

# FEDERAL BAR ASSOCIATION

of the Western District of Washington

# NEWS NEWS NEWS NEWS

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**FEDERAL BAR ASSOCIATION CELEBRATES  
TWENTY-FIVE YEARS OF SERVICE**

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## PRESIDENT'S MESSAGE

### ABOUT SERVICE

**F**all is my favorite season. At no other time of the year is the imminence of change so obvious. Like the changing of the seasons, I realize that my term as president of this fine organization is coming to an end. It is time for a bit of reflection about what we have been and what we can become.

I could have devoted this entire article to a report about what the Federal Bar Association of the Western District of Washington and all its lawyers have accomplished this year. Had I done so, I would have discussed a number of things at length, including the creation of new committees in important areas of federal practice (the Criminal Law Committee, the Intellectual Property Committee and the Bar Liaison position); the completion of a two-year study by the Federal Rules Task Force regarding implementation of the federal Civil Rules in this District; the efforts of a task force that is working to ensure the availability of justice to economically disadvantaged litigants; the implementation of an outreach program to non-King County lawyers with a view toward expanding our membership and services; the discussions that have occurred between our Court Services Liaison and the court and clerk's office concerning the new federal courthouse; the establishment of a scholarship program in honor of Judge William L. Dwyer; the ADR Committee's work in assisting the clerk's office and court in administering CR 39.1; the Pro Bono Committee lawyers' substantial dedication of time to representation of indigent litigants; and the active work of our other committees through CLEs and important programs. But that discussion would have filled an entire article—and a lengthy one at that. The purpose of this report is not to tell you in a lawyer-like

way about all that has been accomplished, but rather to share with you some of my thoughts about good lawyers.

We experience a lot of negatives in the practice of law. The pressure for billable hours, bad lawyer jokes, law firm politics and discovery motions are not calculated to improve our level of career satisfaction. Amidst all of this it sometimes is easy to forget what a grand opportunity we have as lawyers. Each day we are able to do something meaningful. Even at its driest, most commercial moments the practice of law allows us to help provide a process of representation, dispute resolution and access to justice that is vital to our society. With our license to practice comes a power that we must always use properly. We can never take that power for granted, or lose perspective regarding our obligation to promote access to justice. We must remember that it is our clients, not us, who are most important, and that but for them we would not have the opportunities that we have.

I have been reminded of all of these things during the past year by the many lawyers who dedicate their time selflessly to the community and to improving the quality of the practice of law in the Western District of Washington. These lawyers all share something in common: they expect to “give back” to their profession and community without



personal recognition or reward. Indeed, most of the very same lawyers who dedicate so much of their time to bar association activities do so in addition to, not in lieu of, their own busy law practices.

Working with these lawyers in our association has been an inspiration. It has reminded me, after almost thirty years of practice, of why I became a lawyer. It has given me a renewed view of professionalism and made me recall the importance of what we do for our community. It has made me keenly aware of the concept of service within our profession. I have appreciated the opportunity to have been part of this, and know that the Federal Bar Association of the Western District of Washington is in great hands as it heads into the future. There is much to do, but there are fine lawyers to do it. It has been my privilege to have worked with a number of them.

Service provides its own reward. It revitalizes us and, in some fundamental way, helps us remember why we decided to practice law in the first place. It provides us with the chance to work with great people. It reminds us that what we do is important. Thank you for the opportunity to remember that.

*James A. Smith, Jr.*

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On the cover: (l-r) (seated) Treasurer Scott E. Collins, President James A. Smith, Jr., Vice-President Kevin D. Swan; (back row) Past President and Website/Communications Committee Co-Chair Anthony L. Rafel, Ethics & Practice Committee Co-Chair William J. Bender, CLE Committee Co-Chair Andrew Salter, Court Services Liaison Committee Chair Lish Whitson, Criminal Law Committee Co-Chair Linda Severin, Trustee John S. Congalton, Trustee and Criminal Law Committee Co-Chair Dan Dubitzky, Trustee and Ninth Circuit Lawyer Representative Karen F. Jones, Admiralty Committee Chair James R. Woeppel, CLE Committee Co-Chair and Ninth Circuit Lawyer Representative Todd D. True.

The Federal Bar Association News is a semi-annual publication of the Federal Bar Association of the Western District of Washington. Comments and proposed articles should be addressed to:

Anthony L. Rafel  
Riddell Williams P.S.  
1001 Fourth Avenue Plaza, Suite 4500  
Seattle, WA 98154-1065  
(206) 624-3600

## FEDERAL BAR ASSOCIATION CELEBRATES TWENTY-FIVE YEARS OF SERVICE

*By Kevin Swan  
Vice-President*

**L**egend has it that the Federal Bar Association of the Western District of Washington originated almost 25 years ago in a humble duck blind in a misty spot by the eastern bank of the Columbia River. Actually, that's not a legend, according to the Hon. Walter McGovern, who was there when it happened.

### **BAR ASSOCIATIONS AND DUCK HUNTING**

It seems that Judge McGovern and Seattle lawyer Bill Ferguson were sitting in a duck blind near Vantage, Washington, when Judge McGovern mentioned something that had been on his mind for some time. His experience as a judge in both state and federal courts had made him acutely aware of the significant differences that can exist between state and federal practice. He told Ferguson that he thought a federally-oriented bar association should be created in Western Washington. Ferguson said he thought that was a great idea. In fact, he was so taken by the suggestion that he set his shotgun down and, according to Judge McGovern, even allowed some ducks to fly by overhead while the two men talked about what such an association might look like. That night, Ferguson and Judge McGovern discussed the idea with Al Malanca, who was also along on the trip.

From there the idea of a local federal bar association spread to other lawyers who did a great deal of work in the federal courts. According to Judge McGovern, one of those lawyers was

future District Court Judge William Dwyer, who took the lead in working with the Washington State Bar Association to make the new Federal Bar Association's birth and development a complementary venture. Judge Dwyer's efforts established a pattern of cooperation between the Federal Bar Association and its state and other counterparts that continues to this day.

It was not long before Ferguson, Malanca, Dwyer, and a host of others were signing incorporation papers. The Federal Bar Association of the Western District of Washington officially came into being on December 7, 1977.

### **25 YEARS—ALREADY?**

Almost a quarter century has passed since the Association was formed. To some, this might be a cause for self-deprecating dismay at the rapidity of time's passage. (Upon being reminded that the Association was approaching its silver anniversary, one charter member remarked that this "really makes [him] feel old.") Still, we should not hesitate to review and appreciate the Association's accomplishments, and look ahead to where the Association can go from here. The good news for many

of you reading this article is that you were able to contribute to and witness those accomplishments. And the good news for everyone reading this article is that the Association is strong and vital, and offers many opportunities for participation in its future endeavors.

### **A QUARTER CENTURY OF SERVICE**

During its first several years of existence, the Association coalesced around the ideas that had led to its founding—service to the bench and bar, including the provision of assistance to lawyers practicing in federal court. It did not take the Association long to begin contributing significantly to the local federal judicial system.

Among the Association's most meaningful contributions has been its support for the Western District's alternative dispute resolution program. That support found its focus in Local Rule 39.1, which made mediation and other ADR mechanisms a routine part of federal litigation. Implemented by the judges of the Western District in 1979 as an emergency backlog mechanism, Rule 39.1 was a response to caseloads that had risen to about 500 cases per judge at the time the Rule was adopted, and that would have risen far higher without the rule.

The Association and its members have played an important role in making Rule 39.1 work. In 1995, for example, the Association's ADR Task Force published a report presenting the results of an exhaustive study of Rule 39.1 and ADR efforts in the local federal courts. That study resulted in important changes to the rule and to mediation practice in the Western District. The Association is now charged with certifying mediators for participation in the Rule 39.1 program, and assisting the courts in a

number of other ways in the maintenance and promotion of ADR.

Although the Western District reportedly has one of the largest caseloads per judge of any district in the nation, it is among the top districts in terms of how quickly cases are brought to disposition. Rule 39.1's mediation-based system has been so successful in helping to expedite the resolution of cases that it has been used as a model for similar programs in a number of other districts. The Association and its members can be proud of the contribution they have made to this important work.

Other judicial initiatives have received similar levels of support from the Association and its members. For example, Association members have assisted the Western District's Pro Bono Panel—which screens civil rights cases and staffs them with volunteer attorneys—by sitting on the screening panel and acting as pro bono counsel. The Association's support for the Pro Bono Panel's important work has helped ensure that civil rights litigants continue to receive meaningful access to the courts.

Throughout its first 25 years the Association has contributed to the bench, the bar, and the public in many other ways, including:

- Hosting countless CLEs, which have addressed such subjects as federal practice, ethics, criminal law, technology in the courtroom, appellate law, admiralty law, and myriad bankruptcy issues.
- Recognizing the accomplishments of judges, lawyers, and members of the public. One vehicle for that recognition has been the Association's Service Award,

which was first given to Tony Savage in 1986 and was most recently given posthumously to Tom Wales. The Association has also hosted receptions for judicial investitures, including a reception held in 1981 for Judge Coughenour. Most recently, the Association sponsored a tree-planting ceremony to honor Judge Betty Fletcher.

- Gathering and providing input concerning revisions to the local rules.
- Offering screening and input to United States Senators regarding the selection of proposed judicial nominees.
- Working on other issues impacting the bench and bar, including the renovation of the Tacoma Union Station to serve as the U.S. Courthouse in Tacoma, and the design and construction the new U.S. Courthouse in Seattle.

- Organizing a string of very successful Annual Dinners, the nineteenth of which is set for this December 4, 2002, at the Four Seasons Olympic Hotel.

### **A BRIGHT FUTURE BECAUSE OF OUR MEMBERS**

The Association has thrived for 25 years because of the commitment and ongoing involvement of its members. We will continue the efforts of our ADR Committee and Pro Bono Panel, and will carry on our other important ongoing endeavors. We are also undertaking a number of newer projects, including formation of a task force to explore the availability of justice for the poor in the Western District, and implementation of an outreach program to keep the Association vital by expanding its membership outside King County.

For those of you who have been with the Association since its inception, for those of you who only recently joined, and for those who will join us in the



Kevin Swan, Jim Smith and Scott Collins

*Continued on page 12*

## FEDERAL BAR ASSOCIATION OF THE WESTERN DISTRICT OF WASHINGTON ADOPTS CREED OF PROFESSIONALISM

By William J. Bender  
Co-Chair, Ethics and Practice Committee

At its July 2002 Quarterly Meeting, the Federal Bar Association of the Western District of Washington adopted the Washington State Bar Association Creed of Professionalism. The Creed states:

### WASHINGTON STATE BAR ASSOCIATION CREED OF PROFESSIONALISM

*As a proud member of the legal profession practicing in the state of Washington, I endorse the following principles of civil professional conduct, intended to inspire and guide lawyers in the practice of law:*

- In my dealings with lawyers, parties, witnesses, members of the bench, and court staff, I will be civil and courteous and guided by fundamental tenets of integrity and fairness.*
- My word is my bond in my dealings with the court, with fellow counsel and with others.*
- I will endeavor to resolve differences through cooperation and negotiation, giving due consideration to alternative dispute resolution.*
- I will honor appointments, commitments and case schedules, and be timely in all my communications.*
- I will design the timing, manner of service, and scheduling of hearings only for proper*

*purposes, and never for the objective of oppressing or inconveniencing my opponent.*

- I will conduct myself professionally during depositions, negotiations and any other interaction with opposing counsel as if I were in the presence of a judge.*
- I will be forthright and honest in my dealings with the court, opposing counsel and others.*
- I will be respectful of the court, the legal profession and the litigation process in my attire and in my demeanor.*
- As an officer of the court, as an advocate and as a lawyer, I will uphold the honor and dignity of the court and of the profession of law. I will strive always to instill and encourage a respectful attitude toward the courts, the litigation process and the legal profession.*

The Board of Governors of the Washington State Bar Association adopted the Creed on July 27, 2001 after protracted drafting and debate. Since its adoption by the WSBA, the Creed has been accepted and endorsed by

several county and specialty bar associations, and by attorneys and judges throughout the State.

The Creed was presented to our Association by Harry McCarthy, who has been an active member of the Association and serves on the Ethics and Practice Committee. Harry has also served as Chairperson of the WSBA Professionalism Committee. He was instrumental in shepherding the Creed through the drafting and review process at the WSBA. Harry deserves the Association's thanks for his dedicated work in bringing the Creed to fruition.

The Creed is not intended to supplant or modify the Washington Rules of Professional Conduct. Nor was it intended that the Creed be cited as authority or precedent in any attorney disciplinary proceeding. The intent of the Creed is to elevate and enhance the level of professionalism in the practice.

Promoting and enhancing professionalism is one of the Federal Bar Association's most important goals. Many of our active federal court practitioners believe that adherence to the principals contained in the Creed will do far more to increase the degree of professionalism in the practice of law than any past or future changes to the rules of practice.

The officers, trustees, and committee chairs of the Federal Bar Association recommend the adoption and promotion of the Washington State Bar Association Creed of Professionalism by all of our Members, by their law firms, and by the other professional organizations to which our members belong.

## THE CONSUMMATE JUDGE: BEST WISHES TO U.S. MAGISTRATE JUDGE JOHN L. WEINBERG ON HIS RETIREMENT

By Duncan Manville

**W**e get a bit of rain here in the Pacific Northwest. Author and LaConner resident Tom Robbins reportedly wants his epitaph to read, “It rained on his parade and he was glad!” It was raining when Seattle founder Arthur Denny landed at Alki Point in 1851. Denny had this to say about the experience:

“We were landed in the Exact’s boat when the tide was well out. . . . [T]he women and children . . . crawled into the brush, made a fire, and spread a cloth to shelter them from the rain. . . . [I]t dawn[ed] upon me that I had made a desperate venture. . . . I had brought my family from a good home, surrounded by comforts and luxuries and landed them in a wilderness. . . .”

It was also raining when John Weinberg and his wife Sarah reached the comparative wilderness of Seattle in the fall of 1966 with their baby daughter Ruth and cat Tanya in tow. John had no job lined up and no ties to the local community. He and Sarah had simply decided to move west from Chicago and had picked Seattle over Portland, San Francisco, and Denver. They had made their long trip in a Volkswagen Squareback—scarcely speedier than a horse-drawn wagon, and not much more comfortable. (I speak from personal experience: my parents owned a Squareback in the early 1970’s.) Judge Weinberg recalls thinking, “What in the world are we doing here?”

At least the Weinbergs could quickly put a roof over their heads. They

checked into a motel on Aurora Avenue, and the next morning John and Sarah went out job- and house-hunting, respectively. Thirty-five years later, on the eve of his retirement from the federal bench, Judge Weinberg sat down with me to reflect on the path that he has taken since embarking on that initial Seattle job search.

The young John Weinberg was a recent law-school graduate (University of Chicago, JD 1965), fresh off judicial clerkships with Judges Henry L. Burman of the Illinois Court of Appeals and Walter V. Schaefer of the Illinois Supreme Court. Despite his lack of connections to the Seattle community, it did not take him long to secure a position as a law clerk for Judge (later Chief Judge) William T. Beeks of the U.S. District Court for the Western District of Washington. Meanwhile Sarah found a house, and the family settled into their new (and somewhat damper) life.

Judge Weinberg calls clerking for Judge Beeks “probably the smartest thing I ever did,” because it gave him “a chance to see the lay of the land in terms of the law firms in town,” and



provided him with an unimpeachable reference. It also placed him “in the trenches every day. . . . It was lawyers, it was jurors, it was defendants, it was civil cases, it was criminal cases, all the excitement and hurly-burly of the trial court.” It was, in short, a far cry from the ivory tower experience of his earlier clerkships.

After completing his clerkship for Judge Beeks, John Weinberg signed on as a litigation associate with Holman, Marion, Perkins, Coie, & Stone (now Perkins Coie). Among the firm’s clients was the American League. In 1969, Seattle was awarded its first Major League Baseball franchise, the Seattle Pilots (official team song: “Go, go you pilots!”). The Pilots were plagued by financial troubles and drew a paltry 677,944 fans to Sick’s Stadium that year (by contrast, over 3.5 million fans flocked to Safeco Field in 2002). In 1970 the Pilots skipped town, moving to Minneapolis to be reincarnated as the Milwaukee Brewers.

The Pilots’ precipitous departure spawned a \$32 million lawsuit filed

in 1970 by the City of Seattle, King County, and the State of Washington against the American League, the Pilots and their concessionaire. The plaintiffs, represented by Seattle attorneys William Dwyer and Jerry McNaul, argued that the American League had sponsored the City's financial commitments made as a condition of being awarded the Pilots franchise, then deprived the City of the franchise for which the commitments had been made. The lawsuit was not resolved until 1976, when the League offered to give Seattle a new baseball team. That team was, of course, the Mariners. Judge Weinberg remains both a passionate baseball fan (among the objects on his desk are an Ichiro bobblehead and a baseball that he caught during a Mariners spring training game); and an admirer of the late Judge Dwyer, whom Judge Weinberg considered a good friend and a role model. "You see a lot of traits in different judges and wonderful traits that you want to copy," Judge Weinberg says. "He had all of them."

After several years working as an associate at Perkins, Judge Weinberg came to understand that his "temperament was better suited to hearing both sides of the case and doing the right thing, as opposed to being a hired gun." Around that time he learned of an opening for a new U.S. Magistrate position in Seattle (U.S. Magistrate Judges were known as U.S. Magistrates until the Judicial Improvements Act of 1990). He applied for the position, interviewed with the U.S. District Court Judges of the Western District (most of whom he knew from his days as a clerk), and was

appointed on August 9, 1973.

In this and all other districts today, U.S. Magistrate Judges are nominated by a panel before selection by the court through a formal screening process. According to Judge Weinberg, that merit-based selection procedure has helped ensure that the office of the U.S. Magistrate Judge is staffed nationwide by "an outstanding corps of people with wonderful credentials," including



former state court judges, U.S. Attorneys, Federal Public Defenders, and law clerks. Judge Weinberg readily acknowledges that "the system now is much better" than it was in 1973. "You know, I probably wouldn't have been appointed under the new system. That's the way it is."

Judge Weinberg distinctly remembers his first day of work as a U.S. Magistrate. At the time of his appointment, Seattle had one part-time magistrate who had hoped to be elevated to the full-time position. When that did not happen, he promptly resigned. Judge Weinberg agreed to fill in as a part-time magistrate until his full-time appointment became official. His first day on the job, he was called to the courthouse to set bail for an associate of Howard Hughes who was charged with tax evasion. The defendant had fled to Canada, but had later been arrested by the FBI after putting in his fishing boat at Point Roberts. Judge Weinberg had no experience at all in criminal cases. At the bail hearing, he was told by defense counsel that the defendant could never raise the large bail amount proposed by the government. "And so I did what I thought was the conservative thing and set \$100,000 bail for the man," says Judge Weinberg. "And at that he and his lawyer walked across the hall and they posted \$100,000 in cash, just peeled off the bills and gave them to the clerk, and they disappeared back to Canada. So that was my first experience, first day on the job. A good learning experience."

Judge Weinberg might have been green, but he learned quickly and soon developed into one of this District's most outstanding jurists. He has issued significant rulings in cases ranging from a lengthy dispute between the State of Washington and various Native American tribes over fishing rights, to an action initiated by a national waste disposal company challenging the

constitutionality of a county ordinance that prohibited disposal within the county of medical wastes generated outside the county. In July 2001, acting on behalf of Judge Dwyer, Judge Weinberg presided over hearings held to determine whether the State of Washington had complied with a court order to improve mental health treatment at the McNeil Island Special Commitment Center. He issued a detailed report recommending that contempt fines not be imposed on the State, but agreeing with a court-appointed expert that additional halfway houses off McNeil Island were needed.

Judge Weinberg has also been an active presence on the national stage. From 1982 to 1983, he served as President of the Federal Magistrate Judges Association. He also literally wrote the book on federal bail law. After Congress enacted a new bail statute in 1984, the Federal Judicial Center asked Judge Weinberg to teach part of a seminar for U.S. Magistrate Judges on the changes wrought by the new legislation. He prepared a presentation and course materials which were so well-received that he was asked to replicate the presentation at a number of seminars. Eventually he reformatted the course materials for publication in book form. His *Federal Bail and Detention Handbook*, which he continues to update regularly, has become the standard treatise on federal bail law.

Judge Weinberg has been a vocal and effective advocate for expansion of the responsibilities of the office of the U.S. Magistrate Judge, consistent with the limitations imposed by the U.S. Constitution. The duties of Magistrate Judges have changed dramatically since Congress created the office in 1968. Today, U.S. Magistrate Judges make

rulings on preliminary matters in criminal cases (including setting bail and taking felony pleas), hear misdemeanor criminal cases, handle prisoner petitions and Social Security cases, and try civil consent cases. (The duties of Magistrate Judges in this District were described more fully in an article that Judge Weinberg contributed to the fall 2001 issue of this publication.) Resolving civil cases without having to involve a district court judge, Judge Weinberg believes, is the “highest and best use” of a Magistrate Judge’s time and expertise.

Judge Weinberg has received a number of awards over the years. The one he is most proud of is the Founders Award, the FMJA’s highest honor, with which Judge Weinberg was presented at the FMJA’s annual meeting in June 2002. In presenting Judge Weinberg with the award, Judge John Moulds of Sacramento had this to say about his colleague:

“The Association decided unanimously to repay an old debt this year. . . . John Weinberg is exemplary of the qualities that have made the Magistrate Judge system grow—he is intelligent and ethical. John Weinberg has served with distinction since 1973. While holding this position, in addition to his ordinary work, he has written and maintained the reference work we all use to help decide whether a newly arrested person should be released on bail or detained. He has also lectured for the Federal Judicial Center, served on the Judicial Improvements Committee of the United States Judicial Conference, served a term as president of this association, involved himself in the training of newly appointed judges, and hosted two national conventions of our association. All of this work has been done without any hint of self-promotion. In short, Judge Weinberg

has served his country and his colleagues with intelligence and humility.”

The judges of the Western District share those sentiments. According to Chief Judge Coughenour, “Judge Weinberg’s distinguished service to this Court has been matched only by his devoted service to the magistrate judges of the United States as President of the Magistrate Judges Association.” And Judge Barbara Jacobs Rothstein, a good friend of Judge Weinberg who, along with her husband, has traveled extensively with Judge Weinberg and his wife, calls her colleague “a great writer and a terrific judge all the way around. When you give Judge Weinberg a project, you always know you are going to get top-quality work. He has a mind like a steel trap, and is a repository of the Court’s institutional memory. We’ll miss him here.”

Although Judge Weinberg will be retiring next April from the office that he presently holds, he has no intention of retiring from public service. He would certainly agree with Bernard Mannes Baruch that “[a] man can’t retire his experience. He must use it. Experience achieves more with less energy and time.” Judge Weinberg’s plans include assembling a small group of veteran colleagues to collaborate on a set of online training materials for new Magistrate Judges. He views the preparation of those materials as “a way of giving back.”

Retirement will not be all work, however. Judge Weinberg’s wife Sarah, a pediatrician, will also be retiring, and the couple plans to travel, beginning with a trip to Australia in April 2003. Judge Weinberg will also be devoting more time to the piano, photography, bridge (in which he holds a Life Master rating), his children Ruth

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## REPORT ON THE 2002 NINTH CIRCUIT JUDICIAL CONFERENCE

SAN DIEGO, CALIFORNIA, JULY 15-18, 2002

By Michael Reiss

Pursuant to 28 U.S.C. § 333, the Ninth Circuit meets annually to “consider the business of the conference,” discuss the state of the conference, and gather for both educational and social functions. The conference is composed of the circuit, district, bankruptcy and magistrate judges, clerks of court, the U.S. attorneys and federal public defenders, the lawyer representatives selected by the bench and bar in each district, and honored guests who this past year included Supreme Court Justice John Paul Stevens and Solicitor General Theodore Olson. Including spouses and guests, there were about 700 people in attendance. US Attorney John McKay, Federal Public Defender Tom Hillier and FBA President Jim Smith attended the conference, along with lawyer representatives Rick Creatura, Merrilee MacLean, Michael Reiss, Val Tollefson, Todd True and Sheryl Willert.

### PROGRAM

The theme of this year’s Conference was “The New America: Borders and Beyond.” Chief Circuit Judge Mary Schroeder kicked off the Conference with a State-of-the-Circuit address. Judge Schroeder reported that 2001 was the Ninth Circuit’s busiest year ever, with new filings in the Court of Appeals topping 10,000 for the first time. The subsequent opening ceremony included a keynote address by Assistant Attorney General Viet Dinh; the presentation of awards to the winners of a high school essay contest on the topic of “What My American Citizenship Means to Me”; a Naturalization Ceremony for new citizens from more than 20 different countries; and a subtle handling of the Pledge of Allegiance by District Court Judge Michael Hogan, who served as this past year’s Conference Chair.

The Conference’s first General Session focused on national security and civil liberties. Circuit Judge Wallace Tashima and Los Angeles Police Commissioner Rose Ochi participated in a panel remembering through words, photographs and personal accounts some of the experiences of the more than 120,000 Japanese Americans who were interned during World War II. This low-key but moving presentation was followed by a stimulating and interactive panel discussion on the tension between National Security and Civil Liberties in the wake of the September 11 terrorist attacks. Superbly led by moderator Kathleen Sullivan, Dean of the Stanford Law School, the outstanding panel included former Secretary of State Warren Christopher; former Court of Appeals Judge, CIA and FBI Director William Webster; ACLU President

Nadine Strossen; Assistant Attorney General Viet Dinh; and historian Mary Dudziak.

Two other General Sessions proved equally interesting. One focused on “border issues.” It included a presentation on the Mexican immigrant experience by a documentary filmmaker; a session on immigration issues and policies; and a panel discussion of issues arising from the emergence of a “San Diego-Tijuana metropolitan region.” It seems that as a consequence of NAFTA’s liberalization of trade restrictions and the enormous growth of Southern California’s population and market, more televisions are now made in Tijuana than anywhere else in the world. Meanwhile the INS deals with nearly 5 million crossings a month at the Tijuana border. The second General Session presented an absolutely fascinating discussion of medical, legal and ethical issues involved in stem cell research and cloning (helpfully explaining the difference between therapeutic cloning used for research on the prevention and cure of diseases such as Parkinson’s, and reproductive cloning). The Conference also included two special sessions on wellness issues. Those sessions were skillfully-presented and well-received.

As has become the practice, the Conference concluded with the always interesting “Conversation with . . .”—this time with Associate Supreme Court Justice John Paul Stevens and Solicitor General Theodore Olson. In addition to the educational programs, the Conference included the usual round of business meetings and social events.

### RESOLUTIONS

The Conference took up five resolutions sponsored by the lawyer representatives from a number of the districts. Three

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## TASK FORCE STUDY INDICATES REVISIONS TO CIVIL RULES INEFFECTIVE

*By Carolyn Cairns  
Chair, Local Rules Committee*

**T**he Federal Rules Task Force recently completed a survey and a series of discussion groups exploring how attorneys practicing in our District view the changes to the Civil Rules and how those Rules are working.

After receiving a small number of responses to a survey sent out in 2001 to more than 900 attorneys in the Western District of Washington, the Task Force concluded that we would receive more reliable and in-depth information if we selected survey respondents rather than seeking anonymous input from hundreds of attorneys without knowing the degree to which each of the respondents practiced in federal court. Accordingly, the Task Force identified approximately 100 attorneys who practice regularly in the federal courts in several different areas of law and whom we felt would provide thoughtful responses to our questions. Of the 100 attorneys who were invited to participate, approximately 60 agreed to be members of one of five discussion groups convened between May and July, 2002. Four of these groups met in Seattle and one met in Tacoma.

The Task Force was particularly interested in the following issues:

- Whether the revised Civil Rules were reducing costs and delay in civil cases.
- Whether the lay down rules have made litigation more efficient.
- Whether the revised Civil Rules have resulted in increased case

management and reduced discovery abuses.

- Whether the revised Civil Rules have aided in the process of bringing on early resolution of potentially dispositive issues.
- Whether the revised Civil Rules have increased the potential for early referral to mediation or other ADR mechanisms.
- Whether there have been positive changes in the professionalism of opposing counsel since the revision of the Civil Rules.
- Whether there has been an increased use of magistrate judges to manage discovery and for settlement conferences.
- Whether counsel availed themselves of telephone conferences with the court to resolve discovery disputes.
- Whether the new Local Rules had changed our practices and if so, how.
- Participants' suggestions for improving the Civil Rules or the practice in this District.

The thoughtful and often spirited discussions among the members of the groups convened to address the foregoing issues led to a report that outlined majority and minority views and included some specific comments, but without attribution. The Task Force also provided a summary of its findings to the officers, trustees and committee chairs of the Federal Bar Association of the Western District of Washington.

The following general themes emerged:

1. The revisions to the Civil Rules have done little to reduce costs and delay in civil cases. In particular, the lay down rules have not reduced costs or delay, and many feel they have increased costs and delay.
2. The changes in the Civil Rules have done nothing to increase the degree of professionalism among attorneys or to decrease discovery abuses. Those attorneys who previously abused discovery continue to do so, and those who were previously cordial and cooperative continue to be.
3. Several attorneys reported feeling that the limitation on the number of depositions that parties may take has led to a significant increase in the number of Rule 30(b)(6) deposition taken.
4. Employment attorneys who represent plaintiffs feel that the ten-deposition limit is far more burdensome for plaintiffs than for defendants, since defendants generally have far greater access to management witnesses.
5. Many attorneys believe the number of videotaped depositions is increasing, in part because of a potential need to convince the court

that more time is needed for depositions. Most attorneys, however, have not found the seven-hour limitation to be a significant problem and they have been able to negotiate with opposing counsel for some flexibility. Employment attorneys are most likely to have trouble with a time limitation on depositions—at least as to one or two key depositions—because employment cases are highly fact-intensive.

6. Only one out of the sixty attorneys who commented on the question reported feeling that the revised Civil Rules make earlier mediation a more viable option; many feel that the lay down requirement delays the timing of mediation.
7. Many attorneys feel that some refinement and uniformity in the timing of scheduling orders would be helpful to practitioners.
8. Practitioners are pleased to see that a few types of motions are now on a seven-day schedule under our Local Rules, but many think this is just a “good start.” Other discussion-group participants stated that it would be helpful to get away from Friday-only filings.
9. There is a significant divergence of opinion on the use of magistrate judges for the handling of discovery issues prior to trial. Some attorneys feel that it is better to have the trial judge live with the case and get to know the issues and players prior to trial, while others feel that magistrate judges may be more willing to deal with discovery issues. Although many discussion-group participants commented that special masters can be particularly useful in resolving discovery

disputes, there was general agreement few cases justify the cost.

Other issues raised by the respondents to the Task Force’s survey and by the discussion-group participants include:

- Discovery of electronic data. This is a significant issue for practitioners, particularly in large commercial cases and employment cases. Those attorneys who had grappled with these issues reported feeling strongly that lack of substantive knowledge impedes the efficiency of discovery in this area.
- There was widespread agreement that pre-trial orders should be eliminated or streamlined, with the exception of exhibit and witness lists.
- All attorneys, and particularly attorneys who work outside downtown Seattle and Tacoma, want to be able to file and serve by electronic means or by fax.

The next step for the Task Force is to make proposals for changes in the Local Rules, forms, or standing orders to improve the handling of civil cases. The Task Force also identified electronic discovery as an area where a seminar would be particularly useful. The Annual Dinner/CLE Committee took up the topic, and on December 4, 2002 the Federal Bar Association will sponsor a CLE on “The Perils (And Pleasures) Of Electronic Discovery.” A registration form for that CLE and for the Federal Bar Association’s Annual Dinner is included in this issue of the News.

The members of the Federal Rules Task Force are Carolyn Cairns, Lish Whitson, Amanda Lee, Karen Jones, Michele Gammer, Stuart Dunwoody, Hugh Bangasser and Chris Youtz.

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## 25 Years of Service

*Continued from Page 5*

future, the Association offers many opportunities to contribute to its legacy of 25 years of service to the bench, the bar, and the public. Commencing or renewing that participation is as easy as joining any of the Association’s 15 committees and involving yourself in any project the committee is handling. The Association’s web site—<http://www.fba-wdwash.org/>—provides a list of committees and how to contact them.

As long as the Association’s members continue to come together and give of their energy and talent, this organization that originated as an idea kicked around by two friends sitting in a duck blind will continue to provide vital services to our community. And if someone tells us 25 years from now that we should feel old—they will, and we may—at least we will know that we played a role in carrying forward the Association’s of service.

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## Judge Weinberg

*Continued from Page 9*

and Ted, and his grandchildren—to whom he is “Jumpa John” (they have not quite gotten their mouths around “grandpa” yet). He might even go for a hike in the rain every now and then and reflect on how far he has come.

Judge Weinberg’s presence on the bench will be missed by the lawyers and judges of this District, and undoubtedly by his colleagues nationwide. The Federal Bar Association of the Western District of Washington extends its most profound thanks to Judge Weinberg for his outstanding record of service to our community, and wishes him well in his future endeavors.

## Judicial Conference

*Continued from Page 10*

resolutions passed easily with more than 90% pluralities: (1) a resolution expressing appreciation for the work of the Standing Committee on ADR in the Circuit and calling for continued interchange and the further development of educational materials, samples and reports; (2) a resolution encouraging the establishment of confidential and effective ways to identify and then help treat and hopefully rehabilitate attorneys and judges suffering from substance abuse or mental illness; and (3) a resolution supporting the full funding of the Criminal Justice Act.

Also passed by a healthy margin was a resolution recommending that the Ninth Circuit Judicial Council appoint a task force to study and report on videoconferencing practices throughout the Circuit with a view toward identifying potential opportunities to increase the use of videoconferencing. That resolution was, however, vigorously criticized by one Chief Judge from a Northwestern State, who spoke out against what he viewed as the diminishing importance of the trial itself and the increasing tendency to view live witnesses as dispensable.

Finally, a resolution sponsored by this District (generated by the success of the civil liberties topic at last spring's District Conference), which would have encouraged Article III judges to speak or write for a non-lawyer audience at least once a year on the topic of the role of the judiciary in maintaining our basic freedoms, was defeated.

There was a certain amount of dissatisfaction expressed over the resolution process in general—namely

the number of resolutions, their purportedly trivial nature, and the lack of time for a healthy discussion or debate on their merits. On the other hand, a number of resolutions adopted in the past—for example, the resolution that led to the creation of the Ninth Circuit's gender bias task force—have been widely acknowledged to have had significant impact. The resolution process may be streamlined in the coming years.



## GRAMMAR GREMLINS

### *PERIODS AND COMMAS WITH QUOTATION MARKS*

Many people have trouble trying to decide whether the period and comma go inside or outside quotation marks. And when they do make the placement, they are never really certain. In American usage, the rule is simple: Periods and commas are always placed inside the quotation marks.

This rule stands even when it seems more logical to place them outside, as in writing the title of a song or television show. It appears in this instance as if the quotation marks belong to the title and should, therefore, stay with the title. But the rule holds: Periods and commas are placed inside quotation marks—always.

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## NOTICE OF ANNUAL MEETING

The Federal Bar Association's annual meeting will be held at the Four Seasons Olympic Hotel in Seattle on December 4, 2002, from 5:15-6:15 p.m.. At the meeting, elections will be held and reports of the officers and committees will be delivered as requested by the President.

The following candidates have been nominated for Association offices:

**President:** Kevin Swan

**Vice-President:** Todd True

**Treasurer:** Steve Koh

**Secretary:** Beth Andrus

**Trustees:** Al Bentley and Paula Olson

## The Federal Bar Association of the Western District of Washington

Reply to: Federal Bar Association of the  
Western District of Washington  
P.O. Box 21006  
Seattle, Washington 98111-3006  
Telephone: (206) 624-9777  
Website: [www.fba-wdwash.org](http://www.fba-wdwash.org)

James A. Smith, Jr., President  
Kevin D. Swan, Vice-President  
Scott E. Collins, Treasurer  
Steve Y. Koh, Secretary  
Michele A. Gammer, Past President

### 2002 REGISTRATION FORM

Name: \_\_\_\_\_ WSBA #: \_\_\_\_\_

Firm/Office Name: \_\_\_\_\_

Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Telephone: \_\_\_\_\_ New Member? Check Here:

Facsimile: \_\_\_\_\_ New Address? Check Here:

**Dues:** (make checks payable to the Federal Bar Association of the Western District of Washington)

- Payment for 2002 Annual Dues Made Previously**
- \$50 Annual Dues Payment Enclosed** (regular members who have been admitted to any state bar association (or the bar association of the District of Columbia, Puerto Rico, or any United States territory) for at least 10 years)
- \$40 Annual Dues Payment Enclosed** (regular members who have been admitted to any state bar association (or the bar association of the District of Columbia, Puerto Rico, or any United States territory) for at least 2 years but less than 10 years)
- \$40 Annual Dues Payment Enclosed** (regular members who, regardless of their date of admission to a bar association, in their capacity as lawyers are (1) public officers or employees, or (2) employed by non-profit, public interest entities)
- \$0 Annual Dues Payment Enclosed** (regular members who have been admitted to any state bar association (or the bar association of the District of Columbia, Puerto Rico, or any United States territory) for less than two years)

**Committee(s) On Which You Wish To Serve (check all applicable):**

- |   |  |
|---|--|
| <input type="radio"/> Admiralty<br>Chair: James R. Woepfel (206-624-2650)   | <input type="radio"/> Criminal Law<br>Chairs: Dan Dubitzky (206-467-6709)<br>Linda C. Severin (206-662-9087)   |
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| <input type="radio"/> Appellate Practice<br>Chairs: Camden M. Hall (206-447-8951)<br>Michael B. King (206-223-7046)                                     | <input type="radio"/> Intellectual Property<br>Chair: Warren Rheume (206-447-0900)   |
| <input type="radio"/> Bankruptcy<br>Chairs: Tom McBride (206-892-3218)<br>Flint W. Murfitt (206-706-5599)   | <input type="radio"/> Local Rules<br>Chair: Carolyn Cairns (206-626-6000)  |
| <input type="radio"/> Continuing Legal Education<br>Chair: Todd D. True (206-343-7340)<br>Beth Andrus (206-623-6501)<br>Andrew H. Salter (206-622-8484) | <input type="radio"/> Membership<br>Chair: Donald M. Currie (206-553-1565)   |
| <input type="radio"/> Court Services Liaison<br>Chair: Lish Whitson (206-695-4380)  | <input type="radio"/> Pro Bono Panel<br>Chair: Val Hughes (206-583-8840)   |
|   | <input type="radio"/> Website/Communications<br>Chairs: Anthony L. Rafel (206-624-3600)<br>Allison S. Wallin (206-223-7094)                                    |

**Important Note:** Under the Association's bylaws, membership is open to everyone who is: (a) licensed to practice law by the Supreme Court of Washington and (b) a member in good standing of the Bar of the United States District Court for the Western District of Washington. By submitting this form to the Association, you confirm that you meet these criteria.

**IMPORT .EPS/.PDF FILE (REGISTRATION FORM)  
TO REPLACE THIS PAGE**

# FEDERAL BAR ASSOCIATION NEWS

## FEDERAL BAR ASSOCIATION of the Western District of Washington

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#### *Local Rules*

Carolyn Cairns

#### *Membership*

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#### *Website/Communications*

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Federal Bar Association of the  
Western District of Washington  
P.O. Box 21006  
Seattle, Washington 98111-3006

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