan. 25, 2015, at the age of 96.

#### **Dean K. Langsdorf**

Dean Langsdorf was born in Seattle. He attended Whitman College, Rice University, and the University of Houston Law Center. From clerk to counselor, he practiced law for 26 years in the Vancouver legal community with Langsdorf/Ferguson/Posner PLLC and Gregerson & Langsdorf. His varied interests included soccer, cooking, dining, and art.

Dean Langsdorf died on May 25, 2015, at the age of 51.

#### **Daniel M. Mahoney**

Daniel Mahoney was born in Troy, NY. He was a Mercer Island resident since 1968. He was a former FBI special agent. As a labor relations attorney, he served as the general

counsel of the Society of Professional Engineering Employees in Aerospace for 21 years.

Daniel Mahoney died on May 19, 2015, at the age of 89.

#### **Gordon W. Moss**

Gordon Moss was born in 1920 and grew up in Mt. Vernon. In his youth, he worked in Skagit Valley's strawberry fields and canneries before attending the University of Washington through the assistance of an anonymous benefactor. After receiving his undergraduate degree in political science, he served with the Alaska Communication System, Army Signal Corps during WWII. Moss attended Harvard Law School on the G.I. Bill and graduated second in his class. He dedicated his legal career to the firm now known as Lane Powell. Moss enjoyed gardening and walking on the beach.

Gordon Moss died on April 16, 2015, at the age of 94.

#### **Charles N. Mullavey**

Charles Mullavey was born in Edmonds and grew up in Seattle. His skill as a halfback earned him a scholarship to Stanford University, where he played football for a year before a football injury brought him back home. He received his undergraduate and law degrees from the University of Washington. For 60 years, Mullavey practiced law in Ballard. An active sports lover, he was a member of Seattle Golf.

Charles Mullavey died on Feb. 23, 2015, at the age of 85.

#### **Donald L. Navoni**

Donald Navoni was born in Seattle and received his undergraduate degree from Seattle University. He received a graduate degree from St. Louis University and served as an officer in the military before returning to the University of Washington School of Law for his law degree. Navoni loved to travel and was an active supporter of the arts. He was a founding member and vice president of the Seattle Opera Company. In 2005, Seattle University honored him as its Distinguished Alumnus of the Year.

Donald Navoni died on May 16, 2015, at the age of 82.

#### **Hugh J. Potter**

Hugh Potter grew up in Ridgefield, WA, where he spent his youth playing team sports, hunting, fishing, and boating. He received his undergraduate and law degrees from the University of Oregon and remained an avid Oregon Ducks fan for his entire life. Potter joined the Vancouver, WA, firm of Blair, Schaefer, Hutchison, and Wynne and later became a partner in the firm. He worked with Disability Resources of Southwest Washington and coached for Alcoa Little League, and served as president of both organizations.

Hugh Potter died on March 31, 2015, at the age of 71.

#### **William R. Reseburg**

William Reseburg grew up in the Wedgwood area of Seattle, attending Husky football games and watching Seafair hydroplane races from the shores of Lake Washington, and became a lifelong fan of hydroplane racing and cars. He received his undergraduate degree from the University of Washington and his law degree from Willamette University College of Law. Reseburg practiced insurance law at his Seattle firm for more than 30 years.

William Reseburg died on March 2, 2015, at the age of 66.

#### **Brian T. Ritchie**

Brian Ritchie was born and raised in Michigan. He graduated from the business school at the University of Michigan and received his law degree from the University of Montana School of Law. Ritchie was a longtime resident of Seattle, where he practiced law for over 25 years. He volunteered with the Country Doctor Legal Clinic, coached baseball and soccer teams, and loved fishing, skiing, and sailing.

Brian T. Ritchie died on May 30, 2015, at the age of 55.

#### **James M. Roe**

James Roe was born and raised in Spokane. He attended the University of Notre Dame and earned his law degree at Gonzaga University School of Law. For most of his career, Roe practiced criminal law in Seattle. He enjoyed boating, making frequent trips to the San Juan Islands. He was a lifetime rower. Discovering the joy of singing in his 50s, he participated in many local choirs, including the Seattle Symphony Chorale. As an active member of his community, he served on the board of the Montlake Community Center and was a founder of the Montlake Garden Tour. He loved reading, opera, live theater, and was a master composter.

James Roe died on June 28, 2015, at the age of 63.

#### **Ann M. Schwartz**

Ann Schwartz was born in Seattle. She received her undergraduate and law degrees from the University of Washington, where she was a Merit Scholar and associate editor of the *Law Review*. As a defense attorney, Schwartz represented battered women, took on class action lawsuits, and successfully litigated a murder case in the Ninth Circuit Court of Appeals. She was an active supporter of God's Glory Children, an African children's charity.

Ann Schwartz died on June 10, 2015, at the age of 46.

#### **Errol G. Scott**

Errol Scott was born in California. He served in the U.S. Army during the Vietnam War. He received his undergraduate degree from Stanford University and his law degree from the University of California-Berkeley. Scott practiced as a criminal defense lawyer. He

was active with the Seattle Choeizan Enkyoji Nichiren Buddhist Temple, serving as its vice president for many years. He was also an active member of the Masonic Fraternity, eventually serving as deputy to the grand master of District 4.

Errol G. Scott died on April 20, 2015, at the age of 75.

#### **Paul E. Sikora**

Paul Sikora attended Reed College in Portland, OR, studying primarily sculpture and painting. He received his law degree from Lewis & Clark Law School and later received a master's in urban planning at the University of Washington and an LL.M. at Columbia Law School. Sikora joined the Seattle firm of Diamond & Sylvester in 1987, practicing land use, energy, and environmental law. He served as chair of the Seattle mayor's task force on downtown and housing, as trustee of the Allied Arts of Seattle, and was a member of the Seattle Comprehensive Plan Housing Task Force. Sikora discovered a lifelong passion for mobiles when he saw a Calder exhibit at the Guggenheim Museum in 1966. He rented a dilapidated Victorian house so he would have room to construct mobile sculptures and in 2002, he gradually retired from the practice of law to become a full-time artist, eventually showing his distinctive "lightspace" mobiles at an exhibition at UNESCO Headquarters in Paris.

Paul Sikora died on Jan. 17, 2015.

#### **Kerry M.L. Smith**

Kerry Smith was born in 1960 in Walla Walla. He attended Marquette University and received his law degree from Willamette University College of Law. Prior to his career in the law, Smith served as a police officer. As a founding partner of the Gresham law firm of Smith & Fjelstad, he focused his practice on wage and hour law, disability discrimination, family leave, sex discrimination, and wrongful discharge. He enjoyed mentoring newer attorneys and assisting fellow attorneys in need.

Kerry Smith died on March 20, 2015, at the age of 54.

#### **Spencer C. Sneed**

Spencer Sneed, a lifelong Alaskan, was born in Juneau and grew up in Anchorage, where he spent his childhood catching salmon in summer and ice-skating on a local stream in winter. He received his undergraduate degree from Arizona State University, working as a surveyor on the Alaska pipeline in summer to pay for school, and his law degree from Willamette University College of Law. He practiced law for 35 years at Hartig Rhoes, Bogle & Gates, and most recently Dorsey & Whitney. Sneed enjoyed fishing, cross-country skiing, hiking, and biking, and could often be found exploring Chugach State Park.

Spencer Sneed died on Dec. 18, 2014, at the age of 62.

#### **Suzanne B. Stables**

Suzanne Stables grew up in Portland, OR. She attended Mills College in California and completed a program in business administration administered by Harvard University and Radcliffe College. She worked briefly for the CIA before returning to the Northwest, where she received her law degree from the University of Washington School of Law. Stables worked in private practice for several years before becoming an assistant King County prosecutor. She became prosecutor for the City of Mercer Island and then a King County District Court judge for Mercer Island. One of few women lawyers in King County during her early career, Stables was an active champion for women in legal and other professions. She enjoyed digging for clams, visiting local farms, and foraging for mushrooms.

Suzanne Stables died on June 27, 2015, at the age of 82.

#### **Milton J. Stickles Jr.**

Milton Stickles was born in Red Wing, Minnesota. He received his undergraduate and law degrees from the University of Washington. He served in the U.S. Army during the Korean War and remained in the Army Reserve for many years, retiring as a lieutenant colonel. Stickles was a maritime lawyer who worked for nearly 30 years for the U.S. Navy's Military Sealift Command, including postings in England and Germany. After retiring in the 1980s, he was of counsel for 12 years at the Washington office of Cadwalader, Wickersham and Taft. A longtime resident of Chevy Chase, Stickles served on the board of the C&O Canal Association and volunteered with the Boy Scouts.

Milton Stickles Jr. died on Feb. 17, 2015, at the age of 85.

#### **Gary L. Sund**

Gary Sund was born in 1941. He received his undergraduate degree from Pacific Lutheran University, and worked for Burlington Northern Railway and as public affairs director for the state of Oregon under Governor Tom McCall. Sund received his law degree from Lewis & Clark Law School and moved to Sequim to establish his first law firm. He later served his community as a pro tem judge. Sund enjoyed fishing, camping, gardening, and coaching the women's softball team, The Bandits. In later years, he could often be seen driving his street-legal golf cart on the streets of Sequim.

Gary L. Sund died on Dec. 14, 2014, at the age of 72.

#### **Edward W. Taylor**

Edward Taylor was born in 1930. He received his law degree from the University of Washington School of Law. He served in the U.S. Army National Guard. Taylor was an avid fan of Husky football and enjoyed skiing, hiking, boating, and camping.

Edward Taylor died on May 21, 2015, at the age of 84.

#### **John A. Treptow**

John Treptow was born in Minnesota and grew up in Illinois, where he was one of the state's top high school wrestlers. He received his undergraduate and law degrees from Washington University, in St. Louis, MO. A longtime resident of Anchorage, Treptow practiced privately and then for the State of Alaska as senior assistant attorney general. He received many awards throughout his career for pro bono work in maritime, employment, healthcare, and environmental law. Treptow enjoyed watching hockey and spending time with his two golden retrievers.

John Treptow died on Oct. 20, 2014, at the age of 68.

#### **John West**

John West was born in Centralia in 1944 and grew up near Grays Harbor. He received his undergraduate degree from the University of Washington and his law degree from Harvard Law School. He practiced with the firms of Jones Grey & Bayley, Miller Nash, and Hillis Clark Martin & Peterson.

John West died on June 22, 2015, at the age of 70.

#### **J. Vernon "Vern" Williams**

Vern Williams was born in Hawaii. He attended Amherst College and earned his law degree from Yale Law School. During World War II, he served with the U.S. Air Force. Williams practiced law for over 50 years, including as general counsel to Airborne Express. His practice often took him to Alaska for work with the fishing industry, representing the Bristol Bay Regional Native Corporation. He was a founding partner of the firm Riddell Williams. His community work included serving with the March of Dimes, the King County Chapter of the National Foundation for Infantile Paralysis, the YMCA of Greater Seattle and the Seattle Board of Park Commissioners. Williams loved staying at the family summer home on Bainbridge Island, a portion of which is now known as the Williams-Olson Park in memory of the family.

Vern Williams died on Feb. 13, 2015, at the age of 93.

#### **Scott M. Williamson**

Scott Williamson was born in Seattle. His family moved frequently due to his father's military career before eventually settling in Yakima. He received his undergraduate degree from the University of Washington and his law degree from Tulane University Law School. Williamson moved to Seattle to become a partner at the firm of Hackett Beecher & Hart until his retirement in 2002. He enjoyed cars, reading, and fishing.

Scott Williamson died on Feb. 26, 2015, at the age of 64. **NWL**



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News and information of interest to WSBA members

## Opportunity for Service

### Join the Northwest Justice Project Board of Directors

**Application Deadline: Sept. 11, 2015**

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the Board of Directors of the Northwest Justice Project (NJP). The Board will appoint three attorneys to three-year terms commencing January 2016 and one attorney to complete a one-year term.

The Northwest Justice Project is a 125-attorney statewide nonprofit law firm providing free legal services to low-income people from 17 offices throughout Washington. NJP is funded primarily by the State of Washington and the federal Legal Services Corporation, and additional support from the Legal Foundation of Washington. NJP's 2015 budget is \$23.3 million.

Service on NJP's Board is an extraordinary opportunity for accomplished individuals who are passionate about NJP's mission, who have a demonstrated commitment to delivery of high-quality civil legal services to low-income people. NJP Board members are responsible for setting program policy, assuring adequate oversight of NJP operations; and to support, partner with, and oversee the executive director in his/her leadership role.

Board members are expected to attend quarterly meetings in Seattle, attend an annual board retreat, and serve actively on two standing committees. Board members are expected to participate in and support NJP legal community activities and support fund-raising efforts for the organization. Board-related travel and lodging expenses are reimbursed, as appropriate.

For more information, please contact César Torres, NJP executive director, at [cesart@nwjustice.org](mailto:cesart@nwjustice.org), or Joanne Whitehead, board development committee chair, at [jjwhitehead@gmail.com](mailto:jjwhitehead@gmail.com). Please submit letters of interest and résumés on or before Sept. 11, 2015, to: WSBA Bar Leaders, Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email [barleaders@wsba.org](mailto:barleaders@wsba.org). Notification of action by the WSBA Board will follow its November 2015 meeting.

### Legal Foundation of Washington Board of Trustees

**Application deadline: Oct. 9, 2015**

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a two-year term on the Legal Foundation of Washington Board of Trustees. Appointees will serve a term that commences on Jan. 1, 2016, and ends on Dec. 31, 2018. There are three positions available; two positions are held by incumbents who are eligible for reappointment. The Legal Foundation of Washington is a private, not-for-profit organization that promotes equal justice for low-income people through the administration of IOLTA and other funds. Trustees should have a demonstrated commitment to and knowledge of the need for legal services and how these services are provided in Washington. For more information about trustee responsibilities, email [caitlindc@legalfoundation.org](mailto:caitlindc@legalfoundation.org). Please submit letters of interest and résumés to: WSBA Bar Leaders, WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or by email to [barleaders@wsba.org](mailto:barleaders@wsba.org).

## WSBA News

### 2016 License Renewal, MCLE, and Sections Information

Sign up for paperless license renewal by Sept. 13. Log in to [www.mywsba.org](http://www.mywsba.org) and check the box to say "yes" to paperless license renewal, MCLE certification, and Sections registration. Instead of receiving a paper packet in the mail, we'll send you an email reminder when it's time to renew online. While you are logged in, verify and update your contact information, including your email address. License renewal will begin in mid-October and must be completed by Feb. 1, 2016. Note: effective Oct. 1, 2015, a 2.5% transaction fee will be charged on credit card transactions. You can still renew online and mail in a check to avoid the fee.

**Payment plan option available.** If you are experiencing financial challenges, you may contact us about our payment plan option available to all active and inactive members. Payment plans are for three months beginning Dec. 1 and all fees must still be paid in full by Feb. 1, 2016. A one-time hardship exemption is available for active attorney members who qualify. Visit [www.wsba.org/licensing](http://www.wsba.org/licensing) to learn more.

**Join or renew your Section membership.** As the section membership year is Oct. 1, 2015, through Sept. 30, 2016, we encourage

you to join or renew sections in October to receive the full benefit of the membership.

**Certify MCLE compliance.** If you are in the 2013–15 reporting period (Group 3), then you are due to report CLE credits and certify MCLE compliance. All credits must be completed by Dec. 31, 2015, and certification must be completed online or be postmarked or delivered to the WSBA by Feb. 1, 2016. Visit [www.wsba.org/mcle](http://www.wsba.org/mcle) to learn more.

**Judicial members** are required to complete the annual license renewal and pay a \$50 license fee to maintain eligibility to transfer to another membership class when their judicial service ends. Please note that you are required to inform the Bar within 10 days of your retirement or your ineligibility for judicial membership (and you must apply to change to another membership class or to resign). Visit [www.wsba.org/licensing](http://www.wsba.org/licensing) to learn more.

### Join the WSBA New Lawyers List Serve

This list serve is a discussion platform for new lawyers of the WSBA. In addition to being the best place to receive news and information relevant to new lawyers, this is a place to ask questions, seek referrals, and make connections with peers. To join, email [newlawyers@wsba.org](mailto:newlawyers@wsba.org).

### Washington Young Lawyers Committee Meeting

The Washington Young Lawyers Committee will be meeting on Sat., Oct. 3, at the WSBA offices in Seattle. For more information or to attend, email [newlawyers@wsba.org](mailto:newlawyers@wsba.org).

### Apply for a WYLC Public Service Incentive Award

Would you like the opportunity to attend a WSBA CLE for free? Apply now to receive a WYLC Public Service Incentive Award. Applications are due Sept. 21. This award was created to encourage and support new and young lawyers who engage or would like to engage in public service and public service volunteer opportunities, as described in RPC 6.1. Email [newlawyers@wsba.org](mailto:newlawyers@wsba.org).

### WYLC Local Leader Award

Do you know a new and/or young lawyer who deserves to be recognized for their long-term service or extraordinary contribution to the legal community? Nominate an exemplary young lawyer to receive the WYLC Local Leader Award. Nominations are due Sept. 30. Email [newlawyers@wsba.org](mailto:newlawyers@wsba.org).



### Register Now for the WSBA Trial Advocacy Program

Registration is open for the annual WSBA Trial Advocacy Program. New lawyer pricing is available! The program will be held Oct. 23–24 at the WSBA Conference Center and via webcast. An optional mock trial is scheduled for Nov. 7 in Seattle and Nov. 14 in Spokane.

### Open Sections Night in Spokane

Open Sections Night is back in Spokane! This popular event is a great opportunity to learn about the WSBA's 28 practice sections and meet new and experienced practitioners in a fun, casual atmosphere. Open Sections Night is scheduled for Oct. 22 at the Spokane Club. RSVP to [sections@wsba.org](mailto:sections@wsba.org).

### Permanent Price Reductions on WSBA Deskbooks

Take advantage of permanent price reductions on the following WSBA deskbooks while remaining inventory lasts: *Washington Law of Wills and Intestate Succession* (2d ed. 2006): now \$75. *Washington Family Law Deskbook* (2d ed. 2000 & 2012 cumulative supplement set): now \$300. *Washington Legal Ethics Deskbook* (2003 & 2009 supplement): now \$150. Prices do not include shipping and handling or Washington state sales tax. To order, go to [www.wsba.org](http://www.wsba.org) and enter the deskbook title in the Search box or call 206-733-5918.

### New MCLE Rule Takes Effect in 2016

The new MCLE rule taking effect on Jan. 1, 2016, gives lawyers the opportunity to customize their continuing education to best meet their needs. Lawyers will be able to take advantage of new MCLE approved course subjects and activities to address important topics like lawyer-client issues, office management, personal and professional development, and stress management. The increased flexibility is designed to create more meaningful learning opportunities to support excellent lawyer-client relationships and office practices and ultimately improve work-life balance, job satisfaction, and career stability.

At least 6 credits must be in ethics and professional responsibility. At least 15 credits must be from attending approved courses in the subject of law and legal procedure. The remaining 24 credits can be earned in the above categories, as well as in new subject areas and activities that include professional development, personal development

and mental health, office management, improving the legal system, or participating in a structured mentoring program approved by the MCLE Board. There is no live credit requirement. The new rule can be found at [www.wsba.org/licensing-and-lawyer-conduct/mcle/apr-11-rules-and-regulations](http://www.wsba.org/licensing-and-lawyer-conduct/mcle/apr-11-rules-and-regulations).

### WSBA Board of Governors Meetings

**Sept. 17–18, Seattle; Nov. 13, Seattle**

With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Ashka Nakhayee at 206-239-2125, 800-945-9722, ext. 2125, or [ashkan@wsba.org](mailto:ashkan@wsba.org). The complete Board of Governors meeting schedule is available on the WSBA website at [www.wsba.org/bog](http://www.wsba.org/bog).

### Volunteer Custodians Needed

The WSBA is seeking interested lawyers as potential ELC 7.7 volunteer custodians. An appointed custodian is authorized to act as counsel for the limited purpose of protecting a client's interests whenever a lawyer has been transferred to disability inactive status, suspended, disbarred, dies, or dis-

appears and no person appears to be protecting the clients' interests. The custodian takes possession of the necessary files and records and takes action to protect clients' interests. The custodian may act with a team of custodians and much of the work may be performed by supervised staff. If the WSBA is notified of the need for a custodian, the WSBA would affirm the willingness and ability of a potential volunteer and seek their appointment as custodian. Costs incurred may be reimbursed. Current WSBA members of all practice areas are welcome to apply. Contact Sandra Schilling at [sandras@wsba.org](mailto:sandras@wsba.org), 206-239-2118 or 800-945-9722, ext. 2118 or Darlene Neumann at [darlenen@wsba.org](mailto:darlenen@wsba.org), 206-733-5923 or 800-945-9722, ext. 5923.

## Legal Community

### Legal Foundation of Washington Notice of Public Meeting

The trustees of the Legal Foundation of Washington will meet on Sept. 17, 2015, at the Legal Foundation of Washington offices in Seattle. The public may appear in order to comment on the Foundation's activi-



## Celebrate Those Who Paved the Way!

Join the WSBA in celebrating the careers and accomplishments of attorneys who have been WSBA members for 50 years.

### The 50-Year Member Tribute Luncheon

**Friday, Oct. 16, 2015 • Sheraton Seattle Hotel**

**Reception/Registration: 11 a.m. • Program: Noon**

*All members of the legal community and guests are invited.*



For more information, contact Ashka Nakhayee, WSBA events specialist, at [ashkan@wsba.org](mailto:ashkan@wsba.org) or 206-239-2125.



ties between 9–9:30 a.m. This opportunity is made pursuant to Article I, Section 1.7 of the bylaws of the Legal Foundation of Washington.

## Washington Association of Criminal Defense Lawyers Announces 2015 Awards Recipients

In June, the Washington Association of Criminal Defense Lawyers presented its annual awards. Seattle attorney Suzanne Elliott received the 2015 William O. Douglas Award, recognizing extraordinary courage and commitment in the practice of criminal law. Steve Thayer and Lila Silverstein received the President's Award, honoring achievement in a particular case or series of related cases, or long-time service to the criminal defense bar. Spokane attorney Kevin Griffin received the Anthony Savage Award, recognizing an outstanding trial performance or result achieved by an attorney in practice for less than 10 years. The Champion of Justice Award, which recognizes a legislative, judicial, journalistic or humanitarian pursuit that has staunchly preserved or defended the constitutional rights of Washington residents and endeavored to ensure justice and due process for those accused of crime, was presented to the legal team behind the ruling in *Trueblood v. DSHS et. al.*, in which the district court ruled that persistent delays in competency evaluations and restoration services violated detainees' right to due process.

## Ethics

### Facing an Ethical Dilemma?

Members facing ethical dilemmas can talk with WSBA professional responsibility counsel for informal guidance on analyzing a situation involving their own prospective ethical conduct under the RPCs. All calls are confidential. Any advice given is intended for the education of the inquirer and does not represent an official position of the WSBA. Every effort is made to return calls within two business days. Call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

## WSBA Lawyers Assistance Program (LAP)

### WSBA Connects

WSBA Connects provides free counseling in your community. All Bar members are eligible for three free sessions on

topics as broad as work stress, career challenges, addiction, anxiety, and other issues. By calling 800-765-0770, a telephone representative will arrange a referral using APS's network of clinicians throughout the state of Washington. We encourage you to make the most of this valuable resource.

## WSBA Law Office Management Program (LOMAP)

### LOMAP Lending Library

The WSBA Law Office Management Assistance Program Lending Library is a service to WSBA members. We offer the short-term loan of books on the business management aspects of your law office. How does it work? You can view available titles at [www.wsba.org/resources-and-services/lomap/lending-library](http://www.wsba.org/resources-and-services/lomap/lending-library). Books may be borrowed by any WSBA member for up to two weeks. LOMAP requires your WSBA ID and a valid Visa or MasterCard number to guarantee the book's return to the program. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. For walk-in members, we recommend calling first to check availability of requested titles. To arrange for a book loan or to check availability, contact [lomap@wsba.org](mailto:lomap@wsba.org).

### Casemaker Online Research

Casemaker is a powerful online research library provided free to WSBA members. Read about this legal research tool on the WSBA website at [www.wsba.org/casemaker](http://www.wsba.org/casemaker). As a WSBA member, you already receive free access to Casemaker. Now, we have enhanced this member benefit by upgrading to add Casemaker+ with CaseCheck+ for you. Just like Shepard's and KeyCite, CaseCheck+ tells you instantly whether your case is good law. If you want more information, you can find it on the Casemaker website, or call 877-659-0801 and a Casemaker representative can talk with you about these features. For help using Casemaker, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

### Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in August 2015 was 0.168%. Therefore, the maximum allowable usury rate for September is 12%. **NWL**

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*City of Seattle v. Menotti*,  
409 F.3d 1113 (9th Cir. 2005)  
*State v. Letourneau*,  
100 Wn. App. 424 (2000)  
*Fordyce v. Seattle*,  
55 F.3d 436 (9th Cir. 1995)  
*LIMIT v. Maleng*,  
874 F. Supp. 1138 (W.D. Wash. 1994)

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background in individual and corporate  
immigration matters is an asset to the firm's  
thriving immigration practice.

Amy can be reached at 206-654-2260 or  
via email at [royalty@ryanlaw.com](mailto:royalty@ryanlaw.com).

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### FITZER, LEIGHTON & FITZER

is pleased to announce that

#### Jennifer Merringer Veal

has joined the firm as an associate.

Ms. Veal graduated *magna cum laude* from the  
University of Puget Sound and with distinction from  
the University of Nebraska School of Law, where  
she served on the *Law Review*. Ms. Veal's prior  
experience includes over five years with Williams  
Kastner, where she focused her practice on medical  
liability defense. Her practice will include the  
representation of healthcare providers in medical  
liability and licensing matters.

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## CLE Calendar

CLE seminars are subject to change. Please check with providers to verify information. To announce a seminar, send information to [clecalendar@wsba.org](mailto:clecalendar@wsba.org). Information must be received by the first day of the month for placement in the following issue's calendar.

### CRIMINAL LAW

#### Criminal Justice Institute

Oct. 22–23, Burien. CLE credits pending. Presented by the WSBA in partnership with the WSBA Criminal Law Section; 800-945-WSBA or 206-443-WSBA; [www.wsba.org](http://www.wsba.org).

### ETHICS

#### 17th Annual Ethics, Professionalism and Civility Workshop

Sept. 9, Seattle and webcast. 6 ethics CLE credits for full day; 3 ethics CLE credits for morning-only or afternoon-only options. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA; [www.wsba.org](http://www.wsba.org).

#### Ethics in Civil Litigation

Sept. 30, Seattle and webcast. 6 ethics CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA; [www.wsba.org](http://www.wsba.org).

### ELDER LAW

#### Advance Planning for Elder Law Clients: The 18th Annual Elder Law Conference

Sept. 18, Seattle. 6.5 CLE credits pending, including 1 ethics. Presented by the WSBA in partnership with the WSBA Elder Law Section; 800-945-WSBA or 206-443-WSBA; [www.wsba.org](http://www.wsba.org).

### GENERAL

#### Introductory Collaborative Law 2-Day Training (Fall 2015)

Sept. 24, Seattle. 12.25 CLE credits pending, including .5 ethics. Presented by the Seattle Collaborative Law Training Group; 206-249-9145; [www.collabtraining.com](http://www.collabtraining.com).

#### Leaving the Law Without Losing

Sept. 1, Seattle and webcast. 5 CLE credits, including 1 ethics. Presented by the WSBA in partnership with the Law Office Management Assistance Program; 800-945-WSBA or 206-443-WSBA. [www.wsba.org](http://www.wsba.org).

### INDIAN LAW

#### 28th Annual Indian Law Symposium

Sept. 10–11, Seattle. 11.5 CLE credits,

including 1.25 ethics. Presented by the University of Washington School of Law; 800-253-8648 or 206-543-0059; [www.law.washington.edu/events/indianlaw](http://www.law.washington.edu/events/indianlaw).

### INTELLECTUAL PROPERTY

#### IP Fundamentals for the Business and Transactional Lawyer

Sept. 25, Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Intellectual Property Section; 800-945-WSBA or 206-443-WSBA; [www.wsba.org](http://www.wsba.org).

### LEGAL LUNCHBOX SERIES

Free monthly 1.5 CLE credit live webcast on the last Tuesday of each month at noon. [www.wsba.org](http://www.wsba.org).

#### Plain Language Legal Forms

Sept. 29, webcast. 1.5 CLE credits pending. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA; [www.wsba.org](http://www.wsba.org).

### MODERATE MEANS

#### Boot Camp: Family Law-Dissolution

Sept. 15, webcast only. 6 general CLE credits pending. Presented by the WSBA; 206-727-8311. [www.wsba.org/mmp](http://www.wsba.org/mmp). Free for lawyers participating in the WSBA Moderate Means Program. Learn more at [www.wsba.org/mmp](http://www.wsba.org/mmp).

### NEW LAWYER EDUCATION

#### Boot Camp: Family Law-Dissolution

Discounted for new lawyers. Sept. 15, Seattle and webcast. 6 general CLE credits pending. Presented by WSBA New Lawyer Education; 800-945-WSBA or 206-443-WSBA; [www.wsba.org/NLE](http://www.wsba.org/NLE).

#### Trial Advocacy Program

Oct. 23–24, Seattle and webcast. 12 CLE credits, including 1.25 ethics. Presented by WSBA New Lawyer Education; 800-945-WSBA or 206-443-WSBA; [www.wsba.org](http://www.wsba.org)/NLE.

Mock Trials in Seattle on Nov. 7, 2015, and Spokane on Nov. 14, 2015.

### REAL PROPERTY

#### Farmland Succession – Planning the Future of the Farm

Sept. 24, Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the Washington State Conservation Commission and the Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA; [www.wsba.org](http://www.wsba.org).

## Classifieds

**JOB SEEKERS AND JOB POSTERS,** POSITIONS AVAILABLE ads can be found online at the WSBA Career Center. To view these ads or to place a position available ad, go to <http://jobs.wsba.org>.

### TO PLACE A CLASSIFIED AD

#### RATES, DEADLINE, AND PAYMENT:

WSBA members: \$50/first 50 words; \$1 each additional word. Non-members: \$60/first 50 words; \$1 each additional word. Email text to [classifieds@wsba.org](mailto:classifieds@wsba.org) by the first day of each month for the following issue (e.g., Oct. 1 for the Nov. issue.) Advance payment required. For payment information, see <http://bit.ly/NWLawyerAds>. These rates are for advertising in *NWLawyer* only. For questions, email [classifieds@wsba.org](mailto:classifieds@wsba.org).

### SERVICES

**The Coach for Lawyers, LLC**, offers business coaching, law practice consulting and life coaching to help lawyers change or improve their professional life. Services are provided by John Allison, an experienced lawyer and trained professional coach. For more information, call John at 707-357-3732 or visit our website at [www.coachlawyers.com](http://www.coachlawyers.com).

**Contract attorney, experienced in research and writing**, drafts trial and appellate briefs, motions and research memos. Trial preparation, summary judgment work, editing and cite-checking. Prompt turnaround times, excellent references. Elizabeth Dash Bottman, WSBA #11791, 206-526-5777, [ebottman@gmail.com](mailto:ebottman@gmail.com).

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**Effective brief writer with 20-plus years of civil litigation experience** and excellent references available as contract lawyer. Summary judgments, discovery motions, trial preparation, research memos, appeals. State or federal court. Lynne Wilson; [lynnewilsonatty@gmail.com](mailto:lynnewilsonatty@gmail.com) or 206-328-0224.

**Certified personal property appraiser/estate sale and liquidation services:** Deborah Mallory, The Sophisticated Swine LLC, Appraisal and Estate Sale Service, CAGA appraiser with 28 years of experience in estate sales, appraisals for estates, dissolution, insurance and donation. For details, call 425-452-9300, [www.sophisticatedswine.com](http://www.sophisticatedswine.com) or [dsm@sophisticatedswine.com](mailto:dsm@sophisticatedswine.com).

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#### WILLS

**If you have knowledge of an original will executed by Nobuko Wright,** please contact Katie or Ellen at Hertog & Coster PLLC, by telephone at 206-587-6556 or by email, [eservice@hertogcosterlaw.com](mailto:eservice@hertogcosterlaw.com).



These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of *NWLawyer* at <http://nwlawyer.wsba.org> or by looking up the respondent in the lawyer directory on the WSBA website ([www.wsba.org](http://www.wsba.org)) and then scrolling down to “Discipline History.” As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.

## Disbarred

**Matthew Ryan King** (WSBA No. 31822, admitted 2001), of Seattle, was disbarred, effective 5/22/2015, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 8.1 Bar Admission and Disciplinary Matters, 8.3 (Reporting Professional Misconduct). Jonathan Burke acted as disciplinary counsel. Brett Andrews Purtzer represented the respondent. Kelby Fletcher was the hearing officer. The online version of *NWLawyer* contains links to the following documents: Order Approving Stipulation to Disbarment; Stipulation to Disbarment; and Washington Supreme Court Order.

## Resigned in Lieu of Discipline

**Daniel R. Tiffany** (WSBA No. 34917, admitted 2004), of Lakewood, resigned in lieu of discipline, effective 6/19/2015. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4 (Communication), 8.4(c) Dishonesty, Fraud, Deceit or Misrepresentation. Randy Beitel acted as disciplinary counsel. Daniel R. Tiffany represented himself. Daniel A. Brown was the hearing officer. The online version of *NWLawyer* contains a link to the following document: Resignation Form of Daniel R. Tiffany (ELC 9.3(b)).

## Suspended

**Hugh W. Berry** (WSBA No. 23509, admit-

ted 1994), of Mill Creek, WA, was suspended for 30 days, effective 3/23/2015, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of California. For more information, see <http://members.calbar.ca.gov/fal/Member/Detail/149416>. Joanne S. Abelson acted as disciplinary counsel. Hugh W. Berry represented himself. The online version of *NWLawyer* contains a link to the following document: The Washington Supreme Court Order.

## Suspended

**Anthony Rocco Castelda** (WSBA No. 28937, admitted 1999), of Tonasket, was suspended for 16 months, effective 5/15/2015, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property). Joanne S. Abelson acted as disciplinary counsel. Dustin Douglass Deissner and Kenneth Kagan represented the respondent. Edward F. Shea was the hearing officer. David Thorner was the settlement hearing officer. The online version of *NWLawyer* contains links to the following documents: Order Approving Stipulation to 16-Month Suspension; Stipulation to 16-Month Suspension; and Washington Supreme Court Order.

## Suspended

**Paul D. Edmondson** (WSBA No. 3634, admitted 1971), of Yakima, was suspended for four months, effective 6/12/2015, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.7 (Conflict of Interest: Current Clients), 8.4(b) Criminal Act, 8.4(d) Prejudicial to the Administration of Justice, 8.4(i) Moral Turpitude, Corruption or Disregard. Erica Temple acted as disciplinary counsel. Joseph John Ganz represented

the respondent. Terence Ryan was the hearing officer. Stephen Henderson was the settlement hearing officer. The online version of *NWLawyer* contains links to the following documents: Order Approving Stipulation to Four Month Suspension; Stipulation to Suspension; and Washington Supreme Court Order.

## Reprimanded

**Eric Jon Fjelstad** (WSBA No. 19633, admitted 1990), of Gresham, was reprimanded, effective 5/08/2015, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 8.4(l) ELC violation. Joanne S. Abelson acted as disciplinary counsel. Eric Jon Fjelstad represented himself. Robert Stein was the hearing officer. The online version of *NWLawyer* contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

## Interim Suspension

**John David Ferrell** (WSBA No. 28922, admitted 1999), of Gig Harbor, is suspended from the practice of law in the state of Washington pending the outcome of disciplinary proceedings, effective 5/19/2015, by order of the Washington Supreme Court. This is not a disciplinary sanction.

**David C. Reed** (WSBA No. 24663, admitted 1995), of Mountlake Terrace, is suspended from the practice of law in the state of Washington pending the outcome of disciplinary proceedings, effective 5/13/2015, by order of the Washington Supreme Court. This is not a disciplinary sanction.

**Marja M. Starczewski** (WSBA No. 26111, admitted 1996), of Wenatchee, is suspended from the practice of law in the state of Washington pending the outcome of supplemental proceedings, effective 5/08/2015, by order of the Washington Supreme Court. This is not a disciplinary sanction.

## Transfer to Disability Inactive Status

**Michael Reeves Smith** (WSBA No. 26677, admitted 1997), of Ellensburg, was by stipulation transferred to disability inactive status, effective 5/11/2015. This is not a disciplinary action.

# The Ethical Edge



by Jacqueline Justice

**T**he Ethical Edge is a new NWLawyer column designed to provide WSBA members with up-to-date education and information on ethics and lawyer discipline issues in a readable and captivating format. Installments of The Ethical Edge will be written by practicing lawyers serving as featured columnists. The Ethical Edge columns describe and resolve hypothetical ethical dilemmas inspired by the public facts of actual lawyer discipline cases in Washington or other U.S. jurisdictions. These scenarios will be set in the fictional state of “Pacifica,” where the ethics rules are identical to the American Bar Association’s (ABA) Model Rules of Professional Conduct.<sup>1</sup> The individuals, entities, and regulatory agencies mentioned are fictional, but citations to state ethics opinions and decisions are real.



**L**awyer Jones was a successful personal injury practitioner in the state of Pacifica. In 2013, Client Smith contacted Mr. Jones and asked him to represent her. Ms. Smith had slipped, fallen, and was injured on the steps of her apartment building. Mr. Jones took the case and prepared for trial. At trial, Ms. Smith admitted that she had been intoxicated when she fell. She had not previously disclosed this information to Mr. Jones. Unsurprisingly, the outcome of the trial was adverse to Ms. Smith.

Three weeks later, Mr. Jones received a call from a colleague informing him that he’d just read a harsh review of him on an online lawyer-rating website. Furious, Mr. Jones read the review and drafted a response to set the record straight. In the response, he revealed that his client failed to tell him that she was intoxicated at the time of her fall. He also disclosed a number of other weaknesses in the client’s case that might have explained the adverse jury verdict. Mr. Jones clicked “Submit” with righteous satisfaction.

This satisfaction was short-lived. A few

weeks later, Mr. Jones received a copy of a disciplinary grievance that his former client had filed against him. Ms. Smith asserted that he had unethically disclosed confidential client information in his online response.

The grievance proceeded to a disciplinary hearing. A hearing panel determined that Mr. Jones had violated Pacifica Rule of Professional Conduct 1.9(c) by revealing information relating to the representation of a former client without the client’s informed consent. Mr. Jones appealed to the disciplinary board of Pacifica, which made the following remarks:

The Internet provides opportunities for consumers to find ever more information about the people they engage for services. The increased reliance on social media sites raises new ethical concerns for lawyers. It is natural for a lawyer want to explain his or her side of the story.

However, as lawyers we must adhere to a code of ethics, even after the client-lawyer relationship has ended. Although our Supreme Court has not specifically addressed this issue, several other jurisdictions have commented on similar matters. For example, the Washington State Bar Association’s Committee on Professional Ethics published Advisory Opinion 201402. The Committee remarked that “if a lawyer claims or participates in an online social media website service for professional use, they bear responsibility for insuring the accuracy of information contained on their profile.” WSBA Committee on Professional Ethics, Advisory Opinion 201402; [www.mcle.mywsba.org/io/print.aspx?id=1681](http://www.mcle.mywsba.org/io/print.aspx?id=1681). The opinion further observed that “accurate client ratings or peer endorsements may be attached to this profile. However, if endorsements or ratings are false or misleading, the lawyer must delete or disclaim the false or misleading comments or endorsements if it is reasonably feasible to do so.”

Although a lawyer does have responsibility to ensure accuracy, this does not give the lawyer a right to divulge otherwise confidential client information. Rather, given the clear restrictions in Rules of Professional Conduct 1.6 and 1.9, a lawyer must use extreme caution when responding to a negative critique.

Other states have addressed the problem of negative online reviews more specifically. New York<sup>2</sup> and Pennsylvania<sup>3</sup> have correctly observed that in this context a lawyer is still required to follow rules regarding advertising, contact with opposing party, and most importantly, confidentiality. The Pennsylvania opinion emphasizes that although there are some circumstances in which divulging client confidences is permissible, responding to a negative online review is not one of them.

This case is analogous to a recent disciplinary matter in Illinois. There a lawyer was reprimanded for divulging information that “exceeded what was necessary

to respond to the client’s accusations.” *In The Matter of Betty Tsamis*, 13PR0095, Illinois Attorney Registration and Disciplinary Commission Hearing Board, 2014; [www.iardc.org/hb\\_rb\\_disp.html.asp?id=11221](http://www.iardc.org/hb_rb_disp.html.asp?id=11221). In that case, the client asserted online that the lawyer had collected fees from him, knowing full well the client would be unable to receive the unemployment benefits he sought. The lawyer posted an online response, stating “the person did not reveal all the facts of his situation up front in our first and second meeting. [sic] When I received his personnel file, I...informed him that he would likely lose... he chose to go forward with a hearing to try to obtain benefits. I dislike it very much when my clients lose but I cannot invent positive facts for clients when they are not there. I feel badly for him but his own actions in beating up a female coworker are what caused the consequences he is now so upset about.” [www.iardc.org/13PR0095CM.html](http://www.iardc.org/13PR0095CM.html).

The Illinois lawyer was reprimanded. We conclude that the same sanction is warranted here.

After receiving the reprimand, Mr. Jones reconsidered his actions and wrote a letter of apology to Ms. Smith. In his letter, he agreed he should have simply stated that a lawyer cannot guarantee a specific outcome and that he understood her disappointment in the result. **NWL**



**JACQUELINE JUSTICE** is a Washington native. She received her bachelor of arts degree from

Central Washington University and graduated from the University of Oregon School of Law in 2007. After graduation, she spent a year teaching with a law faculty in Ethiopia. Currently, she works for the U.S. Social Security Administration. She can be reached at [jacquelinejustice@gmail.com](mailto:jacquelinejustice@gmail.com).

## NOTES

1. The complete text of the ABA Model Rules is available here: [www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html).
2. See New York State Bar Association Ethics Opinion 1032 (2014).
3. See Pennsylvania Bar Association Ethics and Professional Responsibility Formal Opinion 2014-200.

# Beyond the Bar No.



Rodney Pierce (center) with Burien's Highline High School Pirates softball team and coaches.

## Rodney Pierce WSBA No. 5317

Law School: University of Idaho College of Law

- ▶ **Before law school**, I worked on a turkey farm, at a quarry, at the post office, and as a stevedore.
- ▶ **My greatest talent as a lawyer is** seeing the big picture.
- ▶ **In my practice, I work on** improving my listening skills.
- ▶ **The best advice I have for new lawyers is** to ask clients what they want and where they want to be in a year from when you first meet them. Then finding a way to make it happen.
- ▶ **The most rewarding part of my job is** making a difference in someone's life. In an early case, I helped a client modify his custody order to allow for his daughter to live with him. Years later when she got married, she told me at the reception, "Thanks for getting me with my dad."
- ▶ **I wish that more lawyers would** enjoy life and work together.
- ▶ **During my free time**, I coach high school softball in the greater Seattle area.
- ▶ **My most memorable trip was** hitchhiking 2,500 miles from Seattle to Fairbanks, Alaska, in eight days right after college. Life was simpler.
- ▶ **If I took one day off midweek, I would** be at Pike Place Market getting items for a family dinner.
- ▶ **I enjoy reading** more than one book at a time.
- ▶ **My favorite place in the Pacific Northwest is** my summer home on Camano Island.
- ▶ **Nobody would ever suspect that** I did standup comedy voluntarily.
- ▶ **Friends would describe me as** laid-back, while colleagues would say I'm a pit bull.
- ▶ **This is my favorite dinner party story:** How I went from having three kidneys to one kidney in two seconds. Take me to dinner and I'll tell the story.
- ▶ **My best habit is** saying "Thank you" and "You're welcome." My parents would be proud.
- ▶ **Give this a try:** Take cooking lessons and break bread with as many friends as possible.
- ▶ **I would like to learn** to juggle.
- ▶ **If I have learned one thing in life**, it is that life is short and to enjoy it.

My name is RODNEY PIERCE. I am a family law attorney in Seattle and I have been practicing for more than 36 years. I concentrate my practice on divorce, parenting visitation custody, relocation, and paternity, along with wills and personal injury. I enjoy reading, family dinners, sports, poker, and motorcycles. I have enthusiastically coached high school and college softball for the last 15 years. I play softball on several different teams. I can be reached at [rod@piercefamilylaw.com](mailto:rod@piercefamilylaw.com). My website is [www.piercefamilylaw.com](http://www.piercefamilylaw.com).

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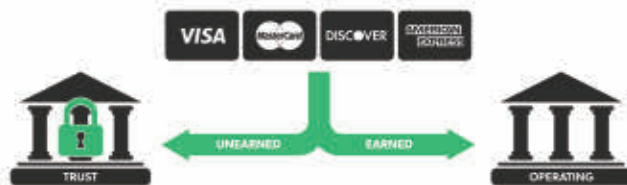


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