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# FEDERAL BAR ASSOCIATION

WESTERN DISTRICT OF WASHINGTON

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

**Christopher G. Emch**
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101-3299
206.447.8904
emchc@foster.com

**W. Adam Coady**
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101-3299
206.447.7253
coadw@foster.com

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# President's Message

*By Jennifer Wellman*

For over thirty-five years, the Court and countless federal practitioners—men and women alike—have been "leaning in,"[1] working together via the Federal Bar Association for the Western District of Washington to advance jurisprudence and promote and improve the administration of justice. It began in or around 1977, when Judge Walter McGovern and accomplished Seattle lawyers William Ferguson and Albert R. Malanca joined forces with leaders of the King County and Washington State Bar Associations (including the then-future Ninth Circuit Court of Appeals Judge Betty B. Fletcher and U.S. District Court Judge William L. Dwyer) to discuss the importance of creating a federal bar association.

On November 29, 1977, that discussion materialized when 38 well respected and accomplished federal practitioners signed the incorporation papers, naming Malanca, Ferguson, Robert Duggan, Irwin Schwartz and Alfred Schweppe its founding directors. The other founding members included the late Judge Dwyer, as well as Ronald Bland, Kelly Corr, Charles Davis, Michael Dundy, Laurence Finegold, Sharon Finegold, Edwin J. Friedman, Jo Anne Friedman, Thomas J. Greenan, Sally R. Gustafson, Dennis S. Harlow, Edward Hilpert, Jr., Gerald L. Hulscher, Christopher Kane, Kenneth Kanev, Keith Kessler, Philip Lucid, Peter Mair, Richard Manning, George Martin, Ronald McKinstry, Jerry R. McNaul, Claude M. Pearson, Llewelyn Pritchard, David Salentine, Ronald Schaps, C. David Shepard, Bradley B. Stam, Harold Vhugen, Robert Westinghouse, Michael Williamson, and Jay Henry Zulauf.

On December 7, 1977, the incorporation papers were filed and these distinguished men and women officially formed the FBA-WDWA. The objectives of the corporation were stated as follows:

> [T]o advance the science of jurisprudence; to promote and improve the administration of justice; to uphold high standards of competence, performance, and ethics for the federal judiciary and for attorneys appearing before U.S. District and Circuit Courts, legal departments and agencies of the United States; to work for sufficient and expeditious appointment of qualified judges to the federal courts; to encourage cordial and friendly relations among federal practitioners and the court; and to improve rules of practice, including grand jury procedures; to encourage development of alternative methods of resolving controversies and litigation; to encourage competent defense of indigents; to improve multi-district practice; to provide portraits and memorials in appropriate cases; and, to keep the federal court system responsive to the needs of the public.2

*Though originally implemented as an emergency relief mechanism, it became one of the country's earliest and most successful efforts to routinely incorporate mediation and other alternate dispute resolution options into the federal litigation process.*

Ever since, its members, Officers and Board of Trustees have coalesced around these objectives.

In the first few years the FBA-WDWA worked with the Court to resolve its overwhelming backlog of civil cases. Together, the FBA-WDWA and the federal judges devised a solution—an alternative dispute resolution program, which found its focus in Civil Rule 39.1. Though originally implemented as an emergency relief mechanism, it became one of the country's earliest and most successful efforts to routinely incorporate mediation and other alternate dispute resolution options into the federal litigation process. That effort continues today, spearheaded by ADR committee co-chairs, Michelle Gammer and Carolyn Cairns, who continue to maintain the high standards of the ADR program by certifying mediators for participation in the Rule 39.1 program.

The Court and the FBA-WDWA also continue to work together to encourage alternative methods of resolving

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*By Chief Judge Marsha J. Pechman*

## Welcoming Our Youngest Citizens

The Court has worked for many years to expand our outreach to the community, but we recently reached a new milestone. On June 21, the Western District of Washington held its first-ever welcoming ceremony for new citizen children.

Dozens of family members, classmates, and friends gathered in the Seattle courthouse with five children, ages 4 to 13, as they recited the pledge of allegiance and took the oath of citizenship in open court. The event began with the presentation of colors by the Kent American Legion Honor Guard, and included welcoming remarks about the importance of citizenship from U.S. Senator Patty Murray and U.S. Representative Jim McDermott.

This was different from the typical naturalization event. While most new citizens attend a formal naturalization ceremony, children under age 13 become citizens when their parents take the oath of citizenship, but are not included in any formal event. The Court decided to host a ceremony for these children after realizing that children currently had no way of commemorating this important event in their lives.

The bar played an important role in the event. Federal Bar Association President Jennifer Wellman and Chris Strawn of the Northwest Immigrant Rights Project introduced the formal motion for the Court to accept the candidates for citizenship. All the observers in the courtroom then joined in with the children to recite the oath, which was administered by Tammy Miller of U.S. Citizenship & Immigration Services.

The ceremony included various presentations about the meaning of American citizenship. Erin Stark, a fifth-grader from Bellevue's Enatai Elementary School read her poem, titled "What Would You Miss About Immigrants if They Didn't Come to America," which recently won a national writing contest. I had the opportunity to come down into the well of the courtroom, where I sat with the children and read an illustrated children's book called "American Wei," about a child who loses his tooth on the way to a naturalization ceremony.

*The joy of the children was evident on their faces, but the event also inspired the judges.*

The joy of the children was evident on their faces, but the event also inspired the judges. Seven of the Seattle judges were in attendance, and we each played a role in presenting certificates to the children. Judge Lasnik told me that the ceremony ranked among the most important events he has attended during his 15 years on the federal bench.

At a time when the Court faces sequestration and the challenge of doing more with less, this event was also particularly meaningful to Court staff. The event involved every part of the Court—the clerk's office, IT, the library, chambers staff, and others—and it reminded everyone of the importance of the work we do.

*Judge Pechman with two young participants.*

The Court plans to continue this important public outreach work. At a time when most schools no longer teach civics, this event provided an opportunity to show the community the Court is an open and welcoming place. Rather than simply being a place where punishment is meted out, we want the public to understand that the Court is a place where people can come and resolve their problems, or come and fulfill their civic responsibility to serve on a jury.

We hope to turn this into a regular event. The Court has already started planning the next ceremony in December, and we hope next year to also begin hosting the ceremonies at the Tacoma courthouse.

# Criminal Defendants in the Western District Able To DREAM

*By Ricardo S. Martinez, U.S. District Court Judge*

On August 9, 2012, representatives from the United States District Court for the Western District of Washington, the United States Attorney's Office, the Federal Public Defender's Office, and the office of United States Probation and Pretrial Services gathered together in the chambers of Chief District Judge Marsha J. Pechman to sign a historic document. This document, simply titled the Interagency Agreement, created a new program in our district formally known as the Drug Re-Entry Alternative Model (DREAM). The purpose of the DREAM program is to more effectively address offender substance abuse by providing the opportunity for qualified federal criminal defendants to participate in a comprehensive court monitored program that blends treatment and sanction alternatives to incarceration. This will create the greatest safety for the community, impact the most lives through rehabilitation and save taxpayer dollars in future offender costs. Modeled after hugely successful state drug court programs such as the one in King County Superior Court, DREAM is the first of its kind in the Western District of Washington and one of very few in the entire nation.

A popular misconception is that federal defendants face charges that are too serious for federal courts to consider alternatives to incarceration. In a February 2013 order, District Judge John Gleason from the Eastern District of New York corrects this misconception in his 35 page opinion replete with 94 footnotes citing official statistics. He writes:

> In a 2006 report on the feasibility of federal drug courts, DOJ concluded that such courts were inappropriate because "state courts already handle the vast majority of nonviolent, substance abusing offenders." By contrast, the report noted, "most U.S. Attorney's Offices have screening guidelines in place to ensure that they only take the most serious drug and violent crime cases generated by law enforcement agencies and local task forces."
>
> The case mix in federal courts is certainly different than that in state courts. But anyone who believes that the federal system deals only with "the most serious drug and violent" offenders isn't familiar

with the federal docket. The make-up of the federal prison population bears this out. In 2011 only 7.6% of federal prisoners were incarcerated for violent crimes. The bulk of the federal prison population is made up of drug offenders; in 2011, about half of all federal prisoners were incarcerated for drug offenses. And they are mainly non-violent, low level offenders. In 2011 roughly 84% of drug defendants had no weapon involved in the offense, and more than half of drug defendants (53%) had a criminal history category of I, signifying a minor or no criminal history. And only 6% of drug defendants could be classified as managers or leaders, i.e. individuals occupying the highest rungs of a drug enterprise.

Moreover, our prisons are repositories for the addicted and formerly addicted, at a monthly cost of $2,407.78 per offender, including the non-violent and victimless offenders.

In contrast the use of drug courts to divert substance-abusing defendants from prison has produced positive results in the states. Drug courts have raised treatment retention rates and lowered recidivism rates among participants. Attesting to the fact that drug courts work at protecting the community and saving money, there are currently more than 2,750 drug courts in existence in the United States.1 This type of proven track record was the initial inspiration for the DREAM program. And, despite the conclusions of the 2006 report, thanks to the willingness, support and progressive vision of our district's United States Attorney, Jenny Durkan, a small committee was formed

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# FBA's Program on Appellate Mediation

*By Jonathan S. Solovy*

## Teaching That Some Things In Life Really Are For Free

Most all of us have grown up with our parents or grandparents hammering home the old adage that "Nothing in life comes for free." Unfortunately, the realities of life have proven this adage to be all too often true. Fortunately, there are a few exceptions to the rule. One exception is that participants paid nothing to attend the continuing legal education program, *Mediation On Appeal: The Pathway To Getting To Yes*, presented by the Federal Bar Association's Appellate Practice Committee and ADR Committee on May 10, 2013. Another exception to the old adage is that the United States Court of Appeals for the Ninth Circuit provides talented and experienced mediators free of charge through its Ninth Circuit Mediation Program.

The panelists for the *Mediation On Appeal* program included the distinguished and storied appellate advocates, Matthew Segal of the Pacifica Law Group, and Howard Goodfriend of Smith Goodfriend, P.S., who related their experiences and successes with appellate mediation and the Ninth Circuit Mediation Program. Panelist Chris Goelz provided his unique insights and experiences from his service as a Ninth Circuit Mediator for over 20 years. The panel was ably moderated by Michele Gammer of the Gammer Law Group, PLLC, who serves as the Federal Bar Association's ADR Committee Co-Chair and teaches a course on Dispute Resolution as an adjunct faculty member at Seattle University School of Law.

> ***Appellate mediation has proven to be a great benefit to litigants who desire a "fresh look" from a skilled and experienced mediator, seek a safe alternative to uncertain, expensive and seemingly intractable litigation, or hope to avoid an unfavorable legal precedent.***

The panelists explained how to decide whether an appellate case is appropriate for mediation, and how to choose between private mediation or the Ninth Circuit Mediation Program. The panelists detailed the "nuts and bolts" of the Ninth Circuit Mediation Program and described what ingredients go into a successful appellate mediation. Appellate mediation has proven to be a great benefit to litigants who desire a "fresh look" from a skilled and experienced mediator, seek a safe alternative to uncertain, expensive and seemingly intractable litigation, or hope to avoid an unfavorable legal precedent.


*Left to right: Michele Gammer, Gammer Law Group, PLLC; Christopher Goelz, Ninth Circuit Mediator; Howard Goodfriend of Smith Goodfriend, P.S.; Matthew Segal of the Pacifica Law Group.*

Established pursuant to Federal Rule of Appellate Procedure 33 and Circuit Rule 33-1, the Ninth Circuit Mediation Program allows for creative solutions to be fashioned without the constraints of standards of review, limited appellate court authority and the typical delays arising from the Ninth Circuit's heavy docket. For example, Ninth Circuit mediation allows parties to style a stipulation and order for remand. Ninth Circuit Mediator Chris Goelz related that the Ninth Circuit Mediation Program is shielded from the rest of the Ninth Circuit's operation to ensure confidentiality and afford the parties a forum to freely explore solutions. Ninth Circuit Mediation may be initiated by Ninth Circuit mediators who review the Mediation Questionnaire which counsel in most civil cases must submit to the court. Ninth Circuit Mediation may also be initiated by counsel, the Ninth Circuit Commissioner, or even by a panel of Ninth Circuit judges before or after oral argument.

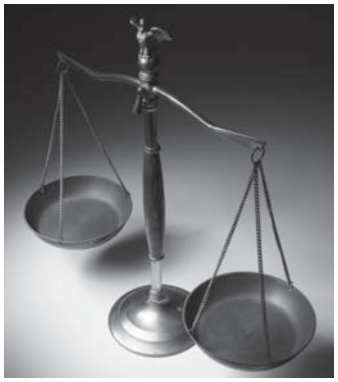
The Federal Bar Association seeks to help educate the bar and to serve as a bridge between the bench and the bar. The continuing legal education program, *Mediation On Appeal: The Pathway To Getting To Yes*, advanced these missions by teaching that alternative dispute resolution serves as a powerful and effective tool which may be used in creative ways to benefit attorneys and their clients and to lighten the heavy load carried by the Ninth Circuit. It is true that in the legal world most things are far from free. However, creative and effective alternative dispute resolution models, such as the Ninth Circuit Mediation Program, have provided judges, lawyers and clients welcome relief from litigation's heavy costs in money, time and emotion.

*Jonathan S. Solovy serves as Co-Chair of the Appellate Practice Committee.*

# Blood on the Ax or I Like My Steak Medium Rare

## *Perspective on Sequestration From the Federal Public Defender's Office*

*By Tom Hillier*



This year marks the 50th anniversary of the Supreme Court's landmark opinion *Gideon v. Wainwright* in which it declared, "Lawyers in a criminal case are necessities, not luxuries. ..." Well, maybe not. Or so it would seem every other Friday when the Federal Public Defender's Office is shuttered and its phone answered by a recording. Despite the promise of *Gideon* and the mandate of the Sixth Amendment, sequestration has brought crippling cuts to the budgets of federal public defender offices throughout the country. Scores of employees have been fired, many hundreds are suffering furloughs, pension plans have been slashed, and essential services have been curtailed. In Western Washington, we have all taken a 10% pay cut, implemented through leave without pay and a darkened office every other Friday. Reduced pay comes after more than two years of salary freezes and it spares no one, from clerical staff to lawyers who already work many hours of "overtime" each week.

Federal defender offices cannot survive another blow from sequester's ax. Our offices have no fat. Eighty-five to ninety percent of our budgets are fixed costs: salaries, benefits, and rent. The remaining funds are essential to the operation of a law office and the welfare of our clients. Client services are spared this year through our lost pay, but continuation of the current fiscal folly will cause permanent damage. Our budget for fiscal year 2014 is set to be reduced by an additional 14%, requiring severance of up to 20% of our staff and a reduction in the type and quality of services we provide the Court.

Collapse of the federal public defender system would be a shame. Since its modest beginnings in the late 1960s, federal public defenders have become the gold standard for public defense and a shining example of how the principle of equal justice can be realized through appropriate funding and stewardship. Ironically, sequester's ax is falling hard on one of the most cost-effective programs in the federal government.

The cost for all federal public defense is just over one billion dollars per year, an invisible line on the federal budget pie. And our funds are spent wisely. Surveys of federal judges, reviews by the General Accounting Office, and studies by private evaluators such as the Rand Corporation, all confirm that federal defenders provide high quality representation that allows the courts to operate efficiently while saving the taxpayers money.

The quality of representation provided by public defenders is evident to all who participate in our system. We led the effort that struck down the mandatory federal sentencing guideline system, a system that bloated our prisons. We championed changes in crack cocaine laws, reducing race-based enforcement and harms. We successfully challenged the pernicious practice of indefinitely detaining immigrants, freeing tens of thousands of clients to return home to their families and jobs. Our fingerprints are on virtually every significant opinion issued by the Supreme Court that concerns federal criminal law. And on a daily basis, we defenders provide our clients with the sort of representation that inspires them to leave the system believing they were treated respectfully and fairly. And what about fairness?

Our counterparts in the United States Attorney's Office are housed in the Department of Justice, a mega-agency with tens of thousands of employees. Not one will suffer a minute of furlough. Participants in the federal criminal justice system understand that our playing field is not level. Prosecutors enjoy the upside of a power imbalance. Add to that imbalance the fact that these full-time prosecutors are being pushed back by part-time public defenders. The risk to our Bill of Rights should be unacceptable.

I was heartbroken when I arrived at our dark and locked office Friday morning, March 29, our initial furlough day. The closure was the first since we opened our doors early in 1975. My sadness has shifted to anger. What is happening is wrong and unnecessary. The monies slashed from our budgets will have no impact whatsoever on deficit reduction efforts. On the other hand, the potential damage to our institution, our staffs, our clients, and the principle of equal access to justice is incalculable. We are happy for our furlough-free federal friends, the meat inspectors. And we hope that after Congress finishes its steak, it will do what it should to assure enforcement of the Sixth Amendment right to counsel and to rescue dedicated public servants from the violence of sequester's ax.

*Tom Hillier is the Chief Federal Public Defender in the Western District of Washington.*

# Thomas J. "Jerry" Greenan

*By Mark Honeywell*

*In Memoriam*

The Washington State and Federal Bar, and legal community in general, lost a true professional with the death of Jerry Greenan this last January. He was an early and many decades long active member of the Federal Bar Association, serving as its president for the Western District of Washington in 1982-83.

Jerry was born on July 13, 1933, in Great Falls, Montana, where he grew up, before moving to Washington in 1951 to attend Gonzaga University. He graduated from Gonzaga with a BA in 1954 and a law degree in 1957. He met the love of his life, Helen Shepard, while they were both students at Gonzaga. They married in 1957, and together they raised five children.

After graduating from law school, Jerry began his legal career with the Washington State Attorney General's Office, trying condemnation cases, including those related to the construction of Interstate 5 through downtown Seattle. After five years, he joined the firm of Ferguson and Burdell where he honed his trial skills and became proficient in a number of different areas, including Anti-trust. In 1995, he joined as a partner the law firm then known as Gordon Thomas Honeywell Malanca Peterson and Daheim, primarily as a result of his long-time friendship with fellow legal icon, Albert Malanca. It was therefore only fitting that in early 2003, the two of them tried their last big jury trial together for four long months in Alaska. They defended a $375 million dollar class action against a Japanese seafood company. The jury returned after only five hours with a defense verdict.

Jerry was a devoted Gonzaga graduate. He served as a member of the Gonzaga Board of Regents for four years, and the Board of Trustees for twenty years, two years as its chair. Throughout his career, he also gave generously of his time to his church. As his practice slowed, he volunteered more frequently at the legal aid department for Catholic Community Services.

> *Jerry was a great lawyer, very perceptive, and best of all a great guy. I had cases with him and against him... His dry sense of humor surfaced frequently. Jerry was a class act which set a high bar for all of us. I am a better person and lawyer for having known and worked with Jerry.*

Jerry described as one of the perks of his association with Gonzaga the opportunity to teach during three separate years at Gonzaga in Florence, Italy - two semesters as visiting Professor, and one semester as Acting Director of the school. He spoke "a little" Italian, but what he lacked in language skills, he more than made up for in congeniality. He and Helen absolutely loved the many months they lived in Florence and traveled to surrounding countries. Helen most fondly remembers how extraordinarily friendly all the people were to them.

To say that Jerry loved the Zags is an understatement. He was certainly proud of the fact that there is a Thomas J. "Jerry" Greenan reading room at the Gonzaga Law School. But more importantly, he followed Zag's basketball "religiously." Jerry would have thought it long overdue that his favorite team reached #1 national status in 2013, very soon after his passing.

Jerry practiced in many courtrooms throughout the State of Washington and several neighboring states. From the start, his skills and reputation grew rapidly. Jerry was listed in the Litigation section of "The Best Lawyers in America" for 22 years. His peers selected him to serve as President of the Western Washington Federal Bar Association. Jerry's trial talents were also well recognized when in 1979, he was inducted as a Fellow in the American College of Trial Lawyers, where he later served as State Chair, Regent, and was an active member of the National Trial Competition. Another ACTL Fellow, commenting on Jerry's passing, put it aptly, "Jerry was a great lawyer, very perceptive, and best of all a great guy. I had cases with him and against him.... His dry sense of humor surfaced frequently. Jerry was a class act which set a high bar for all of us. I am better person and lawyer for having known and worked with Jerry." That just about says it all.

# My First Pro Bono Civil-Rights Case

*By Dario A. Machleidt*

Thirty hours. That is the amount of time that the Washington Rules of Professional Conduct suggest attorneys devote each year to pro bono activities. Ask attorneys who have worked on pro bono cases, and they will likely recommend a much higher number. Having recently litigated such a case in the Western District of Washington, I would have to agree with them. The case has made me a firm believer in the benefits of representing those who deserve, but cannot afford, legal counsel. The rewards of doing so are great, and all attorneys should experience them firsthand.

## Accepting a Case from the Western District of Washington Pro Bono Panel

Near the start of my second year as a patent litigator at Frommer Lawrence & Haug LLP, Mark P. Walters, a partner in the firm, offered me the chance to work on a pro bono civil-rights case.[1] The plaintiff, Thomas Hightower, was a prisoner who sued several prison officials and guards under 42 U.S.C. § 1983 based on unconstitutional conditions of confinement. He filed his lawsuit pro se. Chief Judge Marsha Pechman was the presiding judge. She referred the case to the Western District of Washington Pro Bono Panel after Mr. Hightower, who was unable to afford legal representation, requested assistance of counsel.

> *The plaintiff, Thomas Hightower, was a prisoner who sued several prison officials and guards under 42 U.S.C. § 1983 based on unconstitutional conditions of confinement.*

Mr. Hightower's lawsuit reached Chief Judge Pechman from the Eastern District of California, which has one of the highest weighted civil caseloads per judge in the country. The majority of the court's cases consist of prisoner lawsuits.[2] Chief Judge Pechman, together with other district court and Ninth Circuit judges, volunteered to take several of the Eastern District's prisoner lawsuits to help reduce the number of cases on the overburdened court's docket. Mr. Hightower's lawsuit was one of those cases.

Mark thought that the case would provide good litigation experience and, potentially, an opportunity for trial work. Neither of us had any familiarity with civil-rights disputes, but our initial review of the case made us think that the allegations in the complaint warranted a second look.

## The Factual Allegations and My Role as Pro Bono Counsel

I formed my first impressions of Mr. Hightower based on the allegations in his pro se complaint. The complaint explained the hardships that he faced during his nearly 20 years in prison, many of which, he argued, stemmed from abuses by those charged to protect him. Mr. Hightower had previously filed numerous administrative grievances and several lawsuits against the prison employees based on conduct he considered to be unconstitutional.

The majority of the facts described in his complaint took place in 2006. In March of that year, a nurse working in the prison claimed that Mr. Hightower verbally threatened her. Several correctional officers placed him in solitary confinement as a result of this allegation. He remained there for several weeks, separated from his legal papers and other personal items. Upon his release, Mr. Hightower maintained that the prison guards placed and retained him in solitary confinement as punishment for filing prior grievances and lawsuits. He denied ever threatening the nurse.

In 2008, Mr. Hightower filed a civil suit in the Eastern District of California alleging that the prison employees' actions violated his federal and state constitutional rights. He litigated his case pro se for two years with some success. But his case eventually stalled. He found it increasingly challenging to litigate against the California Attorney General's Office, which represented the prison employees. Many of Mr. Hightower's requests to the defendants went unanswered and, two years into the lawsuit, he had still not been able to serve several defendants named in the complaint. He therefore requested the help of legal counsel.

Under Mark's supervision, I handled the majority of the work during the litigation. I remained in constant contact with Mr. Hightower, keeping him informed about the status of his lawsuit and discussing his goals for the case. I also researched and prepared all arguments in response to the

*Continued on page 18*

*On December 5, 2012, the Federal Bar Association of the Western District of Washington held its 29th Annual Federal Practice CLE and Dinner at the Fairmont Olympic Hotel in Seattle. Join us again this year on December 4, 2013. Event registration will be available soon at our website:* ***www.fba-wdwash.org.***



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Continued from page 4

controversies and litigation, to improve the rules of practice, as well as to keep the federal court system responsive to the needs of the public in other areas of practice. For instance, the Pro Bono Committee, co-chaired by Brett Purtzer and Joanna P. Boisen, is working with the Honorable James P. Donohue, Magistrate Judge, to examine and discuss how pro bono cases are referred, received and assigned, as well as ways to streamline the process. Similarly, the Local Rules committee, co-chaired by Michelle Peterson and Miles Yanick, last year worked tirelessly with the Honorable James L. Robart, District Court Judge, to improve the rules of civil practice. This year, Peterson is working behind the scenes with the committee working with the Honorable Thomas S. Zilly, Senior District Court Judge, to do the same for the local criminal rules.

*Tracy Morris has "leaned in" for the past 10 years and since its inception in 2006, has remained the heart and soul of the Clinic, which provides an amazing service opportunity to our members, as well as a much needed service to our community.*

A more visible example of the collaborative efforts by the FBA-WDWA and the Court is the Federal Civil Rights Legal Clinic. Tracy Morris has "leaned in" for the past 10 years and since its inception in 2006, has remained the heart and soul of the Clinic, which provides an amazing service opportunity to our members, as well as a much needed service to our community. Staffed by volunteer attorneys, every other Thursday between noon and 2:00 p.m., litigants find a kind staff, and guidance on legal issues involving discrimination, prisoner rights, Fourth Amendment search and seizure, excessive force, free speech, voting rights, the Second Amendment and religious freedom. By virtue of Morris's character, intellect and tenacity, as well as the Court's respect for Morris and the program, in 2012, Morris transitioned operations of the Clinic to the Seattle Courthouse. Based upon the success of the program and ongoing and much appreciated support of the Court, a second clinic is scheduled to open in the Tacoma Courthouse later this year.

In the last five years, the Court and the FBA-WDWA have also worked together to increase community outreach. For instance, Roger Townsend, Co-Chair of the Federal Civil Rights Legal Clinic Committee, is working with the Honorable Mary Alice Theiler, Chief Magistrate Judge, to organize the second annual "Constitution Day" in September. Co-chairs of the Criminal Law Committee, Steven Masada and Lissa Shook, are also working with the Honorable Richard A. Jones, District Court Judge, to organize "Youth Law Day," now scheduled for October. Both of these rewarding annual events include a tour of the courthouse and a mock trial, introducing elementary school children (Constitution Day) and young adults (Youth Law Day) to law and justice concepts in a fun, collaborative and impressive environment.

All of the committees also sponsor CLEs throughout the year, in an effort to maintain the hoped for high standards of competence, performance, and ethics for the attorneys appearing before the federal courts. For example, in May 2013, the ADR Committee worked together with the Appellate Committee co-chairs, Helen J. Brunner and Jonathan Solovy, to co-sponsor a lunch time CLE on appellate mediation. The Bankruptcy Committee, co-chaired by Thomas Linde and Richard Hyatt, recently finished a series of bench-bar conferences in Vancouver, Tacoma and Seattle, with a tremendous turnout and plans to make the series an annual event for the Fall or Winter.

The Pro Bono Committee is working on a full day CLE for September, and the Membership Committee, co-chaired by Cynthia Jones and Rebecca Engrav, collaborated with the Court and the King County Bar Association, Young Lawyer's Division, to sponsor a CLE in July aimed at younger lawyers, entitled, *Practice Before the Magistrate Judges; Dos and Don't's*. The Intellectual Property Committee, co-chaired by Brian Parks and Justin Nelson, is working on a CLE for the Fall or Winter. The IP Committee also collaborates with the Washington State Bar Association, the King County Bar Association, and the Washington State Bar Association to sponsor informal brown bag CLEs regarding such topics as professional development and client development. The Admiralty Committee, co-chaired by John Congalton and Kevin Smith, are planning a November CLE in conjunction with the Washington State Bar Association. And CLE co-chairs, Corey Endo and Theo Angelis, have the daunting but rewarding task of orchestrating our 30th Annual CLE in December.

Our members and committee chairs "lean in" in a variety of other ways as well. Chair Lish Whitson of the Court Services & WSBA Liaison Committee is working with the Court on a proposed judicial evaluation project, and the Federal Appointments Committee, long-chaired by John Wolfe, remains active and committed to work with the Court and legal community to find qualified judges for appointment to the federal courts should the opportunity present itself.

In addition, the co-chairs of the Website/Communications Committee, Christopher Emch and Adam Coady,

*The FBA-WDWA is nearly 400-members strong. We enjoy the benefit of 17 different committees, including a brand new committee—In-House Counsel—chaired by David Howard.*

volunteer a considerable amount of time to ensure the FBA-WDWA website is up to date, and our newsletters are published, thereby providing two different forums for our members and the Court to discuss current legal issues as they arise in this District and the Ninth Circuit. In this issue, for instance, Federal Public Defender Thomas Hillier shares his perspective on how the landmark decision of *Gideon v. Wainwright*, 372 U.S. 335 (1963), has withstood the test of time but must now survive sequestration. And the Honorable Ricardo S. Martinez, District Court Judge, introduces the federal bar to the DREAM court, a post-plea/pre-adjudication program in which the criminal justice system utilizes intensive treatment, sanction alternatives and incentives to effectively address substance abuse issues that appear to be contributing causes for the participant's criminal conduct.

Finally, the Nominations Committee, chaired by Brian Kipnis, is working with the Court and his appointed committee to ensure nominations for future board members, trustees of the FBA-WDWA and Ninth Circuit representatives are vetted and timely recommended to the District Court and the Ninth Circuit for consideration, with the hope that the FBA-WDWA's dedication to high standards of practice, civility and community service continue in the many years to come.

In short, the objectives of the founding members ring true today. The FBA-WDWA is nearly 400-members strong. We enjoy the benefit of 17 different committees, including a brand new committee – In-House Counsel – chaired by David Howard. By getting involved, you too have the opportunity to work with these distinguished federal practitioners and the federal courts to provide continuing legal education and training on trends and topics in a particular area of law, as well as support and improve trial practice; provide a new voice to our "objectives"; write articles for the Newsletter; or simply meet new colleagues and help the FBA-WDWA maintain (or improve upon) the professionalism and civility within each competitive bar. Please visit our website at **www.fba-wdwash.org** for more information regarding these committees or to reach out to any one of the co-chairs and "lean in."

*Jennifer Wellman is an Assistant Federal Public Defender and President of the Federal Bar Association of the Western District of Washington. She can be reached through her email at **Jennifer_Wellman@fd.org** or at 206-553-1100.*

[1] *See Sheryl Sandberg, Lean In, Women, Work, and the Will to Lead, (2013) (chief operating officer of Facebook describes how women unintentionally hold themselves back in their careers, and suggests people should "lean in" to their ambitions).*

[2] *See Articles of Incorporation, D-274456 (Domestic), Dec. 7, 1977.*

# Criminal Defendants in the Western District Able To DREAM

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to investigate the possibility of starting such a program in federal court. The result of over two years of intensive effort, including successful lobbying of the Department of Justice, culminated in the creation of the pilot program known as DREAM.

> *DREAM is designed to be a comprehensive court program for substance abusers whose addiction has contributed to their criminal behavior.*

DREAM is designed to be a comprehensive court program for substance abusers whose addiction has contributed to their criminal behavior. Potential candidates should reflect an individual for whom it is believed a period of intensive supervision, coupled with programs intended to address the root causes of his/her criminal conduct, will be more effective than a criminal conviction and sentence in decreasing the likelihood of recidivism.

A defendant must meet certain eligibility criteria in order to qualify for the program. Those specific criteria can be found in a referral form available at the district court's external website.2 In short, DREAM is designed for offenders with no more than two prior felony convictions, who are lawful residents of the district and whose criminal conduct was motivated by addiction issues. A criminal history that contains sex offenses or serious violent crimes leads to disqualification. Any mental illness present must be manageable as well. Also, eligibility does not automatically guarantee enrollment in the program. As this is a pilot project only a small number of applicants will be accepted. The potential participant must also be approved by an Executive Review Team (ERT) that discusses, in a confidential setting, every application submitted. The ERT agrees that the eligibility criteria are to be broadly defined as to allow those who need and want treatment access to the program. The team considers the defendant's criminal history, reported substance abuse/dependence history, mental health history, willingness, ability and motivation to participate as well as any other relevant factors to determine suitability for the program. The executive team's decision is final and not appealable.

A participant in the DREAM program enters a guilty plea and his/her sentencing is then held in abeyance while s/he is involved in the program. All participants are asked to enter into a written contract pursuant to which they agree to participate in the program and abide by the governing terms as set out in the contract. It is anticipated that participants will be involved for a minimum of 12 months although the term of involvement may be extended up to 24 months. The program is intended to be flexible, working at each individual's pace and specialized needs with an understanding that the track to recovery and stability can be a slow process.

Participants in the program are asked to appear in court on a monthly basis at a minimum. Reports on the participant's progress, or lack thereof, are prepared by assigned officers from Probation and Pretrial Services. Participants who are excelling in their scheduled program activities and maintaining sobriety will be rewarded by encouragement from the presiding judge and other members of the team. At certain milestones, small tokens such as pens, bus tickets or movie passes may be handed out in recognition of a job well done. If a participant is not in compliance with his program the presiding judge will determine appropriate sanctions when necessary. Sanctions are intended to be progressive in terms of severity. They are designed to motivate and encourage positive behavior and not simply to punish, although the court may impose custodial time depending on the severity of the violation(s). The underlying philosophy of the program

*Far left is Bob Westinghouse (Chief of Criminal Division of U.S. Attorney's Office). To his right are Connie Smith (Chief of Probation & Pretrial Services), Judge Martinez, Kerry Keefe (Chief of Criminal Division of U.S. Attorney's Office), and Jennifer Wellman.*

*The underlying philosophy of the program is an understanding that recovery and sobriety are a slow and very individual process that is best addressed by a holistic team approach rather than the usual individual advocacy present in the typical courtroom procedure.*

is an understanding that recovery and sobriety are a slow and very individual process that is best addressed by a holistic team approach rather than the usual individual advocacy present in the typical courtroom procedure.

Following each court appearance all of the participants meet in a more informal setting with probation officers assigned to the program. These group meetings address specific issues of interest to individuals or the group as a whole. Discussion is moderated, encouraged and participants are asked to focus on progress or problems during the preceding months and to set goals for the upcoming month. The participants bond, support and strengthen each other in these meetings.

Successful completion of the DREAM program leads to the withdrawal of the guilty plea and a complete dismissal of the charge(s). If a participant fails to satisfactorily complete the program then s/he will be sentenced by the district court judge overseeing the program pursuant to the previously entered plea. One additional benefit, even for those that ultimately falter and fail to complete the DREAM program, is that all positive effort displayed while involved in the program will be taken into account by the judge in determining an appropriate sentence.

Those of us who have the incredible responsibility of imposing a sentence on another human being will tell you that it is the most difficult charge we perform. The federal Judiciary has continually voiced its support for expanding alternatives to incarceration. Although incarceration serves legitimate sentencing purposes, it also negatively impacts individuals, families and our community. The need is present both from a policy perspective and as a matter of cost savings—both fiscal and human. We judges must hold the appropriate tools to sentence smarter if we wish to make our criminal justice system more efficient and effective and hope to reduce the ever expanding federal prison population. Are programs like DREAM the answer? We are about to find out. We acknowledge that policy should always be driven by data, not anecdotes. Therefore, we will be collecting and analyzing data as our program progresses and using the results to adjust our methods in order to maximize the opportunities for better outcomes, reduced recidivism, and avoid unnecessary incarceration. For now, this is just one small step, but for the first time a select number of criminal defendants in the Western District of Washington will be allowed to DREAM.

[1] *The King County Superior Court Drug Court was implemented in August 1994 and it was then the twelfth Drug Court in the country.*

[2] *See* **www.wawd.uscourts.gov**. *The Application and other DREAM materials are also available on the Federal Public Defender's website, waw.fd.org, under "litigation support," as well as the Pretrial Services web-site, www.pretrial.wawd.uscourts.gov.*

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defendants' various motions, and I decided what discovery we required from the defendants to prove our case. Mark also gave me the opportunity to argue on Mr. Hightower's behalf during a successful mediation before a magistrate judge. The mediation resulted in a several-thousand-dollar settlement for Mr. Hightower.

### The Value of Pro Bono

The benefits of pro bono service are immense. It increases access to justice, which is the essence of public service. And it enables lawyers to gain important legal skills as they reaffirm why they entered the legal profession in the first place.

Mr. Hightower's case taught me that, to achieve justice in prisoner civil-rights disputes, plaintiff–inmates need legal representation. It is frequently too difficult for prisoners to have their voices heard from their jail cells, and all too often they cannot afford legal representation. At the outset, the solution to this problem requires judges (and their law clerks) to screen for and find meritorious prisoner cases. But after that point, willing attorneys must step forward and help prisoners navigate the complexities of the legal system to resolve their cases. By doing so, lawyers provide a critical public service to an otherwise disenfranchised group of people.

*Willing attorneys must step forward and help prisoners navigate the complexities of the legal system to resolve their cases.*

Providing this service not only benefits the client, but it allows lawyers to obtain important legal experience. For instance, representing Mr. Hightower provided me with excellent opportunities that I likely would not have experienced until later in my career. These included regular client contact, primary responsibility for case strategy, and the opportunity to argue in court.

Helping Mr. Hightower also introduced me to an incredible network of judges and lawyers that gave me a renewed appreciation for the legal profession. Every person that touched Mr. Hightower's case, in his or her own way, helped secure justice for him. Chief Judge Pechman first decided to help an overworked court and, afterwards, helped a pro se prisoner obtain legal representation. The California deputy attorney generals, although zealous in their representation of the prison employees, remained open to mediation that ultimately benefited all parties. And the magistrate judge who presided over the mediation volunteered to listen as Mr. Hightower aired his grievances in court.

It was a rewarding and humbling experience to play a role, together with each of these individuals, in securing justice for Mr. Hightower. Working on his lawsuit has solidified my desire to remain involved in pro bono cases throughout my career, hopefully in excess of the minimum 30-hour suggestion.

*Dario A. Machleidt is an attorney in the Seattle office of Frommer Lawrence & Haug LLP. His practice includes all aspects of intellectual-property litigation. Mr. Machleidt has also engaged in substantial pro bono representation.*

[1] *Hightower v. Tilton et al., No. 2:08-cv-01129-MJP (E.D. Cal.).*

[2] *See generally Eastern District of California Swamped by Prisoner Lawsuits, The Third Branch, July 2010, www.uscourts.gov/news/TheThirdBranch/10-07-01/Eastern_District_of_California_Swamped_by_Prisoner_Lawsuits.aspx.*

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