

## Washington's Alternate Path to the Bar: APR 6 \_\_\_\_\_ by Marjorie A. Walter

Long before the word apprentice became inextricably linked with a certain tonsorial-challenged real estate mogul, apprenticeship was how most aspiring lawyers gained the knowledge and skill they needed to become practicing attorneys. As late as 1930, only four states mandated any law school attendance, and only one of those required the three-year course of study that is now the norm. By contrast, today Washington is one of only four states that does not require any law school attendance. In a few other states an applicant need not have earned a law degree, but must have completed either one or two years of study at an ABA-accredited law school. As of 2005, there were fewer

than 150 of these legal apprentices in the United States, compared with approximately 140,000 students attending ABA-accredited law schools.

There are currently 51 law clerks (as they are known in Washington) enrolled in the state's four-year program, the scope and requirements of which are prescribed by Admission to Practice Rule 6. For each of those four years, the clerk pays an administrative fee (currently \$1,500) and is required to work full time for a practicing attorney or judge, who serves as the clerk's tutor. APR 6 also provides a means for lawyers from other countries to qualify to take the Washington State Bar Exam. Admission to the program is not automatic. Both clerk and tutor must apply and attend an in-person interview with a member of the WSBA Law Clerk Committee. The clerk must submit letters of recommendation, a personal statement, and proof of a four-year college degree.

Once admitted to the program, each clerk works through 18 required courses (unless they are granted advanced standing) and six electives. Every month, the tutor reports to the WSBA on both the clerk's studies and work for that month. A member of the Law Clerk Committee monitors each clerk's progress. Clerks need to be comfortable studying independently, with-

out the structure and group dynamic of a classroom. Juggling what are essentially two full-time jobs is very challenging, and the workload is relentless. The program is designed to be followed 12 months a year, without breaks. Rule 6 also places enormous demands on the tutor, who must develop reading assignments for each subject (some of which she may not have encountered since her own legal training), discuss the reading with the clerk, and prepare and administer an exam every month.

In addition to studying the various subject areas, clerks are actively involved in their tutor's practice or judicial work. As such, a clerk may, with supervision, spend time working directly with clients to understand their legal needs, interviewing witnesses, drafting and responding to pleadings and discovery requests, performing legal research, preparing contracts, developing case strategy, and other myriad tasks related to the tutor's work. This practical experience is invaluable, but often lacking in the traditional law school curriculum and approach.

Some schools have tried to address this gap between the theoretical and the practical. Harvard, for example, recently announced that 1Ls will take a problem-solving course, while 2Ls and 3Ls will have greater opportunities for clinical work and internships. According to the December 2006 issue of the alumni newsletter *Harvard Law Today*, the revamped curriculum reflects a belief that problem-solving exercises should be a critical component of legal education and that hands-on training should be central to many students' law school experience. The Rule 6 program provides plenty of hands-on training and problem-solving experience.

Direct, or at least statistically significant, comparisons between Rule 6 clerks and law school graduates in Washington are difficult because there are so few clerks, but clearly those who complete the program are well-qualified to take the bar. Since 1984, when the WSBA adopted the current rules and program structure, 92% of clerks who have taken the exam have passed. Rule 6 alumni have achieved success in a wide variety of practice areas. Many are active in the WSBA and their local bar associations; one serves on a county bar association board of trustees, another is a municipal court judge, and at least two are public defenders.

The Rule 6 path to the bar is not any easier than the usual route, but it can provoke resentment from some who sweated through three years of school and spent tens of thousands of dollars earning a JD. Bellingham lawyer Penny Henderson, who completed the Rule 6 program and now serves on the Law Clerk Committee, has encountered outright hostility from other attorneys, who have accused her of being a pretend lawyer. Nothing could be further from the truth. According to Henderson, "Law clerks aren't people who couldn't cut it in law school." They tend to be extremely motivated, and hold themselves to a very high standard of performance. Most tutors, adds Henderson, are equally motivated, with a "huge sense of civic duty and community involvement."

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## Editor's Column

by Jason T. Vail



Like many aspiring lawyers, I came to law school with the intent to practice public-interest law. And, like many similar law students, I quickly became aware of the challenges and barriers to this type of legal career. For example, my school's career services office knew virtually nothing about public interest fields and could provide me little concrete direction or advice. When I finally came across public-interest job opportunities on my own, I quickly discovered that these jobs are not at all plentiful and competition for the limited available slots is fierce. On top of it all, I had to carefully weigh my burgeoning student loan debt against the prospect of future earnings that were sure to be a fraction of what could be obtained in the private sector. Nevertheless, thanks to tremendously helpful mentoring and advice from faculty and public interest attorneys, I was fortunate enough to join the civil legal aid community after graduation, and I continue this work today.

My experiences as a law student and new legal aid lawyer have left me with a personal commitment to give the same kind of help I received to other hopeful public-interest lawyers. Thus I have consistently endeavored to make myself available as a resource for advice and mentoring to young lawyers and, in particular, law students interested in public-interest law. I have found my experiences giving presentations and meeting one-on-one with interested lawyers and law students to be incredibly energizing. These efforts led in part to my decision to get involved with the Bar Association and to serve as editor of *De Novo*, where I have strived to ensure every issue (that I have managed) included at least one article or item that might better inform the readership about public-interest work and the opportunities therein. And this has not just been my own personal initiative; the Young Lawyers Division is known throughout the WSBA as the "public-service arm" of the Bar for all of its work in this regard. Thus, I have tried very hard to make sure *De Novo* reflects this strong aspect of the Division as well as my own particular interest in lawyers working for the common good.

Now, as my eighteen-month term as editor comes to an end with this issue, I am absolutely confident that *De Novo's* new editor, former associate editor Shelley Ajax, and new associate editor, Cynthia Jones, will continue to keep public service issues in front of *De Novo's* readership.

I am also pleased that I will be continuing my work for the Young Lawyer Division as its representative on the WSBA Board of Governors, where I will be able to continue working to eliminate the impediments to public interest careers like those I faced. I do this not solely because it is a matter of personal concern to me; instead, I believe very strongly that all law students and young lawyers should have as much freedom as possible to choose work they find meaningful to them, whether that be public-interest or any other legal practice.

I have already had opportunities to do this during my short time on the Board of Governors. I was pleased to support the Justice in Jeopardy funding package currently winding its way through the state legislature that, if successful, will increase the funding of entities providing services to low-income people. This, in turn, should result in public-service employment and volunteer opportunities for young lawyers, from civil legal aid to public defense to Court Appointed Special Advocate ("CASA") programs. I am continuing my work as liaison to the Access to Justice Board that is currently overseeing the implementation of its new State Plan for the Delivery of Legal Services, which will improve the distribution of civil legal services statewide and, consequently, chances for young lawyers all across the state to fulfill their RPC 6.1 responsibilities to provide *pro bono* services.

I am also now a board member of the Washington State Bar Foundation which, among other things, administers the public interest Loan Repayment Assistance Program ("LRAP"). I know full well how student loan repayment pressures can steer law students and young lawyers away from public interest careers, a problem that will continue to accelerate with rising tuition and interest rates. An effective LRAP is a way to relieve this debt burden and give new attorneys the freedom to pursue important legal work. I intend to work with the Foundation to find ways to strengthen and even expand this program. I also support the work of the APR 6 Law Clerk Program, which is featured in an article written by Marjorie Walter, a current law clerk and future young lawyer, in this issue of *De Novo*. This program is a unique and vital way to ensure that the practice of law is open to all, not just those who can afford law school. If we, as a Bar Association, are serious about diversity in our profession, I believe the Law Clerk Program is an excellent way to cultivate that diversity.

In closing, I hope you have found reading *De Novo* these past eighteen months to have been as interesting as I have found preparing and editing it to be. As always, we are continually open to your input, suggestions, and article submissions. And I particularly hope to hear from you about the work of the Bar Association and the Board of Governors and what you would like to see us doing to help you have the chance to achieve the kind of legal career that you envisioned having when you first decided to become a lawyer.

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# President's Column

by John Brangwin



One day as I ventured onto a website, a question at the edge of the site's page caught my attention by asking: Which state has the longest coast line?

- A. Alaska
- B. California
- C. Florida
- D. Hawaii

I clicked on letter "A" and sure enough I was right. Before I knew it, I was taking a 40 question

IQ Test. After I answered all 40 questions, I was given neither my score nor the correct answers. But after filling in my name (I used a bogus one in case I got all the questions wrong – no record that way) and my email address (I used my Yahoo account for fear of spam) and THEN wading through what seemed like a hundred offers for one product or another, I was finally given my score – a 126. I have no idea if that's high or low, good or bad, but I guess I won't quit my day job. The analysis of my answers did suggest I might enjoy being an attorney – hmmm, lucky guess. What you will see below are a few of the "40" questions. I got every one of these wrong, so if you get even one of these correct you can say you're smarter than me. But you probably didn't need this test to figure that out. By the way, the correct answers are on page 9.

Enjoy!

1. Which one of the five choices makes the best comparison to LIVED and DEVIL as 6323 is to:
  - A. 2336
  - B. 6232
  - C. 3236
  - D. 3326
2. John likes 400 but not 300; he likes 100 but not 99; he likes 3600 but not 3700. Which does he like:
  - A. 900
  - B. 1000
  - C. 1100
  - D. 1200
3. If some Wicks are Slicks, and some Slicks are Snicks, then some Wicks are definitely Snicks. The statement is:
  - A. True
  - B. False
  - C. Neither
4. Sue is both the 50th best and 50th worst student at her school. How many students attend her school?
  - A. 50
  - B. 75
  - C. 99
  - D. 100
  - E. 101
5. In a race from point X to point Y and back, Jack averages 30 miles per hour to point Y and 10 miles per hour back to point X. Sandy averages 20 miles per hour in both directions. If Jack

and Sandy begin the race at the same time, who will finish first?

- A. Jack
  - B. Sandy
  - C. They tie
  - D. Neither
  - E. Impossible to tell
6. Which number should come next? 64, 16, 4, 1, \_?
    - A. 1/16
    - B. 1/12
    - C. 1/8
    - D. 1/2
    - E. 1
  7. What number is one half of one quarter of one tenth of 800?
    - A. 2
    - B. 5
    - C. 8
    - D. 10
    - E. 40
  8. Two cars start off at the same point on a straight highway facing opposite directions. Each car drives for 6 miles, takes a left turn, and drives for 8 miles. How far apart are the two cars?
    - A. 2 miles
    - B. 11 miles
    - C. 14 miles
    - D. 20 miles
    - E. 26 miles
  9. True knowledge exists in knowing that you know \_\_\_\_\_.
    - A. Everything
    - B. Nothing
    - C. The truth
    - D. The weather
    - E. The meaning of life
  10. For the picture sequence shown, find the picture that follows logically from one of the five below.
 

A.

B.

C.

D.

E.
- Courtesy of: <http://web.tickle.com/tests>
- John Brangwin is the president of the WYLD, and practices law as a partner in Woods & Brangwin, PLLC, located in Wenatchee. He can be reached at 509-663-3915 or john@wblawfirm.com.

Answers on page 9

## Seventh WYLD Express (the “Ski/LE”) a Success!

by Adrienne Keith and Julia A. Bahner, 2006-2007 co-chairs of the WYLD Membership Committee

Leavenworth—Washington’s “Bavarian Village”—was a picture perfect wonderland for the 7th WYLD Express on February 24. Young lawyers from across the State were treated to four fascinating speakers and nearly as many free CLE credits. Trial lawyer Jim Danielson, Judge John Bridges, and attorneys Art Lachman and Phil Safar shared their years of wisdom with well over 40 young lawyers at the picturesque Enzian Inn.

Jim Danielson, of Wenatchee’s Jeffers, Danielson, Sonn & Aylward, spoke on deposition techniques. Jim shared the practical insights he has gained in his 35 years of practice and advised young lawyers what courteous, professional steps to take in this key aspect of discovery. He also shared some war stories, including being mindful of the scope of discoverable documents. Don’t forget: everything you send an expert is discoverable, including letters that contain your view of the case.

Judge John Bridges spoke about his role in the historic 2004 Governor’s Election case. Judge Bridges’s presentation revealed the level of judicial efficiency that is possible when the lawyers work with



Photo of WYLD members at Icicle Ridge Winery

Judge Bridges described how he came to be involved in a case of statewide importance where more than 1,200 pleadings were filed in a case where less than 200 votes decided the election outcome. Attendees were given a copy of the court’s decision as background to Judge Bridge’s presentation – a fascinating read. Judge Bridges also revealed the contents of some of the mail he received after the decision – not all of it fan mail in such a politically charged case!

Seattle-area attorney Art Lachman made the trek to Leavenworth from Seattle to speak about the new Rules of Professional Conduct. Energetic and straightforward, Art reminded the audience that “ethics by feel is not a great idea.” With the recent changes to the Rules of Professional Conduct, Art’s presentation and use of hypotheticals highlighted the need to know the rules and to apply professional judgment.

The final speaker of the afternoon was Wenatchee’s Phil Safar, who served as an amiable guide through the complicated maze of immigration law. The take-home tip of the day: criminal charges can make a quick end to an immigrant’s quest for citizenship. Phil’s thorough materials, coupled with his generous offer to share forms, more than complemented his introduction to this important area of law.

Every WYLD express includes fun social events and Leavenworth was no exception. After the CLE the participants headed to the nearby Icicle Ridge Winery ([www.icicleridgewinery.com](http://www.icicleridgewinery.com)) for a complimentary private tour and tasting. This family-owned winery is only four miles from Leavenworth in a magnificent log home setting. The family’s

pride in their winery really showed. A cheese and salami platter from the local “cheesemongers” store complimented the wines. A group dinner was then held at King Ludwig’s German restaurant to go with Leavenworth’s “little Bavaria” feel. A polka band played in the background.

On Sunday the group had the choice of skiing at Steven’s Pass or snowshoeing in Leavenworth. The fresh snow made the skiing a popular option.

The snowshoe tour was made memorable in part because of the guide, Mr. Kevin Powers, the director of the forestry education staff at the WSU



WYLD members on snowshoe tour and guide Kevin Powers

Extension campus in Chelan County. Mr. Powers shared a wealth of information about the outdoors as young lawyers got some exercise by trekking in the falling snow behind the Leavenworth National Fish Hatchery complex.

This successful and enjoyable event would not have been possible without the efforts of Amy O’Donnell, WYLD Liaison, WYLD Membership Committee member Kristin Guberman, the WYLD CLE Committee for their generous donation of funds, and the rest of the Membership Committee for their great ideas on topics and location. Finally, we’d like to thank this year’s WYLD president, John Brangwin, for his support, as well as the speakers for their generous time and insight!

The Membership Committee is already hard at work on WYLD Express number 8, to be held this summer or fall. We’d love to have your help in planning it. Tentatively, Vancouver, Washington, has been chosen as the location. Ideally, the dinner will be held in Portland and members from the Oregon YLD will be invited as well. Stay tuned for more information.



Honorable John E. Bridges and James M. Danielson (right)

Written by Adrienne Keith and Julia A. Bahner, 2006-2007 co-chairs of the WYLD Membership Committee. Ms. Keith practices amicable family law in Seattle, and can be reached at [adrienne.keith@gmail.com](mailto:adrienne.keith@gmail.com). Ms. Bahner practices commercial litigation and bankruptcy law and can be reached at [julbahner@hotmail.com](mailto:julbahner@hotmail.com).

## Review of Justice Stephen Breyer's Book on Interpreting the Constitution

Justice Stephen Breyer, *Active Liberty: Interpreting Our Democratic Constitution* (New York: Alfred K. Knopf 2005). 161 pages. \$23.00.

by Sean T. McLaughlin

With the recent addition of Chief Justice John Roberts and Justice Samuel Alito to the U.S. Supreme Court, it remains unclear whether the Rehnquist-era's text-based originalism will continue to gain momentum. Nonetheless, over the last three decades, progressives have largely struggled to espouse a viable, comprehensive framework to analyze constitutional questions and persuasively articulate the law's role in contemporary American life. Justice Stephen Breyer's book *Active Liberty* ambitiously strives to fill this jurisprudential void.

Breyer outlines his thematic approach by pronouncing that the United States, at its core, is built on principles of liberty. Citing political philosopher Benjamin Constant, he maintains that these key principles involve freedom from government coercion (liberty of the moderns) and freedom to actively participate in government (liberty of the ancients). Ever mindful of constitutional history, Breyer's theme concentrates on the latter – which he refers to as “active liberty.”

Built on the works of John Hart Ely, “active liberty” guides Breyer's general interpretative approach. Specifically, it directs our attention to the Constitution's democratic objective and the importance of legislative purpose and practical consequences. An advocate of judicial modesty, Breyer does not selectively abandon text, history, tradition, or precedent. Disturbed by the judiciary's growing politicization, Breyer plainly acknowledges a general consensus on the importance of these key interpretive tools. He contends that judges, when resolving constitutional and statutory disputes, merely differ on where and how they should be emphasized.

To illustrate his theme's utility, Breyer provides a series of examples. When examining First Amendment political and commercial speech issues, Breyer argues that active liberty helps generate and apply appropriate levels of scrutiny. For campaign finance reform and consumer safety, active liberty should drive courts to preserve a balanced, democratic flow of information. In the process, legislators can continue working to ensure that speech remains the province of ideas and reason – not merely dictated by brokers of money and power.

Addressing federalism issues, Breyer maintains that active liberty principles dictate a preference for incentive-based cooperation and increased transparency, especially for matters of local concern. Nonetheless, Breyer contends that the Court's recent federalism cases (notably its commandeering and Commerce Clause decisions) have stifled congressional innovation and enthusiasm. Consistent with the Constitution's democratic objective, Breyer maintains that greater deference to clearly articulated legislative purposes and even narrow consultation with Congress during the lawmaking process could help rescue many statutes that courts too quickly strike down on purely textual grounds.

For privacy concerns, which he defines as an individual's “power to control what others can come know about him or her,” Breyer again celebrates the importance of judicial restraint. He also contends that broad, pre-mature constitutional rulings often unduly stifle democratic approaches to resolving privacy issues in the today's complex, digital landscape. “Courts, in determining the breadth of a constitutional holding, should look to the effect of a holding of a certain breadth on the on-going policy creating process.” For Breyer, this approach not only pays proper tribute to the Constitution's enduring values, but reinforces the importance of weighing both the legal and practical considerations for each, unique privacy dispute.

Focusing on *Grutter v. Bollinger*, Breyer also address the use of active liberty in examining affirmative action. In contrast to Justice Clarence Thomas, Breyer maintains that color-blindness is not the sole driving historical purpose behind the Equal Protection Clause. Instead, it strives to empower traditionally excluded groups in fully participating in American social and political life. The Clause also demands that courts examine practical consequences and carefully scrutinize laws with race-based distinctions in order to “ferret out classifications [that] in reality [are] malign, but [that are] masquerading as benign.” Thus, according to Breyer, some forms of affirmative action – such as those used in law school admissions – are still necessary to ensure a diverse, participatory democracy. If not, “too many would conclude that the nation and its governmental processes are *theirs*, not *ours*.”

Breyer next discusses active liberty's relationship to statutory interpretation and administrative deference under *Chevron U.S.A., Inc. v. National Resources Defense Council, Inc.* For unclear, ambiguous statutes, Breyer contends that that wholly emphasizing text often runs afoul of the founders' expectation that judges would remain faithful to legislative will. Breyer advocates increased attention to legislative purpose and utilizing a “reasonable member of Congress” standard. Responding to Justice Antonin Scalia, Breyer maintains that sole adherence to canons of textual interpretation too often produces impractical results and unnecessarily frustrates public expectations. Breyer's acute understanding of the legislative process and rejection of legal elitism is also central to his thematic approach. The American people are more than capable of discerning a legislator's general intent in enacting a particular law. “But it *is* impossible to ask an ordinary citizen (or an ordinary legislator) to understand the operation of linguistic canons of interpretation . . . [or] draw any relevant electoral conclusion” from judicial decisions based solely upon their use.

Breyer concludes by addressing possible objections to his active liberty approach. Through argument and example, Breyer respectfully dissects the tenets of text-based originalism. Reminding us that the framers never specifically dictated a preferred, fixed method of constitutional and statutory interpretation, Breyer also notes that practitioners of text-based originalism (literalists) are not unconcerned about consequences. Literalists' unflappable emphasis on text and unilateral focus on the framers' purported original understanding operates as its own form of judicial subjectivity. Indeed, interpretative canons, history, and tradition are not self-selecting.

Breyer also argues that active liberty is fully compatible with judicial prudence. He notes that active liberty's attention to purposes, consequences, and the Constitution's democratic objectives does not “automatically invite frequent dramatic legal changes.” Purposes and consequences should be considered in reference to the textual ambiguities at issue, not whether they are necessarily good or bad. Breyer wraps up his critique by stating that text-based originalism simply fails to deliver on its promises. For Breyer, literalism does not produce clear, workable rules for future universal use. Separating rules from context, consequence, and purposes too often leads to injustice, unworkable precedent, and ultimately, the law's divorce from the practical realities of American life. With no irony lost, Breyer contends that these results are simply “inconsistent with the most fundamental original intention of the Framers themselves.”

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# Dear Family Lawyer

## A column answering family law questions

*“Dear Family Lawyer” is prepared for De Novo by the Family Law Section of the Washington State Bar Association*

### Dear Family Lawyer

I have been practicing family law for only a short time. I was recently retained by a client who had been served in a dissolution of marriage action involving three small children. At our initial meeting, the client appeared visibly shaken by the fact that his wife had served him with no apparent indication of any problem in the marriage. After meeting with this client a few times, I was greatly impressed by his compassion and obvious affection for his family. Yesterday, my client called in tears to inform me that he had just been served with a temporary protection order based on allegations of domestic violence lodged by his estranged wife. The order temporarily prohibits contact with his wife and his children. I know that allegations of domestic violence can have a long-term impact on whether, and to what extent, a parent will be allowed to have contact with the children. I want to give my client effective advice and representation, but I don't have much experience in these types of cases. Can you give me some pointers on what I should be doing?

*Signed, What to Do Now*

### Dear WTDN

Many experienced family law attorneys will tell you that it is, unfortunately, not uncommon to see allegations of domestic violence arise during a dissolution action. In fact, a recent column in this publication addressed that issue from the perspective of a victim's lawyer. What is not so openly discussed, however, is what to do if your client is either the perpetrator or if he has been wrongfully accused or is, in fact, a male victim.

Although leading sociologists have repeatedly found that men and women commit intimate violence at similar rates, the commonly held belief of many remains grounded in the concept that domestic violence is the use of physical power by men against women in an effort to gain and maintain control over women. Unfortunately this does not help your male clients who are victims of either domestic violence perpetrated by their female partner or who are victims of false allegations of domestic violence brought by their female partner.

As a lawyer, even if you have a firm grasp of the legal relevance of domestic violence in family law proceedings, there is a great deal more that you need to know and to consider when representing a client in the situation you have described.

### Do I need to know if my client did the deed?

The first question that often comes to an attorney's mind in such cases may be “Do I need to know if my client did what he has been accused of doing?” There are two schools of thought on this type of question: one is that you should find out, and the other is that you should not. Regardless of how you personally feel about the answer, if you are going to represent this client, your duty as an advocate remains

the same regardless of whether the allegations are true. You need to develop the evidence and present your case in an ethical manner. Now would probably be a good time to review the newly revised Rules of Professional Conduct as to what your duties are and what they are not.

If your client is, in fact, a perpetrator, you will need to guide him into appropriate counseling and treatment in order to be able to demonstrate to the court whether he poses any risk to the children. If he is a victim of a false allegation, you will need to work hard to prove a negative – something that is difficult to do.

### Is there a criminal charge pending?

The more important question is to ascertain whether criminal charges have been filed against your client. Depending on the allegations, there may be either misdemeanor or felony charges pending. This is important for you to know as your client has constitutional protections at stake in either case.

If there are criminal charges pending and if you do not handle criminal matters, then you should be advising your client to retain an experienced criminal defense attorney. If you know of no such attorney to whom you could refer your client, there are a number of possible resources that may be of help. For example, you could check out the Criminal Law Section site on the WSBA website, contact your local bar association to see if there is a local criminal bar, or contact the Washington Association of Criminal Defense Lawyers or visit their website.

You should also explain to your client that you and the criminal defense attorney need to be able to communicate in order to best represent the client's interests. This will probably require that your client execute a written authorization for counsel to communicate freely.

You should also instruct your client not to discuss the allegations with anyone other than his attorneys – not family members or friends or even counselors – until he is fully advised in his rights and has a complete understanding of the consequences of such communications.

### Temporary protective orders vs. temporary restraining orders

A temporary order for protection is governed by RCW 26.50 and can be obtained by any person claiming to be a victim of domestic violence or who fears violence by a “family or household member.” It can be obtained in district, municipal, or superior court and can be effective for up to fourteen days. The other party is served with the petition, notice of hearing and temporary order with a hearing scheduled within fourteen days, at which time the court may deny or grant an order effective for up to one year or more. There is no cost to the petitioner in such matters.

*continued on next page*

*Dear Family Lawyer* from previous page

A temporary restraining order is governed by RCW 26.09 and 26.26. Married persons or persons with a child in common who are filing for divorce, legal separation, custody, or to determine parentage may obtain such an order and need not have experienced an assault or threat of violence. This type of order can do all that an order for protection does as well as ordering child support, maintenance, use of property, and can address child custody. It can only be obtained in superior court as a part of a family law action and can be filed at the time of a civil petition and signed by the judge *ex parte* until the preliminary hearing – often within fourteen days of entry. A filing fee of \$200 plus possible local surcharges may apply, but may also be waived for indigent persons. Additionally, the petitioner may have to bear the costs of service for such orders.

In both cases, a respondent violating the order can be arrested with possible criminal or contempt charges also being brought upon violations. In neither case can a petitioner authorize a respondent to violate the order. This is very important for your client to understand that even if the complaining party contacts him and says “I forgive you – come home,” your client must understand that until a judge signs an order of dismissal, the protective or restraining order is still in effect and it is no defense that the complaining party authorized his return. He will still go to jail!

If your client is charged criminally, the court may also enter a no contact order pursuant to RCW 10.99 with or without the protected party requesting such an order.

It may also be valuable to know that a third violation of a protective order may result in the respondent being charged with a felony!

**Understand domestic violence**

Do your research and learn as much as you can about domestic violence, the statutes in effect in the state of Washington, and learn from the experience of your local colleagues with regard to how the courts in your jurisdiction handle such allegations. Join the Family Law Section and take advantage of the wisdom of your peers through active list serve conversations, connection with experts in such matters, and read the valuable articles posted on the section website. The “Dear Family Lawyer” column in the June 2006 edition of *De Novo* gives a good definition of what constitutes domestic violence in this state as well as how certain social science professionals define the phenomena. In addition to the myths cited in that column, here is another to be aware of:

- *Myth: Only women are victims of domestic violence and only men are perpetrators.* Numerous studies have been conducted in the last twenty-five to thirty years that have repeatedly pointed out the fact that men and women commit violence at similar rates. These studies are not an attempt to minimize or question the magnitude or seriousness of violence inflicted on women by men. Instead, they look candidly at the possibility (and the empirical evidence) that men and women are roughly equal in their use of any form of physical violence. Abuse is abuse and, unfortunately, is not limited to one gender.

**Services available and planning for court**

It is unlikely that you have sufficient training and experience to assess whether the allegations made against your client are true – nor is that necessarily your role as his or her attorney. However, you can take some important precautions to protect not only your client but

also yourself. In dealing with a domestic violence case, victim safety must be paramount. The victim here may be your client, but it may also be the complaining spouse.

- *Refer Client to Appropriate Programs and Services.* If, in fact, your client is a victim, he may face great difficulty in locating services in your community because victim advocacy programs geared toward male victims are few and far between. Contact the Washington State Domestic Violence Hotline (1-800-562-6025 V/TTY) to find out if there is such a program in or near your community to which you could refer your client. If the client is a perpetrator and no criminal charges have been filed, start getting the client into counseling and evaluations/treatment to address the client’s behaviors so that the behaviors will not be repeated.
- *Work in Concert with the Criminal Defense Attorney.* If there are criminal charges pending, before making any referrals for your client to counseling or to evaluations of any kind, discuss such options with the criminal defense attorney to determine what programs might be helpful rather than harmful to the issues in the criminal action. If he or she agrees that it would be beneficial to the client, then actively seek out various types of professional therapeutic assistance including counseling, anger management or domestic violence evaluations, and similar programs. Then, make your referrals in concert with the criminal attorney and encourage the client to follow through. It is also important for the criminal attorney and your client to understand the ramifications of taking a plea bargain in criminal court on the family law matter, such as loss of custody or visitation with the children.
- *Read the Affidavit in Support of the Protective Order Carefully.* It is extremely important that you know the statutory requirements to sustain a request for a protective order. Look to see if the information provided in the affidavit is legally sufficient. You may want to consider filing a CR 65(b) motion to quash the order right away.
- *Explain the Protective Order in Detail.* Go through the protective order with your client, line by line. Make sure to emphasize to him or her that no matter how much he or she misses the children, violating the order will only make things worse. Explain the consequences including further criminal charges, jail, fines, treatment, loss of contact with the children for extended periods of time, and other relevant items. Explain that your client cannot drive by the house to check up on what is going on while the client is away.
- *Develop a Safety Plan.* Help your client plan for court appearances as well as daily life. Encourage your client to always come to court with an escort of some kind and to develop a similar pattern of not going places alone where the client could be accused of violating the protective order. Encourage the client to use an answering system on the telephone to avoid being trapped into contact by the alleged victim – a not uncommon practice. Consider your own safety as well. If your client is a perpetrator, he or she could turn on you. Make sure your office is a safe place for everyone. Schedule appointments at a time when there is staff nearby to either intervene or to call for help. Never, ever give out your home telephone number to the client.
- *Get a copy of the police report(s) and 911 call if they exist.* Usually these items can only be obtained by the client or by his criminal defense attorney. They can reveal important information about the allegations and the timing of the allegations which may be crucial to your case as well as that of the criminal attorney.

*continued on next page*

## Clark County Young Lawyers Annual Meeting \_\_\_\_\_ by Quinn H. Posner

Last month the Clark County Bar Association Young Lawyers Section (YLS) held its annual meeting and election of new officers. The YLS is proud to announce three new officers: Quinn Posner, president; Mila Chase, vice president; and Chris Boyd, secretary/treasurer. The YLS would like to give a special thanks to Chris Veley for his guidance and hard work throughout our first year. Without him, this organization would never have gotten off the ground.

The YLS is especially excited for the upcoming year. We are preparing to present many exciting and useful programs for our members, ranging from CLEs to social events. The cornerstone of our social calendar will again be the annual summer BBQ/softball outing welcoming all members of the Clark County Bar Association where the Young Lawyers are poised to repeat as champions over the more senior members of the bar. Further, one of our goals is to bring our members together with other young professionals in Clark County in order to foster relationships that will benefit clients and the community in the future. In sum, we anticipate a great year!

*Quinn H. Posner is an associate attorney at Duggan Schlotfeldt & Welch in Vancouver, WA. He can be reached at 360-699-1201, or qposner@dsw-law.com.*

## 2007 WYLD Pre-Law Student Leadership Conference – Volunteers Needed!

Attorney volunteers are needed for the 2007 WYLD Pre-Law Student Leadership Conference, scheduled for May 19, 2007, from 10:00 a.m. - 6:00 p.m. at the Yakima Convention Center in Yakima, Washington. The conference is free to high school students from around the state and is designed to encourage young people to attend college and consider a career in the legal profession. Attorneys from around the state are encouraged to attend. For information on how you can participate, please contact Amy O'Donnell, WYLD liaison, at [amy@wsba.org](mailto:amy@wsba.org).

### Dear Family Lawyer from previous page

- *Request a Guardian Ad Litem.* Children are always the victim of cases involving domestic violence regardless of whether the victim is mom or dad. Children learn from their parents' behavior including how to become a victim as well as a perpetrator. They need an advocate. If your client is truly the victim in this case, the children are going to need an advocate; thus, a dutiful guardian ad litem can help. But be careful, familiarize yourself with the pool of guardians ad litem in your jurisdiction and know how to assure that a fair-minded guardian ad litem is appointed rather than one who has a preconceived perception of domestic violence.
- *Overcome the Allegations with Evidence and Facts to the Contrary.* Know the history of each party, i.e., whether there have been similar allegations brought by either party in prior relationships and the outcome of them, whether there have been similar allegations brought against your client by prior partners and the outcome of them, whether your client has an alibi or witnesses that

## Notice: BarBri Class Action

The class action lawsuit against BarBri was recently settled for \$49 million. Anyone who purchased a BarBri course between 1997 and 2006 anywhere in the United States may be entitled to approximately \$125, provided the purchaser did not request an exemption from the law suit. The official website is [www.barbri-classaction.com/barbri/default.htm](http://www.barbri-classaction.com/barbri/default.htm).

While settlement information has yet to be posted, this is the official settlement website where all information will be posted as soon as details are available.

## WYLD Seeks Trial Advocacy Program Planning Committee Volunteers

The Trial Advocacy Program (TAP) is an intensive two-weekend program sponsored by the WYLD each fall. The first weekend is comprised of presentations and workshops by accomplished trial attorneys, judges and legal consultants on critical phases of trial preparation and practice, including depositions, discovery, voir dire, opening statements, etc. Mock jury trials will be held the second weekend. Trials teams prepare cases using assigned trial materials and the information learned during the workshops, then argue the case in a one-day trial before a judge and jury. Following the verdict, participants will receive constructive criticism and helpful insights from the judge and members of the jury.

The WYLD is seeking volunteers to participate on the TAP planning committee for the 2007 program. Volunteers will be responsible for acquiring speakers and assist with putting together the course materials. Committee members will also help to coordinate the mock trials.

If you are interested in participating, please contact the WYLD Liaison Amy O'Donnell at [amy@wsba.org](mailto:amy@wsba.org) or TAP Chair Stacey MacDonald at [stacey.macdonald@metrokc.gov](mailto:stacey.macdonald@metrokc.gov).

can help, and the parties' criminal histories. You should also know whether a polygraph would be useful, be ready to decide whether the victim's story rings true or false and why, and finally, analyze whether the victim's story is credible or filled with inconsistencies. Be prepared with answers to all of the foregoing questions and more when you walk into the courtroom.

### Final word

While there are many agencies to which female victims of domestic violence can turn, there are, unfortunately, very few from which male victims can likewise seek assistance. Most shelters do not offer space for males. Most advocacy programs do not offer groups for male victims. In fact, several domestic violence programs do not even recognize the possibility that a man could be a victim. If you are correct in your assessment that your client is the victim in this case, you may have a difficult time proving it. If you feel you are in over your head, you can always seek assistance from your peers.

## WSBA Leadership Institute Seeks Fellows for 2008

The Washington State Bar Association seeks applicants for the 2008 WSBA Leadership Institute. The Leadership Institute recognizes that many lawyers, especially those from diverse backgrounds and other underrepresented groups, have not been traditionally recruited for leadership positions or made aware of opportunities for leadership training, skill development, and professional growth available through the WSBA. Ten to 12 attorneys, in practice for three to 10 years, will be carefully selected for the fourth year of the program. The program will take place January to August 2008.

The program is a collaborative, experiential, and individualized curriculum that includes eight professional-development seminars. The WSBA Leadership Institute fellows will benefit from the latest trends in professional leadership development; exposure to the legislative and judicial systems; interaction with high-level state and local officials and judges; and opportunities to meet high-profile attorneys from the private and public sectors. The program requires a two-year commitment. Following the completion of the first year, fellows are expected to serve on a WSBA section, committee, or bar-related activity. Fellows will earn a minimum of 30 CLE credits, and the program is no charge to participants.

To be considered for the program, applicants must: (1) complete an application with cover letter, résumé, and three references; (2) be an active WSBA member; (3) have practiced law in a U.S. jurisdiction for three to 10 years (i.e., any attorney who has been admitted in a U.S. jurisdiction between January 1, 1998 and December 31, 2005, meets this criterion); (4) be nominated by his/her employer, or if self-employed, by another individual; and (5) provide evidence of interest in community and WSBA activities. Applications for the 2008 WSBA Leadership Institute will be available June 1, 2007. The deadline for applications for the 2008 Leadership Institute will be early September 2007. Application and nomination forms and instructions will be available on the WSBA website at [www.wsba.org/lawyers/leadership\\_institute.htm](http://www.wsba.org/lawyers/leadership_institute.htm). For further information, please contact Camille Campbell at [camillec@wsba.org](mailto:camillec@wsba.org) or 206-239-2116.

### President's Column from page 3

#### Answer key:

1. C
2. A
3. B
4. C
5. B
6. A
7. D
8. D
9. B
10. B

#### Guide:

- 10 correct: You are a total genius. Why are you wasting your time being an attorney?
- 7-9 correct: You're awfully smart.
- 4-6 correct: Not too bad.
- 1-3 correct: How did you get into law school?
- 0 correct: You're as smart as John.

## WYLD President-elect and Trustee Applications Sought

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

- Trustee, At-large\*
- Trustee, King County District
- Trustee, Snohomish County District
- Trustee, Southwest District
- Trustee, Spokane County District
- President-elect, Washington State

\* The WYLD Committee for Diversity encourages young lawyers to submit applications for the at-large trustee position. The at-large trustee position is for a person who, in the WYLD Board's discretion, has the experience and knowledge of the issues affecting those lawyers whose membership is or may have been historically underrepresented on the Board, or who represents some of the diverse elements of young lawyers of the State of Washington. Under-representation and diversity may be determined by the Board at the time of the election of any at-large trustee, considering factors such as race, gender, sexual orientation, disability, and age. For further information on the at-large trustee position, please refer to section 3.2 of the WYLD Bylaws, [www.wsba.org/lawyers/groups/wyld/wyldbylawsasofoct2006.pdf](http://www.wsba.org/lawyers/groups/wyld/wyldbylawsasofoct2006.pdf).

To be eligible for one of these positions, a candidate must be a member of the WYLD for at least the first two full years of the position.

If you are an eligible young lawyer interested in serving as a WYLD trustee, please send:

1. Cover letter describing yourself, your practice, and why you feel you are a strong candidate for the position;
2. Current résumé.  
to: Amy O'Donnell, WYLD Liaison  
Washington State Bar Association  
1325 Fourth Avenue, Suite 600  
Seattle, WA 98101  
[amy@wsba.org](mailto:amy@wsba.org)  
Fax: 206-727-8319

Applications must be received by 5:00 p.m. on May 1, 2007. To be considered, applications should include all of the above mentioned documents, and the documents should be submitted together in one complete packet.

For more information about the WYLD, please visit [www.wsba.org/lawyers/groups/wyld/default.htm](http://www.wsba.org/lawyers/groups/wyld/default.htm).

Elected trustees will serve a three-year term commencing on October 1, 2007.

## The BOG Report

by Jason T. Vail

The Washington State Bar Association Board of Governors (“the BOG”) met January 11 and 12, 2007, in Tumwater and Olympia. It was a very interesting meeting, covering a diverse range of subjects. Below are some of the highlights.

First, I requested – and received – a unanimous statement of support from the BOG for the Young Lawyers Division’s effort to secure a 2008 ABA Young Lawyers Division conference in Seattle. This effort is being headed by WYLD President-elect Mark O’Halloran. The statement of support from the BOG was included in the initial application materials sent to the ABA. Stay tuned to future issues of *De Novo* for opportunities to get involved in this project.

The BOG then turned to several pressing issues. The first concerned RPC 1.15A, the rule covering the safeguarding of client property. In 2006 the Washington Supreme Court approved this rule that, among other things, requires attorneys holding monetary and non-monetary property belonging to a client, including original legal documents, to provide that client with an accounting of that property on a minimum annual basis. As it was explained to the BOG by the WSBA Professional Responsibility Counsel and Chief Disciplinary Counsel, the primary motivation behind an annual accounting for legal documents was to address the problem of “orphaned wills”: original wills that turn up when a lawyer dies or abandons his or her practice. We were advised that it is a routine issue for WSBA, as these wills frequently later turn up on the Bar Association’s doorstep, requiring some form of disposition that will protect the will makers’ rights. By requiring an annual accounting from attorneys holding wills to be sent their clients, it was believed this approach would help solve the orphaned will problem because clients would be reminded of the will location and could take steps to obtain it if necessary.

We then heard from representatives from the Real Property, Probate and Trust (“RPPT”) Section. These attorneys strenuously objected to the annual accounting requirement, claiming it would be costly and cumbersome, especially for attorneys already holding numerous wills for clients. The RPPT Section urged us to submit a revised version of RPC 1.15A to the Supreme Court that would, while retaining annual accounting for client funds, remove the reporting requirement for non-monetary client property like wills.

Though I was sympathetic to the RPPT Section’s concerns about the burden on practicing attorneys, I objected to its proposal on two grounds. First, I was persuaded that orphaned wills were a problem requiring resolution, though I was not particularly convinced that RPC 1.15A as formulated was an effective means to accomplish this. Second, I was troubled by the fact that this issue was being raised now, long after the formal rulemaking and public comment period had closed. I did not want our actions perceived as an attempt to accommodate an “end run” around the established rulemaking process. Though the BOG ultimately approved the RPPT Section’s recommendations, I understand that my concerns (shared by others on the Board) will be communicated to the Supreme Court along with the proposed amendment.

The next issue taken up was no less contentious. At our prior December meeting we decided to sponsor state legislation this year that would increase the amount under Washington’s Homestead Exemption statute, RCW 6.13.030, from \$40,000 to \$125,000. The recommendation from the Creditor-Debtor Section had been to sponsor an increase to \$100,000, but following some discussion we decided to go further and reached a figure of \$125,000. Consequently we heard from

a number of members of the Creditor-Debtor Section, as well as several bankruptcy court trustees, who objected to our actions.

I am quite familiar with the application of the Homestead Exemption from my own practice and I did some research on the issue prior to the meeting. It was very apparent to me that the current exemption of \$40,000 in today’s housing market was wholly insufficient to meet the basic, historical purposes of such an exemption, and I was unpersuaded by the arguments in opposition to an increase in the exemption amount. However, I was bothered by accusations made regarding the internal process undertaken within the Section when reaching its recommendation to the BOG. I was concerned that such dissension might be exacerbated by the BOG’s independent action to go beyond the Section’s recommendation (especially in light of questions whether the original recommendation accurately reflected the Section’s position), thereby possibly undermining the bill and affecting its success in the legislature. I proposed that we change course and sponsor only the amount that was originally put to us in an effort to quell some of the procedural concerns, but this view was not shared by a majority on the Board. Ultimately it was determined that the bill will move forward with the \$125,000 figure.

These two issues alone consumed much of our meeting time. We also handled a number of other matters, and these are reflected in the BOG meeting minutes on the WSBA website. We also had the opportunity to meet with several members of the Washington Supreme Court in the Temple of Justice to have a dialogue on matters currently facing both the Bar and the Court. This meeting is held annually, and it was a fascinating discussion. I will look forward to doing it again next year.

In closing, I want to mention one additional item that will be before the Board at its April 13–14 meeting in Kelso. The Death Penalty Subcommittee of the WSBA Committee on Public Defense has issued a final report after its extensive study and analysis of the use of the death penalty in Washington. This report reaches a number of conclusions and makes several recommendations for further study and action, and the subcommittee is seeking endorsement by the Board of these conclusions and recommendations. I believe the report is generally uncontroversial; it does not, for example, make any judgments about the merits of the death penalty system itself one way or another. Thus, I intend to vote to endorse the report and the continuing work of the subcommittee. However, I am interested in hearing your views on this important report. You can read all of the materials at [www.wsba.org/lawyers/groups/committeeonpublicdefense.htm](http://www.wsba.org/lawyers/groups/committeeonpublicdefense.htm), and you can reach me at the contact information below. I want to hear what you think.

*Jason T. Vail is the WYLD governor on the WSBA Board of Governors. His regular reports on the BOG can be found online at “The BOG Blog,” [wsbabogblog.blogspot.com](http://wsbabogblog.blogspot.com). He can be reached at 206-464-1519 or [wylid\\_governor@mac.com](mailto:wylid_governor@mac.com).*

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**De Novo Mission Statement**

*De Novo* is published for the young lawyers of the Washington State Bar Association. Its general mission is to provide a forum for the exchange of ideas, information and commentary, and to encourage discussion amongst the readership regarding the broad experience of young lawyers. *De Novo* additionally serves as a vehicle to facilitate the dissemination of information regarding member services, public service, programs, and activities of the Young Lawyers Division.

Readers are invited to submit correspondence and articles. They may be sent via e-mail to [denovo@wsba.org](mailto:denovo@wsba.org). By submitting articles, the author licenses *De Novo* to publish and permit reprints of the author's article at the sole discretion of the editor. The editor reserves the right to edit articles and correspondence as deemed appropriate.

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***Washington's Alternate Path to the Bar: APR 6***  
*from page 1*

Unfortunately, clerks admitted in Washington find themselves foreclosed from many professional opportunities simply because they lack a law degree. A quick scan of available attorney positions with the federal government reveals that a JD, usually from an ABA-accredited law school, is a standard threshold requirement. The same is true for a number of Washington public entities, including the offices of the Kent City Attorney, the Washington State Senate, and the Spokane County Public Defender. A former clerk can be admitted to practice before federal trial and appellate courts, including the US Supreme Court, but none of the states with which Washington has reciprocity arrangements will admit a clerk. Only in Vermont is it theoretically possible for a clerk, after five years of practice, to be admitted without examination. A clerk cannot even sit for the bar exam in the vast majority of states, no matter how long she or he has practiced.

For the right candidate, the Rule 6 Law Clerk Program is an excellent way to prepare for a career as a lawyer. It is designed to, and does, produce well-trained, capable attorneys with extensive practical experience already under their belts by the time they are sworn in to the bar. Perhaps as word of Washington's Rule 6 Program and its successes spreads, the artificial barriers limiting clerks' career choices will be reduced or even eliminated.

*Marjorie A. Walter is in the fourth year of the Rule 6 Program. She is studying and working with Mike Kipling at Kipling Law Group, PLLC. She can be contacted at 206-545-0347.*

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***Book Review*** *from page 5*

For all it offers, *Active Liberty's* brevity occasionally leads to disappointments. Breyer's historical connection between active liberty principles and the nation's founding does not fully explore tensions between the Federalists and Anti-Federalists. Perhaps in an attempt to avoid undue controversy, Breyer neglects to demonstrate how his active liberty approach would function when applied to reproductive rights or the Court's use of foreign sources of law. Although he provides a useful understanding regarding the practical difficulties that judges face in deciphering constitutional and statutory disputes, Breyer does not tell us precisely how text becomes undeniably ambiguous or where legislative purposes can be found. Breyer's "reasonable member of Congress" standard also fails to address the converging roles that circumstance, interest groups, and partisan allegiance play in the legislative process. Would a "reasonable member" of the 109<sup>th</sup> Congress differ from a "reasonable member" of the 110<sup>th</sup> Congress? If not, why? Last, Breyer does not explain how active liberty's focus on consequences can or should be distinguished from mere prediction or well-studied experience.

Although *Active Liberty* often raises more questions than it answers, this potential shortcoming stands apart as the book's greatest contribution. For young lawyers who came of age during the Warren, Burger, and Rehnquist eras, *Active Liberty* offers an opportunity to collectively turn the page. Without malice or condescension, Breyer forces the reader to think critically and challenge assumptions. He also implicitly warns us that rigid paradigms of the past will not work to resolve emerging legal complexities in the 21<sup>st</sup> century. For all concerned with direction of the country, the Court, and the law, these reasons alone are why *Active Liberty* is worth your time, effort, and attention.

*Sean T. McLaughlin can be reached at [sean\\_mc@hotmail.com](mailto:sean_mc@hotmail.com).*

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