

LIFE

Senior Lawyers Section Newsletter

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Volume 23 | Number 1 **Spring 2023**

Letter from the (Interim) Chair **THE RITES OF SPRING**

By David Sprinkle, Interim Chair (Jan–Mar 2023)

T **TO THE MEMBERS** of the Senior Lawyers Section, some of the rites of spring (pre- and post-pandemic, at least) in the Pacific Northwest include the return of robins, daffodils, and tulips blooming, pitchers and catchers reporting to spring training, and ... your spring edition of the Senior Lawyers Section Newsletter, *Life Begins!* In this edition, we are pleased to present a trip around Germany with Executive Committee member Jenny Ryberg, an invitation to pay back/give forward by attorneys Mark Hutcheson and Dick Manning, the naked truth about eyewitness mistakes by EC member Steve DeForest, our quarterly article by Supreme Court Justice Barbara Madsen, and much more.

Your Executive Committee has been busy planning for the return of our annual CLE this summer. **Save the date of Friday, July 14, 2023.** Based on the results from our recent survey, we hope to have a hybrid version at WSBA offices for those who want to attend in person with a webinar option for those who do not. After a half day of presentations, we expect to have a catered luncheon for the in-person attendees to get

some valuable face time with their fellow senior lawyers. If any Section members have suggestions for topics or speakers for the CLE, it is not too late to share those ideas. Please email our CLE subcommittee chair, Carole Grayson, at cag8@uw.edu. More information on the CLE will be sent to all Section members in the coming weeks. Thank you to all who participated in our Survey Monkey and congratulations to our five Amazon gift card winners. Your prizes are on the way. Promise!

As I prepare to turn over the reins as interim chair to the capable Jeanine Lutzenhiser, I wanted to express my gratitude to past Chair Eleanor Doerman. Eleanor has been on the Executive Committee for many years and served as chair for the past three. After my three month interim stint, I know that is no small task. Eleanor is not standing for election to the Executive Committee in the upcoming elections, choosing to spend her time and passion on the Board of Directors for GenPride, as it helps build Pride

Continued on page 2...



2022-2023

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Letter from the Interim Chair

...continued from page 1

Place, Seattle's first affordable housing project designed to be an affirming environment for LGBTQIA+ seniors. The project will provide 118 apartments and a community and health services center. Donations are gladly accepted. CCP – GenPride (genprideseattle.org). Eleanor guided the EC through the pandemic and was my personal inspiration to be involved with the Senior Lawyers Executive Committee. Eleanor will still be a "senior lawyer" (none of us can escape that tag) and will be missed on the Executive Committee.

In closing, I am watching the opening of the T-Mobile roof from my office as



I write this letter. I was a Mariners' season ticket holder from 1991 to 2004 (as Bruce Springsteen would call them, the "glory days") and have been sucked back into owning season tickets again this year. Hope springs eternal for that long-awaited World Series in Seattle. At the very least, Seattle will see another All-Star Game on July 11, 2023. It is hard to believe it has been 22 years already! A much younger me was in attendance at that game.

Enjoy the newsletter!

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WSBA Sections

A BUSY WINTER FOR THE SUPREMES

by Justice Barbara Madsen

January 2023 started strong for the Washington Supreme Court. For the first time since 2017, the Supreme Court was invited to present the State of the Judiciary to a joint session of the Legislature. As with everyone, the pandemic battered the branch, but through a collective response led largely by the Board for Judicial Administration (BJA) and then-Chief Justice Stephens, we emerged with new energy and technology tools, enhancing access to the courts through remote options. In January, the court also completed the 'move-in' to the building lovingly referred to as TC3, a warren of cubicles and tiny offices, with a swearing-in celebration. Justices Yu, Whitener, and I were reelected in a landslide—we had no opponents, likely due to Zoom fatigue and the challenge of remote campaigning!

In February, we resumed Traveling Court with a visit to Seattle U Law School. The visit started on Wednesday, February 22, with members guest lecturing in both law and undergrad courses, followed by a lunch with students and an afternoon Q&A panel where several members of the court answered student and audience questions ranging from court process, our toughest cases, and our paths to the bench. Audience open mic is a favorite with the justices. On Thursday the court heard argument on three interesting cases: whether Washington recognizes a special "university-student" relationship giving a duty to protect students on and off campus; when bail may constitutionally be denied; and whether the state-wide eviction moratorium violated the Constitution or exceeded the governor's emergency powers.

The court's next out-of-town gig starts May 10 in Langley, with visits

and lunch at three local schools and a town hall forum at the South Whidbey Community Center. On Thursday, the court will hear arguments at the community center, beginning with a greeting from the Langley mayor and former Justice Bobbe Bridge, who has ties to the community.

March began on a sad note with our newest justice reporting that she will be on medical leave. Justice Whitener is scheduled to have reconstructive surgery, following years of back pain. She is optimistic and says she "looks forward to returning in a few months better than ever!" Since joining the court, Justice Whitener has been actively addressing access issues facing people with disabilities, convening the first Barriers on Access to Justice in Appellate Courts Committee.

Although not in direct response, the court recently adopted a new Supreme Court pro-tem policy at the end of 2022, which expands the eligibility list to include superior court judges. Since 1992, the court has limited pro-tem service to other appellate level judges. The opportunity has been enthusiastically received by the trial judges.

In April, the court's Washington Bar Licensure Task Force, led by Justice Montoya-Lewis, will meet to discuss and finalize its recommendations to the full court. The court formed the task force following our 2020 order amending APR 3 and 4 to allow bar-takers the option of receiving a diploma privilege to practice. The task force's charge is to assess the efficacy of the bar exam. It is examining current and past bar exam methods, passage rates, and alternative licensure methods. Part of the inquiry

is to assess the disproportionate impacts on examinees of color and first-generation examinees.

Finally, May will bring the court's In Memoriam service. On May 31, the court will honor the memory and



The Supreme Court holding a session at Seattle University



Retired Chief Justice of the Supreme Court Gerry Alexander at the State of the Judiciary speech before a joint session of the State's Legislature

service of Justice James Anderson. Jim was chief justice when I joined the court. He both scared and impressed me and I will miss him. //

MEMBER SPOTLIGHT

WILLIAM L. CAMERON

THIS FEELS MORE LIKE an obituary than a *Life Begins* article, because the Spotlight articles from last year were written by boomers. I am used to being the oldest guy in the room, but dope-smoking, flower children, hippie boomers as senior anything just seems wrong. I better hold my tongue, because most of the readers of this article are bound to be boomers.

Having gotten that off my chest, I grew up on a dairy farm in Sequim raised by liberal, Democrat parents who ended up sounding like Reagan Republicans. I graduated from the University of Washington, just like my father and all three of my sons, and in between graduation and starting law school in 1972, I spent a couple of years in the U.S. Army as a lieutenant first at Fort Knox and then Vietnam. After a short interlude as a Los Angeles police officer, it was off to law school. I graduated from Gonzaga, magna cum laude, and that even surprised me. And practicing law has been fun. Most of the time between 1975 and 2023 I spent representing municipalities and defending against the depredations of trial attorneys. Who could ask for a better career? That sums up the first 78-plus years.

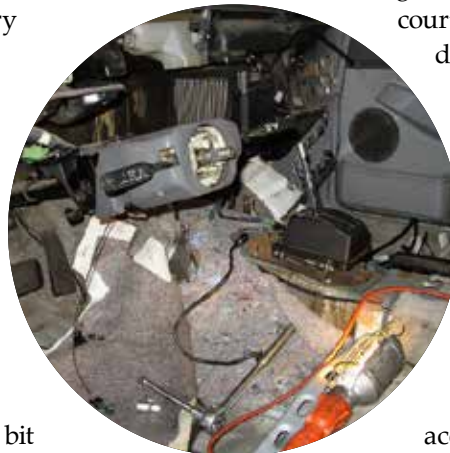
I do need to digress, however. The editor wanted a picture, so here is a picture of my one-owner 1981 Datsun Maxima on April 6, 2007. As you can see, getting to the heater core to replace a leaking hose took some patience. I replaced the hose only to find that there were two, not one, that were leaking, so I got to do this little task again. I kept the car until it went

to the junk yard a few years later.

So, never buy anything you cannot fix, and make sure you fix it correctly the first time you take it apart.

For anyone who thinks being a municipal lawyer is boring or that defending against trial lawyers is futile, think again. I once tried several civil rights cases, because the local newspaper decided that our police officers beat up everybody they arrested. This must have produced a dozen claims, but we won every one we tried. One was particularly memorable because I learned a couple of things that were not strictly legal. We tried the case in Federal District Court miles from the paper's general circulation. This was the 1980s and communications were a bit different, but co-counsel and I would read the paper every morning to make sure the reporting was accurate. On the third day of trial, I called my secretary, and she was crying because of the paper's coverage to the effect that we were being beaten to death by the

plaintiff. We read the paper again, and sure enough, if you had not been in the courtroom, the accurate facts they did report made it look like a big plaintiff's judgment was imminent. (It was a bench trial.) So, the plaintiff's case went on until Friday morning, and we had a couple of witnesses to tidy up some loose ends. I had prepared a motion to dismiss at the close of the plaintiff's case, but these are usually a waste of time, so we agonized over it. Just before court began, co-counsel sat down next to me with a smile on his face and said, "Make your motion. The judge just walked into the building wearing his golf shirt." This proved to be useful. A couple of days later Joe McGough¹ accosted me as I was walking into McDonald's on his view of this great injustice. I just told him, "Dismissed at the close of plaintiff's case." That was always enough to quiet down propagandized lawyers. Was this just an early encounter with "fake news?" //



¹ Joe was one of several but his was the noisiest and most self-righteous, and the one I can still remember. Joe is no longer an attorney. In re McGough, 115 Wn.2d 1 (1990).

OUR BODIES KEEP SCORE

By Charles A. Ericksen, Ed.D.

Despite our capacity for resiliency in the face of traumatic situations and chronic stress, trauma and stress leave traces. Traces in our minds and emotions, even in our biology and immune systems. Sometimes we get stuck and the traces affect our capacity for joy, intimacy, and healthy lifestyles.

As a counselor trained in Gestalt therapy, I drew heavily upon this principle while working with juvenile offenders at Maple Lane School in Rochester. Gestalt attends to an individual and organization's energetic field. It is quite useful to attend to an individual's energy field, especially if they are prone to anger outbursts that frequently lead to violence. There are signs we all use to read another's emotions.

Darwin wrote a fascinating, yet seldom referenced study, entitled *The Expression of the Emotions in Man and Animals*. Evidently, he drew upon observations watching his children and their household pets. Happy or sad eyes! Think back to when you felt the hair on the back of your neck stand up when you passed a snarling street dog, an all too frequent occurrence of mine in Kosovo! For Darwin, our emotions are fundamentally rooted in biology. They motivate us to action. Faced with fear: it's flight or fight!

Back to the youth at Maple Lane for a moment. Many programs were established to teach skills related to awareness and management of feelings, impulse control, empathy, and cooperation. Emotional intelligence refers to an ability to recognize the meanings of emotions and their relationships and to reason and problem-solve on the basis of them. Emotional intelligence is involved in the capacity to perceive emotions, assimilate emotion-related feelings, understand the information of those emotions, and manage them. The ability to understand and analyze emotions and then put that knowledge into use is an important protective factor for mental and physical health.

Fast forward to Tirana, Albania, 2018

Since 1992, the U.S. government has been supporting Albania's transition from the most isolated and repressive communist state in Europe to a democracy. Specifically, USAID has been helping Albania to strengthen the rule of law by building the skills of lawyers and judges and ensuring that courts function properly.

During a workshop I was conducting, a group of women judges approached me and asked if USAID would support a program dealing with stress. Odd request perhaps, but I had seen the same expression in the faces of judges, lawyers, and court professionals in Afghanistan, Kazakhstan, Ukraine, South Africa, Liberia and Kosovo. (While work-



related stress has an extremely high prevalence in post conflict countries, I've recognized similar expressions here too.) Aware of the statistics that highlight the dangers of stress in post-conflict countries, USAID generously agreed to fund a three-day retreat in the mountains.

At the retreat, we discussed the prevalence of stress in the workplace. The discussions

Included poor physical conditions, workload and extended working hours, responsibility for other people, promotion beyond reach, and lack of job security due to the judicial vetting process. Additional stressors included negative relationships with the male presiding judge and inappropriate communications with colleagues, lack of participation in decision making, unequal treatment at work, the rapid pace of change, and the general lack of morale among court staff.

Albanian Women Judges Wellness Seminar

At these retreats, I led a process designed to foster a more mindful work-based culture drawn from Gestalt stress management groups. Gestalt therapy maintains that we block certain aspect of our personalities which become expressed in non-verbal language, our movements, our posture, our facial expression, our tone of voice, and our mannerisms.

Participants typically express that they avoid sad emotions such as grief, sorrow, disappointment, suffering, or regret. They admit that they are uncomfortable talking about feelings. The price for ignoring or distorting the body's messages is being unable to detect what is truly dangerous or harmful for you. The body keeps score.

Chronic stress, much like trauma, alters the way our mind manages perception. It changes not only how we think and what we think about, but also the very energy to think. Helping individuals identify stressors and find the words to describe their emotions is profoundly meaningful, but it is not enough. The act of telling the story doesn't necessarily alter the physical responses of our bodies that remain hyper-vigilant, prepared for fight or flight. For real change to take place, the body needs to learn to live in the reality of the present (mindfulness).

The challenge of the 21st century is to make change our friend—not our ruler. In order to do this, we need to identify and understand the causes of stress and stimulus overload, to recognize the social pressures that undermine community, to highlight the emotional habits and power-plays that keep us stuck in the past, to identify our unhealthy defenses, and to actualize the visions that can guide us toward greater wellness. Emotional intelligence is at the core of this journey. //

The ability to understand and analyze emotions and then put that knowledge into use is an important protective factor for mental and physical health.

By Jenny Rydberg

JAPAN, BERLIN, BABYLON, EGYPT, TURKEY, GERMANY, CINDERELLA & THE LIFE OF CHRIST

TRAVEL

10 Amazing Days Experienced

Lights dimmed. Violins started busily. Then the whole orchestra took us to Nagasaki, Japan, and Puccini's masterpiece: *Madama Butterfly*. This opera demands everything of the mezzo-soprano who sings the leading role. A delicious, formal dinner and an exquisite performance in the "new" German Opera House Berlin were an amazing end to my long day in May that started in Seattle. Berlin has three opera houses; two were behind the Berlin Wall, so a third one was constructed with amazing acoustics and stage views.

Tickets are cheap by U.S. standards, a reflection of the European passion for opera. Thus began my latest trip to Europe, the object of which was to see the Passion Play in Oberammergau after a whirlwind bus tour of what was Eastern Germany. It was my last mental escape before getting a new knee.

Traveling solo and wishing to avoid arranging my own logistics, I scored a last minute reservation with Globus. My plans were made a few weeks before my mid-May 2022 start, unlike some on the tour who had reserved their spot in 2016!

Museum Island in Berlin houses the Pergamon and Nueces Museums and several more. The Pergamon Museum displays the imposing entrance to

ancient Babylon, existing now only because German anthropologists rescued these artifacts in the 1800s and brought them back to Europe, like all of the extraordinary artifacts in the museum. While the Pergamon Altar is hidden while under restoration, a breathtaking 3-story 360° panorama more than compensates (see www.assi.de/en). In the Nueces

Archives. The boring text of this treaty between the Hittites and Ramses II makes a lawyer proud of the tradition of obfuscation.

In brilliant sun the next day, our bus tour of Berlin revealed the

magnificent Brandenburg Gate and the brickwork in streets showing the absurd locations of the Berlin Wall. Now unmarked and covered with a parking lot, Hitler's bunker serves as a humbling outdoor memorial to the millions who were murdered during Hitler's tyranny, and more.

We soon

got out of the big city and traveled through rural East Germany in a large, comfortable bus with huge, clean picture windows. We were taken nearby to the Bridge of Spies and two palaces in Potsdam, where President Truman represented American interests during the 1945 Potsdam Conference that decided the post-war fate of Germany and Europe.

Dresden, a quaint town with an extraordinary porcelain glockenspiel



Parade of Nobles (Fürstenzug), Dresden. 24,000 Meissen porcelain tiles, fired 3 times at 2,400°F when created in 1907. Survived the 1945 Dresden bombing.



Altar of restored FrauenKirch (Church of our Lady), Dresden. The church was reduced to rubble by the Allies in 1945 and reopened in 2005.

and its sweet chimes inside a spectacular golden crown gate, was our next stop. While its annihilation at the end of WWII inspired the novel *Slaughterhouse Five*, by Kurt Vonnegut, today it is largely restored. I enjoyed seeing the area where jousting competitions were held and the unique and extraordinary Parade of Nobles. The illustration of the order of reign of the royalty and other leaders during 700 years of Saxon history was captured in more than 300 linear feet of street mural on 24,000 tiles.

Next up was Rothenburg, home to the Medieval Crime & Punishment Museum. An hour here should convince all but the most ardent power addicts of the compelling benefits and freedoms democracy affords, with spectacularly preserved detailed books, drawings, and instruments that depict the pathetic substitute for justice dispensed in the medieval era. Rothenburg also has wonderful shopping in quaint, elegant shops. The house that inspired Geppetto's house in Disney's Pinocchio and spectacular views of the rural countryside from its old town walls, added to the charm. A nightwatchman's evening tour along the wall surrounding old town provided a sense of what life was like hundreds of years ago.

Neuschwanstein, a tiny tourist town, was our next destination. The drive to get here was stunning with beautiful agricultural fields, majestic mountains, forests, and small communities disbursed throughout the countryside. As we were driven down the Romantic Road, bypassing collisions and road construction, we arrived minutes before the deadline to pick up our castle tickets. A bus took us up the steep hill to the base of King Ludwig's Neuschwanstein Castle. He never meant it to be seen by the public. However, it inspired Walt Disney's Cinderella Castle and is the

among the biggest tourist traps I've ever seen. The next morning, a local German paper was on the hotel desk for guests, its huge headline about the horror of the Uvalde massacre needing no translation.

Oberammergau, population 5,000, is a quaint small town in Bavarian Germany, a stone's throw from Austria. With exceptions only for the Spanish flu, WWII, and COVID-19, The Passion Play, an extraordinary production that tells the story of Christ, has been performed every decade since 1634. It is meant to keep the people's promise to God to honor Christ if only God would spare the community from the dual effects of the bubonic plague and the Thirty Years' War. The community was spared. At one time, the play took 16 hours to perform. This year, it was condensed to about 6, with dinner in the middle, after a serious morning of shopping.

The Passion Play is produced in German by half of the townspeople, the skills needed to put it on taught in local public schools. German is the perfect language for this play, its sharp resonance apt for the expression of anger and outrage. So good is the acting that the script's translation available in multiple languages to the audience of 7,000 is almost unnecessary to those who know the story of Christ's life and resurrection. The creative costumes were true to the times, the stage enormous, and the 60-voice choir and full orchestra essential to conveying the story. The stage held horses, donkeys, sheep, and more, with choreography and set designs that conveyed more than words could tell. It took no less than 34 people to run the technical aspects of displaying scenes shown center third of the stage while actors and action took place around the display. Emotions were so well conveyed that I sobbed as I walked back to our

hotel for the night. I was not alone in shedding tears. It was all I hoped for, not knowing what to expect. Truly the experience of a lifetime and worth repeating in 2030.

Our trip ended with a day in Munich. After getting our COVID-19 tests and seeing Marienplatz with its elaborate New Town Hall and glockenspiel chime, I headed to Dachau. Given the tens of thousands of Jews interned and murdered here, it was remarkably small. Only one barrack has been reconstructed. All others are reduced to a foundation outline. The crematorium was undersized to the task. After a sobering walk through the camp, I ended up in the administrative building converted to a museum where I was most impressed by a map of WWII Germanic territory showing the locations of all of the concentration camps and their sub-camps. They were everywhere! This left me not understanding how any German citizen could truthfully say they were unaware of these camps or what was done in them. I'm glad I went there but have no desire to see another concentration camp.

This trip was made memorable by the interesting people who were in the tour. Our knowledgeable Italian tour guide was amazing and was fluent in German and English. We had excellent accommodations at the most convenient of locations and wonderful food. At our last dinner together in Munich, in a huge tavern dating back to Medieval times, we celebrated our experiences and reveled experiencing history. Had I known there was a Henle store in Munich that we walked past to get to dinner, I'd have come earlier to peruse the wonderful editions of piano sheet music inside. Return I must. //

GENERATIONAL HUMOR

When my daughter told her 5-year-old son, Adin, that his school will be having a Veterans Day assembly she advised Adin that he should watch very carefully to see his Great Grandpa Steve in their slideshow. The school had invited students to submit photos of veterans and their family.

Adin was delighted, but precociously explained that he thought the student and their veteran family member should be in the slideshow together. Sarah said “that’s a good idea,” and she would email them a picture of Adin and his great grandpa Steve together. My grandson responded, “will we get to go on the highest slide?” At that point my daughter Sarah realized Adin had no idea what a slideshow was. Needless to say Adin was a bit disappointed when his mom explained it to him, but heard he was still delighted to see his great grandpa honored at the assembly!

We now have a great image in our mind of grandpa (my dad) sliding down a giant slide in the middle of Ridgecrest Elementary’s auditorium, hands high in the air and beaming **Go NAVY!**

Michael B. Goldenkranz is a retired health care attorney and former member of a hospital’s executive staff, who is now a full time curmudgeon in Seattle and volunteering weekly with KCBA Neighborhood Legal Clinics since 2004.



LOOKING FOR A GOOD BOOK?



BEETHOVEN'S HAIR: AN EXTRAORDINARY HISTORICAL ODYSSEY AND A SCIENTIFIC MYSTERY SOLVED

By Russell Martin //
Published 2001

WHEN LUDWIG
VAN BEETHOVEN

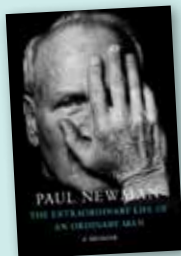
lay dying in 1827, a young musician snipped a lock of his hair as a keepsake. The lock of hair was a treasured family relic for a century, later surfacing in Gilleleje, Denmark, in WWII where it was given to a local doctor, Kay Fremming, who was deeply involved in the effort to help save hundreds of Nazi-hunted Jews.

After Fremming's death, the hair was sold in 1994 by Sotheby's to two American Beethoven enthusiasts. They and others instituted a series of complex forensic tests in the hope of finding the probable causes of the composer's chronically bad health, his deafness, and his final demise. The results are the most compelling explanation yet offered for why one of history's most prominent musicians

was forced to spend much of his life in silence.

This non-fiction book is a rich historical treasure hunt, a tale of false leads, amazing breakthroughs, and incredible revelations and is a moving testament to the power of music, the lure of relics, the heroism of the Resistance movement, and the brilliance of molecular science.

The book, a national bestseller, is available at the King Co. Library; the movie is available on Amazon Prime. //



PAUL NEWMAN THE EXTRAORDINARY LIFE OF AN ORDINARY MAN A MEMOIR

Published 2022

IN 1986 Paul
Newman and his
closest friend, Stewart

Stern, set out on a five-year journey to compile an oral history through stories by his family, friends, and those who worked closely with him. The result is an extraordinary memoir based

on thousands of pages of transcript, only recently rediscovered, along with Newman's own voice. It is an insightful, revealing, and powerful story of an iconic actor's life seldom seen by the public. //



WINE AND WAR: THE FRENCH, THE NAZIS, AND THE BATTLE FOR FRANCE'S GREATEST TREASURE

By Donald & Petie
Kladstrup //
Published 2002

THE REMARKABLE UNTOLD STORY of France's courageous and clever vintners who protected and rescued the country's most treasured commodity from the invading Germans. This thrilling tale of the French producers who undertook ingenious and daring measures to save their cherished crops and bottles will inspire you. You'll never drink French wine or champagne without appreciating the courage of the French during harrowing times. //

ENDOWING EQUAL JUSTICE: WHETHER PAYING BACK OR GIVING FORWARD, DO SO WISELY

By Mark Hutcheson and Dick Manning

In our state, we're fortunate that the Legal Foundation of Washington and the Endowment for Equal Justice offer a clear path to justice through the provision of civil legal aid.

As lawyers who have decades of experience begin to reflect on their time in the profession, you may be searching for ways to give back. Or you may be drawn to doing what you can to create a better future for all our communities. Regardless of motivation, for those wishing to dismantle barriers to justice, increase racial equity, and transform our legal system into a justice system that works for everyone, supporting the Endowment is a smart strategy for accomplishing these objectives efficiently and effectively—in short, wisely.

As you may know, **only one in four low-income people with serious civil legal problems will be helped** and the justice gap is growing. Even one unresolved legal problem can escalate into a series of complex and interconnected challenges that quickly endanger people's health, housing, or financial security.

In response to this need, two attorneys, Mark Hutcheson and the late J. David Andrews, created the

Endowment for Equal Justice 22 years ago to provide a stable and sustainable

source of legal aid funding. Since then, the Endowment has distributed almost **\$7M** to fund volunteer legal aid programs throughout Washington,

and families, veterans, seniors, and the homeless are helped each day.

As lawyers, we know how important good representation is, but for legal aid clients, it is life changing and lifesaving.

Every year, the Endowment receives hundreds of gifts totaling many hundreds of thousands of dollars to support civil legal aid in perpetuity. Such gifts are typically made from income, but greater impact can be had when supporters draw upon their assets.



An increasingly popular choice for those 70-1/2 or older is to liquidate some of the investments in a traditional IRA on a tax-free basis and then have the custodian transfer the resulting cash directly to the Endowment. Through this approach, known as a **Qualified Charitable Distribution** or QCD, up to \$100,000 can be transferred annually. Moreover, for those age 73 and older, a QCD offsets a donor's required minimum distribution for the year. There is no deduction for the gift, but neither is the amount transferred added to the donor's adjusted gross income.



Alternatively, if you are 70-1/2 or older, you can withdraw a certain amount of cash from a non-Roth IRA or a qualified retirement plan such as a 401(k) and then use **long-term appreciated publicly-traded securities** to make a gift to the Endowment. So long as the securities are transferred and not sold, all of the capital gain escapes taxation. This also produces a deduction for the full amount of the gift. So long as

the donor itemizes deductions, the gift should offset the taxable income associated with the cash withdrawn.



Whereas some assets are better suited for lifetime gifts to the Endowment, others are more appropriate for gifts made upon death.

In particular, the step-up in the basis of assets a person owns outright upon death causes them to lose their luster, with assets such as those in a traditional IRA thereupon stepping into the spotlight. Because the Endowment is a tax-exempt entity, it completely avoids tax on any such assets it receives. In summary, being wise in supporting the Endowment consists mostly of deciding what assets to give, when to give them, and how.

What we choose to support philanthropically reflects our most deeply held values learned over the course of a lifetime.

We know that providing for yourself and your loved ones, both currently and in the future, takes priority.

But, if you are in the very fortunate position of being able to share your hard-earned assets with an organization that works to provide legal assistance to those who cannot afford it, and to advance justice and equity, we invite you to learn more about the Endowment for Equal Justice by contacting Chief Development and Stewardship Officer **Melinda Mann**. She can be reached by phone at **(206) 383-9876** or by email at **melinda@legalfoundation.org**. And if you are interested in talking with a technical expert in the field of planned giving, please contact **Bill Zook**. //

ENDOWMENT for
**EQUAL
JUSTICE**

Melinda Mann (206) 383-9876 | melinda@legalfoundation.org

Bill Zook bill@EvergreenPG.com

TECHNOLOGY TOOLS FOR ESTATE PLANNING

By Jeffrey Allen and Ashley Hallene

It is inevitable that one day your assets will become your estate, and when that time comes, one of the best gifts you can give to your loved ones is a well thought out estate plan. There are the basic document tools that go into an estate plan (Power of Attorney, Advanced Directive, Last Will & Testament, etc.) There are also technology tools that can make managing the estate plan easier. For this month's column we will take a look at some of the tools that are out there to manage your estate plan.



Check out MyDirectives.com

MyDirectives.com is a free site where you can upload any advance directive, advance care plan, or portable medical order you have and then share it with the people who need to know. You can also easily ensure everyone has access to the latest forms. Doctors and nurses can access the information, you can send links to loved ones, carry a card in your wallet with instructions to access from the site, or even use the app to keep the information on your iPhone lock screen. In a few simple steps you can feel confident your wishes will be followed.

- Record your estate plan documents—they have a feature that allows you to create documents, but we feel that is better left to you or your counsel.
- Identify your healthcare agents—these are the people you would want to represent you if you cannot communicate during a health crisis. MyDirectives will notify your loved ones with an invite and reaffirm their roles from time to time.
- Log your thoughts. You can record notes in between medical visits, or record video messages for your file to share with your healthcare professional on your next visit.
- Keep the contact information of everyone in your support network in one convenient location. This feature can be vital in a crisis.



Use a Password Manager

One inconvenient aspect of all these digital conveniences is the need to protect digital information with secure and unique passwords. Knowing what a hassle it is to manage and keep track of all your passwords, how would your loved ones do it if you were to become suddenly incapacitated? Can they find the information to access your emails, bank accounts, or social media accounts? Could an appropriate agent access your work emails to address clients? Can someone stop online services from billing your credit card? Who would be authorized to close your accounts on your behalf?

In addition to the documents that go into an estate plan, it is worth putting together a digital estate plan that protects your digital assets but still ensures someone trusted can close your online accounts. One easy plan to set up is an online password manager. Password protection software is an easy solution to set up. Millions of people are already using these online services to protect sensitive information. You can use these systems to store a link to the online service, usernames, passwords, security questions and answers, Personal Identification Numbers (PINs) and more. Services like LastPass, 1Password, SecureSafe, and Keeper are helpful in providing access and peace of mind.

Furthermore, you can use the apps for these services to access your passwords when you are on the go with your smartphone.

Keep in mind, the information is stored online or in the cloud. Anytime information is stored online there is some exposure to hackers. Password manager users place their trust in the digital security professionals who work at these companies. The risk of hacking is low, but it is not zero. Also remember, for this system to be useful someone needs to know the master password for the password protection service.

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Make a List

Once you have a system for storing password data, the next step is to make a list of each service that requires access information. This list will include:

- Secured hardware devices (computers, cellphones, tablets, etc.)
- Email accounts
- Financial accounts
- Credit cards (personal and professional)
- Online service providers (cloud storage for client files, photo storage, computer backup services, etc.)
- Account managers and their contact information
- Locations for safe deposit boxes, physical safes, etc.



Set up an In-Case-of-Emergency Document

The parents of co-author Ashley are heading out of the country for a destination wedding. Part of their preparation for the trip included putting together a document in case of emergency and providing said document to both Ashley and her sister. Once you go through the process of creating the document, the hard part is over, all you need to do is update it from time to time. The document should include:

- Important contacts (name, address, email address and phone number)
- Family members
- Friends
- Employers/employees
- List out any allergies or health conditions
- List medications you take regularly
- Location of important documents like birth certificates, passports, wills, etc.
- Financial information



Manage Your Digital Legacy

Many people have a significant digital footprint online, so it is a good idea to plan for managing (or deleting) these accounts when you are gone. Some of your online services may have a system in place. For example, Google lets users name an “inactive account manager” who is granted access to your account if it goes a designated period without use. Google gives you the option of a 3-, 6-, 12-, or 18-month waiting period, after which your account will automatically be turned over to the designated person.

Several password management services have a similar digital legacy feature. For example, 1Password has users create their emergency toolkit when they sign up. The kit provides the information needed to access the account. It can be printed out or placed on a USB drive and stored in a safe or at a lawyer's office.

None of this advice will stop something bad from happening, but it may prevent a bad situation from being even worse by giving your loved ones the tools they need to navigate the crisis. //

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TO EVERYTHING THERE IS A SEASON

By Jeff Tolman

For years, Kitsap County lawyers saw Judge Len Kruse rise at every memorial or the hanging of the photo of a deceased lawyer on the wall of remembrance in Courtroom 206. With his baritone, radio announcer's voice, Len Kruse would quote Ecclesiastes, Pete Seeger, and the rock group, The Byrds.

To everything, there is a season,

There are many common "seasons" in each of our lives. Birth. Walking. K-12 formal education. Sports, dance, and other activities. The dreaded middle school years. High school. Driver's licenses. Dating. High school graduation. College or a job. Weddings. Baby showers. Grandchildren. Retirements. Be-careful-use-the-handrail-Dad/Mom and don't fall. Funerals. We senior lawyers are now in the last "season" of our lives, the time for saying goodbye.

a time to kill, a time to heal, a time to laugh, a time to weep.

While a sad "season," many understand this as a natural evolution, completing the circle of life.

Last October, my law partner of 35 years, Mike Kirk, was terminally ill and chose to simply cease dialysis. He spent three days calling and seeing friends, telling them of his choice and what each had added to his life, ending each goodbye with a smile, funny remark, or "I love you." He lived life and he died on his own terms. I miss him daily, particularly during our beloved Zags basketball season. More than our final farewell, I remember our many cases, years, clients, judges, and adventures together. With all the health issues his body was fighting but destined to ultimately lose, it was a natural and positive ending to an interesting and sometimes quirky life.

a time to be born, a time to die, a time to plant, a time to reap.

In my nearly 70 years of life, and 45 years as a lawyer, I have come to appreciate more and more how many people have contributed to whatever Jeff Tolman is personally and



Friend and Colleague, Mike Kirk

professionally. Through those many men and women who have touched my life, I have broadened my view and often changed my opinion. It is a societal failing, I would argue, that we wait to gather and share vignettes and tales about our friends when they have passed. Mike Kirk would have loved the stories told about him at his celebration of life. For every tear shed in sadness, there were five shed from laughing so hard at the stories told about Mike.

As an example, Mike was...well...loquacious. He and my 18-year-old son, Chris, went goose hunting in the Tri-Cities. Near Cle Elum, heading east on I-90, Mike said, "Chris, you are so young, you probably don't know much about Elvis, do you?" Chris acknowledged that he knew nothing about "The King" and Mike began the lesson. Chris soon fell asleep. When he finally awoke two hours later, Mike's oratory about Mr. Presley was steaming ahead at full speed!

At the celebration of life, friends, clients, colleagues, law partners, and staff told touching, human, funny vignettes about Mike. There were many tales he would have loved to have heard and some, undoubtedly, he would have loved to have an opportunity to rebut.

I wish he could have heard, for example, the letter I received a couple of months after Mike passed, from the son of a long-ago family law client, which read:

Dear attorney Tolman:

My name is James Brett (not his real name). I am writing to express my condolences on the death of your law partner, Mike Kirk. I am

extremely grateful for all he did for my mom and me when he was my mom's attorney from 2008-2011.

I was in first grade then and am now a Junior at Dartmouth College. Attorney Kirk ensured my safety and well-being during the most difficult time of my life, and I would not have the life I have now without his support and hard work. I hope one day I will have the chance to pay it forward.

I will always remember attorney Kirk with deep gratitude. Please give my sympathy to his family.

In my last "season" now, I try harder to express my feelings of appreciation and affection more openly, more frequently, to let my friends hear how they have added to my life and lives of others. Nobody ever felt worse hearing how they were a positive force in another person's life.

To everything turn, turn, turn, there is a season turn, turn, turn,

Rather than feeling I am saying goodbye when someone passes, I now concentrate on the individual, unique, personal spice they added to my life. To see their ongoing memory as a new life, a new existence. To see the valuable memories, vignettes, and impacts that remain as part of our ongoing spirit.

There is an old Greek philosophy that declares you are dead only when everyone who remembers you has passed. To honor that possibility, I have had three photos in my wallet for a total of 89 years. Three friends who are still alive through my love and memory. I soon will add a fourth...Mike.

As we senior lawyers venture through the final season of our lives, filling it with as much joy and as many adventures as we can, let us embrace the memories and relationships we have had the good fortune to be, and to have been, part of. Embrace and share the memories and never-ending relationships the years have brought each of us.

...a time to every purpose under Heaven. //

WHAT'S UP WITH THE BOG?

By Jordan L. Couch

At times a boring question but at others a very important one. This happens to be one of those important times. In this, my introductory column, I'll try to be brief but I'd like to encourage all of you to reach out to me with any questions, concerns, thoughts, and opinions whether half formed or otherwise. The BOG is entering an era of a lot of exciting things and your voice in these issues is greatly appreciated.

Goals for the Year:

The Board of Governors has identified five goals that will be the focus of this year. 1) Increase member engagement in the WSBA's volunteer community. Declining member engagement has been a systemic issue around the country in bar associations, but the BOG would like to try to reverse that trend this year. 2) Establish a process for WSBA program review. Every so often the BOG does an audit of WSBA programs; this year we intend to set up a system for regularly reviewing programs for relevance and efficacy. 3) Support rural practice. The declining number of lawyers practicing in rural areas is an access to justice crisis in the making. The BOG plans to institute policies and programs to prevent that. 4) Develop a strategic plan for the future of the WSBA's space. The pandemic changed the WSBA's office needs and our lease ends in a couple years. What does the future of WSBA offices look like? 5) Increase the WSBA's commitment to diversity, equity, and inclusion. This one feels self-explanatory.

Diversity At-Large Governors:

For those who may not know, the at-large seats on the BOG used to be appointed by the elected members of the BOG. A few years ago that was changed and all of the governors are now elected. At the last BOG meeting the Board voted to change the definition of diversity to remove reference to geographic diversity. The purpose behind this was two-fold. 1) Geographic diversity is already enshrined in the BOG because the majority of governors are elected based on geographic district and 2)



the purpose behind creating the at-large governor positions was to ensure seats for members from historically marginalized groups

and while geographic diversity is important, residents of smaller towns haven't been historically marginalized in the same way that people of color and members of the LGBT+ community have been.

POLB Legal Regulatory Lab:

At the March meeting the BOG voted to support the Practice of Law Board's continued work on developing a proposal for a Legal Regulatory Lab. (I am also liaison to the POLB so I would be happy to discuss this proposal in detail). The Legal Regulatory Lab would recommend a new approach to dealing with companies like Legal Zoom operating in Washington that would ensure the public is protected and that these companies are not a burden to the legal profession.

WA Bar Licensure Task Force:

The BOG got an update at our January meeting from the Supreme Court's Bar Licensure Task Force. (I should note I also in a separate role serve on the task force so I am more than happy to provide you detailed information about what is going on in those meetings.) The task force is making substantial progress on strengthening our licensure process and ensuring that Washington leads the way in protecting the public. It is expected that recommendations for an improved lawyer licensing program will be made before the end of the year. //

HOW DO EYEWITNESS MISTAKES HAPPEN? THE NAKED TRUTH

By Steve DeForest

ACCORDING TO a U.S. Department of Justice study, the most common cause of wrongful convictions in our judicial system is mistaken identification. On the one hand, eyewitness identification is one of the most effective tools available to police and prosecutors. It is compelling, and frequently convinces juries of the guilt of a defendant. Yet, mistakes do happen, and as a result innocent persons are locked away for crimes they did not commit. DNA has certainly reduced the number of wrongful convictions. But DNA is possible only where there is biological material, such as the criminal's blood or semen left at the scene.

For over 100 years there has been an ongoing battle between scientists studying the shortcomings of human memory and a legal system that relies on eyewitness testimony as a central tool of identifying and convicting suspects. One hundred years ago, Professor Hugo Munsterberg, the German-born chair of Harvard's Psychological Laboratory, argued that a witness's honesty is no guarantee of reliability, and that a witness's certainty is no proof of accuracy. There are surveys indicating that 20-25 percent of witnesses choose the wrong person in police identification procedures. Of course, many of these mistakes don't matter. They do matter if an innocent person is convicted and is incarcerated, and the perpetrator goes on to commit

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Jordan L. Couch is a partner at Palace Law where his practice focuses on workers compensation and personal injury. He is the at-large member of the BOG representing new and young lawyers. Jordan has been in practice for over seven years and has been involved in bar leadership that entire time. He is also one of the two BOG liaisons to the Senior Lawyers Section.

more crimes. Prominent psychologists such as Robert Buckhout, Elizabeth Loftus, Stephen Perrod, and Gary Wells have frequently testified (and perhaps just as often have been barred from testifying) in widely reported trials. Scientific research suggests that an eyewitness identification depends on a fragile three-step process: an eyewitness has to see, then store what has been seen, and finally retrieve what has been stored. The process is vulnerable at every stage. Memory is not a video tape.

The fallibility of eyewitness identification was brought home to me by a personal

experience this last summer on a hiking trip in the Eastern Cascade mountains. The Hatchery Creek trailhead is about 10 miles west of the Bavarian village of Leavenworth, off Highway 2. It is not a particularly popular hike because the first 2 miles of the 5 miles to the junction with the Icicle Ridge trail require a significant expenditure of energy, with an elevation gain of approximately 2,500 feet, before the trail begins to moderate over the next several miles, to an open ridge with rewarding views, grassy meadows, a scattering of wildflowers, and the stark remnants of a devastating forest fire in 1994.

My hiking companion and I arrived at the trailhead parking lot at about 7:45 a.m. There were 6 or 7 vehicles parked, which we surmised probably were overnights, although it is possible that one or more hikers had gotten an earlier start than us. As we exited the car we were greeted by numerous mosquitoes, and immediately wiped on DEET. About 40 minutes into the hike, as we were working our way up an extended steep slope by traversing long switchbacks, we heard the chattering of two or more women somewhere on the trail above us. We could not see anyone, as the slope was only partially open, with a scattering of trees, bushes, and

Each had a heavy backpack, hiking boots ... and nothing else on! Not a stitch of clothing.

large rocks. I was puzzled. It seemed unlikely that at the pace we were proceeding, we would be overtaking another party of hikers, if someone had gotten an earlier start. Conversely, 8:30 a.m. was too early for a party that had spent the night somewhere up on top to be returning to their vehicle. The voices disappeared, only to be heard again some minutes later. Undoubtedly this was due to the fact we could not hear them when we were at opposite ends of the switchback, but

only as we were both more or less at the center of each incline. As I came around a steep bend and started

up the next incline, I looked up and saw about 30 feet away two young ladies coming down the trail. Each had a heavy backpack, hiking boots ... and nothing else on! Not a stitch of clothing. The lead hiker was taller than the other one. The first thing I said to them was "good morning," an invariable greeting when meeting other hikers on the trail before noon. I was surprised; my hiking companion (a woman, not my wife) was surprised; and I think the other two hikers were surprised. No other words were spoken. Trail etiquette dictates that anyone descending yields to a hiker going uphill. Because of the steepness of the slope, moving any distance off the trail on either side was not an option for the descenders. The two ladies turned 90°, and I and my hiking partner passed them at very close range and continued on up the trail.

For the next hour or so I entertained myself with thoughts about the questions I might have asked, and the actions I might have taken, including the following:

- Did you pack up and leave in a hurry this morning?
- Is there anyone else coming down the trail behind you?
- Can I hold your pack while you get out some clothes?
- Do the straps on your pack chafe

your skin?

- Do you hike this way very often?
- When and where will your next hike be?
- Would you like to borrow any clothes?

Actions that might have been taken:

- We might have stepped aside and invited them to pass.
- We might have just stopped and waited to see what they would do.
- We might have stopped and asked them about the condition of the trail ahead.
- We might have asked them to wait while I got the camera out of my pack.
- We might have informed them about the mosquitoes in the parking lot.

Somewhat later came the realization that although I had been an eyewitness to a brief encounter, I could not have made a positive identification if I had been asked to describe either of the two young women or to pick them out of a police lineup. I imagined myself both as a witness and as a defense counsel, with the latter asking me the following questions about the lead hiker:

- What was the color of her hair?
- What type of hiking boots did she have on?
- Was she wearing socks?
- How tall was she?
- What did she weigh?
- What was her approximate age?
- Did she appear to be tanned?
- What was the color of her backpack?
- Was she wearing a hat of any kind?
- Was her hair short or long?
- Did she appear to be surprised?

The Hatchery Creek trail goes into my hiking log as a "PB" (personal best). I suppose I could now contentedly retire my hiking boots. Yet the experience more likely will motivate me to get out on more trails, fortified by one or more of the following aphorisms:

- Uphill battles can have a payoff.
- Age does not interfere with the appreciation of beauty.
- Even a "ho hum" activity can prove to be an eye-opener.
- Isn't nature grand! //

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