



LIFE BEGINS

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Senior Lawyers Section

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Save the Date!

Senior Lawyers Section 2008 Annual Meeting & CLE Seminar

Friday, May 2, 2008
Marriott, SeaTac Airport

By Robert A. Berst

How can we make the 2008 annual meeting and CLE seminar as exciting as the 2007 seminar? Each year, the entire committee works as a team to bring you new, exciting, and relevant programs. As those regular attendees know, your CLE committee is not bashful about experimenting with unusual material.

But, enough of this technical stuff. We again have tentatively decided to keep the CLE seminar tuition at \$100.00 for section members. A great bargain, for it includes the seminar, written materials, lunch, social hour, and parking. We have arranged for a top-of-the-line lunch served by the SeaTac Marriott.

And we have arranged for a top-of-the-line faculty, including Dean Kellye Testy of Seattle University Law School and other distinguished panelists from the bench and bar.

This is the only CLE seminar where you will know most of those in attendance.

SEE YOU THERE!

Growing Up in Langley

By Joanne Primavera[†]

In the last issue of "Life Begins," Bob Berst enthusiastically wrote about a trip to Langley on Whidbey Island. After I saw the article, I mentioned to Bob that I was born and raised in Langley. What a different place it was then.

Langley, like small towns in the 40's and 50's, was self-sufficient. We had a telephone company (my home number was 76), bank, small post office, butcher shop, bakery, beauty salon and barber shop owned by a wife and husband in one building with separate entrances, furniture store, tavern, laundromat, clothing store, hardware store, penny candy store, drug store, some cafes, a grocery store, and a general merchandise store where you could buy almost everything.

The telephone company building still stands across from the fairgrounds. I remember going into the building and watching the operator plug the cables into the switches to hook up the calls. Although we didn't have a party line, many of my friends could listen in on the other calls on their party lines.

My first savings account was in the bank that was at the corner of Anthes and First (now a rare books and prints gallery). Everything was done by hand and the bank was open from 9 a.m. to 3 p.m. It was never open on Saturday.

Our post office box had a combination lock, and I can remember how much fun it was to be sent to get the mail. The post office building is an art gallery now, and a big post office is now on Second Street.

The butcher shop now holds Cascadia Nauticals. During World War II, we took our leftover fat to the butcher shop for the war effort. The butcher shop also held a food storage freezer that people rented to hold meat they had either raised or shot. Refrigerators had really small freezers during those years.

Actually, the bakery was gone by the time I was born. It only is important to this story because that is where my mother worked and first saw my father. He and his parents owned the general merchandise store next door to the bakery. My dad would go to the bakery and buy bread to

continued on next page

In This Issue

Growing Up in Langley	1
April 2007 Annual Meeting and CLE Seminar Is a Resounding Success	3
Public Guardianship Legislation Enacted	4
Big Wave on the Horizon! Musings on Annual CLE	5
In Sickness (not in health), When (but not until) Death Do Us Part	7
1957: A Moment in Time	10
2007 50-Year Members of the Washington State Bar Association	11

Growing Up in Langley from previous page

sell in the grocery side of their store. My mother thought he was cute, but he limped because he had just been in an auto accident. He was quite the wild guy before he married my mother.

The beauty shop had one of those "permanent" machines that really intrigued me. Luckily my hair was curly, so I never needed to sit under it. It looked like a torture instrument. I would go to the barber shop with my dad. It was fun to sit and wait with the guys while my dad got his haircut.

Interestingly, the furniture store has morphed into an interior design store. The furniture on display is beautiful, and I always gaze in the windows and wish I could have some of the wonderful items for sale there.

There was a little clothing store going up the hill on First Street. Although my dad's store also sold clothing, it was fun to see different things, and I shopped there quite a bit. Now, the store sells rugs and is a crafts cooperative run by local residents.

The drug store sold a little bit of everything that was in most drug stores. It had a great comic book selection. Not only would I buy comics, I would buy "True Story" magazine and sneak it home to read. I'm sure it wasn't too racy, but I must have thought so. Today, the upstairs of the former drug store is a pizza parlor. Downstairs, where the pharmacist and his family lived, is a bed and breakfast.

There were a couple of little cafés that made simple food. I worked in my dad's store, so I would go to one or the other for lunch. Now, there are many wonderful restaurants in Langley. I love to eat at most of them.

The Dog House Tavern still is in business today. I remember walking past and smelling stale beer and I didn't like that smell. I thought everyone who went there was an old drunk. Now, I drink beer and don't have a

problem with the smell, but know that everyone who went there was an old drunk.

Granddad's was the penny candy store. We could spend hours making our selections. The laundromat is now a chocolate shop. Many people who lived on the island were really poor and didn't have washers, and no one had dryers. A laundromat was a necessity to a small town. The doctor's office is now a store called Violet Fields. Later, a dentist had an office in a home where the pharmacy is now. The Christian Science Church is now North Star Trading Company. The Masonic Lodge is now City Hall. The library is in the same place and looks somewhat the same. The Clyde Movie Theater is still the Clyde, but tickets were fifty cents when I was growing up. There were two auto repair places, one where Mike's Place is and the other on the waterfront where antique and jewelry stores are now.

The most important store, then and now, is the Star Store. It was built by my Italian immigrant grandparents in 1929, and they were able to keep the business going throughout the Depression. (The scuttlebutt is that they never would have been allowed to live there later because they were the only Italians on the south end of the Island). Groceries were on one side of the store and dry goods were on the other. I was born in an apartment above the dry goods part of the store. Above the grocery store was a series of hotel rooms. A dentist had an office and came over once a week. The only time the hotel rooms paid their way was when the Puget Power crew would come and stay for a week. My dad delivered groceries once a week and I loved to ride along. I started working in the store when I was about ten and used that experience to work in a number of re-

**2007-2008
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tail establishments when I was an adult.

Although I loved growing up in Langley, I could hardly wait to go to college. I haven't been back to live there since I left. However, I love to go back and walk around the little town and remember what it was like. You should take Bob Berst's advice and go. You'll love it.

† Joanne Primavera is an attorney and *guardian ad litem* in Snohomish County.

April 2007 Annual Meeting and CLE Seminar Is a Resounding Success

By Bob Berst

Two hundred twelve senior lawyers and faculty filled out Sea-Tac Marriott convention room on Monday, April 9, 2007. The Senior Lawyers Section Executive Committee accurately estimated this year's attendance, and the room was very comfortably full.

What a Bargain

One more time, at the urging of the founder of the Section, Phil DeTurk, and with the approval of the committee, tuition for the seminar was \$100.00. Included in this cost were morning beverages and pastries, a spectacular lunch buffet in the atrium, and a hosted reception. The lunch, which followed our established pattern, included Caesar salad and Italian-style antipasto to start; a choice of salmon, chicken, or both; assorted vegetables; and then, to top it off, an amazing variety of desserts.

Reception

The reception immediately followed the seminar and was hosted by Bonnie Amble Pladson, president of the BECU Trust Company.

Comments by Attendees

This year the committee again made a special point of requesting comments on the evaluation forms. The following are some of the typical comments:

Bill Neukom of K&L Gates, Seattle, and president-elect of the American Bar Association, speaking on Advancing the Rule of Law: "Very stimulating."

David Nevin, criminal defense lawyer from Boise, Idaho, speaking on the Rule of Law in a Time of Terror: "... Very stimulating, and worth the price of admission." "Incredible." "Fabulous speaker, critical topic, riveting."

Bonnie Amble Pladson, president, BECU Trust Company, speaking on Ethics – Duties and Responsibilities of Trustee: "Useful."

Stephen DeForest, past president, WSBA; attorney at Riddell Williams, Seattle, and now secretary of the Senior Lawyers Section Executive Committee, speaking on Signs of Aging – Second Installment: "Fun and frightening." "Very entertaining – especially for a lawyer. It was great for this program: light but yet realistic, and he gave some good advice. Stephen's second career could be a stand-up comic."

William Dussault of Dussault Law Group, Seattle, speaking on the Death and Rebirth of Elder Law: "Extraordinarily timely and important subject." "Especially well-prepared and delivered." "Outstanding presentation, blending law and policy."

Steven Jager of Jager Law Office, Seattle, speaking on What Is All the Fuss About? Condominiums in 2007: "Very interesting."

Ben Porter of Porter Kohl & LeMaster, Seattle, speaking on Estate Planning in the Face of the Washington State Estate Tax: "Knowledgeable and good outline." "... Good in getting his points across."

Megan Nelson of Gordon Derr, Seattle, speaking on Ethics and presenting a video of oral arguments in lawyer discipline cases before the Washington Supreme Court: "Great presentation." "Good material. Too bad about technical problems."

The high marks for all of our speakers reflected what I heard on the scene, which was very complimentary of the entire program. As was emphasized at the seminar, the evaluation forms are read by the committee and help to guide us on future programs and speakers.

CLE Credits

The seminar was approved for 6.25 credits, including 4.75 general credits and 1.5 ethics credits.

WSBA Presence

Helping to greet the participants was Mark Sideman, director of the WSBA CLE Department. This year's seminar event coordinator was Barbara Konior. She was present at the seminar and was assisted by Kristen Ponsolle and Rex Nolte. They all did an excellent job, as shown by all the evaluations as "a positive experience."



WSBA staff (l to r): Barbara Konior, Rex Nolte, Mark Sideman and Kristin Ponsolle

Program Planning

The members of the Senior Lawyers Section executive committee work as a team to select and put out seminar programs together. Thanks go to all the members for their efforts.

The following article originally appeared in the summer 2007 Elder Law Section newsletter, and is being used with our appreciation and consent of the authors.

Public Guardianship Legislation Enacted

By Peter Greenfield†

A bill creating an Office of Public Guardianship was signed by Governor Gregoire on May 8, 2007. Substitute Senate Bill 5320 had passed the Senate by a vote of 44-0 and the House by a vote of 98-0. The bill originated with the Elder Law Section, and was drafted to implement recommendations made by its public guardianship task force. The successful effort to develop a public guardianship bill and secure its adoption illustrates how lawyers working through the organized bar and with others can promote the public interest by taking on a persistent problem encountered in their practice and contributing to its solution.

The Public Guardianship Task Force was appointed by Section Chair Jacob Menashe in early 2005 to propose a solution to a problem recognized by Section executive committee members: Many people can't get guardianship services they need because they don't have family members or friends to serve as volunteers and don't have sufficient funds to pay for such services and still meet other basic needs. Without needed guardianship services, vulnerable individuals are likely to lose housing, to go without needed medical care, to experience exploitation, or to face institutionalization that would be avoidable with appropriate help.

The task force issued a report in August 2005. The report was (and is) posted on the Section's website and the posting was noted on the Section's list serve, soliciting member comment. In September 2005, the Executive Committee adopted a resolution endorsing the recommendations of the task force, including a recommendation that an Office of Public Guardianship be created. Then it turned to the task of implementation.

The Executive Committee authorized 2006-07 Section Chair Eileen Peterson to retain Joan Mell, of Miller Quinlan & Auter, in Fircrest, to draft implementing legislation and to advise on legislative strategy. Between September 2005 and the end of 2006, drafts were reviewed by the task force and by representatives of interested organizations, including many who started with serious doubts. During that period, many organizations followed the Section's lead and adopted resolutions calling for the creation of a public guardianship office. There were ultimately some two dozen such organizations, including the Washington State Medical Association, the Washington State Catholic Conference, the Senior Citizens' Lobby, the state chapter of NAELA, the Washington State Long-Term Care Ombudsman Pro-

gram, and the Alzheimer's Association's Western and Central Washington Chapter. In November 2006, the WSBA Board of Governors voted to "sponsor" public guardianship legislation, making it a priority for the Association's experienced legislative director, Gail Stone.

In January of this year, identical public guardianship bills were introduced in both chambers of the Legislature. Senator Rosa Franklin, the prime sponsor of SB 5320, was joined by Senators McCaslin, Kline, Stevens, Prentice, Parlette, Regala, Hargrove, Rasmussen, Murray, Jacobsen, Hewitt, Keiser and Roach. (Names are listed in the order in which they appeared on the bill.) Representative Patricia Lantz, the prime sponsor of HB 1130, was joined by Representatives Jay Rodne, Dawn Morrell, Shay Schual-Berke, Roger Goodman, Phyllis Kenney, Kathy Haigh and Jim Moeller. It was the Senate bill that was finally adopted.

The bill creates an Office of Public Guardianship within the Administrative Office of the Courts, with an administrator to be appointed by the Supreme Court. The office is to contract with certified professional guardians, or with entities employing them, to serve as public guardians. Public guardians would be available for appointment, under defined circumstances, by courts that have determined, under current law, that appointment of a guardian is needed. The bill makes no changes in the criteria for establishing guardianships. Initially, services will be offered on a pilot basis in two regions of the state, one urban and one rural. (The specific regions remain to be defined.) The cost of the services and the savings associated with them will be the subject of a study and report by the Washington State Institute of Public Policy. For the 2007-09 biennium, the Legislature appropriated \$1.483 million to implement SSB 5320.

Among the responsibilities assigned to the office of public guardianship are the following:

- To adopt criteria to enable the office to target services at individuals with the greatest need
- To adopt standards of practice
- To develop a procedure for responding to complaints
- To monitor performance under its contracts
- To identify guardian training needs
- To consider the need to develop a legislative proposal to make legal assistance with guardianship petitions available
- To report to the Legislature about how services other than guardianship services might be provided under

continued on page 6

Big Wave on the Horizon!

By Carole Grayson, Editor

A balmy April day
 one moment you're loving the sun
 and the next moment you notice
 your colleagues squinting from the glare —
 so you must be —
 and they have wrinkles and furrows and crow's feet
 so you —

So you
 don't even want to think about it.

But then you hear yourself exhaling,
 carbon dioxide tickling your nose hairs
 a smile plays at the corners of your mouth,
 your eyes widen
 and brighten
 and you feel, dang it all, you feel!!!!

Your lungs fill with air
 and you stand taller
 as your body loves your truth:
 The trials and travails of your decades of practice
 entitle you to each and every of your battle scars
 and you wouldn't have it any other way!!!!

It was on this balmy April day that over 200 hearty (and not so hearty) sun-kissed souls filled the Sea-Tac Marriott for the annual CLE and long-timer reunion opportunity sponsored by your Senior Lawyers Section.

Scanning the attendees, this first-timer was reminded of my freshman year in college, when the ratio of guys to gals was 13 to 1. My alma mater had gone co-ed the year before, after 225 years as a bastion of virile verisimilitude. Having grown up playing sports with boys and girls, this middle class suburban kid didn't find the gender disparity odd. During precepts (discussion groups of 10 or less), I sometimes was the only female. That didn't seem odd. Nor did freshman gym, where there were three women, two dozen or so guys, and I wound up as quarterback of one of the teams. (What a shock to learn that not all guys were athletic!)

The summer before my freshman year, I had participated in the first co-ed group of the 10-year-old Student Conservation Association. www.thesca.org. The ratio of guys to outsider gals (i.e., those of us unrelated to the trip leaders) was 6 to 1. We worked up the Bogachiel River in Olympic National Park. I didn't see the sun for 11 days in a row, froze swimming in the Bogachiel, and never quite learned that patience was imperative when drying wet wool socks over a campfire.

Twelve years later, I moved to the Northwest for good.

Twenty-six years after that transcontinental move, and 29 years after graduating from law school (where the guy to gal ratio was c. 4 to 1), here I was at the Sea Tac Marriott, A.D. 2007.

And something seemed odd.

Around the room were all these older lawyers of the male persuasion, ten score of 'em, congenial, recognition in their eyes; handshakes, slaps on the back; guys catching up on lives and wives; guys tapering down their practices with summer trips and autumn trips and how the hell are you and how the hell have you been?

Once again I was reminded of my undergraduate days, this time of those humid Junes when I worked at Reunions. The campus glowed from black and orange regalia worn by the alumni and their wives. At the 25-Year reunion tent, watching revelers do the Lindy Hop and foxtrot to Big Band music, I said to myself, "At my 25th Reunion I want to dance to this music." It never occurred to me that by my 25th Reunion, music would change and my classmates (but not me) would get down to cacophony and metal. I should have wandered down to the tents for those classes from the 1940's. Were they still dancing to swing?

But I digress.

What amazed me about the 2007 CLE – what was odd – was the makeup of the attendees. (And I don't mean the cosmetic kind.) As your loyal editor, I felt obliged to unleash my inner extrovert and work the crowd. I knew my task. I approached every attendee of the female persuasion. I could have counted them on two hands. My opening line sounded like the Liquor Control Board: "How old are you?" Yet I was one of them, and here we were, hiding out in plain sight among the supermajority of not yet superannuated males.

The Executive Committee members of this Section say that we female attendees are the beginning of a wave. After half a century of practicing law, they can still name on *one* hand the female members of the Bar from 40 and 50 years ago. I melt when I hear their names, for they became distinguished practitioners and jurists.

And yet, half a century ago was relatively recent ... Let's go back to just over a decade after Washington achieved statehood. An early graduating class of the University of Washington Law School, just a few years after 1900, had six students. Two were women (one was a Rus-

continued on next page

Big Wave on the Horizon! from previous page

sian Jewish immigrant); of the men, one was of Japanese heritage and one was of African heritage. Now that was diversity! Century-old diversity!

According to a press release from the University of Washington School of Law on September 11, 2007, "Nearly 66% of this year's incoming class at the UW School of Law are women, bucking a national trend where men still dominate law school enrollment nationwide. According to the American Bar Association, first-year female law school enrollment was 46% for the 2006-07 academic year. The majority of female law students enrolled at the UW has been higher than men every year since 2000, including last year's class where women made up more than 54% of the incoming class."

Student Legal Services, which I direct at the University of Washington, employs seven 3rd-year law students (Rule 9 legal interns). It has been mind-blowing for me to realize that when it goes to hiring decisions, I have predictions: Ideally, I want a legal staff that mirrors the makeup of the student body, i.e., roughly half gals and half guys. But I wouldn't sleep well at night if I hired a less-qualified person just to equalize gender. And so I have hired the most qualified applicants without regard to gender, and they have turned out to be bipeds with XX chromosomes.

For the last four years, 75 per cent of the law student applicants to Student Legal Services have been female law students. For 2007-08, I hired five women and two men. For 2006-07: seven women (no men); for 2005-06: five women and two men; and for 2004-05: six women and one man.

Interestingly, for my three prior years at Student Legal Services, the ratio of female to male legal applicants and interns was roughly even.

A long-time (male) law professor told me a few years ago that the law school had a long way to go when it was the women who believed that they could advance their careers by engaging in meaningful work in legal services.

Does any of this have any significance for the future of the profession? Or the activities of the Senior Lawyers Section? It can be difficult to have a detachment from one's place in history, but as a 55 year old member of the Section who happens to have two X chromosomes, I look forward to your thoughts.

Public Guardianship Legislation Enacted from page 1

contract with the office, so as to limit the need for guardianship services

The bill also requires that public guardians adhere to caseload limits, that they visit individuals served at least monthly, and that they certify annually that they have reviewed the need for continued guardianship services in each case in which they serve and have notified the court if termination or modification of an order appears warranted.

The bill as proposed by the Section and as passed by the Legislature called for appointment of an advisory committee to provide guidance to the administrator. It was to have members appointed by many different entities concerned with guardianship issues and with the protection of individuals with cognitive disabilities. The Governor vetoed the section creating the advisory committee on the ground that oversight should be the responsibility of the Supreme Court and the Administrative Office of the Courts. It remains to be seen whether an effective mechanism will be created for soliciting the valuable advice the statutory committee might have provided.

The enactment of public guardianship legislation and the initial funding of public guardianship services are important steps. Many Section members, and many others, will be watching with critical eyes to see how the program develops.

† Peter Greenfield is the secretary of the Elder Law Section and chair of its Public Guardianship Task Force. He is a staff attorney with Columbia Legal Services.

Speak Out!

Wanted: Lawyers to volunteer to speak to schools and community groups on a variety of topics. For more information about the WSBA Speakers Bureau, contact Pam Inglesby at 206-727-8226 or pami@wsba.org



The following article originally appeared in the summer 2007 Family Law Section newsletter and is being used with our appreciation and consent of the authors.

In Sickness (not in health), When (but not until) Death Do Us Part

A Look at Washington's Domestic Partner Registration Law and Its Impact on Family Law Clients and Practitioners

By Janet M. Helson[†]

Editor's note: Did you know that Washington state's new domestic partner registry is an option for different-sex couples where either or both members of the couple is over 62? Read on...

On April 21, 2007, Governor Christine Gregoire signed into law Senate Bill 5336, which creates a domestic partner registry for eligible couples, and affords couples who register certain recognition and rights under Washington state law. Much of the media coverage and many of the public statements by legislators and pundits – both proponents and detractors of the law – analogized to marriage and spoke in either hopeful or fearful terms about how the bill represented a first step toward “gay marriage.” A number of the Seattle television stations simply recycled footage taken the previous July when the Supreme Court announced in its *Andersen* decision that same-sex couples did not have a constitutional right to marry, suggesting by implication that the domestic-partner legislation did for same-sex couples what the Supreme Court had not done in *Andersen*¹.

So it is no wonder that many people – both those directly affected by the law and those who are not – have come away with the impression that, by registering as domestic partners, couples will receive a wide array of rights and benefits, and will have secured the same types of protection afforded by marriage. That is simply not the case. In reality, while the domestic partner registry and the existence of the status of “registered domestic partner” creates an underlying structure which has the potential to be used in the future to secure additional rights for registered couples,² and which could evolve over time and through additional legislation into a more complete, marriage-like set of rights, the current law provides only a few rights related to health care and death. Moreover, even those few rights likely have little or no portability to other jurisdictions.

What that means for family law practitioners is that we will spend a lot of time explaining to clients what the law does *not* do and why it is still important for same-sex and older unmarried couples to take all of the steps to protect their families that they should have taken before the domestic-partner law, including (as appropriate to each case) but not limited to:

- wills and trusts
- durable powers of attorney (medical and financial)
- advance medical directives/living wills

- instructions re autopsy and disposition of remains
- hospital visitation authorization
- second-parent adoptions
- nominations of a guardian/ authorizations for consent to medical treatment of a minor (in situations where one partner is legally a parent of a child they are raising and one is not)
- cohabitation/ domestic-partnership agreements
- titling of property and accounts in appropriate names
- naming of partner as beneficiary

In addition to educating our clients, family law attorneys will also have to educate the bench regarding the limitations of the law and what evidentiary and legal significance the court can or should attach either to a couple's registration or failure to register as domestic partners.

Who Is Eligible to Register

Domestic partner registration will be available to same-sex couples and to different-sex couples in which at least one partner is over 62 years of age. The intent section of the legislation explains that the law includes older, different-sex couples, as well as same-sex couples, so that such older couples can have the recognition and rights of domestic partnership without losing important benefits such as Social Security or pension payments. For both groups, the legislature determined that allowing for domestic partner registration would “further Washington's interest in promoting family relationships and protecting family members during life crises.”

In addition to the qualifications set out above, in order to register as domestic partners the couple must meet the following requirements:

- Both must share a common residence
- Both must be at least eighteen years of age
- Neither may be married to someone other than the party to the domestic partnership
- Neither may be in a state-registered domestic partnership with another person
- Both must be capable of consenting to the domestic partnership
- The members of the couple may not be nearer in kinship than second cousins

continued on next page

In Sickness (not in health), When (but not until) Death Do Us Part from previous page

Effective July 22, 2007, couples who qualify and wish to become domestic partners may do so by filing with the Washington Secretary of State's Office a declaration signed by both parties and notarized indicating that they are registering as domestic partners.

Benefits of Domestic Partnership

By registering as domestic partners in Washington, the couple will attain in Washington state the right to:

- Visit an ill or injured partner in the hospital and receive health care information about the partner
- Provide informed consent for certain medical procedures for an incapacitated partner
- Bring a civil action for the wrongful death of a partner
- Be listed on a partner's death certificate
- Authorize an autopsy on a deceased partner
- Control the disposition of a deceased partner's remains
- Have rights regarding family cemetery plots
- Make anatomical gifts on behalf of a deceased partner
- Inherit from a partner in the absence of a will
- Administer a partner's estate in the absence of a will

Because domestic partnership is a creature of state statute, a registered domestic partner will have these rights so long as the couple remains in Washington state; but couples should not and cannot rely on the partnership and attendant rights being recognized in other states. Indeed, in states with super-DOMAs³ it is clear that the domestic partnership will not be accorded any recognition. While it is possible that states such as California or Connecticut, which have broad domestic-partnership laws themselves, will afford some sort of reciprocal recognition to Washington domestic partnerships, it is difficult to know how reciprocity would work as a practical matter.⁴ You would not want the doctor to delay surgery so that the hospital's attorney could analyze what decision-making authority Washington law confers on registered domestic partners. In short, couples registered as domestic partners in Washington should not rely on that status being given any recognition outside the boundaries of Washington state.

Terminating the Partnership

In order to terminate a domestic partnership, one or both members of the partnership must file a notarized "notice of termination" with the secretary of state. If both partners have not joined in and signed the notice, the partner seeking termination must also file an affidavit of service showing that personal service has been obtained or that the partner could not be located with reasonable effort and notice has been made by publication as outlined in the statute. Once the notice of termination has been filed (with affidavit of service, if necessary) the partnership is automati-

cally terminated 90 days after filing, with no further inquiry or process. The second way a partnership may be terminated is if either or both of the partners enters into "a marriage that is recognized as valid in this state, either with each other or with another person." Such marriage terminates the domestic partnership immediately and automatically, without a requirement of any notice to the other partner.

Members of the Family Law Executive Committee were troubled both by the provision for automatic termination of the partnership upon marriage of one partner and by the non-judicial, very cursory process for terminating partnerships. In light of the very limited benefits and rights currently afforded to domestic partners by the statute, the consequences of having such a summary process may not be dire. However, there are clearly circumstances in which a partner could be adversely affected by having the partnership terminated automatically or with little notice. This would include situations in which, for example: 1) one partner provides health insurance for the other through employment and either the policy or employer requires them to be registered domestic partners to receive benefits; or 2) one or both partners' will or the parties' property holdings have been structured based on the assumption that there is a domestic partnership in effect. Certainly, as we look forward to the future, when more substantial rights may be added, it is clear that the termination process will have to be augmented so that parties do not lose substantial rights without opportunity for due process.

Effect on Existing Remedies and Community Property Law

The statute, by its terms, provides that it "does not affect marriage or any other ways in which legal rights and responsibilities between two adults may be created, recognized or given effect in Washington" (emphasis supplied). Both that language and the legislative history make clear that the drafters did not intend to supplant or preempt common law meretricious relationship remedies. Indeed, it would be difficult to argue that the domestic partnership law preempts meretricious relationship case law since, in its current form, the domestic partnership law does not in any way address the property rights of living unmarried partners.

Still, one can anticipate that litigants in meretricious relationship cases will argue that the fact of registration supports a finding of meretricious relationship or that the parties' non-registration should undermine such a finding. While the positive may be true (i.e., registration is evidence of the existence of a meretricious relationship), the negative is not. There are many reasons why a couple might

continued on next page

In Sickness (not in health), When (but not until) Death Do Us Part from previous page

choose to forego registration other than lack of commitment to one another. Currently the only right that couples acquire through registration which cannot be secured, and arguably more effectively secured, through executing legal documents, is the right to sue for wrongful death. Couples who already have their legal documents in place may choose not to register in order to avoid the possible need to re-draft and re-execute those documents; they may be philosophically opposed to registering as domestic partners based on a perception that domestic partnership is a second-class status; or they may already be married in another jurisdiction and believe that registration in Washington would be duplicative and confusing. In addition, same-sex couples have many legitimate reasons (e.g., fear of job discrimination, desire to adopt internationally, one or both members' military service and the existence of "Don't Ask, Don't Tell"), not to create a public record of their relationship. Thus, there are strong arguments why the fact that a couple is *not* registered should *not* be viewed as persuasive evidence that a meretricious relationship does not exist.

The intestate succession provision also raises an interesting legal issue. As is the case for many of the benefits conferred by the statute, registered partners are included in the intestate succession provisions simply by adding "or state registered domestic partner" following the provision relating to spouses. Thus, the law will now provide that:

The net estate of a person dying intestate ... shall be distributed as follows:

- (1) Share of surviving spouse *or state registered domestic partner*. The surviving spouse *or state registered domestic partner* shall receive the following share:
 - (a) All of the decedent's share of the net community estate; and
 - (b) One-half of the net separate estate if the intestate is survived by issue; or
 - (c) Three-quarters of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his parents, or by one or more of the issue of one or more of his parents; or
 - (d) All of the net separate estate, if there is no surviving issue nor parent nor issue of the parent.

This obviously raises the question as to whether there is a "net community estate" in a state-registered domestic partnership and how one establishes what it is. Through a meretricious relationship case, a petitioner can establish the existence of a "quasi-community" and "quasi-community property," but nothing in existing statute or case law creates a "community estate" for unmarried partners, and nothing in the domestic-partnership statute itself provides that a "community estate" is created by domestic partner

registration. On the other hand, the clear intent of many, if not all, of the statute's provisions is to treat registered domestic partners as if they were spouses, which suggests that the intent of the intestate succession provision may also be to treat registered domestic partners equally to spouses. Interpreting "community estate" to apply to married couples only would mean in some cases that the registered domestic partner would inherit only half of the total estate when a similarly situated spouse would receive 100 percent. While both the Elder Law Section and the Family Law Section brought this issue to the attention of the drafters and the reviewing committees, the legislature chose not to address it; thus, it will be left to the courts and creative attorneys to resolve.

Looking to the Future: California's Evolution

As we look toward the future, it may be instructive to look at the evolution of California's domestic-partnership law. In 1999, California established the domestic partner registry, the platform upon which its now-comprehensive domestic-partnership statute rests. That initial legislation provided only two substantive benefits: hospital visitation privileges and domestic-partner benefits for certain state employees. In 2000, California passed legislation allowing registered domestic partners to qualify for specially designed accessible housing for seniors. In 2001, in the wake of the horrendous nationally publicized case in which a woman's long-time domestic partner was killed by vicious dogs, and it appeared that there would be no civil available remedy, California passed legislation allowing domestic partners to bring wrongful-death cases and added many of the other death-related provisions which are part of Washington's statute. The 2001 legislation also allowed registered domestic partners to use streamlined stepparent adoption procedures (Washington does not have such a two-track process); provided continued health insurance for domestic partners of deceased state employees; and provided that the value of domestic partner benefits would not be taxed as income by the state. In 2002, there were six pieces of legislation, sponsored by six different legislators, which continued to add rights for domestic partners on a piecemeal basis.

Finally, in 2003, California passed AB 205, which provided domestic partners with nearly⁵ all of the rights, benefits, and responsibilities granted to spouses under state law. At that time, the legislature also amended the process for terminating a domestic partnership so that termination in California now requires a judicial process equivalent to filing for divorce. AB 205 had a delayed effective date until January 2005 in order to give the Secretary of State time to send out notices to all registered domestic partners informing them of the change in the law so that they could dis-

continued on page 11

1957: A Moment in Time

By Stephanie Perry[†]

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And now, I invite you to sit back, and reminisce for a few minutes. The year is 1957. A car costs about \$2,100, and a house \$18,000. Gasoline is 31 cents a gallon, and a postage stamp is just 3 cents. Bread costs 19 cents a loaf, and milk is \$1.00 per gallon. The stock market is 436, the average annual salary is \$5,500, and minimum wage is \$1.00 per hour.

It's a good year for inventions: General Foods Corporation introduces Tang breakfast beverage crystals. Velcro is patented by George de Mestral of Switzerland. The Frisbee is renamed and nationally marketed. Eveready produces "AA" size alkaline batteries for use in "personal transistor radios."

Barry Gordy Jr. invests \$700 to found Motown Records. The Everly Brothers enjoy two big hits in 1957 with "Bye Bye Love" and "Wake Up, Little Susie." Other popular songs include "Blueberry Hill" by Fats Domino, "All Shook Up" and "Let Me Be Your Teddy Bear" by Elvis Presley, "Whole Lot of Shakin' Going On" by Jerry Lee Lewis, "Peggy Sue" and "That'll Be The Day" by Buddy Holly, and "Banana Boat (Day-O)" by Harry Belafonte. "American Bandstand" goes national, with Dick Clark as host.

"Music Man" and "West Side Story" open on Broadway.

Raymond Burr plays Perry Mason on television for the first time. Other popular TV shows include "Leave It to Beaver," "The Real McCoys," "Divorce Court," "Wagon Train," and "Zorro."

At the Academy Awards, "Bridge on the River Kwai" receives seven awards, including Best Motion Picture, Best Director (David Lean), and Best Actor (Alec Guinness). The Best Actress award goes to Joanne Woodward for "The Three Faces of Eve."

At the age of 14, Bobby Fischer first successfully defends his United States Junior Chess Championship title, then wins the United States Open Chess Championship.

The first large-scale American nuclear power plant goes into operation in Shippensburg, Pennsylvania. Britain becomes the third nation to join the "nuclear club" with the explosion of an atomic weapon. The International Atomic Energy Agency is established.

In August, United States Senator Strom Thurmond sets the record for the longest filibuster with his 24-hour, 18-minute speech railing against a civil rights bill. President Dwight D. Eisenhower begins his second term as president this year. In September, Eisenhower sends federal troops to Arkansas to provide safe passage into Central High School for the Little Rock Nine.

Notable births this year include actor Daniel Day-Lewis, singer Donny Osmond, and TV newscaster Katie Couric. Notable deaths include actor Humphrey Bogart;

author Laura Ingalls Wilder; Senator Joseph McCarthy; and half of the Laurel and Hardy duo, Oliver Hardy.

Jackie Robinson, perhaps the finest athlete of the century, announces his retirement from baseball. On September 4, the last game is played at Ebbets Field in Brooklyn as the Dodgers prepare to move to Los Angeles. At the World Series, the Milwaukee Braves beat the New York Yankees 4-3. Lew Burdette pitches three complete-game victories, including two shutouts. Hank Aaron leads all regulars with a .393 average and 11 hits, including a triple, three home runs, and seven RBIs.

Americans Clarence W. Lillehie and Earl Bakke invent the internal pacemaker.

Albert Camus receives the Nobel Prize for literature. Nikita Khrushchev is named Time Magazine's "Man of the Year."

The publication of Jack Kerouac's *On the Road* introduces the words "beat" and "beatnik" into the American popular consciousness and gives a name to a generation.

Theodore Geisel, also known as Dr. Seuss, writes *The Cat in the Hat*. Other popular books include *From Russia with Love* by Ian Fleming, *Doctor Zhivago* by Boris Pasternak, *The Guns of Navarone* by Alistair MacLean, *Atlas Shrugged* by Ayn Rand, and Art Linkletter's *Kids Say the Darndest Things*.

On October 4, 1957, Sputnik is launched. The world's first artificial satellite is about the size of a beach ball (22.8 inches in diameter), weighs 183.9 pounds, and takes about 98 minutes to orbit the Earth on its elliptical path. In November, Sputnik II is launched, carrying a much heavier payload – including a dog named Laika.

In Washington:

In 1957, the Seattle School Board takes its first census of school enrollment by race. The Board finds that 5 percent of the 91,782 pupils are black. Nine elementary schools, eight of which are located in the Central Area, contain 81 percent of elementary-age black children. This de facto segregation is highly frustrating to civil rights leaders.

Elvis Presley performs at Sicks' Seattle Stadium, drawing an estimated 16,200 people (90 percent of them teenage girls) – the biggest crowd for a single performer in Seattle up to this point.

The first production Boeing 707 jet rolls out in Renton, and Pan American World Airways orders the first 707s. Pan Am would inaugurate trans-Atlantic jet service between New York and Paris the following year.

The Washington Public Power Supply System is created to develop Washington's energy resources. The state Legislature creates the Department of Natural Resources

continued on page 12

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In Sickness (not in health), When (but not until) Death Do Us Part from page 9

solve their domestic partnership if they did not wish to have new rights and responsibilities.

The evolution of California's domestic partnership law is now complete, at least from a substantive perspective. However, as one California advocate notes, California legislators and lawyers are still engaged in "cleaning up what seem to be an endless array of quasi-technical issues and unexpected complications," which underscores how difficult it is to create an alternate status which functions similarly to marriage when marital status permeates so many aspects of the law.⁶

Conclusion

In Washington state, we are just at the beginning of our process. The existence of a domestic partner registry and the possibility of having same-sex relationships recognized and afforded some legal protection is clearly of historic moment and of importance to Washington family law practitioners and clients. Some decades from now, if there comes a time when all couples may marry in all fifty states, we may look back and view the domestic partner law as akin to *Plessy v. Ferguson* and "separate but equal." Or we may still have a domestic-partner registry and a domestic-partner status which affords just a limited number of protections. For now, however, our clients who choose to register need to realize that domestic partnership is not only separate but it is decidedly unequal. Unmarried couples, whether registered or not, should and will continue to look to lawyers for assistance in drafting documents to protect their families and relationships.

† Janet Helson is a principal at Skellenger Bender in Seattle.

- 1 *Andersen v. King County*, 158 Wn.2d 1, 138 P.3d 963 (2006).
 - 2 For example, SB 5069, which was introduced but did not pass during the last legislative session, would have extended state retirement benefits to surviving domestic partners on the same basis that they are available to surviving spouses.
 - 3 Congress passed the federal Defense of Marriage Act (DOMA) in 1996 and a majority of states, including Washington, have enacted state DOMAs. A number of states have enacted more extreme versions of DOMA ("super-DOMAs") which not only prevent the recognition of marriage between same sex couples but declare as void any public act, record or judicial proceeding that extends any of "the specific statutory benefits of legal marriage to nonmarital relationships."
 - 4 Other states which afford legal benefits to domestic partners include Vermont, New Jersey, Hawaii, Illinois, Iowa, New Mexico, New York, Oregon, Maine and Rhode Island. While Vermont, New Jersey, Connecticut, California and Oregon (effective in 2008) provide a full panoply of state marriage rights to registered partners, the other states provide a range of coverage, with some, like Washington, only addressing a handful of benefits.
 - 5 As part of a political compromise, tax equality was not addressed but has since been addressed in legislation that passed in 2004 and 2005 related to property and income tax respectively.
 - 6 There are at least 438 Washington laws which provide rights or responsibilities based on marital status.
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1957: A Moment in Time from page 10

to be responsible for state- and privately-owned forests and forest practices.

On April 1, 1957, the Washington State Highway Department establishes a special office charged with acquiring property within the established right-of-way of the Seattle Freeway, now the Seattle portion of I-5. Along a route some 20 miles long that cuts through the city, some 4,500 parcels of land, most improved with homes, apartment buildings, and businesses, are slated for acquisition and property clearing.

The state World's Fair Commission submits a recommendation to the state Legislature that a fair be held, combined with the creation of the Seattle Civic Center. The Legislature passes its own \$7.5 million bond, bringing the total budget to \$15 million, and preparations begin for the tentatively titled "Festival of the West," soon to be renamed the "Century 21 Exposition."

And at the WSBA...

41 people take the bar exam in January, and 28 pass. This past February, 508 candidates took the exam and 387 passed. In July 1957, 119 people take the bar exam and 86 pass. In July 2007, 909 people took the exam and 644 passed.

As announced in *Bar News*, the City of Vancouver offers a monthly salary of \$665 for the position of city attorney. A nationwide survey conducted by the U.S. Department of Commerce shows that lawyers in Washington state earn less than the U.S. average of \$852 per month.

Bar News also announces the beginning of *The Seattle Bar Bulletin*, published by the Seattle Bar Association, with Betty B. Fletcher and Louis H. Pepper as co-editors, and Phil De Turk as editor. We read in *Bar News*: "The Washing-

ton State Bar News has several high hopes for the new publication including: (1) That it will abate the danger of over-emphasizing Seattle material in the *News*; (2) That it will present a ripe field for plucking material when copy is scarce; and (3) That its regular appearance will remind us of our own resolve to publish regularly each month."

Bertha M. Snell, said to be the first woman admitted to the Washington State Bar, dies at the age of 84, having practiced until age 83.

Fred C. Palmer is the WSBA president, T.M. Royce is counsel, and Alice O'Leary Ralls is executive secretary (this position is later re-named executive director). The Annual Meeting is held in Seattle for the first time since 1949, and 800 lawyers attend. The Ladies' Auxiliary of the Seattle Bar Association plans "a full program of activity for wives of lawyers," including fashion shows, flower arrangement talks, and lectures on antiques.

Today we honor you...

You, the members of the WSBA class of '57, have seen many changes – cultural, political, and societal – during your years in the legal profession. I hope you enjoy celebrating your 50 years of membership in the Washington State Bar Association, as you gather here today with friends and colleagues to share stories and memories. Your dedication and accomplishments are an inspiration. You have served our profession and our community for 50 years, and have made us all proud to be lawyers. We salute you and we thank you.

† Stephanie Perry is the WSBA's Communications Specialist/Website Editor.