VOL. 51 NO. 10 FIVE DOLLARS

Washington State BAR NEWS

The Official Publication of The Washington State Bar
October 1997

Mary Fairhurst
1997 - 1998
WSBA President

More citations than a New York meter maid.

Washington Supreme Court and Court of Appeals Decisions, 1909 to date
1997 Session Laws
The 1996 Revised Code of Washington
Legislative History Materials for 1995, 1996, and 1997
The Washington Administrative Code (Titles 1-516, WAC)
The Washington State Register
Washington Court Rules
Washington Local Rules of Court (every county)
Washington Corporations - from the WA Secretary of State, Corporations Div.
The Subject Index to Washington Law Reviews, 1970 to date
Attorney General Opinions and Letter Opinions, 1949 to date
Shorelines Hearings Board Decisions, 1983 to date
Pollution Control Hearings Board Decisions, 1980 to date
Forest Practices Hearings Board Decisions, 1990 to date
Growth Management Hearings Board Decisions, 1992 to date
Public Employment Relations Commission ("PERC") Decisions, 1976 to date
Significant Decisions of the Board of Industrial Insurance Appeals, 1955 to date
Washington Tax Decisions - Tax Decisions and Excise Tax Bulletins from the Washington Department of Revenue, 1966 to 1996
Washington Board of Tax Appeals Decisions, 1968 to date
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Mandatory Domestic Relations Forms
Sentencing Guidelines
The Seattle Municipal Code
The Spokane Municipal Code
The Bellevue City Code
The Everett Municipal Code
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Washington State
BAR NEWS

October 1997

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Letters

New Jury Selection Methods Produce Biased Juries

Editor:

After reading the article on voir dire by Patricia Hall Clark, I would like to take issue with the present practices of juror inquisition ("Navigating the Waters of Jury Selection," *Bar News* 8/97). To allow openly, unabashedly, the misbegotten profession of jury consultant is to sound the death knell for "unbiased" jurors drawn from a "fair cross-section" of the community. For "unbiased" and "fair cross-section" lose their constitutional meaning under the doublespeak of jury experts.

The purpose of the new scientific approaches to jury selection is not to secure impartial, representative panels, but stacked, biased juries. And in what direction shall these panels be stacked? If one side gets the panel it wants, obviously the other side is forced to accept the jury it doesn't want. How is justice served by establishing a skewed jury or a before-the-fact winning case?

Otto G. Obermaier, cited in the article ("Judge Conducted Voir Dire," Litigation and Administrative Practice Course Handbook Series - Litigation, Practicing Law Institute, 1987), provides a blueprint for jury destruction. He includes among the purposes of voir dire: to discover prejudice; to eliminate extreme positions; to discover "friendly" jurors; and to exercise "educated" peremptories (quotations in Patricia Clark's article). Such scrutiny of the jury has but one purpose — to destroy the cross-sectional nature of the jury and render it unrepresentative of the community.

To ensure cross-sectional juries free from the tampering of either side, jurors should be drawn completely by lot, and struck only for consanguinity, a personal relationship to the parties or attorneys, or a financial stake in the outcome of the trial. Jury selection should be a routine court function, conducted within a short period of time, that assures the likelihood of seating a jury representative of the community. For a complete discussion of this topic, see "We the Jury: the Impact of Jurors on Our Basic Freedoms" by Godfrey D. Lehman, Prometheus Books, 1997.

PATRICIA MICHL
Sumner

Voir Dire Should be Abolished or Strictly Limited

Editor:

The citations in the endnotes of Patricia Clark's article, "Navigating The Waters Of Jury Selection" (*Bar News*, August 1997), tell the real story of voir dire.

A review of Ms. Clark's first endnote (Gutman, "The Attorney Conducted Voir Dire, A Constitutional Right," 39 Brooklyn Law Review 290, 1972) reveals that voir dire is a rigging device used by the government to stack the jury with government supporters.

The Lord Chief Justices of England from Lord Parnung in the fourteenth century reign of Edward III to Lord Coke were of the opinion that a juror biased against the defendant was *good* (emphasis

> in original) for the King . . . the sheriffs were given complete charge of selecting persons to sit on the panel. Gutman, pp. 291-292

Voir dire is the principal weapon by which the government counteracts the jury's power to use its right of jury nullification against oppressive government laws and practices. Since jury nullification depends for its effectiveness upon a jury chosen at random from a fair cross section of the community, the government from early times has seized upon voir dire as a stacking device.

When the British government faced opposition from juries in the American colonies, Parliament changed the colonial jury selection process and placed voir dire in the control of the court.

> . . . by Act of Parliament the selection of jurors was taken from the town meeting and vested entirely in the court. Defendants were thenceforth required to strike twelve jurors from a list prepared by the sheriff. Gutman, pp. 294-295.

Defense attorneys have been trying to play catch-up in the voir dire stacking process ever since, but they can never catch up. Voir dire will always work to the overwhelming advantage of the government. This is because there is an unlimited number of challenges for cause and one of the main challenges for cause is to strike jurors who are opposed to the law at issue. RCW 4.44.170 and RCW 4.44.190.

Once dissenters to the laws are stricken from the jury, then the jury is stacked with government partisans and the defense attorney is powerless to restore any cross-sectional balance. It is never a challenge for cause that a juror *supports* the law, and the defense attorney's peremptories cannot overcome a jury pool stacked with government partisans.

Voir dire should be abolished, or at least limited to those few questions that concern the juror's personal relationships or animosities with the individuals involved in the case, or the juror's financial interest in the outcome.

The true purpose of the jury is "to prevent oppression by the Government." *Duncan v. Louisiana*, 391 U.S. 145, 155-156 (1968). The jury cannot prevent government oppression if its members and their political beliefs are being sifted by the government during voir dire.

TOM STAHL
Ellensburg

MANDATORY FEE ARBITRATION PUNISHES ALL LAWYERS FOR THE MISDEEDS OF SOME

Editor:

Mandatory fee arbitration is a bad idea for several reasons. The essence of the market system is that people ought to be able to make bargains for goods, and be bound by their bargains. When consumers are not happy with sellers, they move on to other sellers, and the trade and reputation of the seller diminishes. Lawyers, and all people in business, usually try to make their customers or clients happy because they want the satisfaction of a happy consumer, and they want future referrals. Most businesses cannot thrive without word-of-mouth referrals. The proposed rule attempts to substitute an adversarial relationship for the market system by starting a detailed system of government regulation of attorney fees.

Lawyers do only two things: they take money from people (and defend), and they take freedom from people (and defend). They use the power of the govern-

ment to do this. Since lawyers have such a sensitive role, the public should have unrestricted access to them. This will not be the case under the proposed rule because lawyers know their fees will be subject to unfriendly scrutiny by the State Bar, and all lawyers, not only those who are unpopular with the State Bar, will fear to take cases.

The State Bar is political. The Bar should not have the power to regulate the fees of all attorneys: its political opponents, the fees of anyone who defends people from the authority of government, even the fees of attorneys who use the authority of the state to recover money. This causes a chilling impact on the right to counsel. The rule would give Randy Beitel and the WSBA attorneys tremendous power over all attorneys in the state.

Arbitrators may have some independence from the Bar, but the WSBA writes the laws that determine who gets a fee, and the Bar may have a profound influence on the choice of who gets to be an arbitrator.

Aside from all that, these rules will tremendously hurt all lawyers because no one can collect a fee or draw money from trust until the legal matter is over and the time limit for a client claim has run. This can be years. Personal injury lawyers who advance large sums will pay interest and perhaps lose their home while "arbitration" grinds along. The personal frustration of going through this procedure will demoralize everyone. Divorce lawyers and criminal lawyers will most often be the victims of complaining clients, but no one is exempt. Any lawyer who loses a case, and there is one in almost every trial, will have difficulty collecting a fee. Lawyers will recognize that they now have to win two lawsuits, one against the opponent and the other against the State Bar.

To make up for that, lawyers will charge more money and avoid contentious clients. This is access to justice?

The rules are punitive. The lawyer has to prove his or her case by clear and cogent evidence, similar to a child deprivation case, but different from every other civil case. There is no real appeal from a single arbitrator's opinion. This is unconstitutional, since we do have a right to a jury trial in suits on an account, but that does not concern the State Bar. The arbitrator is instructed to rat on the attorney whenever possible, which means that the arbitrator is not an impartial judge. Whenever possible, difficult burdens of proof are imposed on the lawyer. What is the Bar's motive for all this?

Now, some attorney fee cases are subtle and difficult. Sometimes it is difficult to reconstruct what you did. The burden of reconstructing what you did for an arbitrator, who may not understand your practice or your methods, is staggering. Perhaps it is necessary to hire a lawyer, which means more frustration, and more dissipation of the fee. This may be the reason the State Bar advertises group therapy with Victor Burnstein, J.D., Ph.D., on the same page they announce "Fee Arbitration to be Mandatory."

Also, it appears that this rule is a mechanism for funding Columbia Legal Services. Lawyers will have to hold money in their trust accounts much longer while they hire other lawyers to prove beyond a reasonable doubt that they are entitled to a fee. Instead of paying debts which some lawyers desperately need to pay, the money will go to Columbia.

It is said that this rule is a substitute for

lawyer discipline. This makes no sense. The rule punishes all lawyers for the misdeeds of some and the refusal of the Bar Association to process its piled-up complaints. Lawyers who commit misdemeanor type violations should be suspended for ten days, and then we should go on. That would exert a deterrent effect and cut down on the number of future complaints.

These regulations would profoundly change the practice of law in Washington. They should be rejected.

ROGER B. LEY
Seattle

MANDATORY FEE ARBITRATION VIOLATES CONSTITUTIONAL RIGHT TO JURY TRIAL

■ Editor:

Your August *Bar News* article "Fee Arbitration To Be Mandatory When Required By A Client" was an eye-catcher. It described the Washington State Supreme Court's recent amendment to General Rule 12(b):

> The new program will replace the current WSBA Fee Arbitration, in which participation is voluntary . . . . Under the new program, fee arbitration will continue to be voluntary for the client, but the lawyer's participation will be mandatory . . . . No *de novo* appeal to superior court is provided.

The purpose behind the rule, according to the *Bar News* article, is to soothe the feelings of those clients who are presently frustrated when an attorney declines their offer to arbitrate. In 1996, for instance, there were 72 such frustrated clients. Another expressed purpose behind the amendment is an attempt to improve the perceived lack of public confidence in the Bar.

On its face, though, the amendment appears to violate the Constitution of the United States, Amendment VII preserving the right to a jury trial in suits at common law. Likewise, it appears to violate the Constitution of the State of Washington, Section 21, which provides that in civil cases the right to a jury trial "shall remain inviolate." The WSBA could argue that the Washington Supreme Court has the power to regulate the bar, as it does. The court has predicated its authority to regulate the practice of law upon the "inherent power of the judiciary" because there is no explicit authority granted to the court by either the state constitution or statute. The court's power to regulate the bar has historically dealt with attorney admissions, ethical violations and court rules. The court has recognized that it does not have exclusive control over the entrepreneurial aspects of the practice of law. Surely the court cannot, under the guise of regulating attorney ethics, deprive the class of citizens who make their livelihood by practicing law of their state constitutional right to a jury trial. The United States Supreme Court, of course, has ruled in a similar vein, declaring rules prohibiting attorney advertising an unconstitutional violation of the First Amendment.

The Bar is demonstrably apathetic about the loss of its constitutional right to a jury trial as it has done nothing to preserve it in response to the publication of the proposed rule. This is because most lawyers, including myself, never expect to request a jury trial in a civil case involving a fee dispute. The same can be said, however, about the right to a jury trial in a criminal matter: I do not expect to have a personal need to exercise the right. We would all agree, however, that the lack of immediate need for a jury trial in a criminal matter is not a sufficient reason to do

away with it. The same must then also be true in a civil matter.

The fact that 20,000 lawyers do not care enough about their constitutional rights to take any action to preserve them is not going to increase public confidence in the bar. If there is a lack of public confidence in the Bar, it is based in large part on the lack of adequate and stable funding of the attorney discipline function as documented in the recent ABA report. If the WSBA truly wants to increase public confidence in it, the best way will be to stop promoting rules which have more to do with dictating politically correct behavior than substance and devote the energy and resources to the attorney discipline function necessary to administer it in a timely and professional manner.

JAMES RIGBY
Seattle

Editor's note: The following letter, originally sent to WSBA Governor Peter Ehrlichman, is being published at the writer's request.

■ Dear Mr. Ehrlichman:

I have just learned through the *Washington State Bar News* of a new proposed rule that would force attorneys in the state of Washington to agree to submit fee disputes to arbitration and would also require the attorney to advise the client of the availability of fee arbitration in any written fee agreement signed by both attorney and client. Currently, as you know, attorneys are not compelled to agree to arbitrate their fee disputes nor advise clients of this option in their fee agreements.

In my view, this new proposed rule is severely misguided. First of all, it is extremely one-sided, as only the attorney would be compelled to arbitrate a fee dispute — the client is not required to arbitrate under the new rule. This is one-sided and unfair. Both sides should face the same procedural requirements. I believe the old rule is more than adequate.

We all know that any clients who are unhappy with their fees now always have another remedy other than arbitration which works even better — the bar complaint. Any attorney who seeks unpaid fees or charges more than they should knows that the client can always file a bar complaint which will often result in more headache and aggravation for the attorney. This leverage already acts as a check upon attorneys who attempt to exploit their profession.

As long as the attorney gets the fee agreement in writing, why should we lawyers subject ourselves to something other professions, such as doctor, do not? Why should we subject ourselves to something the client can avoid?

When somebody walks into my office, they want help. I provide that to them, for a fee, and the client may either sign the written fee agreement and pay, or they may walk out and hire someone else. Now, after the work is done, this new rule will allow disgruntled and unsuccessful clients to tie up attorneys in pointless fee arbitration, which will make us that much less effective for all our other clients.

Money magazine did a study recently showing that legal clients who were involved in the adversarial process were often much more dissatisfied with their attorney than those clients who had non-adversarial problems (e.g., wills, trust, tax planning, etc.). This new rule invites every unsuccessful litigant to contest fees by using the argument, "I lost. My lawyer charged too much because we didn't win the case."

Please use all your influence with the bar to get them to veto adoption of this misguided attempt to fix a problem that does not exist.

DAVID G. ARGANIAN
Seattle

ALLEGEDLY IRONIC

■ Editor:

I found the title of the September 1997 "Allegedly Humorous" column both apt and ironic. With all due respect, the column would have been much funnier had the response to Mr. Hartwig's plight not come from the Executive Director, who (as reported in previous editions of the *Bar News*) is driving a $40,000 Saab (a veritable land yacht that many of us might like to have) whose lease is subsidized by my Bar dues. Yours in humor,

JONATHAN S. COLE
Washington, D.C.

Readers are invited to submit letters of reasonable length to the editor. They should be typed on letterhead and signed. Due date is the 15th of the month for the second issue following. The editor reserves the right to select excerpts for publication or edit them as may be appropriate. Signatures in excess of three names will be printed only in exceptional circumstances, at the sole discretion of the editor.

Mary Fairhurst

NOT THE SAME OLD FACES

I feel excitement in the air as I begin my year as Bar president. In some ways, I am not typical of past Bar presidents. If you read Tom's column last month or have seen the press releases, you already know that I am the second woman, the youngest, and the first public-sector attorney to be president of the Washington State Bar Association. In those ways, I am quite different from my predecessors and will bring unique perspectives and experiences to the position. I am the same as prior presidents in that I am dedicated to the profession and its advancement. I will work hard to be inclusive, attentive, communicative and responsive. I want the Washington State Bar Association to be not only an organization one has to join to practice law, but one in which one is proud to be a member because of the work we — all of us at the Bar — are doing, and the difference we are making because we are lawyers.

Much focus has been on me as incoming president, but I do not do this job alone. The Washington State Bar Association is governed by the Board of Governors, assisted by the president and president-elect and administered by the executive director and Bar staff. The Board has nine district governors representing the nine state congressional districts, plus two King County-at-large governors. The 11 governors serve nonrenewable, staggered, three-year terms.

I would like to introduce you to your other representatives, the ones elected to the Board of Governors by the attorneys in their districts.

The Third-year Class . . .

Stephen R. Crossland, Fourth District. Steve lives and works in Cashmere. At Johnson, Gaukroger & Crossland, an eight-attorney law firm with four offices, Steve primarily does real estate planning, probate and business law. He also has been in solo practice and a Chelan County Deputy Prosecuting Attorney. He is a member of the Chelan-Douglas County Bar Association. Steve graduated from Lewis and Clark Law School in 1973.

Dennis J. La Porte, Ninth District. Denny lives in Federal Way and practices in Tacoma with Thompson, Krilich, La Porte, Tucci & West, a nine-attorney firm. Denny's practice consists of 80 percent personal injury litigation, primarily defense, with a mix of probate and domestic-violence cases. He also is a mediator with American Mediation of Bellevue, and a member of the King County, South King County and Tacoma-Pierce County bar associations. He clerked for Washington Supreme Court Chief Justice Robert Hunter following his 1968 graduation from Gonzaga University School of Law.

William H. Nielsen, Second District. Bill lives in LaConner and works in Olympia as a Western Washington Growth Management Hearings Board Member. Prior to his appointment to the Hearings Board, Bill's primary work was in the areas of environment and zoning, property disputes and appellate practice. For five years, he was a Skagit County Deputy Prosecutor and, at different times, served as Chief Criminal Deputy and Chief Civil Deputy. Bill clerked for the Washington State Court of Appeals following his 1969 graduation from the University of Washington School of Law.

Lish Whitson, Seventh District. Lish lives and works in Seattle. At Helsell Fetterman LLP, a 45-attorney firm, Lish's practice emphasizes commercial litigation, insurance, personal injury, medical malpractice, employment and environmental law. He also has litigated cases concerning construction, real property, administrative and criminal law. For three years, Lish was a Public Defender in Seattle. He is a member of the Federal, King County and American bar associations. He graduated from the University of Washington School of Law in 1972.

The Second-year Class . . .

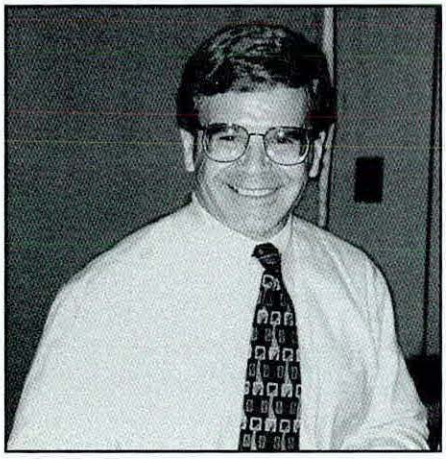
Terrance J. Lee, Third District. Terry lives and works in Vancouver. Four years ago, Terry opened his own practice, focusing primarily on family law, wills and misdemeanor defense, as well as business, employment and collection law. Previously, Terry was a senior associate for a large Southwest law office; a Cowlitz County Felony Deputy Prosecutor and a prosecutor for the Quinault Indian Nation. He is a member of the Clark County Bar Association. He graduated from Gonzaga University School of Law.

Marijean Moschetto, Eighth District. Marijean lives and works in Bellevue. At Moschetto and Koplin, Inc., P.S., a two-attorney firm, Marijean primarily

practices family law with segues into probate, guardianships and estate planning. Marijean is a member of the East King County, King County and South King County bar associations. In 1978, she graduated from McGeorge School of Law.

Donald N. Powell, Sixth District. Don lives and works in Tacoma. At Lozier, Powell & Ripley, P.S., a three-attorney firm, Don practices in the areas of family law, real property, business litigation, general practice. Don is a member of the Tacoma-Pierce County Bar Association. He graduated cum laude from Seattle University (University of Puget Sound) School of Law in 1981.

Mary Alice Theiler, King County at Large. Mary Alice lives and works in Seattle. At Theiler Douglas Drachler & McKee, an eight-attorney firm, Mary Alice practices maritime personal injury, general personal injury and wrongful death, and employment law. She is a member of the American and King County bar associations. She also is a member of American and Washington State Trial Lawyers associations, Trial Lawyers for Public Justice, and Washington Women Lawyers, among others. She also serves on the Access to Justice Board. Mary Alice graduated from Wayne State University Law School in 1974.



Walter R. Krueger

Richard Manning

The First-year Class . . .

Richard C. Eymann, Fifth District. Richard lives and works in Spokane. At Feltman, Gebhardt, Eymann and Jones, P.S., a nine-attorney law firm, Richard's trial practice emphasizes personal injury, sexual abuse and assault cases, business torts and medical negligence. He is a member of the American and Spokane County bar associations. He is immediate past president of the Washington State Trial Lawyers. He graduated from Gonzaga University School of Law in 1976.

Walter R. Krueger, First District. Walt lives and works in Kirkland. He is a sole practitioner, emphasizing estate planning, trusts and probate, while handling some personal injury cases. Walt is a member of the American and East King County bar associations. He also is a member of the American and Washington State Trial Lawyer associations and Trial Lawyers for Public Justice. In 1975, Walt graduated from Gonzaga University School of Law.

Richard Manning, King County at Large. Dick lives and works in Seattle. As a sole practitioner, he is a trial lawyer in the areas of construction, business and real estate. For the past 13 years, Dick has focused on mediation and conducts about 100 mediations each year. Dick is a member of the American, Federal Western District, and King County bar associations. He also is a member of the American Trial Lawyers Association. Dick is a 1960 graduate of Gonzaga University School of Law.

PRESIDENT'S CORNER

Just as I am not typical of past Bar presidents, your governors are not typical of past boards. They are geographically and gender diverse, have private- and public-sector experience, represent a wide variety of subject matter practice areas, and come from large, small and solo practices. Individually and collectively, the Board and I have a common purpose: To serve you and the profession.

Richard C. Eymann

EXECUTIVE'S REPORT

A Lawyer Assistance Department

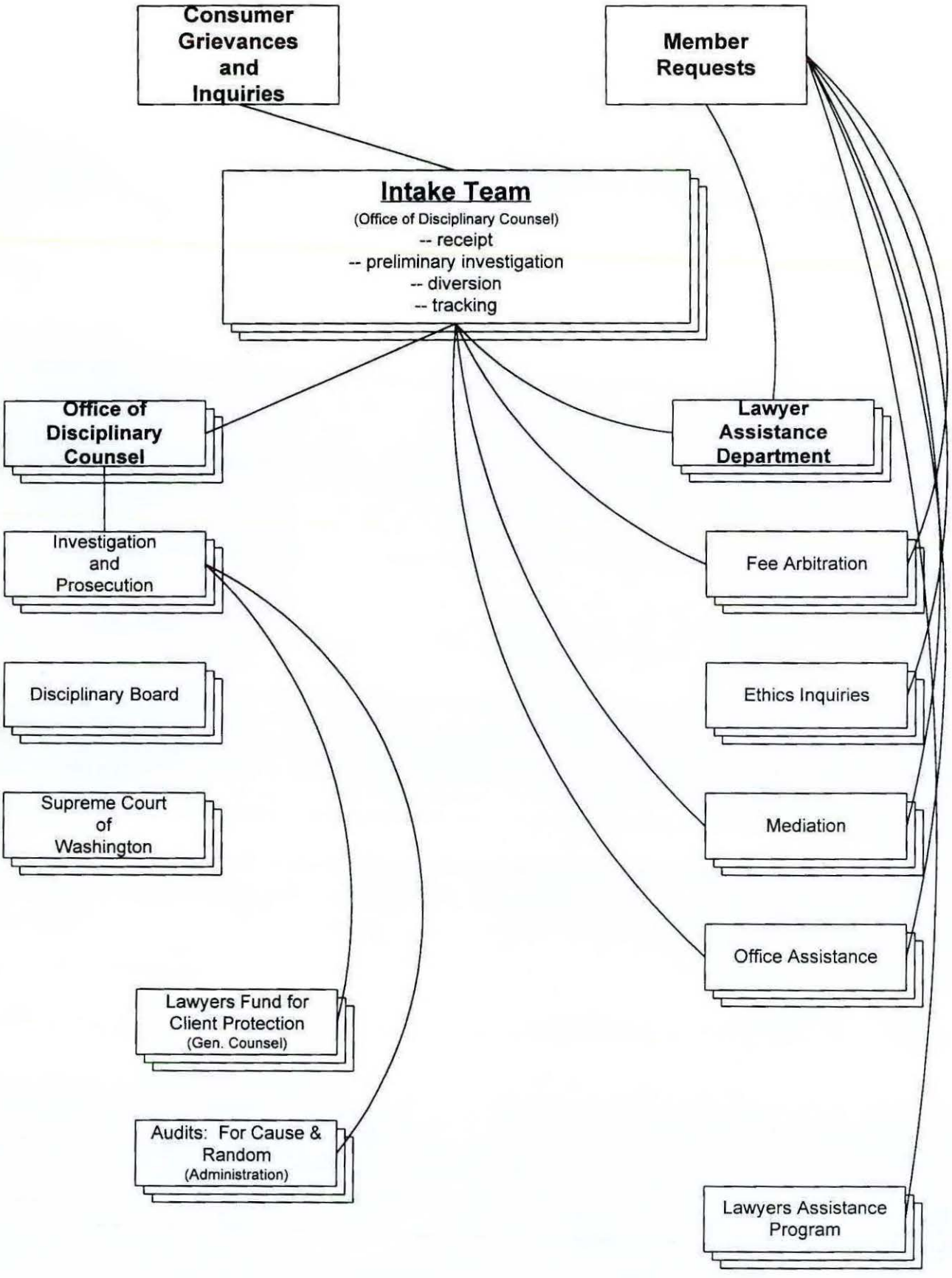
Dennis P. Harwick
Executive Director

Yes, you heard me. A lawyer assistance *department*. We've done a little restructuring here at the WSBA and consolidated a number of existing programs and some upcoming new programs into a Lawyer Assistance Department.

First, let's talk about the name. Should it be Lawyer, Lawyers, or Lawyers'? We have opted for the singular, non-possessive "Lawyer." One lawyer at a time. We're here to help. Give us the opportunity to prove it.

So what's in this new department? It includes, predictably enough, the Lawyers' Assistance Program (a confidential intake and referral program to help impaired lawyers), the ethics inquiry service (where a WSBA staff attorney is available to answer ethics questions from WSBA members), and the fee arbitration service (currently voluntary, but with a mandatory rule in preparation for the Supreme Court). The new Lawyer Assistance Department will also include two new programs — a mediation service for disputes between lawyers and their clients and a law office management assistance program. These new programs will be developed during the next year.

As a long-time believer that a picture is worth a thousand words — or at least a lot more interesting — here's a flow chart of how inquiries from WSBA members and the public will be handled.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Intake Team
(Office of Disciplinary Counsel)
-- receipt
-- preliminary investigation
-- diversion
-- tracking
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Lawyer Assistance Department
Investigation and Prosecution
Disciplinary Board
Supreme Court of Washington
Lawyers Fund for Client Protection
(Gen. Counsel)
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(Administration)
Fee Arbitration
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Lawyers Assistance Program

Therapy vs

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Therapeutic and
Mental Healt

BY STUART A.
& DANIEL V

Tightened insurance reimbursement rules, a growing market for forensic mental health professionals, and zealous patient advocacy by therapists have combined to induce many therapists, including those who once avoided the judicial system, to appear as forensic expert witnesses on behalf of their patients. Although there are explicit ethical precepts about psychologists and psychiatrists engaging in these conflicting dual roles, they have not eliminated this conduct. Psychologists and psychiatrists have not understood either why these ethical precepts exist or how they affect the behavior of even the most competent therapists. The specific problem addressed here is that of the psychologist or psychiatrist who provides clinical assessment or therapy to a patient-litigant and who concurrently or subsequently attempts to serve as a forensic expert for that patient in civil litigation.

Psychologists may testify as fact witnesses as well as either of two types of expert witnesses: treating experts and forensic experts. No special expertise beyond the ability to tell the court what is known from firsthand observation is required to be a fact witness. What distinguishes expert witnesses from fact witnesses is that expert witnesses have relevant specialized knowledge beyond that of the average person that may qualify them to provide opinions, as well as facts, to aid the court in reaching a just conclusion. Psychologists and psychiatrists who provide patient care usually qualify to testify as treating experts, in that they have the specialized knowledge, not possessed by most individuals, to offer a clinical diagnosis and prognosis. A role conflict arises, however, when a treating therapist also attempts to testify as a forensic expert addressing the psycholegal issues in the case (e.g., testamentary capacity, proximate cause of injury, parental capacity).

In the preceding description, the therapeutic relationship occurs first and the forensic role second, but there are parallel concerns with the reverse sequence (i.e., the subsequent provision of therapy by a psychologist or psychiatrist who previously provided a forensic assessment of that litigant). There are also similar concerns about the treating therapist's role in criminal litigation. This article, however, will address only civil litigation.

Role Conflict

In most jurisdictions, a properly qualified therapist testifies as a fact witness for some purposes (to information learned firsthand in therapy), and as an expert witness for some purposes (to opinions about mental disorder that a layperson would not be permitted to offer). Thus, a therapist may, if requested to do so by a patient or ordered to do so by a court, properly testify to facts, observations and clinical opinions for which the therapy process provides a trustworthy basis. This testimony may include the history as provided by a patient, the clinical diagnosis, the care provided to a patient, the patient's response to that treatment, the patient's prognosis, the mood, cognitions, or behavior of the patient at particular times and any other statements that the patient made in treatment.

To be admissible, an expert opinion must be reliable and valid to a reasonable degree of scientific certainty (a metric for scrutinizing the certainty of expert testimony as a condition of its admissibility). It is improper for the therapist to offer an expert opinion as to proximate cause for two reasons. First, the type and amount of data routinely observed in therapy is rarely adequate to form a proper foundation to determine the psycholegal (as opposed to the clinically assumed) cause of the litigant's impairment, nor is therapy usually adequate to rule out other potential causes. Second, such testimony engages the therapist in conflicting roles with the patient. Common examples of this role conflict occur when a patient's therapist testifies to the psycholegal issues that arise in competency, personal injury, worker's compensation and custody litigation.

Clinical, ethical, and legal concerns arise when the treating expert offers psycholegal assessment: an assessment for which the treating expert does not have adequate professional basis, for which there are inherent role conflicts, and for which there will almost certainly

. FORENSICS

Conflict Between Forensic Roles of h Professionals

GREENBERG
W. SHUMAN

be negative implications for continued therapy.

The temptation to use therapists as forensic experts falls on fertile ground because clinical psychology and psychiatry graduate students often do not receive adequate training in forensic ethics. The legal arena is sufficiently foreign to most academicians and their students that ethics training focuses primarily on licensing laws and ethical codes for general practice. Therapists are not typically trained to know that the rules of procedure, rules of evidence, and the standard of proof are different for courtroom testimony versus clinical practice.

The temptation to use therapists as forensic experts on behalf of patient-litigants exists because of erroneous beliefs about efficiency, candor, neutrality and expertise. Using a therapist to provide forensic assessment appears efficient because the therapist has already spent time with the patient and knows much about him or her that others have yet to learn; using a therapist avoids substantial expenditures of time and money for an additional evaluation. A therapist appears to gain candid information from a patient-litigant because of the patient's assumed incentive to be candid with the therapist to receive effective treatment. Although litigants may learn much about themselves as a consequence of receiving thorough forensic evaluations (Finn & Tonsager, 1996), the same treatment incentive does not exist in a forensic examination. Thus, the facts forming the basis for a therapist's opinion may initially appear more accurate and complete than the facts that could be gathered in a separate forensic assessment. In addition, a therapist does not appear to be the attorney's hired gun who has come into the case solely to assist in advancing or defeating a legal claim or defense. Thus, a therapist's forensic assessment may appear more neutral and less immediately skewed by financial incentives toward a particular result than does a separate forensic evaluation.

10 Differences Between Therapeutic and Forensic Relationships

Nevertheless, the therapeutic and forensic roles demand different and inconsistent orientations and procedures (adapted from Greenberg & Moreland, 1995). The superficial and perilous appeal of using a therapist as a forensic examiner is debunked by an examination of the conceptual and practical differences between the therapist-patient relationship and the forensic examiner-litigant relationship.

1) Perhaps the most crucial difference between the roles is the identification of whose client the patient-litigant is. As implied by the name, the patient-litigant has two roles, one as therapy patient and another as plaintiff in the legal process. The patient-litigant is the client of the therapist for the purposes of treatment. The patient-litigant also is the client of the attorney for guidance and representation through the legal system.

The therapist is ultimately answerable to the client, who decides whether to use the services of a particular therapist. The forensic evaluator is ultimately answerable to the attorney, or the court in the case of a court-appointed expert, who decides whether to use the services of a particular forensic evaluator. This arrangement best protects the parties' interests as well as the integrity of the therapist and the forensic evaluator.

2) The legal protection against compelled disclosure of the contents of a therapist-patient relationship is governed by the therapist-patient privilege and can usually be waived only by the patient or by court order. Legal protection against compelled disclosure of the contents of the forensic evaluator-litigant relationship is governed by the attorney-client and attorney-work-product privileges. Because the purpose of a forensic relationship is litigation — not treatment nor even diagnosis for the purpose of planning treatment — communications between a forensic examiner and a litigant are not protected under a physician-, psychiatrist-, psychologist-, or psychotherapist-patient privilege. The forensic evaluator, however, having been retained by the attorney, is acting as an agent of the attorney in evaluating the party or parties

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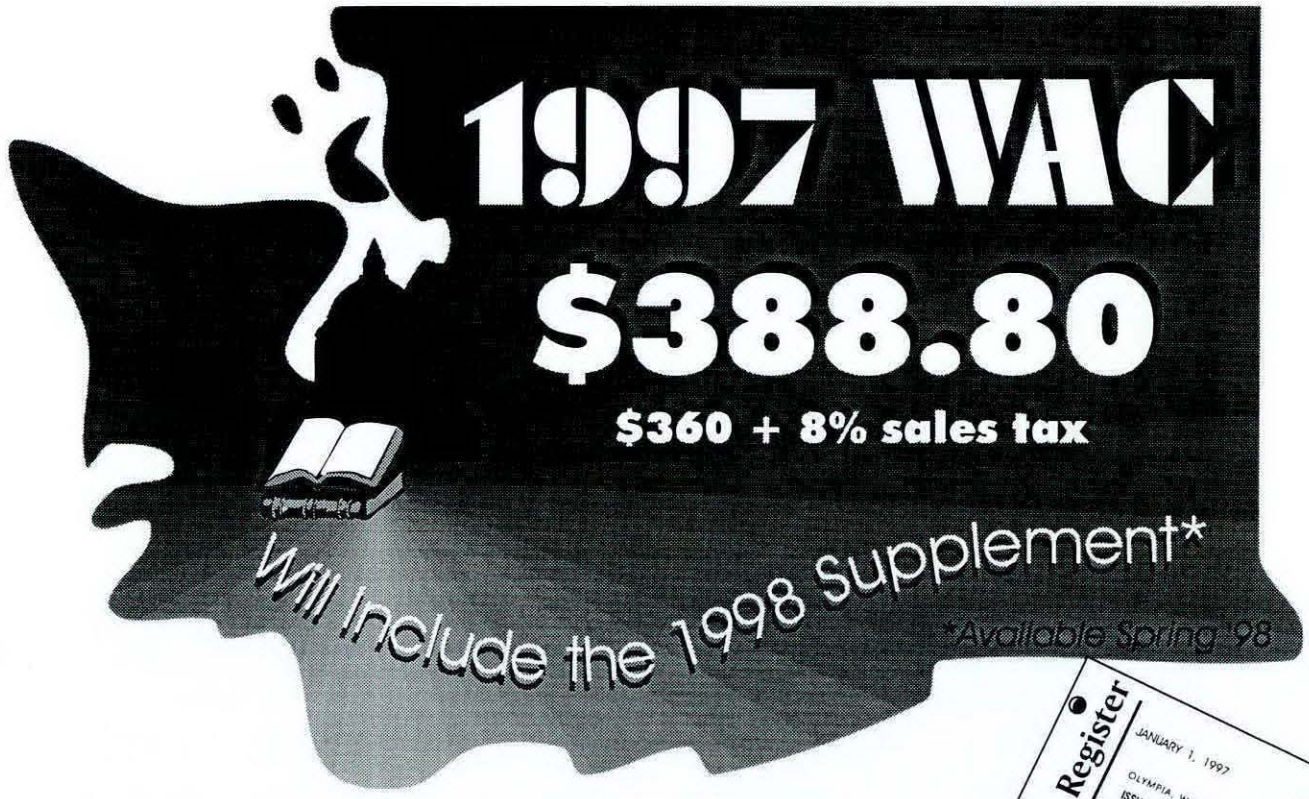

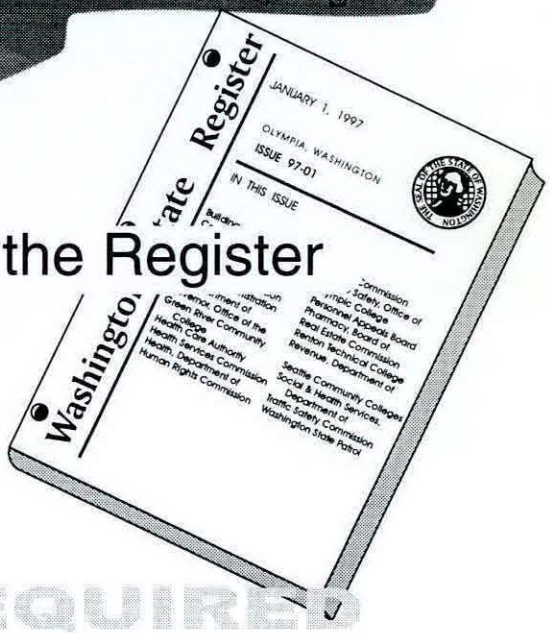

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in the legal matter. This legal agency status puts the forensic evaluator under the umbrella of the attorney-client privilege and usually protects privileged information until such time that the evaluator is declared to be a witness at trial. The main practice point to be made here is that the logic, the legal basis, and the rules governing the privilege that applies to care providers are substantially different from those that apply to forensic evaluators. Given this, the duty to inform forensic examinees of the potential lack of privilege and the intended use of the examination product is embodied in case law (*Estelle v. Smith,* 1981) and the Specialty Guidelines for Forensic Psychologists (SGFP) adopted by the American Psychology-Law Society (APA Division 41) and the American Board of Forensic Psychology in 1991. The Specialty Guidelines state the following:

> Forensic psychologists have an obligation to ensure that prospective clients are informed of their legal rights with respect to the anticipated forensic service, of the purposes of any evaluation, of the nature of procedures to be employed, of the intended uses of any product of their services, and of the party who has employed the forensic psychologist (Committee on Ethical Guidelines for Forensic Psychologists, 1991, p. 659).

3) The evaluative attitude of each expert is different. The therapist is a care provider and usually supportive, accepting, and empathic; the forensic evaluator is an assessor and usually neutral, objective, and detached as to the forensic issues. A forensic evaluator's task is to gain an empathic understanding of the person but to remain dispassionate as to the psycholegal issues being evaluated.

4) To perform his or her task, a therapist must be competent in the clinical assessment and treatment of the patient's impairment. In contrast, a forensic evaluator must be competent in forensic evaluation procedures and psycholegal issues relevant to the case.

5) A therapist uses this expertise to test rival diagnostic hypotheses to ascertain which therapeutic intervention is most likely to be effective. For example, a therapeutic diagnostic question might be whether a patient is a better candidate for insight-oriented psychotherapy, systematic desensitization or psychopharmacologic intervention. A forensic evaluator must know the relevant law and how it relates to a particular psychological assessment. A forensic evaluator then uses this expertise to test a very different set of rival psycholegal hypotheses that are generated by the elements of the law applicable to the legal case being adjudicated.

A forensic evaluator's task is to gain an empathic understanding of the person but to remain dispassionate as to the psycholegal issues being evaluated.

6) Information from the patient-litigant is subjected to different degrees of scrutiny. At least with competent adults, therapy is based primarily on information from the person being treated, information that may be somewhat incomplete, grossly biased or honestly misperceived. Even when the therapist does seek collateral information from outside of therapy, such as when treating children and incompetent adults, the purpose of the information gathering is to further treatment, not to validate historical truth. Effective therapy can usually proceed even in the face of substantial historical inaccuracy. Thus, the historical truth of matters raised during therapy cannot, simply on that basis alone, be considered valid and reliable for legal purposes.

In contrast, the role of a forensic examiner is, among other things, to offer opinions regarding historical truth and the validity of the psychological aspects of a litigant's claims. The accuracy of this assessment is almost always more critical in a forensic context than it is in psychotherapy. A competent forensic evaluation almost always includes verification of the litigant's accuracy against other information sources about the events in question. These sources may include collateral interviews with coworkers, neighbors, family members, emergency room personnel, or a child's teacher or pediatrician, and a review of documents such as police reports, school records, military

records, medical records, personnel files, athletic team attendance, credit card bills, check stubs, changes in one's résumé, depositions, witness statements and any other possible sources of information about the litigant's pre- and post-incident thoughts, emotions, and behaviors.

7) The need for historical accuracy in forensic evaluations leads to a need for both completeness in the information acquired and structure in the assessment process to accomplish that goal. Therapeutic evaluation, in comparison, is relatively less complete and less structured than a forensic evaluation. Moreover, a patient provides more structure to a therapeutic evaluation than does a litigant to a forensic evaluation. Ideally, a patient and therapist work collaboratively to define the goals of a therapeutic interaction and a time frame within which to realize them. The time frame and goals of a forensic evaluation are defined by the legal rules that govern the proceeding, and, once these are determined, the forensic evaluator and litigant are usually constrained to operate within them.

A treating psychiatrist should generally avoid agreeing to be an expert witness or to perform an evaluation of his patient for legal purposes because a forensic evaluation usually requires that other people be interviewed and testimony may adversely affect the therapeutic relationship.

Ethical Guidelines for the Practice of Forensic Psychiatry

8) Although some patients resist discussing emotionally laden information, the psychotherapeutic process is rarely adversarial in the attempt to reveal that information. Forensic evaluation, although not necessarily unfriendly or hostile, is nonetheless adversarial in that the forensic evaluator seeks information that both supports and refutes the litigant's legal assertions. This struggle for information is also handled quite differently by each expert. The therapist exercises therapeutic judgment about pressing a patient to discuss troubling material, whereas a forensic evaluator will routinely seek information from other sources if the litigant refuses to provide it or to corroborate it when the litigant does provide information.

9) The goals of each of these relationships differs. Therapy is intended to aid the person being treated. A therapist attempts to intervene in a way that will improve or enhance the quality of the person's life. Forensic examiners strive to gather and present objective information that may ultimately aid a trier of fact (i.e., judge or jury) to reach a just solution to a legal conflict. A forensic examiner is obligated to be neutral, independent, and honest, without becoming invested in the legal outcome.

10) The patient-litigant is likely to feel differently about expert opinions rendered by therapists than those rendered by forensic experts. To develop a positive therapist-patient alliance, a therapist must suspend judgment of the patient so that the therapist can enter and understand the private perceptual world of the patient without doing anything that would substantially threaten that relationship.

In contrast, the role of a forensic examiner is to assess, to judge, and to report

This role conflict poses both therapeutic risks to the patient-litigant, and risks inaccuracy and lack of objectivity in the court's process and to all of the litigants.

that finding to a third party (attorney, judge, or jury) who will use that information in an adversarial setting. Because a forensic psychologist or psychiatrist has not engaged in a helping relationship with the litigant, it is less likely that his or her judgment-laden testimony would cause serious or lasting emotional harm to the litigant than would that of the psychologist or psychiatrist who has occupied the therapeutic role.

Waiving the Dual-role Conflict

These role differences are not merely artificial distinctions but are substantial differences that make inherently good sense. Unless these distinctions are respected, not only are both the therapeutic and forensic endeavors jeopardized for the patient-litigant, but so are the rights of all parties who are affected by this erroneous and conflictual choice. This role conflict poses both therapeutic risks to the patient-litigant, and risks inaccuracy and lack of objectivity in the court's process and to all of the litigants.

Existing Professional Guidelines

On the basis of these concerns, both psychological and psychiatric organizations have sought to limit situations in which dual functions are performed by a single psychologist or psychiatrist. In increasing detail and specificity, professional organizations have discouraged psychologists and psychiatrists from engaging in conflicting dual professional roles with patient-litigants. As the Ethical Guidelines for the Practice of Forensic Psychiatry, adopted by the American Academy of Psychiatry and the Law (AAPL) in 1989, note:

> A treating psychiatrist should generally avoid agreeing to be an expert witness or to perform an evaluation of his patient for legal purposes because a forensic evaluation usually requires that other people be interviewed and testimony may adversely affect the therapeutic relationship.

In a similar vein, the Specialty Guidelines for Forensic Psychologists indicate the following:

> Forensic psychologists avoid providing professional services to parties in a legal proceeding with whom they have personal or professional relationships that are inconsistent with the anticipated relationship.

When it is necessary to provide both evaluation and treatment services to a party in a legal proceeding (as may be the case in small forensic hospital settings or small communities), the forensic psychologist must take reasonable steps to minimize the potential negative effects of these circumstances on the rights of the party, confidentiality and the process of treatment and evaluation (Committee on Ethical Guidelines for Forensic Psychologists, 1991, p. 659).

The Committee on Psychiatry and Law of the Group for the Advancement of Psychiatry (GAP, 1991) concluded in 1991, "While, in some areas of the country with limited number of mental health practitioners, the therapist may have the role of forensic expert thrust upon him, ordinarily, it is wise to avoid mixing the therapeutic and forensic roles" (p. 44). Similarly, the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association (APA, 1992) admonishes, "In most circumstances, psychologists avoid performing multiple and potentially conflicting roles in forensic matters" (p. 1610). Finally, the most recent and the most specific of these codes, the American Psychological Association's (1994) guidelines for conducting child custody evaluations, concluded the following:

> Psychologists generally avoid conducting a child custody evaluation in a case in which the psychologist served in a therapeutic role for the child or his or her immediate family or has had other involvement that may compromise the psychologist's objectivity. This should not, however, preclude the psychologist from testifying in the case as a fact witness concerning treatment of the child. In addition, during the course of a child custody evaluation, a psychologist does not accept any of the involved participants in the evaluation as a therapy client. Therapeutic contact with the child or involved participants following a child custody evaluation is undertaken with caution.

A psychologist asked to testify regarding a therapy client who is involved in a child custody case is aware of the limitations and possible biases inherent in such a role and the possible impact on the ongoing therapeutic relationship. Although the court may require the psychologist to testify as a fact witness regarding factual information he or she became aware of in a professional relationship with a client, that psychologist should decline the role of an expert witness who gives a professional opinion regarding custody and visitation issues (see Ethical Standard 7.03) unless so ordered by the court (p. 678).

Some courts may not recognize the role conflicts or not see them as important; other courts may see them, but are too concerned with efficiency to give them great weight.

The Legal Perspective

Even though there are explicit ethical precepts addressing this dual role, there are no reported judicial decisions to date that address the exclusion of a forensic assessment by a psychologist or psychiatrist who has served as a litigant's therapist. Courts may not see this as an issue of competence or qualification, but instead, at most, as one of weight or credibility. Thus, the therapist would be permitted to testify and the ethical precept could be used to challenge credibility. Some courts may not recognize the role conflicts or not see them as important; other courts may see them, but are too concerned with efficiency to give them great weight.

Although even the clear ethical conflict may not yet persuade a court to exclude the testimony of a therapist who offers a forensic assessment, the effect of this departure from professional standards on the perceived credibility of the witness may persuade attorneys to resist this two-for-one strategy. Deviating from the ethical codes or practice guidelines of one's profession is an appropriate and effective basis for impeaching a witness, and the explicit ethical and specialty guidelines that address this problem simplify this task for the cross-examining attorney.

Similarly, under both the test of "general acceptance" in the relevant professional community of *Frye v. United States* (1923) and the "good grounds given what is known" test of *Daubert v. Merrill Dow Pharmaceuticals* (1993), forensic assessment by a patient's therapist does not generally provide a reliable basis for a forensic assessment and should be avoided by the ethical psychologist and viewed skeptically by the courts. The Supreme Court's decision in *Daubert* requires federal courts to make a "preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and whether that reasoning properly can be applied to the facts in issue" (p. 592). This decision is part of a trend in both state and federal courts toward a more demanding level of scrutiny requiring scientific support or validation for the assertions made by mental-health professionals in forensic settings. This trend (e.g., *State v. Russel,* 1994) is seen even in states that have chosen to apply the "general acceptance in the relevant professional community" test (*Frye,* 1923) instead of the test used in *Daubert.* Psychologists and

psychiatrists should expect courts to demand evidence of the research that supports their opinions and that supports the data acquisition methods on which opinions are based. A forensic evaluation must be based on information that is more complete and more accurate than that typically obtained as part of therapy.

A forensic evaluation must be based on information that is more complete and more accurate than that typically obtained as part of therapy.

To date, society has taken a largely laissez-faire, market orientation to psychotherapy. Most successful malpractice claims against mental-health professionals have involved sex with patients, drug interactions, failure to warn or protect and suicide (Smith, 1991). However, engaging in dual roles raises the potential for a lawsuit against a therapist by a patient alleging lack of informed consent. This could be claimed by a disgruntled patient-litigant who expected the therapist to be as successful and partisan an expert witness as he or she was a therapist.

Where Then Should the Line Be Drawn?

As stated earlier, psychologists and psychiatrists may appropriately testify as treating experts (subject to privilege, confidentiality, and qualifications) without risk of conflict on matters of the reported history as provided by the patient, mental status, the clinical diagnosis, the care provided to the patient and the patient's response to it, the patient's prognosis, the mood, cognitions, or behavior of the patient and any other relevant statements that the patient made in treatment. These matters, presented in the manner of descriptive "occurrences," and not psycholegal opinions, do not raise issues of judgment, foundation or historical truth. Therapists do not ordinarily have the requisite database to testify appropriately about psycholegal issues of causation or capacity. These matters raise problems of judgment, foundation, and historical truth that are problematic for treating experts.

When faced with issues that seem to fall between the above guideposts, it is useful to ask whether each opinion is one that could or should have been reached in therapy. Thus, if the legal system did not exist, would therapists be expected to reach these sorts of conclusions on their own? Would doing so ordinarily be considered an aspect of the therapy process? Would the opinion be considered exploratory, tentative, and speculative, or, rather, as an adequate basis for guiding legal action outside of therapy? Is the therapist generating hypotheses to facilitate treatment, or is he or she reasonably scientifically certain that this opinion is accurate? Is it based on something substantially more than, "My patient said so?"

Conclusion

Psychologists, psychiatrists, and other mental-health professionals have given and received criticism about the use of expert witnesses whose partisanship appears to overwhelm their professionalism. Engaging in conflicting therapeutic and forensic relationships exacerbates the danger that experts will be more concerned with case outcome than the accu-

racy of their testimony. Therapists are usually highly invested in the welfare of their patients and rightfully concerned that publicly offering some candid opinions about their patient's deficits could seriously impair their patient's trust in them. They are often unfamiliar with the relevant law and the psycholegal issues raised. They are often unaware of much of the factual information in the case, and much of what they know comes solely from the patient and is often uncorroborated. What they do know, they know primarily, if not solely, from their patient's point of view. They are usually sympathetic to their patient's plight, and they usually want their patient to prevail.

By failing to recognize the inherent limitations of their work as therapists, as well as the conflicting therapeutic and forensic roles, psychologists, psychiatrists, and other mental health professionals risk harm to their profession, their patients and the courts. Although therapists frequently enter the forensic arena in their efforts to help, these efforts may not only put therapists in ethical difficulty but may also neutralize the impact both of their testimony and their work as therapists. Therapists need to acknowledge the limits of what they can accurately and reliably say on the basis of therapeutic relationships.

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THE NUTS AND BOLTS OF

Child Support Enforcement in Washington State

Many people who owe child support — and their employers — become involved with Washington State's administrative enforcement system, but the rules governing this system are obscure to most lawyers. This article attempts to provide a general guide for practitioners representing parents paying or receiving support, or businesses facing noncompliance penalties.[1]

Failure to pay support is a societal problem. Judicial remedies are too slow, cumbersome, and expensive to provide a systematic solution. Federal law requires states to implement enforcement programs, and all states have such programs. Although there is no federal supremacy or preemption in this field, states must comply with federal requirements or risk losing federal funding.

These requirements are found in Title IV-D of the Social Security Act; thus state enforcement agencies are known as "IV-D agencies." In Washington, the agency is the Division of Child Support (DCS) of the Department of Social and Health Services (DSHS).[2] Its responsibilities include processing applications for services, locating absent parents, determining support obligations, and collecting, distributing and recording payments.

Anatomy of a Case

DCS may accept referrals from caregivers, welfare agencies, courts, or other IV-D agencies.[3] Each new case is assigned a "D" number that should be used when communicating with agency staff to facilitate retrieval of computerized case information.

The caregiver[4] is the primary source of information to identify and locate the responsible parent. If a support order exists, DCS will enforce it. Otherwise, the agency determines the obligation. Notices demanding money must be served personally or by certified mail, return receipt requested; most others are sent by regular mail.

Once an order exists, if the responsible parent fails to pay as directed, DCS may collect the support by withholding from wages, intercepting income tax refunds, seizing bank accounts and enforcing liens against property. The payee is notified of collections, distributions and debt calculations. When the obligation is paid and the child is no longer dependent, or if the obligor cannot be located, DCS may close the case.[5]

A support enforcement officer (SEO) does the initial work on a case. SEOs are very busy and have limited discretion, so substantial disputes should be appealed to establish contact with a claims officer, an attorney possessing settlement authority within agency guidelines. If the issue is not resolved at this level, an independent administrative law judge (ALJ) will conduct an informal *de novo* hearing.

The ALJ's decision may be appealed to a DSHS review judge, who is authorized to rewrite the decision within agency-defined review standards.[6] The Review Judge's decision is final with respect to DCS, but other parties may seek judicial review.

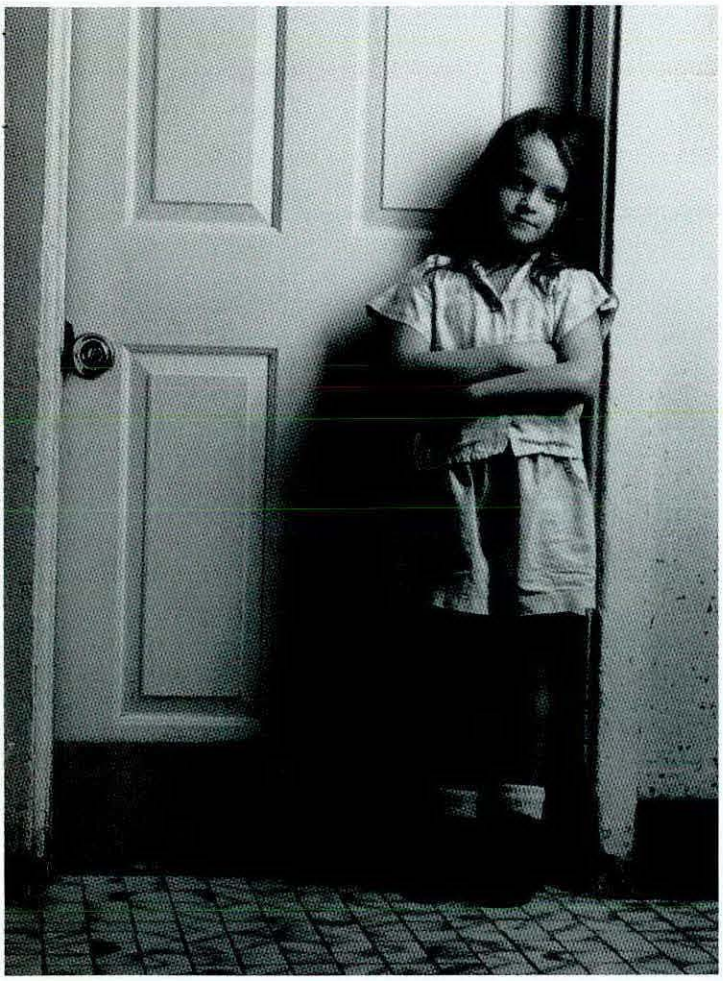
Duty of Support

The substantive duty enforceable under RCW 74.20A.055, DCS's jurisdictional statute, is codified at RCW 26.16.205, which is part of Washington's community property act and, by its terms, applies only to married persons. It is debatable whether or not DCS may enforce common law and other statutes.[7] In any event, DCS's enforcement authority was extended to unmarried parents on equal-protection grounds by decisions of review judges and later by statute.[8] The obligation is based upon the relationship between a "responsible parent" and a "dependent child" as defined in RCW 74.20A.020. Unless DCS is enforcing a court order, an obligor may show (s)he is not a "responsible parent" as a complete defense.[9]

DCS cannot determine paternity but a presumptive father has the burden of initiating a paternity proceeding in court.[10] If the parents are unmarried, a paternity acknowledgment is sought. If it is not given, DCS will refer the case to the prosecuting attorney for paternity establishment. Beginning July 1, 1997, an ac-

knowledgment must be retracted within 60 days, or it becomes conclusive and difficult to set aside.[11]

Washington imposes responsibility on "custodial" stepparents. This qualification comes from *Van Dyke v. Thompson,* 95 Wn.2d 726, 630 P.2d 420 (1980), which held that wages of the obligor's



spouse may not be garnished absent an *in loco parentis* relationship. The test for this relationship is stated in *Groves v. DSHS,* 42 Wn. App. 84, 709 P.2d 1213 (1985). The ALJ may make this finding because it is not a paternity determination. A stepparent's liability is personal and continues until dissolution unless terminated by a superior court.[12]

Liability for current and future (but not past) support terminates upon majority or emancipation except for children over age 18 attending secondary school and expected to graduate by age 19.[13]

Establishing the Obligation

DCS cannot modify a court order but may recalculate support under an adjustment clause unless a party elects to proceed in superior court.[14] DCS has full authority to determine a support obligation in the absence of a court order establishing a "set or determinable" amount or expressly relieving the responsible parent of an obligation with respect to the parent from whom support is sought.[15] If this were not so, a large percentage of cases would be unenforceable and the goal of universal enforcement unattainable. A DCS order has the same force and effect as a court order, but is superseded by a subsequent court order to the extent inconsistent.[16]

The SEO usually applies the Washington State Child Support Schedule (WSCSS) to either employer quarterly tax reports that are several months old or to the WSCSS median income table. This procedure may not be exact, but it provides a default obligation which DCS can enforce lacking actual information. Appealing a notice based on less income than actually earned will result in a higher obligation if the claims officer amends the notice, unless the responsible parent establishes defenses or deviations. RCW 26.19.065(2) imposes a minimum obligation of $25 per month, but a federal court decision requires DCS to reduce or waive this amount where it is inequitable.[17]

DCS establishes the obligation by serving a "Notice and Finding of Financial Responsibility" (NFFR) upon the responsible parent, who has the burden of objecting and showing cause.[18] When a child is receiving public assistance in this state, DCS must notify the obligor within 60 days, or forfeit collection for periods during which it failed to make reasonable efforts to locate the obligor parent.[19]

The objection need not be in writing.[20] Objecting within 20 days stays enforcement pending settlement with the claims officer or the ALJ's decision. An obligor may object within one year without showing good cause, but collection continues and no money will be refunded (although the ALJ may reduce the uncollected debt.) After one year, the ALJ must dismiss unless "good cause" is shown, which means a "substantial reason or legal justification for delay, including the grounds enumerated in Civil Rule 60," which includes mistake, inadvertence or excusable neglect.[21] The ALJ will consider whether the obligor evaded the obligation or was hindered by illiteracy, illness or impairment. Substance abuse has been accepted as sufficient excuse where the obligor is now rehabilitated, wants to put his or her affairs in order, and intends to be responsible for the obligation. If good cause is not granted, the obligor may request a Conference Board (*infra*).

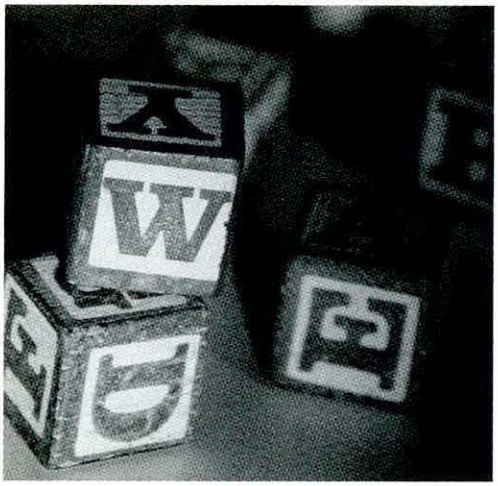
A notice that becomes final for lack of objection is a judgment. Thereafter, each month's support is vested when due and may not be retroactively modified, except a court may equitably mitigate accrued claims where it will not work injustice upon the caregiver or child. *Hartman v. Smith,* 100 Wn.2d 766, 674 P.2d 176 (1984). A DCS Conference Board can do the same thing at less expense.

An obligation determined by DCS or other IV-D agency may be prospectively modified at any time based on a material change of circumstances, effective no earlier than the date of the petition.[22]

Hearings

A hearing before the ALJ is an adjudicative proceeding under RCW 34.05 enjoyed as a matter of right; it is intended to satisfy due process, and it produces an appealable decision. ALJs, however, have only the authority conferred by statute or

by Don Wittenberger



rule and lack general equity power. But the rules provide some important equity defenses, notably equitable estoppel.[23] Generally, a right of hearing exists with respect to obligations and debts, but not collection. Hearing rights may be lost to untimeliness.

The "show cause" nature of hearings to determine support obligations places all of the burdens on the responsible parent, and DCS need not prove anything. The standard for burden of proof is preponderance of the evidence.

In most hearings, the obligor simply wants the obligation to reflect his or her actual income.

The obligor is a party in any hearing to determine how much (s)he owes, but lacks standing as to distribution issues. DSHS is a party if there is any subrogated child support at issue. In all other cases, the claims officer represents the public's interest in assuring that children are adequately supported and in maintaining "the integrity and proper application of the process." As such, the claims officer is not an agent or representative of the caregiver or child.[24] The caregiver appears in a fiduciary capacity for the child, but may also be a party in his or her own right. Historically, where all the support at issue was subrogated or assigned, caregivers were not given party status. The policy now is to treat them as parties in all cases with full rights to argue, present evidence and cross-examine witnesses (n.17 *supra*).

The obligor may assert any of the defenses specified in WAC 388-11-065. An allegation that the caregiver fraudulently received public assistance will not be entertained. DCS will not enforce current support while the obligor resides with the child for purposes other than visitation regardless of any order.[25]

In most hearings, the obligor simply wants the obligation to reflect his or her actual income. A practical difficulty is that many people do not keep records and provide only vague testimony. The ALJ is entitled to believe such evidence and to estimate income. When determining support for several years of variable income, averaging saves time and avoids an excessive number of worksheets. If the income fluctuations were extreme, *e.g.* high earnings interspersed with periods of unemployment, separate worksheets should be used. The ALJ also determines allowable credits under WAC 388-11-015. Credits denied under this rule may be sought in a Conference Board.

It is emphasized that this hearing is fundamentally different from a superior court proceeding in that rules specify who gets a hearing, what issues may be raised, and what relief may be granted. For ex-

ample, the ALJ cannot award attorney fees, enforce subpoenas or impose CR 11 sanctions. Although courts have general jurisdiction over support issues, a statute may require timely election of the judicial remedy, failing which the administrative process must be exhausted prior to judicial review.

Conference Boards

When the ALJ declines jurisdiction, recourse may exist through a Conference Board under WAC 388-14-385, an informal grievance procedure which nevertheless can resolve substantial issues including deferring collection and compromising debts. It may be requested at any time; it is discretionary and equitable. There is no appeal from a Conference Board.

Property Interests and Agreements

Support is the child's property received in trust by the caregiver for the child's benefit. *Hartman v. Smith, supra.* The caregiver, therefore, lacks power to waive or compromise support. Offsets are not permitted because a parent cannot use the child's property to satisfy the parent's debt. A further reason is that the support may be assigned or subrogated. Instead, the obligor should request enforcement against the other parent.

When DSHS or another state's welfare agency provides public assistance to a child, the child support is subrogated to the agency during the period of assistance, up to the amount expended.[26] The recipient also is required to assign past support, which is used to reimburse DSHS.[27] Such a subrogation or assignment transfers property rights and makes DCS a party in proceedings to determine the amount or distribution of support. This should not be confused with an assignment for collection purposes only.

DCS does not recognize informal agreements between parents; WAC 388-11-150 requires agreements to be with DCS. Although the *Hartman* case indicates past support that reimburses the caregiver is his or her property, a collection assignment will subject such support to this requirement. Caregivers, however, may challenge agreements between obligors and DCS.[28] Agreements must comply with support formulas established by law.

Support is the child's property received in trust by the caregiver for the child's benefit... The caregiver, therefore, lacks power to waive or compromise support.

Collection

DCS's collection authority is discretionary, and neither the obligor nor payee may raise this issue in administrative forums. Remedies may, however, be available through a Conference Board or judicial review under RCW 74.20A.200.

DCS initiates wage-withholding by serving the employer with a Payroll Deduction Notice (PDN) or an Order to Withhold and Deliver (OWD). The PDN, a recent innovation, is more efficient for this purpose, and OWDs are now mainly used to reach other types of property. Either notice has priority over any other

Wage-withholding is the most effective, most widely used, and least costly method of collecting support. As the program's effectiveness depends heavily on employers' cooperation, noncompliance is penalized.

garnishment or attachment, as does an assignment of earnings.[29]

DCS may reduce payment schedules because of hardship.[30] If DCS or the support order directs payment to the Washington State Support Registry (WSSR), payments will not be credited unless made to the registry, with rare exceptions.[31]

A joint owner of a bank account seized by DCS may request a hearing.[32] The burden of tracing is upon the claimant, and a claim that the funds at issue did not belong to the support debtor must be well-documented because of the risk of collusion.

Support debts are not dischargeable in bankruptcy, but they are subject to a statute of limitations. DCS will not agree to payment schedules resulting in loss of support, according to the statute.[33]

Distribution

Distribution priorities are specified in WAC 388-14-270 through WAC 388-14-274. These rules also specify the allocation of support received from an obligor owing multiple obligations.

Current support is paid before back debt, and the caregiver is paid before DSHS where the debt is partially assigned or subrogated. DCS allocates such a debt by comparing total public assistance payments with total support collections, which is called a "Total vs. Total" comparison. This may be appealed by a caregiver to a Conference Board.[34]

Support distributed in error, or based on dishonored checks or refunded collections, is recovered from the distributee unless barred by equitable estoppel.[35]

Retained Support

DCS may recover support money from the possession of third parties through administrative procedures, *i.e.* the claim need not be reduced to judgment. A demand must be served and the alleged possessor is entitled to a hearing.[36] Additionally, public assistance may be suspended if a caregiver fails to remit subrogated or assigned support received directly from the obligor.[37]

Employer Noncompliance

Wage-withholding is the most effective, most widely used, and least costly method of collecting support. As the program's effectiveness depends heavily on employers' cooperation, noncompliance is penalized. If DCS or another IV-D agency serves an employer with a withholding order or wage assignment, failure to comply or answer will render the employer liable for any amounts that should have been withheld. Additionally, employers may be fined for failing to timely remit payments, provide information, or report hires.[38]

Some employers discard the PDN when the obligor leaves employment, a mistake often leading to noncompliance. The employer must retain a PDN for one year and automatically resume withholding if

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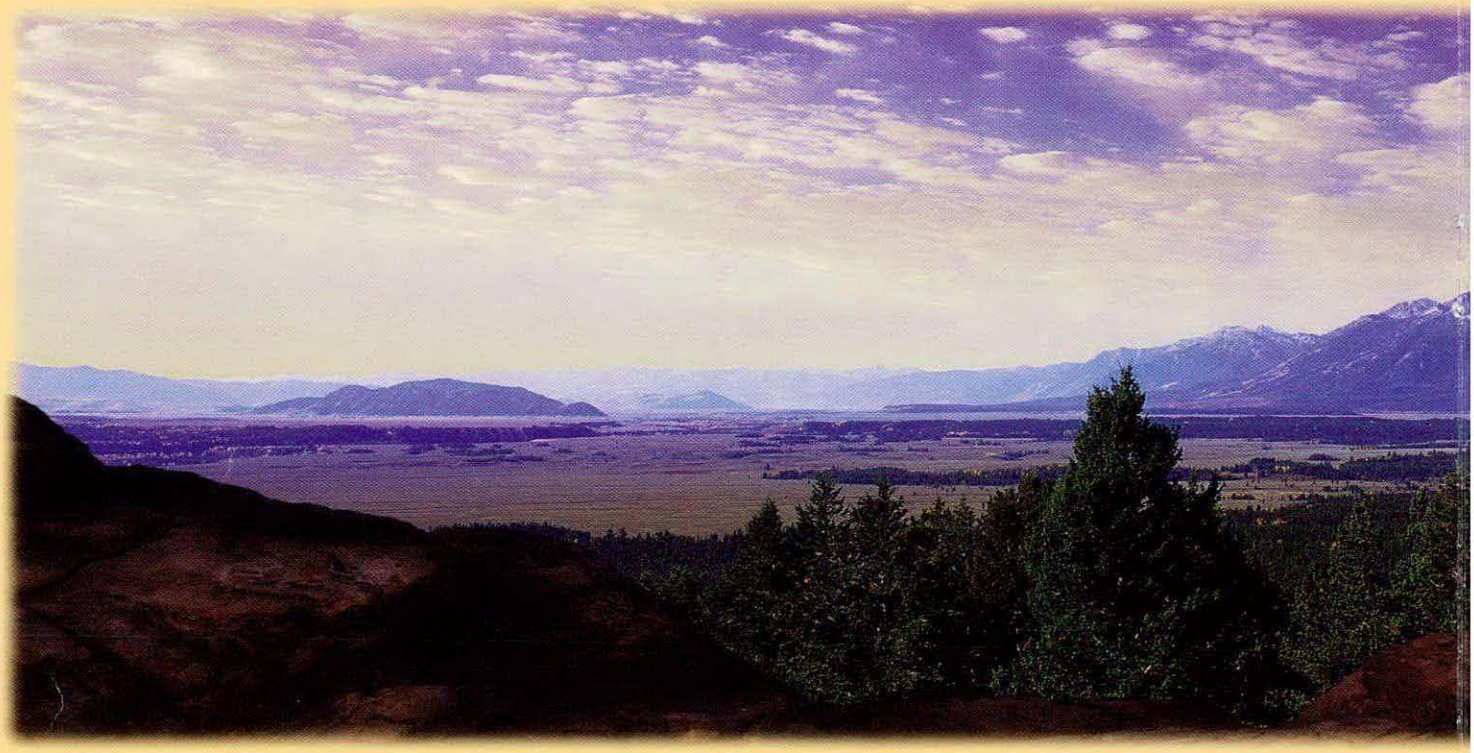

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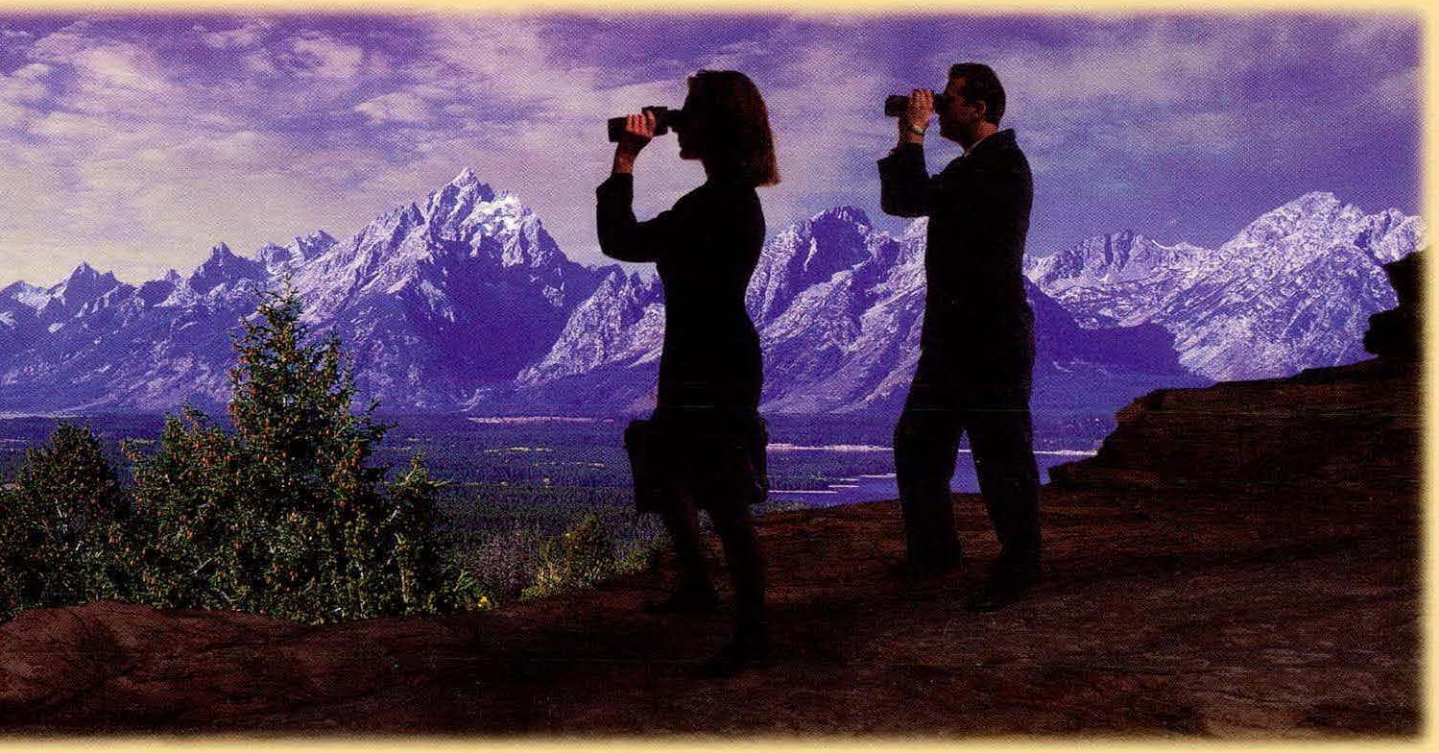

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the obligor returns within that time. After one year, DCS must serve the employer with a new PDN. An employer receiving a PDN for a person no longer employed or never employed nevertheless must answer. This is the only way DCS knows it has not located the obligor.

When an employer receives a Notice of Noncompliance (NNC), counsel should check two possibilities. First, incomplete service of a PDN or OWD is a potential defense; but the review office interprets *Marriage of McLean,* 132 Wn.2d 301, 937 P.2d 602 (1997), as holding that actual delivery is not required. This issue is unsettled and should be thoroughly briefed with more focus on due process than on the agency authority of the employee who received the instrument (in some cases the obligor). Second, an employer may realize a large reduction of liability by showing from payroll records what amounts should have been withheld (as the NNC typically demands the obligor's entire debt.)

Reciprocity

The Full Faith and Credit Clause of the U.S. Constitution and international treaties require recognition of foreign support orders, and statutes require DCS to cooperate with other jurisdictions.[39] DCS, therefore, enforces support, information requests and withholding orders for other jurisdictions when the obligor is present in this state.[40] Today, court proceedings under reciprocal statutes are rare, and most referrals are informal transmittals by IV-D agencies.

If no order is received, DCS will determine the obligation under Washington law and may exceed the amount requested by the initiating jurisdiction. The responsible parent is entitled to application of the laws of other jurisdictions in which (s)he resided during the relevant period.[41]

DCS negotiates with tribal governments for access to tribal courts or processes and seeks the voluntary cooperation of tribal employers. In this context, the support of dependents is significantly influenced by culture and tradition. DCS would not intentionally serve a tribal employer with a NNC. If this occurs, the tribal liaison officer of the issuing office should be contacted.[42]

1997 Legislation

This year the Legislature authorized license suspensions, streamlined reciprocal procedures, and revised paternity rules in response to new federal requirements. Nearly 100 sections in 70 chapters of RCW were amended. Practitioners using older RCW materials should check the 1997 Session Laws, ch. 58, § 801 *et seq.,* for current wordings. A major rewrite of WAC 388-14 was adopted at WSR 97-13-092 (Permanent Rules p. 40), and published in WSR 97-15, (Permanent Rules pp. 1-21). Support enforcement is an evolving program in which statutes and rules change frequently. It is therefore always wise to check for recent revisions.

Endnotes

[1] For more detail see chapter 28 of the WSBA Family Law Deskbook (1996).

[2] Formerly the Office of Support Enforcement (OSE).

[3] RCW 74.20.040.

[4] This article follows the practice of Washington courts in using the term "caregiver" in place of "custodian." *See Marriage of McLean,* 132 Wn.2d 301, 303, 937 P.2d 602 (1997).

[5] WAC 388-14-420.

[6] WAC 388-08-466 (WSR 96-20-010, Permanent Rules, p. 4).

[7] *See e.g.* RCW 74.20A.057 and RCW 26.26.020.

[8] RCW 74.20A.056.

[9] WAC 388-11-065(1)(c).

[10] *Taylor v. Morris,* 88 Wn.2d 586, 564 P.2d 795 (1977); *see* RCW 26.26.040, and note that RCW 74.20A.055(5)(b) was repealed by 1997 Wash. Laws, ch. 58, § 940.

[11] RCW 26.26.040(1)(e) as amended by 1997 Wash. Laws, ch. 58, § 938.

[12] *Harmon v. DSHS,* 83 Wn. App. 596, 922 P.2d 201 (1996), disapproving *Marriage of Farrell,* 67 Wn.App. 361, 835 P.2d 267 (1992).

[13] WAC 388-11-011(11).

[14] RCW 26.23.110 and WAC 388-14-415.

[15] RCW 74.20A.055(1) and RCW 74.20A.020(5).

[16] RCW 74.20A.055(7); *DSHS v. Handy,* 62 Wn.App. 105, 813 P.2d 610 (1991).

[17] *N.R. v. Soliz,* U.S. District Court, District of Western Washington, No. C93-5338B, February 7, 1994, implemented by WAC 388-11-205(9).

[18] RCW 74.20A.055(1).

[19] RCW 74.20A.055(2) and WAC 388-11-045. The purpose of this rule is to protect obligors from accruing onerous debts as a result of agency inaction.

[20] WAC 388-14-500.

[21] RCW 74.20A.055(4); WAC 388-11-011(13).

[22] RCW 74.20A.059 and WAC 388-11-140.

[23] WAC 388-11-067.

[24] RCW 74.20.057; *see also* RCW 26.21.265(3).

[25] WAC 388-11-155(3). This rule abates enforcement, not the obligation, which remains collectible in court. See *Schaefer v. Schafer,* 95 Wn.2d 78, 621 P.2d 721 (1980).

[26] RCW 74.20.330 and RCW 74.20A.030.

[27] RCW 74.20A.320 and WAC 388-14-200.

[28] WAC 388-11-430 and WAC 388-14-445.

[29] RCW 26.23.060(4), RCW 74.20A.080(12), and RCW 74.20A.240.

[30] RCW 74.20A.160 and WAC 388-14-385(12); *see also* WAC 388-14-395.

[31] RCW 26.23.050(9).

[32] WAC 388-14-390(4).

[33] 11 USC § 523(5); RCW 4.16.020(3) and RCW 6.17.020.

[34] WAC 388-14-276(3).

[35] WAC 388-14-272; WAC 388-11-067.

[36] RCW 74.20A.270, RCW 74.20A.275, and WAC 388-13.

[37] WAC 388-14-200(6), (10)(b), (14).

[38] RCW 26.18.110, RCW 26.21.456, RCW 26.23.040, RCW 26.23.090, RCW 74.20A.100, and RCW 74.20A.350.

[39] *See* the Uniform Interstate Family Support Act (RCW 26.21); procedures for reconciling conflicting orders are detailed in RCW 26.21.135.

[40] RCW 26.21.450; RCW 74.20.040(3) and WAC 388-14-260.

[41] RCW 74.20A.057.

[42] For a discussion of issues related to collecting support in tribal jurisdictions, *See* Note, "Beyond Jurisdictional Midrash: Toward a Human Solution to Title IV-D Child Support Enforcement Problems Across Indian Country Borders," 33 *Ariz. L. Rev.* 337 (1991).

Don Wittenberger is a WSBA member and former Administrative Law Judge.

State Bar Highlights

Harwick Receives NABE Recognition

WSBA Executive Director Dennis P. Harwick receives an award from the National Association of Bar Executives at the group's annual meeting luncheon in San Francisco in August, in recognition of his year as NABE president. Keith Birkes, incoming NABE president and executive director of the Missouri State Bar, presented the award.

Appointment to the Commission on Judicial Conduct

The WSBA Board of Governors will be appointing an alternate for one of its representatives on the Commission on Judicial Conduct. Each lawyer member on the Commission has an alternate to serve when the regular member is recused.

The Commission receives, investigates, and hears allegations of judicial misconduct in accordance with its goal to maintain confidence and integrity in the judicial system. The Commission consists of 11 members who serve four-year terms: six non-lawyer citizens, three judges and two lawyers. Meetings are held every other month. This position requires a significant commitment of time and interest as the members spend about 10 hours a month on Commission work.

Members interested in this appointment should contact their Governor or write to the Executive Director at the Bar office by October 14. Lawyers outside the Seattle area are especially encouraged to participate.

Fall International Law Institute

The WSBA International Practice Section and the Washington Society of Certified Public Accountants are co-sponsoring the Fall International Law Institute on October 21 at the Washington Athletic Club in downtown Seattle. The Institute has 7 CLE credits pending.

The speakers are experienced attorneys and accountants who will provide an in-depth analysis of legal and tax issues involving international business transactions.

Topics include: Trade Finance, Transfer Pricing, Treaties, Foreign Exchange, Customs, Protecting Intellectual Property Overseas, Alternative Dispute Resolution, State and Local Taxation, Federal Taxation, and Negotiating and Drafting International Agreements/Joint Ventures.

Six Programs Receive DSHS Grants for Domestic Violence Services

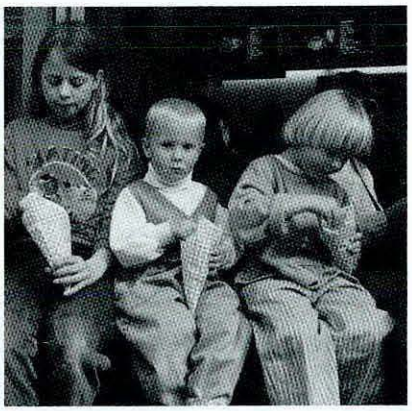
The State Department of Social and Health Services recently awarded contracts to six Washington programs to provide legal services for victims of domestic violence.

Eastside Legal Assistance Program, LAW Advocates, North Columbia Community Action Center, Northwest Justice Project, Snohomish County Legal Services, and the Spokane County Volunteer Lawyers Program each will receive between $35,000 and $65,000 to provide information, assistance and representation to victims of domestic violence. This money is made available as a result of the Victims of Crime Act.

To contribute news and information, call WSBA Communications staff at (206) 727-8203

FYI information

TRAINING FOR CHILDREN'S SSI PRO BONO PANEL



In 1996, Congress made dramatic changes in the Social Security regulations which have resulted or will result in thousands of disabled children losing their SSI (Supplemental Security Income) benefits. It is estimated that as many as 1,700 children in Washington state may receive termination notices. As a result, the Washington State Access to Justice Network has established a statewide Children's SSI Pro Bono Panel.

On September 10, nearly 100 lawyers attended a special seminar regarding the recent changes to children's disability benefits. In return for this free training and CLE credits, each lawyer agreed to join the Children's SSI Pro Bono Panel, and to accept at least one children's SSI case.

This seminar was coordinated by Columbia Legal Services, Northwest Justice Project, National Organization of Social Security Claims Representatives (NOSSCR), National Center for Youth Law, and the Washington State Bar Association. Trainers were Peter H.D. McKee of Theiler Douglas Drachler & McKee, and Alice Bussiere and Chris Palamountain of the National Center for Youth Law in San Francisco. McKee led the group in singing the "Social Security Lament," an original song which he developed as a tool for teaching the complex area of Social Security Disability law.

The program was videotaped. Copies of the videotape will be made available to local legal services and volunteer attorney legal services providers for local or regional training seminars or self-study by volunteer attorneys. Members of NOSCCR have volunteered to mentor pro bono attorneys unfamiliar with Social Security law and procedure and the new SSI Children's regulations, and provide assistance at local or regional training events.

Please contact Yvette War Bonnet at Columbia Legal Services (425-259-3421 ext. 203) or Joan Fairbanks at the Washington State Bar Association (206-727-8282) if you are interested in learning more about the Children's SSI Pro Bono Panel.

DE NOVO WINS ABA AWARD

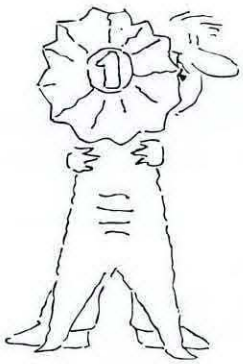
De Novo, the official publication of the Washington Young Lawyers Division (WYLD), took second place in the newsletter competition for the American Bar Association-Young Lawyers Division 1996-97 Awards of Achievement.

Entries were judged on a number of criteria, including overall design, writing and article selection. First place was awarded to the Maryland Young Lawyers and Virginia Young Lawyers received an honorable mention. The WYLD president will receive a plaque in recognition of De Novo's achievement.

De Novo is a bi-monthly publication reporting on issues and topics of interest to members of the Young Lawyers Division. The publication is staffed by Editor Evan L. Loeffler of Harrison, Benis & Spence, LLP, in Seattle, and Managing Editor Stella J. Edens of Rettig, Osborne, Forgette, O'Donnell, Iller & Adamson, LLP, in Kennewick.

ABA AWARDS, MEETINGS

ABA Litigation Section John Minor Wisdon and Professionalism Awards — Nominations accepted through October 15: Presented annually to lawyers who make the legal system accessible to the poor, disenfranchised and other underrepresented groups. These awards recognize outstanding contributions made by lawyers — from career public interest lawyers to large firm lawyers, solo practitioners and corporate lawyers. The awards are presented at the Section's Annual Meeting on April 22-25, 1998.



For a nomination packet or additional information, contact Kelly Sheridan, American Bar Association, 750 N. Lake Shore Dr., Chicago, IL 60611, (312) 988-5665, or e-mail: sheridan@staff.abanet.org.

1998 ABA/West Group Partnership Awards — Applications accepted through October 22. The ABA Partnership Awards are presented to bar organizations, court agencies and other law-related groups which, through noteworthy partnership efforts, have produced outstanding programs which promote greater understanding of the justice system and enhance the legal profession's service to both clients and their communities. The awards, which include cash grants of up to $3,000, will be presented at the ABA Midyear Meeting in January 1998 in Nashville.

Contact Roseanne T. Lucianek at (312) 988-5344 for more information.

Sixth Annual ABA Leadership Forum — This forum provides bar leaders with a rare opportunity for indepth discussion with 1997-98 ABA President Jerome Shestak and other ABA officials. This year's forum will focus on two crucial legal issues: independence of the judiciary and professionalism. The conference will be November 14-16 at the Hyatt Regency in New Orleans. For more information, call Janet Jackson at (312) 988-6117.

1998 ABA Pro Bono Conference — March 26-28, 1998, in Asheville, North Carolina. Call Dorothy Jackson at (312) 988-5766 for more information. Registration brochures will be available in November.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in September 1997 is 5.35%. **The maximum allowable interest rate permissible for October 1997 is therefore 12%.** Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates of the past 10 years appear on page 32 of the June 1997 *Bar News*, and in the online edition of the *Bar News* at http://www.wsba.org.

Correction

In our September 1997 issue, we neglected to credit our esteemed general counsel, Robert "Flash" Welden, for his photo of Tom Chambers and Mary Fairhurst in clown garb in the President's Column. He also took the Access to Justice Conference photos in the August FYI. We really, really apologize for the oversight.

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How Do I Order . . . ?

It seems as if every time of the year is the busy season for our order fulfillment department (currently consisting of one person). As the end of the year approaches, members begin remembering that they still have a few mandatory CLE credits to get done before their reporting period.

Our order processor starts her day with 30-40 phone calls to return. In addition to processing orders for section and admissions materials, Citizen Rights Pamphlets and *Resources*, she fills about 150

continued on next page

FYI Information

LAWTALK: TELEVISION PROGRAMMING FOR THE COMMON PERSON

by Patrick Palace

In an effort to meet the growing demand for legal services for low- and middle-income people who cannot afford a lawyer and are locked out of the courthouse, the Washington State Young Lawyers Division, members of the Pierce County Young Lawyers and Olympia Young Lawyers formed a committee for the purposes of creating a television program to provide the general public with straight legal talk about issues that affect a broad base of society.

Patrick A. Palace, the chair of the LawTalk committee, applied for an American Bar Association Public Service subgrant in late 1996. The ABA subsequently awarded LawTalk funds to produce a series of television programs. The Washington State Young Lawyers Division then provided additional funds to complete the budget. The committee is comprised of Gina Auter, John Casey, Melissa Denton, Patrick Palace and John Wilson.

After six months of planning, two programs were produced in the Pierce County TCI studios. The first show discussed family law issues, and the second show addressed sexual harassment in the work place.

Both of these programs aired on TCI Channel 29 from July 21 through September 21, 1997.

The LawTalk committee is currently in the process of distributing the shows to other television channels across the state. LawTalk should be fully syndicated across Washington State and shown in 10 cities before the end of the year.

On October 22, 1997, two new programs will be produced. These programs will be dedicated to informing people of their rights and remedies 1) when they are injured on the job and 2) if they are victims of domestic violence. These shows will also be aired statewide.

The goal of LawTalk has to been to help those citizens of our state who do not feel they can afford or obtain legal representation. The LawTalk program was therefore designed to help disseminate valuable legal information to meet the public demand and at the same time enhance the perception of attorneys and the public services they perform. LawTalk disseminates information to the general public, particularly to those people who are not privy to legal information or resources and to help them obtain necessary assistance. In short, it has been and will remain the goal of LawTalk to enlighten and empower its viewers through clear, concise and practical legal advice and information, and at the same time underscore the point that lawyers are public servants and professionals dedicated to the services of their clients and community.

Thanks go to the LawTalk committee members and also to the presenters in the first two television programs. These presenters include: Superior Court Judge Marywave Van Deren; Thurston County Prosecutor Allen Tom; Tacoma lawyers Ed Loughrey and Virginia DeCosta; Heriberto Ruiz, Acting Director of Special Programs for the Human Rights Commission; and Debra Stednick, Vice President of Human Resources for the Ackerley Group.

Those interested in participating in the LawTalk program may contact Patrick A. Palace at 627-3883 or e-mail LawTalk at LAWTALKTV@aol.com.

Ordering — *continued from previous page*

CLE book and tape orders a week. Here's a few handy guidelines to make things smoother for you and her:

If you call before dropping by the office, we can have your order ready for you. Only deskbooks are kept on hand. Orders take approximately two weeks to fill and will be mailed to you. If you would like to pick up your order, indicate so on your order form or in a letter to us and we will call you when it's ready. Books related to a particular CLE are often listed, and can be ordered, on the seminar brochure.

A CLE Source catalog of all books and tapes is available by asking.

Orders for CLE materials can be paid by VISA or MasterCard, and you can fax us your order at (206) 727-8320 (everything else must be paid for in advance by check). If you signed up for but did not attend a CLE, a coursebook will be mailed to you automatically.

Call the Order Fulfillment Clerk at (206) 733-5918.

Disciplinary Notice

Disbarred

Island County lawyer Patrick Joseph Flannigan (WSBA #9053, admitted 1979) was disbarred by the Washington Supreme Court effective June 24, 1997. Flannigan also was ordered to pay restitution in the amount of $103,436.23, pursuant to RLD 5.3, and costs and expenses in the amount of $6,759.41, pursuant to RLD 5.7. The Order of Disbarment was entered after a default hearing and was based upon the hearing officer's findings and conclusions that Flannigan committed 24 counts of ethical misconduct. The hearing officer's recommendations of disbarment and restitution were approved by the Disciplinary Board. The discipline is based upon Flannigan's continued practice of law while suspended, neglect of seven client matters, misrepresentation to clients about the status of their cases, entering into business dealings with an elderly client, misappropriation of a client's retirement funds held in trust, and abandonment of his practice without proper protection for his clients.

Flannigan was suspended for nonpayment of dues on June 2, 1995. In 1995, prior to his suspension, Flannigan accepted funds from five clients but did not complete routine probate, trust and real estate legal services. After October 1995, Flannigan failed to return calls or keep his clients apprised of the status of their cases. In another matter, a trust of $99,352.52 was established with Flannigan as trustee, for the benefit and retirement of an older woman. Flannigan repeatedly violated the terms of the trust by invading the trust principal without prior authorization of the trustor. Within months, he made unauthorized loans to himself in the amount of $22,575.65. Flannigan did not keep accurate records and made misrepresentations to hide these disbursals. The beneficiary of the trust was injured by the removal of funds from her trust account. Flannigan left the beneficiary without any trustee for the trust, without an accounting of the trust's monies, and without documentation to establish or allow collection of outstanding loans from the trust's funds.

After failing to pay his annual lawyer licensing fees, Flannigan accepted at least $15,000 in fees from three different clients. After his suspension, he failed to inform existing clients of his suspension and continued to accept legal fees and promise legal services until December 22, 1995, when he disappeared. He abandoned his practice without taking steps to protect any of his clients' interests and leaving 22 boxes of client files behind. RLD 8.6 custodians were appointed to disburse 121 active client files and review over 15 boxes of closed files to remove and return to clients their original documents. Flannigan's actions violated Rules of Professional Conduct 1.1, 1.3, 1.4, 1.5, 1.7(a) & (b), 1.8(a), 1.14(b)(3), 1.15(a), 5.5(a), and 8.4(b), (c) & (d), and Rules For Lawyer Discipline 1.1(c), (i), (j) and (l).

The hearing officer was Ernest A. Bentley, Jr. of Bellingham. Respondent did not appear for the hearing. The Bar Association was represented by Disciplinary Counsel Bernadette Janét.

For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at (206) 727-8280 leaving the case name and your address.

Nondisciplinary Notice

Interim Suspension

Tacoma lawyer Michael Sean McAllister (WSBA #22279, admitted 1992) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings, by Supreme Court order entered July 22, 1997. Joy McLean represented the Bar Association.

Seattle lawyer Michael B. Markham (WSBA #11388, admitted 1980) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered August 5, 1997.

Interim suspension is pursuant to RLD 3.1 and is not a disciplinary sanction.

1 New Ethics Opinion, 2 Withdrawn

Withdrawal of Formal Opinion 19 (1952)

The Board of Governors, at its June 20, 1997 meeting, unanimously approved the recommendation of the Rules of Professional Conduct Committee that Formal Opinion 19 on an attorney's use of a predecessor's name be withdrawn. Doug Tuffley, chair of the RPC Committee, reported to the Board that the Committee's recommendation was based on the fact that the initial portion of Formal Opinion 19, which states that a law practice may not be sold, conflicts with Formal Opinion 192 (1996) on the sale of a law practice. Formal Opinion 192 is published in the *Resources* directory, or contact Rick Augastino at (206) 727-8252 to receive a copy of the opinion.

Withdrawal of Informal Opinion 91-2 and Publication of Informal Opinion 97-1

At its March 21, 1997, meeting, the RPC Committee withdrew Published Informal Opinion 91-2 "Use of Testimonials and Specific Results in Advertising," and approved and voted to publish Informal Opinion 97-1, "Use of Testimonials and Specific Results in Advertising." These advertising issues have been before the RPC Committee repeatedly. Informal Opinion 91-2 took the position that an advertisement containing specific results could not comply with RPC 7.1(b) because of the potential for misleading legal consumers. By contrast, Informal

Opinion 97-1 takes the position that specific results in advertising may comply with RPC 7.1(b) if they are factually accurate and include an appropriate disclaimer. *See, Peel v. Attorney Registration and Disciplinary Commission*, 110 S.Ct.2281,2292-2293 (1980); *Zauderer v. Ohio Disciplinary Counsel*, 105 S.Ct.2265,2282 (1985).

While the RPC Committee cannot issue an opinion on the ethical propriety of specific individual advertising programs, general ethics questions regarding advertising or other issues may be directed to Cathy Blinka, WSBA Professional Responsibility Counsel. Ethics Line: (206) 727-8284, fax: (206) 727-8320, e-mail: license@wsba.org.

INFORMAL OPINION 97-1: USE OF TESTIMONIALS AND SPECIFIC RESULTS IN ADVERTISING

Rule 7.1 of the Rules of Professional Conduct provides: A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it *** (b) Is likely to create an unjustified expectation about results the lawyer can achieve...***

The Rules of Professional Conduct Committee recently had occasion to review an advertisement for a lawyer's services which cited specific jury verdicts and other results the lawyer had obtained in specific cases. The Committee is of the opinion that such an advertisement, even if true, does not comply with RPC 7.1(b), unless it includes a sufficiently prominent disclaimer.

Rules 7.1 of the Model Rules of Professional Conduct of the American Bar Association is identical to Washington's RPC 7.1. The comments to the model rule, although not formally adopted as a part of Washington's rule, are instructive. They say:

The prohibition in paragraph (b) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

In the opinion of the Committee, even though a statement in an advertisement may be factual, it may be misleading if it omits relevant facts and circumstances to permit a potential client to fully understand its significance. The types of statements which concern the Committee are along the line of "largest jury verdict" and "largest recovery ever obtained." A similar opinion from Alabama (#90-61) gives as examples "landlord negligently maintains common areas, tenants sprain ankles, $11,500.00"; "Insurance company wrongfully refuses to pay $2,000.00 hospital bill, $30,000.00"; "Negligent operation of automobile results in torn knee cartilage, $40,000.00"; and "Hospital and physician malpractice resulting in leg amputation, $300,000.00."

However, the Committee believes that the potential for creating unjustified expectations can be eliminated if such claims are accompanied by an appropriate disclaimer. Whether a particular disclaimer is sufficient will depend on its content and the manner in which it is displayed in

the context of the advertisement. A disclaimer must at a minimum (1) be displayed at least as prominently as the references to results themselves and (2) contain information that would lead a reasonable person to understand that the attorney is not claiming to be able to reproduce such results in a particular case. For example, a statement in a printed advertisement about the results in a particular case would not, in the Committee's opinion, violate the rule if accompanied by an equally prominent statement to the effect that each case is different and that prior results should not create an expectation about results in an individual case. The Committee believes that a disclaimer is "equally prominent" if contained in the same font and at least the same size print as the claims themselves, and its import is not obscured or minimized by other language or materials in the advertisement.

The Committee also believes that statements in printed advertisements about results in particular cases must be factually accurate. This may, in particular cases, require information to be included that limits the import of the statements. For example, statements about "largest award" or "largest verdict" should indicate the date as of which these statements are true since there may have been events subsequent to the publication of the advertisement that would make the statements no longer true.

Similarly, the Committee is of the opinion that client testimonials and statements that purport to convey information but in fact are meaningless fail to comply with RPC 7.1(b). Examples are "Attorneys who get results" and "Over 50 years combined experience" and "Lawyers who work hard." Such statements fail to convey any meaningful information to persons seeking legal services, and may mislead the unwary consumer into believing that they mean more than they do.

The United States Supreme Court's opinions on lawyer advertising, beginning with Bates v. State Bar of Arizona, 433 U.S. 350, 97 S. Ct. 2691, 53 L. Ed.2d 810 (1977), have made it clear that lawyers have a constitutional right to advertise, but that those advertisements may not be deceptive or misleading. Quoting Bates, the Court has said that it "recognized that advertising by professions poses special risks of deception — 'because the public lacks sophistication concerning legal services, misstatements that might be overlooked or deemed unimportant in other advertising may be found quite inappropriate in legal advertising.'" *In re R.M.J.*, 455 U.S. 191, 200, 102 S. Ct. 929, 71 L. Ed.2d 64 (1982). However, the Court has also stated that "because disclosure requirements trench much more narrowly on an advertiser's interests than do flat prohibitions on speech, 'warning[s] or disclaimer[s] might be appropriately required...in order to dissipate the possibility of consumer confusion or deception.'" *Zauderer v. Ohio Disciplinary Counsel*, 471 U.S. 626, 105 S. Ct. 2265, 2282 (1985).

Informal opinions are published pursuant to authorization granted by the Board of Governors but they have not been individually approved by the Board and do not reflect the official position of the Association. An informal opinion is provided for the education of the Bar and reflects the opinion of the Rules of Professional Conduct Committee. All opinions are published in the annual Resources *directory, or call Rick Augastino at (206) 727-8252.*

Annual Meeting and September 11-12 Board of Governors Meeting

Changing of the Guard

Tom Chambers and Mary Fairhurst

Before outgoing president Tom Chambers handed over the gavel to President-Elect Mary Fairhurst, he challenged the board to not be afraid to "fail, lose, stumble and make mistakes," that no great effort is achieved without risk. In reviewing his year as Bar Association president, he highlighted some of the accomplishments of the Board: improving some programs and putting other programs that weren't doing so well to bed, improving relations with the state Supreme Court, better coordination with other groups regarding legislative proposals, and beginning a unified communications plan.

Incoming President Mary Fairhurst, surrounded by an extensive entourage of coworkers and family, spoke of lawyers as "stewards of justice" and encouraged WSBA members to become better problem-solvers. In describing her philosophy, she shared two quotes hanging in her office: "Wisdom does not reside in only one mind" and "Vision with action can change the world."

The Board elected Wayne Blair of Seattle as President-elect for the coming year.

Reciprocity Resolution

Resolutions which would require the WSBA to negotiate with other states for admission of attorneys to the bar by reciprocity, and to submit a referendum to WSBA members to approve reciprocity admission, failed upon a vote by all WSBA members present at the annual meeting. The Reciprocity Committee will continue to explore the merits of reciprocity and report back to the Board at a later date.

Mandatory Fee Arbitration Discussion Continues

Board members shared concerns of constituents regarding the mandatory fee arbitration rules now being considered and redrafted by the Board. Feedback from WSBA members was described by Governor Whitson as a "firestorm," with lawyers' perception of the rule as being "loaded in favor of consumers." Wayne Blair outlined several reasons the mandatory fee process would be good for lawyers: (1) it is a friendly forum in front of lawyers who understand the lawyer-client process and what is reasonable in terms of fees; (2) it is a quick process; and (3) it is a process which is fair to both lawyer and client. Wayne Blair urged the Board to "put on your regulatory hat" and follow through in making mandatory fee arbitration a reality.

Governor Theiler noted that in King County, the mandatory fee arbitration process already in place through the Superior Court "forces people to come to the table." While she made it clear that she did not agree with all the provisions of the rule in its current state, she acknowledged that "within a very narrow construct, it could be a service to members."

Governor Lee, who presented the board with several constituent letters opposing the rule, described the rule as "too volatile in its current form." He expressed his concern that the rule may have a tremendous economic impact on practitioners, who may feel that they can no longer do pro bono work or allow divorce clients leeway in making payment arrangements.

Governor Nielsen countered with his analysis that everyone is still on the same level playing field as with litigation, but the mandatory fee arbitration process is cheaper and faster.

After considerable discussion, the Board voted to continue working on the issues surrounding the rules in their current form, but to table discussion until the October meeting, so that everyone will have an opportunity to obtain further feedback from members before continuing the redrafting process.

Board Institutes "Guidelines for Member/Staff Relations"

The Board adopted official guidelines for member/staff relations, which state as follows:

The Executive Director of the association assigns certain staff to act as liaisons to certain committees, sections, task forces and member groups. Assigned staff pro-

Mary Fairhurst and her parents, Stan and Mary

ABA President Jerome J. Shestack and WSBA President Mary Fairhurst.

vide support for members' groups such as arranging meetings, acting as a resource for information and WSBA programs, assisting with budgeting and coordinating mailings and communications. Member groups need to recognize that there are many competing interests for the time of WSBA staff and that many member groups may be utilizing the same staff person's time.

The primary responsibility of staff assigned to assist member groups is to facilitate the work of the group. In meetings, even after working hours, staff are still performing work-related duties. Members may find some settings more social in nature and an opportunity to relax and enjoy the company of others. It is important to remember that in these situations, staff may see these events as part of their processional obligations.

The WSBA has a policy prohibiting harassment, a copy of which is attached. It applies not only to relationships and interaction among employees of the WSBA, but relationships among members and employees as well as of staff by vendors, visitors and others conducting business with the WSBA. If any employee believes that he or she has suffered harassment, the matter is to be brought to the attention of the Human Resources Manager or Executive Director who shall conduct an investigation and take appropriate action.

The WSBA policy attached to the guidelines prohibit sexual and other types of harassment, and prohibit discrimination because of sex, age, race, color, marital status, national origin, religion, sexual orientation, veteran's status, disability or any other basis prohibited by local, state, or federal laws.

Endorsement of Initiative 677

In a consistent action, the Board endorsed Initiative 677, the Employment Non-Discrimination Act, which would amend state law to prohibit discrimination in employment based upon sexual orientation.

Young Lawyers "LawTalk" Presentation

Patrick Palace and Kathleen Hopkins of the Young Lawyers' Division gave a sparkling presentation on the "LawTalk" television spots produced by the Young Lawyers in a law-related education effort. The spots, produced for under $2,000, brought together panels of experts to answer frequently-asked questions in various areas of the law.

Governor Ehrlichman expressed the need to devote substantial resources to "putting seed money out on law-related education activities such as this."

Rules of Professional Conduct Committee Report

Doug Tuffley presented the RPC Committee Report to the Board.

In a related development, the Board approved the withdrawal of Formal Opin-

Top, Fairhurst, the second woman president of the WSBA, with the three other women on the board, Mary Alice Theiler, Marijean Moschetto and Pat Williams; bottom left, Governor Steve Crossland chats with Young Lawyers Division President Kathleen Hopkins and LawTalk Committee Chair Patrick Palace; bottom right, Attorney General Christine Gregoire and WSBA President-elect Wayne Blair.

THE CHOICE

There Are a Number of Lawyers' Liability Programs in Washington - But The WSBA Sponsors Just One.

Sponsored by:
The Washington State Bar Association

Administered by:
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Premiums for Washington State Bar members are based on claims experience of Washington lawyers ... not on losses experienced elsewhere or on out-of-state market conditions.

Your sponsored program provides these features:

- **Defense Costs Payable in Addition to the Limit of Liability.**
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- **Unlimited Tail Coverage.** You have the option to purchase unlimited non-practicing tail coverage when you cease private practice. The deductible provision is waived.
- **Increased Liability Limits.** You and your firm can choose coverage up to $10,000,000.00.

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ion 189 and publication of proposed Formal Opinion 194. Formal Opinion 189 took the position that the identity of a client is always a secret which may not be disclosed by the lawyer on IRS Form 8300 which, by federal statute, requires that the client's identity be disclosed when the lawyer receives more that $10,000 in cash in one transaction or in two or more related transactions from the client. The new proposed Formal Opinion 194 comports with the decision of the Ninth Circuit in U.S. v. Blackman, 72 F.3d 1418 (9th Cir. 1995), cert. denied, 117 S. Ct. 275 (1996), which holds that, in the context of an IRS Form 8300 dispute, a lawyer may not in all circumstances protect the identity of the client under federal law, and may be compelled by court order to divulge the client's identity.

Interprofessional Committee Report

Kathleen Kilcullen, committee chair, and Joy McLean, disciplinary counsel and liaison, gave a report to the Board regarding the activities of the Interprofessional Committee, who operate as a conduit before the Bar Association and members about whom the Bar has received complaints from other professionals (such as court reporters and doctors) that the member has not paid their billing. The Board directed the committee to interact with the Office of Disciplinary Counsel and the mandatory fee arbitration committee and return to the Board in approximately three months with alternatives and suggestions as to how to best put enforcement teeth into the process.

Lawyers' Fund for Client Protection Committee Report

Bob Welden presented the Lawyers' Fund for Client Protection Committee annual report. The Board voted to amend Rule 5(d), codifying the long-standing policy of the Fund that it cannot reimburse consequential damages such as lost interest, or attorneys fees or costs expended in attempting to recover the loss.

Appointments

The Board appointed Judy Foster and Raymond Tansy as non-lawyer members of the Lawyers' Fund for Client Protection Committee. The Board also appointed Chris Peck, editor of *The Spokesman Review*, to the Mandatory Continuing Legal Education Board.

Approval of License Fee Reduction

The Board approved a Fiscal Year 1998 license fee reduction schedule, whereby members can withhold a portion of their licensing fees (ranging from 20 cents to $1.50) at the beginning of the legislative process based on the previous year's legislative financial history.

Approval of Real Property/Probate/Trust Bylaw Amendments

The Board approved amendments to the Real Property/Probate/Trust bylaws, adding a public service subcommittee and creating a newsletter and editorial board.

THE CULTURE OF DISBELIEF

How American Law and Politics Trivialize Religious Devotion

STEPHEN L. CARTER
328 PP., SOFTCOVER,
$14.95.
DOUBLEDAY ANCHOR
BOOKS, 1994.

by Bob Cumbow

Last fall, then-gubernatorial candidate Gary Locke won headlines with his reaction to opponent Ellen Craswell's identification of the Bible as her personal moral and spiritual guide. Said Mr. Locke: "We have so many religions now, we can't run government according to the Bible." Ms. Craswell's willingness to refer to at least some moral authority to guide the business of government was sadly a rare event — and one that evidently cost her votes. Mr. Locke's success was apparently due at least in part to the fact that he offered voters no clue as to what, if any, moral authority he might prefer to be guided by.

The public discrediting of Ms. Craswell reflected the muddled notion that a political leader's acknowledgment of a religious text as a moral authority signifies some sort of evangelistic agenda; while Mr. Locke's reference to "so many religions" was a sort of shorthand for the idea that an abundance and diversity of religions somehow preclude public respect for religious views altogether. Both notions are typical of an age in which we have come to view the many religions of our nation's diverse citizenry not as equally welcome in the public forum but as equally suspicious.

The fear of religion in public life — ironically so common today in a nation that was founded on principles of tolerance and was first populated partly as a safe harbor for religious refugees from European persecutions — arises from confusion between the First Amendment's original goal of protecting religion from the state and the contemporary liberal goal of protecting the state from religion. Mr. Locke's remarks, in particular, seem to fuel the notion that, if so many religions with so many different teachings can coexist, none of them must actually be true, and thus religion as a whole can't really matter very much. This perception has fueled the trivialization of religion in public life that Stephen Carter decries in his interesting and well-intended book *The Culture of Disbelief*. Unfortunately, Mr. Carter's book misses the mark too often, and compromises too readily with the voguish suspicion of religion, to be the useful defense of religion's role in our culture and public life that Mr. Carter so earnestly wants it to be.

Although initially hopeful about the book, I grew suspicious while Mr. Carter, still in his Foreword, remarked that "too many" journalists, scholars and politicians "treat deep religious conviction as presumptively irrational." (p. xiv). This pronouncement left me thinking that either Mr. Carter doesn't know what "irrational" means, or he seriously believes that belief has something to do with reason. But if religious belief were rational, we'd call it *knowledge*, not belief.

"I do not believe that faith and reason are inconsistent," Carter says (p. xv). But this does not make them the same thing; they are coexistent, not identical. Mr. Carter makes the epistemological mistake of equating conviction with knowledge. Conviction may come from faith *or* reason. The fact that the religious believer is certain about his or her beliefs does not make those beliefs rational. If religion were rational, then all religions would be as uniform as systems of mathematics.

Religions are systems of belief, not of knowledge; and the province of *belief* is the unknowable. If something is knowable, it is a proper subject of science; only if it is not does belief enter the picture. Even as late as page 217, Mr. Carter seems to recognize this, only to turn around and again claim that the truth or falsity of a proposition is what makes it rational. Of a life after death, he says, "either there is one or there is not." (p. 222). But that does not make the afterlife a question of fact rather than belief. The fact that it is not knowable (in this lifetime at least) is what makes it necessarily a matter of faith.

Why is this important? Because it shows how Mr. Carter betrays his own argument. To treat faith as if it were not irrational is to trivialize the importance and power of faith. There was nothing rational about the willingness of Abraham to kill his own son because God had asked him to do so. If it were a reasonable thing to do, Abraham would hardly have been considered such a strong man for being prepared to do it. He undertook to sacrifice Isaac because he had faith in God, not because he found God's command rational.

Thus, though Mr. Carter is at his best when arguing that the religious voice must not be excluded from public discourse, he is at his worst when trying to defend that argument by persuading his reader that religious conviction is less like belief and more like knowledge. Unfortunately, that kind of muddled thinking is typical of Mr. Carter's book as a whole. At one point, for example, he argues that "airports, backed by the Supreme Court, are happy to restrict solicitation by devotees of Krishna Consciousness, which travelers, including this one, find irritating. (Picture the response should the airports try to regulate the wearing of crucifixes or

yarmulkes on similar grounds of irritation.)" (p. 9). But this argument would make sense only if there were no difference between aggressive financial solicitation and passive religious costuming.

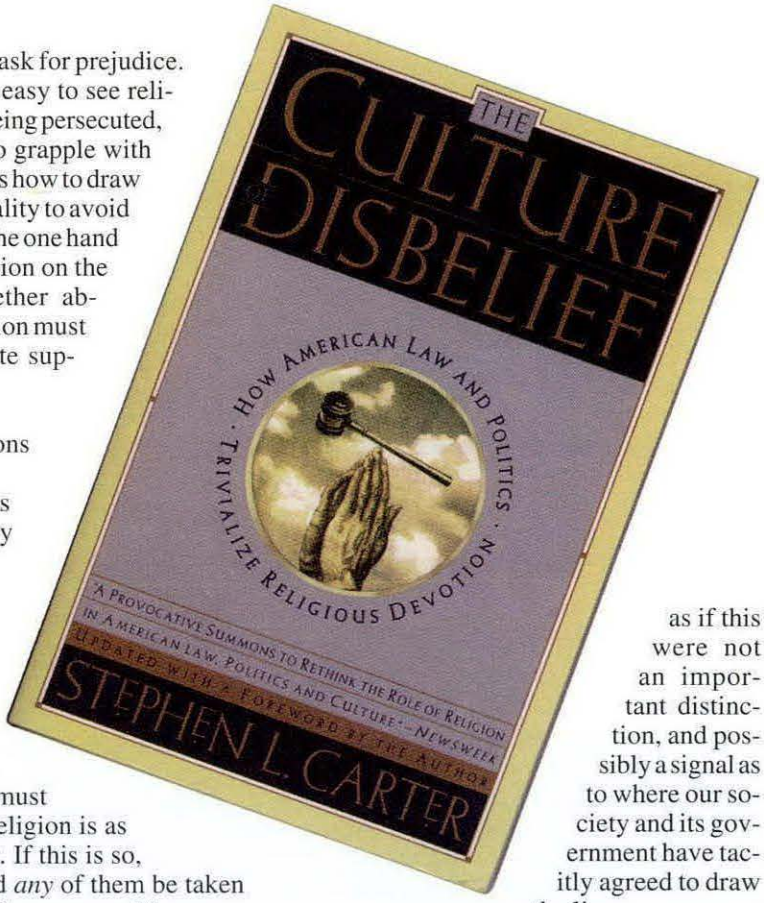
Elsewhere, Mr. Carter cites with approval a Talmudic scholar's assertion that "theologically and historically, there is no such thing as the Judaeo-Christian tradition" (p. 87) — which certainly must come as a surprise to the millions of people who recall Jesus Christ as a Jew who characterized his teachings as "the fulfillment of the Law."

To his too-often muddled thinking, Mr. Carter adds muddled writing. Though his rhetoric is often stirring, he has an unfortunate tendency to defuse his best thoughts through opaque writing. I challenge anyone to grasp Carter's point upon a single reading of this intellectually rich but stylistically destitute sentence:

> The seeming unwillingness of politically active religionists to accept the possibility that their religious traditions might correctly teach a word of God contrary to their secular political predilections is an obstacle, not an aid, to restoring religion to the place of honor that it deserves in the pantheon of American cultural institutions; indeed, if the principal value of religion to a democratic polity is its ability to preach resistance, it is difficult to see any gain to religion from the unswerving effort to take control of the apparatus of the state. (p. 68).

The worst offense of Mr. Carter's book, however, and the one that most keeps it from being what it truly ought to be, is his scrupulous avoidance of tough questions, his insistence upon oversimplifying big issues and not facing up to the analysis necessary to a truly meaningful exploration of the problem.

He often raises, for example, but never satisfactorily resolves, the crucial issue of why contemporary American legal thinkers either refuse to distinguish, or simply can't tell the difference, between protecting religious belief and proselytizing. He oversimplifies the complex issue of the government's so-called "neutrality" as a mere mask for prejudice. It is temptingly easy to see religious belief as being persecuted, much tougher to grapple with such questions as how to draw the line of neutrality to avoid persecution on the one hand and proselytization on the other; and whether absence of restriction must always constitute support.



One of the toughest questions that Mr. Carter refuses to face is the one raised by Gary Locke's comment alluded to earlier: If all religions should be protected, and allowed to coexist, then it must mean that one religion is as good as another. If this is so, then why should *any* of them be taken seriously? Mr. Carter states his own view that "everyone is entitled to his or her religious belief" (p. 90); but this does not square with the fact that religious adherents tend to regard their beliefs as objective, revealed truth.

Unfortunately, Mr. Carter's book misses the mark too often, and compromises too readily with the voguish suspicion of religion, to be the useful defense of religion's role in our culture and public life that Mr. Carter so earnestly wants it to be.

Indeed, the supreme irony of Mr. Carter's jeremiad against the trivialization of religious belief is that it should rely on the la-dee-dah subjectivism of "everyone is entitled" — a tepid tolerance that *itself* trivializes religious belief.

Mr. Carter makes nothing of the fact that all of the cases in the developing constitutional doctrine of "accommodation of religion" deal with religious *practices* rather than with religious *beliefs* — as if this were not an important distinction, and possibly a signal as to where our society and its government have tacitly agreed to draw the line.

He proposes instead a philosophy of accommodation that would be based on the protection of individual conscience, not on the preservation of organized religions as independent power bases that exist in part to resist the state. (p. 134) Yet he makes no suggestion as to how such a new doctrine of accommodation would actually work, or how "individual conscience" could be reliably perceived so as to accommodate it. Moreover, his proposal short-changes the value of preserving institutionalized religions precisely *because* they provide a check on the potential excesses of government regulation in the area of religious practice.

Dealing with religion in the education system, Mr. Carter artfully avoids another tricky issue, perhaps the central one to this aspect of the debate: Can't you *teach* religion without *preaching* it? Indeed, you *must*, if you are to produce educated minds. But government seems to have lost sight of the difference between education and conversion — a scary thought, since the failure to see that distinction tends to typify governments that

view education *as* a means of conversion, and want to make sure that students are converted to the *right* ("politically correct"?) beliefs. Indeed, Mr. Carter seems to be sniffing around this notion, without quite realizing it, when he writes that it is not at all clear that the public educational system is prepared to make compromises with parents who raise religious objections to the curriculum — even though educational authorities often seem more than ready to make peace (as, very often, they should) with people who object to parts of the curriculum as racist or sexist. (p. 173)

A better example of Mr. Carter's view is the following excerpt, which demonstrates what is best and worst about his book:

> America would be a better nation if only it took more seriously the reinforcement of strong moral character in its children. With this sentiment one can hardly disagree, which is why it is a shame that religious conservatives keep ruining it by saying that the real problem is how the liberals have kicked God out of the schools (p. 187).

The fear of religion in public life . . . arises from confusion between the First Amendment's original goal of protecting religion from the state and the contemporary liberal goal of protecting the state from religion.

This approach — ironically from a man who admittedly sent his own children to private schools because public schools were so unwelcoming to religious belief — shows at once Mr. Carter's ability to pinpoint a complex problem and then throw it away by reducing it to simplistic partisan politics.

Later in this same passage, he goes on to say that "at the time that half the nation was run as a slaveocracy" (surely the wrong word!) "there was prayer aplenty in what schools existed." This too-easy demonstration that classroom prayer does not make us more moral merely avoids the question. And suggesting that institutionalized religion did not prevent slavery simple-mindedly ignores the impact that the institutional Christianization of the slaves had on the road to emancipation. Slavery could not long endure once Americans had to regard those they enslaved not as animals or savages but as children of God with immortal souls.

To his credit, Mr. Carter recognizes that the key tactic of p.c. liberalism — preclusion of debate — will be its undoing. (p. 230) But he too often reflects a p.c. consciousness himself, in his haste to indict "the religious right" and to compromise with the moral-relativist left. He uncritically adopts eminently debatable liberal propositions such as "it is impossible to design a noncoercive approach to school prayer." (p. 188)

Sometimes, Mr. Carter's acceptance of a liberal position is frustratingly enigmatic: He casually asserts that the Supreme Court "correctly rejected the proposition that the fetus is a juridical person" without ever suggesting why that rejection was "correct." That's something millions of people on both sides of the issue would like to know; but Mr. Carter passes on in silence.

He says elsewhere that "Constitutional rights should be cast in positive, not negative terms" (p. 257) — an odd assertion for someone who surely must know that a constitution is a restriction on government action, not an affirmative grant of rights. Yet the mistaken insistence that our government grants rights to individuals, not the other way around, is typical of contemporary liberalism — and it is ultimately the urgency of his desire to please liberals while presenting an essentially conservative view that keeps Mr. Carter's book from doing its job.

There is, to be sure, much that is good in this book. It is particularly useful to the general reader wanting a first pass at the problems raised by our government's response to religion. But its social, legal, religious and psychological simplisticism keep it from being the valuable source of provocative discourse that it ought to have been.

❖ ❖ ❖

Bob Cumbow *is a former chair of the WSBA Editorial Advisory Board. He frequently reviews books for the* Bar News.

Calendar

OCTOBER

1 CONSTRUCTION LAW '97
Silverdale
Also in Bellevue 10/8, Everett 10/15, Tacoma 10/29
By Pacific Legal Seminars (206) 933-9247
7 CLE credits

3 WA COLLECTION LAW AND PRACTICE
Seattle
By WA Law Institute (206) 726-9337
6.5 CLE credits (incl. 2 ethics)

3 THE PSYCHOLOGY OF DIVORCE: TOWARD A HOLISTIC APPROACH TO DIVORCE
Seattle
By King Co. Bar Assn. (206) 624-9365
7 CLE credits (incl. 1 ethics)

3 ETHICAL DILEMMAS FOR THE PRACTICING LAWYER
Tacoma
Also in Seattle 10/17, Spokane 10/31, Kennewick 11/14, Mt. Vernon & Vancouver 11/21
By WSBA CLE (206) 727-8202
3 CLE ethics credits per session

3-4 24TH ANNUAL TAX INSTITUTE
Priest Lake, ID
By Gonzaga University School of Law (509) 328-4220, ext. 3738

3-5 PROFESSIONAL MEDIATING TRAINING
Seattle (continues 10/11-12)
By UW CLE (206) 543-0059/ (800) CLE-UNIV
CLE credits TBA

5 NATIONAL TRAINING AND CONTINUING EDUCATION CONFERENCE — ACCESS TO JUSTICE; THE ADMINISTRATIVE HEARING
Seattle
By National Association of Hearing Officials (360) 902-8135
16 CLE credits (incl. 2 ethics)

6-7 PERSONNEL LAW UPDATE
Bellevue
By Council on Education in Management (510) 988-1837
12.75 CLE credits (incl. 1 ethics)

8 VALUING CLOSELY HELD BUSINESSES: THEORY, PRACTICE & LAW
Spokane
Also in Bellevue 10/10, Seattle 10/15
By Business Advisory Services (206) 223-5400
7.5 CLE credits

9 EMPLOYMENT, LABOR AND HUMAN RESOURCES SERIES: WINNING WITH TEMPORARY AND INDEPENDENT WORKERS
Seattle
By UW CLE (206) 543-0059/(800) CLE-UNIV
CLE credits TBA

9 TOM CHAMBERS SEMINAR FOR THE GENERAL PRACTITIONER
Seattle
Also in Spokane, Vancouver and Olympia 10/9; Bellingham 10/16; Tri-Cities 10/24
By WSTLA (206) 464-1011
CLE credits TBA

9 ADVANCED LEGAL WRITING & EDITING
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By LawProse (214) 691-8588
6.5 CLE credits

9-10 AFFIRMATIVE ACTION BRIEFING
Seattle
By National Employment Law Institute (415) 924-3844
14 CLE credits

9-10 1997 ANNUAL FALL CONFERENCE
Kennewick
By WA State Assn. Of Municipal Attorneys (206) 625-1300
10.5 CLE credits (incl. .5 ethics)

10 DEFENSE OF DRUG CASES
Seattle
By WACDL (206) 623-1302
6.25 CLE credits (incl. .75 ethics)

10 EMPLOYMENT, LABOR AND HUMAN RESOURCES SERIES: WORKPLACE CONFLICT RESOLUTION
Seattle
By UW CLE (206) 543-0059/ (800) CLE-UNIV
CLE credits TBA

10 COMMUNITY PROPERTY LAW & DEVELOPMENTS — THE IMPACT ON YOUR PRACTICE
Seattle
By WSBA CLE and Litigation Section (206) 727-8202
5.75 CLE credits

10 HOW TO WORK SMARTER, NOT HARDER
Seattle
By WSBA CLE (206) 727-8202
5.75 CLE credits

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Seattle
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7.5 CLE credits

13 TAXATION OF EMPLOYEES
Seattle
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15 CLE credits

14 TRANSFER PRICING
Seattle
By Golden Gate University (206) 622-9996
4 CLE credits

15 WASHINGTON STATE AND LOCAL TAX
Seattle
By Golden Gate University (206) 622-9996
15 CLE credits

16-17 ELECTRONIC PUBLISHING: RISKS AND OPPORTUNITIES
Seattle
By LSI (206) 567-4490
10 CLE credits

16 BROWNSFIELD REDEVELOPMENT IN WA
Seattle
By LSI (206) 567-4490
12.5 CLE credits

16 DEFENDING WRONGFUL DISCHARGE CLAIMS UNDER WA LAW
Seattle
By NBI (715) 835-8525
6.5 CLE credits (incl. 1 ethics)

16-18 WSBA BOARD OF GOVERNORS MEETING
Walla Walla
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17 ADVANCED MEDIATION SKILLS TRAINING
Seattle
By WA Law Institute (206) 726-9337
7 CLE credits (incl. 2 ethics)

17 STREAMLINING FEDERAL LITIGATION
Seattle
By The Rutter Group (818) 990-3260
3.25 CLE credits

17 TORT LAW UPDATE
Seattle
By WSTLA (206) 464-1011
CLE credits TBA

17 ETHICS/BAR GRIEVANCES
Seattle
By WDTL (206) 521-6559
3.75 CLE ethics credits pending

20 CLAIMS LAW '97
Bellevue
By Pacific Legal Seminars
(206) 933-9247
4 CLE credits

20 INTEREST-BASED MEDIATION — THE PROCESS: PHILOSOPHIES, PROFICIENCY & PROCEDURES
Spokane
By Fulcrum Institute (509) 838-2799
36.5 CLE credits (incl. 1 ethics)

20 PERSONNEL LAW UPDATE (1-DAY)
Spokane
By Council on Education in Management (510) 988-1837
6 CLE credits (incl. .75 ethics)

21 INSURANCE COVERAGE LAW IN WA
Seattle
By NBI (715) 835-8525
6.5 CLE credits (incl. 1 ethics)

22 TAX PLANNING AND COMPLIANCE FOR TAX-EXEMPT ORGANIZATIONS
Seattle
By PESI (715) 833-5296
7.25 CLE credits

22 PUBLIC WORKS LAW '97
Bellevue
By Pacific Legal Seminars
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3 CLE credits

22-23 WOMEN IN THE LAW
Union
By WSTLA (206) 464-1011
CLE credits pending

23 INSURANCE FRAUD AND SUSPICIOUS CLAIMS
Seattle
By Defense Research Institute
(312) 944-0575
11 CLE credits

23 OPENING WINDOWS: UNDERSTANDING TRAUMA AND CHILD DEVELOPMENT
Yakima
By WA State CASA/GAL
(206) 667-9716
9 CLE credits (incl. 1.5 ethics)

23 ACCESSING RECORDS: DISCOVERING

AND PROTECTING "CONFIDENTIAL" INFORMATION
Seattle
Also in Spokane 10/30
By WSBA CLE (206) 727-8202
6.5 CLE credits

23 HANDLING WAGE & HOUR LAW CASES: PROTECTIONS AFFORDED BY THE WAGE & HOUR LAWS (A.M.); AVAILABLE REMEDIES & PROPOSALS FOR CHANGE (P.M.)
Seattle
By WSBA CLE (206) 727-8202
3.25 CLE credits per session

23 VANCOUVER STOCK EXCHANGE HIGH TECHNOLOGY SHOWCASE
Seattle
By Vancouver Stock Exchange, call Canadian Consulate General, Trade & Development Section, (206) 443-1777/(206) 443-9735.

24 WORKERS COMPENSATION: A VIEW FROM THE BOARD
SeaTac
By Board of Industrial Insurance Appeals (360) 753-9639
6 CLE credits (incl. 1 ethics)

24 EMPLOYMENT, LABOR AND HUMAN RESOURCES SERIES: EMPLOYEE RIGHTS AND RESPONSIBILITIES
Seattle
By UW CLE (206) 543-0059/ (800) CLE-UNIV
CLE credits TBA

28 COMPLYING WITH THE FAIR DEBT COLLECTION PRACTICES ACT
Seattle
By NBI (715) 835-8525
6 CLE credits (incl. 1 ethics)

30 GETTING THE JUDGE TO SAY "YES"
Seattle
By Kinder Legal (206) 622-3810
7 CLE credits (incl. .25 ethics)

30 USING EXHIBITS TO WIN YOUR CASE
Seattle
By NBI (715) 835-8525
3.25 CLE credits

30-31 14TH NATIONAL FISHERY LAW SYMPOSIUM
Seattle
By King Co. Bar Assn. (206) 624-9365
10 CLE credits

31 SPENCE RANCH TRIAL TIPS
Seattle
By UW CLE (206) 543-0059/(800) CLE-UNIV
CLE credits TBA

NOVEMBER

1 TRAINING ON GOVERNMENT ETHICS
Olympia
By WA State House of Representatives (360) 786-7736
2.25 CLE ethics credits

4 A PRACTICAL APPROACH TO BUILDING YOUR DEPOSITION SKILLS
Aberdeen (video replay with live moderator)
By WSBA CLE (206) 727-8202
6.75 CLE credits

4 INTERNET AND ELECTRONIC COMMERCE TRAPS FOR THE UNWARY
Seattle
By UW CLE (206) 543-0059/(800) CLE-UNIV
CLE credits TBA

5 PRIVATE EQUITY CAPITAL
Seattle
By UW CLE (206) 543-0059/ (800) CLE-UNIV
CLE credits TBA

6-8 AFM FAMILY MEDIATION
Seattle
By UW CLE (206) 543-0059/ (800) CLE-UNIV
CLE credits TBA

6-11 42ND ANNUAL ESTATE PLANNING SEMINAR
Seattle
By WSBA CLE and Estate Planning Council of Seattle (206) 727-8202
15.25 CLE credits (incl. .75 ethics)

6 DOMESTIC VIOLENCE AND THE WORKPLACE: THE THREAT AND THE RESPONSE
Seattle
By Greater Puget Sound Domestic Violence Conference Planning Committee (253) 798-2981
6.25 CLE credits

7 CONSUMER PROTECTION, ANTITRUST AND UNFAIR BUSINESS PRACTICES CONFERENCE
Seattle
By WSBA CLE (206) 727-8202
5 CLE credits pending

7 EMPLOYMENT, LABOR AND HUMAN RESOURCES LAW AND PRACTICE SERIES: DISCRIMINATION LAW
Seattle
By UW CLE (206) 543-0059/(800) CLE-UNIV
CLE credits TBA

7 EXPERT WITNESSES
Port Angeles
By Clallam Co. Bar Assn. (360) 457-3327
1.25 CLE credits

7 CREATING CHANGE: WORKING TOGETHER FOR ACCOUNTABILITY
Seattle
By Greater Puget Sound Domestic Violence Conference Planning Committee (253) 798-2981
5.5 CLE credits

7 SUBROGATION & REIMBURSEMENT — LAND MINES IN PERSONAL INJURY PRACTICE
Seattle
By KCBA (206) 340-2572
6 CLE (incl. 1 ethics) credits pending

10-14 LAUNCHING A NEW BUSINESS VENTURE
Seattle
By UW CLE (206) 543-0059/ (800) CLE-UNIV
CLE credits TBA

11 WRITING TO WIN
Seattle
By KCBA (206) 340-2572
6.5 CLE credits pending

12 SCHOOL LAW IN WA
Seattle
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6.5 CLE credits (incl. 1 ethics)

12 TRUCK ACCIDENT LITIGATION IN A NUTSHELL
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13 INSURANCE LAW
Spokane
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By WDTL (206) 521-6559
5.5 CLE credits pending

14 1997 FALL REAL ESTATE CONFERENCE
Seattle
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6.5 CLE credits

14 EMPLOYMENT, LABOR AND HUMAN RESOURCES LAW AND PRACTICE SERIES: WORKPLACE STANDARDS AND BENEFITS
Seattle
By UW CLE (206) 543-0059/
(800) CLE-UNIV
CLE credits TBA

14 TRIAL AS TV
Seattle
By UW CLE (206) 543-0059/
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CLE credits TBA

18 SUCCESSFUL DIVORCE MEDIATION
Seattle
By NBI (715) 835-8525
6.5 CLE credits (incl. 1 ethics)

20 PROMOTING DIVERSITY AND ELIMINATING BIAS IN THE LEGAL PROFESSION
Vancouver (video replay with live moderator)
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6.5 CLE ethics credits

20 THROUGH THE EYES OF THE DEFENSE
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5.5 CLE credits

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6.5 CLE credits (incl. 1 ethics)

20 COMMUNICATION IN THE COURTROOM
Bellingham
By Carl Grant (206) 364-5298
7 CLE credits

20 A LAWYER'S ETHICAL RESPONSIBILITIES IN DEALING WITH PRO SE LITIGANTS
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2 CLE ethics credits pending

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South End office share: sole practitioner with client base but no support needs office share arrangement (modest) in South King County. Reply to WSBA *Bar News* Box 537.

Downtown Seattle office-sharing: $150 per month. Also, full-time offices available on 32nd floor, 1001 Fourth Avenue Plaza. Close to courts. Furnished/unfurnished suites, short-term/long-term lease. Receptionist, legal word-processing, telephone answering, fax, law library, legal messenger and other services. (206) 624-9188.

Leonard W. Moen & Associates wants to sublet its North End building, suitable for individuals or groups. (425) 227-4260.

Lovely view: office space available in United Airlines Building 8th floor. Reception, library, conference room, copy machine available. Please call Marco or David (206) 728-7799.

Southcenter: one inside office in three-office suite. Furnished, full electronic support. Informal, relaxed atmosphere. Legal secretarial services available. Free parking. Available immediately. $700/month. (206) 930-0022.

Downtown Seattle: four offices and secretarial stations available. Tasteful decor, relaxed atmosphere. Overflow, referral, contract work potential. Receptionist, conference rooms, computerized library. (206) 624-9392.

Office space: share with five CPAs; phones, receptionist, tax library (books and CD-ROM). AGC Building with Lake Union view, lots of convenient parking, good access for clients. Call Stan (206) 285-4211.

Downtown Seattle, Washington Mutual Tower, 33rd floor: law firm has two or three offices with two secretarial stations and two internal paralegal offices available, with or without access to conference rooms, copier, fax and kitchen. Separate entrance. Reply to WSBA *Bar News* Box 538.

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Quality attorneys, law clerks and paralegals sought to fill temporary and permanent positions in law firms and companies throughout Washington. Contact Legal Ease, LLC (425) 822-1157.

Attorney jobs: Harvard Law School calls our publication "probably the most comprehensive source of nationwide and international job openings received by our office and should be the starting point of any job search by lawyers looking to change jobs." Each monthly issue contains 500-600 current (public/private sector) jobs. $45/three months. Contact: *Legal Employment Report*, 1010 Vermont Ave. NW, Ste. 408-WB, Washington, DC 20005. (800) 296-9611. Visa/MC/AmEx.

Ater Wynne Hewitt Dodson & Skerritt, LLP, a Northwest regional law firm with 55 lawyers, is seeking an associate to join our growing Seattle office. Applicants should have at least two years' experience in a broad range of environmental matters, including hazardous waste cleanup and regulatory compliance, air and wastewater permitting, environmental issues in transactions, and environmental litigation. Some additional experience in corporate, commercial, and/or real estate transactions would be preferred. Candidates should have superior academic credentials and excellent analytical, research, and writing skills; major law firm experience is desirable. This is an exceptional opportunity for a talented individual interested in working on a variety of matters. Qualified applicants should send letter and résumé (no calls, please) to: Tom Kilbane, Ater Wynne Hewitt Dodson & Skerritt, LLP, 601 Union Street, Suite 5450, Seattle, WA 98101-2327.

Associate position available with growing general firm's Tacoma office. Superior academic credentials, one year's experience, and willingness to go to trial required. Send résumé to Managing Partner, Leggett & Kram, 1901 South I Street, Tacoma, WA 98405-3810.

Minzel & Associates is a temporary placement agency for lawyers and paralegals. We are looking for quality lawyers and paralegals who are willing to work on a contract basis for law firms, corporations, solo practitioners, and government agencies. If you are interested, please call (206) 689-8526 for an interview.

Commercial trial attorney: Lasher, Holzapfel, Sperry & Ebberson, a 21-attorney, AV-rated law firm, is seeking an associate with two years' commercial litigation experience. Candidates should possess excellent oral, writing and research skills. Current Washington State

Bar membership and basic computer literacy are strongly preferred. Competitive salary and benefits. Friendly, supportive workplace. Send résumé and writing samples to: Personnel, 2600 Two Union Square, 601 Union Street, Seattle, WA 98101.

Litigator: downtown Seattle law firm with strong international business practice seeks commercial litigator with at least five years of experience. A significant portable case load is necessary. Reply to WSBA *Bar News* Box 535.

Tri-Cities law firm seeks attorney. Minimum one year's experience preferred. Associate would do family law and general practice work. Spanish language ability a plus. Salary DOE. Send résumé to: 428 W. Shoshone, Pasco, WA 99301. Please do not call.

Land use associate sought by Phillips McCullough Wilson Hill & Fisko, a six-attorney Seattle firm emphasizing land use, real estate and general business matters throughout the state. Two years' actual land use experience required; real estate and/or litigation experience also helpful. You should be bright and highly motivated, with strong writing ability and people skills. All replies kept in strict confidence. Qualified applicants should send letter and résumé (no calls) to: 2025 First Avenue, Suite 1130, Seattle, WA 98121, attn: Jack McCullough.

Entry-level position in an eight-attorney firm emphasizing estate planning and trust- related work. Reply to Dorothy Foster at Gores & Blais, 1420 Fifth Avenue Suite 2600, Seattle, WA 98101.

Associate position available for litigation department. Reply in confidence to Miller Nash, attn. Libby Matheny, 601 Union St., Ste. 4400, Seattle, WA 98101-2352.

Labor and Employment Attorney: Stoel Rives LLP, one of the largest Pacific Intermountain West law firms, seeks a lawyer with a minimum of two years' experience in labor and employment law for its Portland, Oregon, office. Position will include a mix of office and litigation practice. Excellent academic record, writing ability and client relationship skills are required. Equal Opportunity Employer. Send résumé in confidence to: Ms. Lee Dayfield, Stoel Rives LLP, 900 SW 5th Ave., Ste. 2300, Portland, OR 97204.

Public Defender Services: the newly incorporated city of Maple Valley (pop. 11,000) is seeking a professional services contract for Public Defense. Municipal court services by contract with the city of Enumclaw. Calendars will be conducted one day or night per week. Public defense screening will be conducted in open court by the judge. Data from the Maple Valley area in 1996 showed annual filings of 856 infractions and 302 citations, but the city's actual experience may differ following incorporation. Please submit résumé, references from other municipal clients, proposed costs and terms, and a letter detailing availability to accommodate the proposed court schedule, by October 31 to: John Starbard, Interim City Manager, City of Maple Valley, P.O. Box 320, Maple Valley, WA 98038-0320.

Assistant City Attorney for the City of Yakima, Criminal Division. One year of legal experience is required; municipal law work, especially criminal prosecution, is desirable. Salary $3,588-$4,569 plus excellent fringe benefits. Please submit résumé with salary requirements to: Archie M. Sutton, Personnel Officer, City of Yakima, 129 N. 2nd St., Yakima, WA 98901. Applications must be postmarked or submitted by 5 p.m. on October 17.

Associate or "of counsel" position. 12-attorney Eugene AV firm with strong business and litigation practice seeks litigator with a minimum of five years' experience. Excellent credentials and substantial experience trying insurance defense cases are required. Transportable practice not required. Please send résumé in confidence to: Administrator, Arnold Gallagher Saydack Percell & Roberts, PC, PO Box 1758, Eugene, OR 97440-1758.

Senior Associate/Principal: downtown Portland, OR, AV business firm has senior associate or principal addition opportunity for qualified applicant. Existing clientele preferred. Demonstrable experience in major business litigation and/or transactions or accomplished practice emphasis desirable. Performance-based compensation/equity for suitable candidate. All inquiries confidential. Reply to WSBA *Bar News* Box 536.

Bennett & Bigelow, P.S., a 21-lawyer firm concentrating in health care law, seeks one litigation associate and one transaction associate. A minimum of two years' experience, superior academic credentials and excellent writing skills are essential. Experience in tax, health care law and/or antitrust preferred but not essential. Please send résumé, law school transcript, references and writing sample to: Associate Hiring Coordinator, Bennett & Bigelow, P.S., 999 3rd Ave., Ste. 2150, Seattle, WA 98104.

Reply to WSBA* Bar News *Box Numbers at: WSBA* Bar News *Box* ___, Bar News *Classifieds, 2101 Fourth Avenue — Fourth Floor, Seattle, WA 98121-2330.

Part-time lawyer: flexible hours possible. Respond to calls from members of organization re: variety of legal questions. Résumé to: Hiring Partner, 2200 6th Ave., Ste. 1122, Seattle, WA 98121.

Pago Pago, American Samoa: Small, well-established law firm (two attorneys and three support staff) is seeking an associate attorney. Our practice is truly a general practice. We are currently handling cases in the following areas: admiralty, real estate, general corporate, criminal, drunk driving, domestic relations, collections, estate planning and probate, worker's compensation, personal injury, insurance defense and employment. We represent some of Samoa's most successful businesses and several large off-island corporations. Our offices are located in a small modern office building. The office atmosphere is friendly and professional. We are looking for someone with excellent research and writing skills who is willing to make a one-year commitment. Successful applicant must have passed a bar examination and be currently licensed to practice law. Salary range is $32,500 to $36,000 per year. Round-trip airfare for one person will be provided. Benefits include a housing allowance of $500/month, two weeks' paid vacation per year, one week's paid sick leave per year and major medical insurance. Please provide a cover letter explaining why you wish to practice law in American Samoa, a résumé, two writing samples, three employer references and three personal references. Please forward application materials by regular first class United States mail to: Barry I. Rose and Associates, P.C., P.O. Box 3501, Pago

Pago, American Samoa 96799. Upon receipt, we will provide interested applicants with detailed information about our practice and what it is like to live and work in American Samoa. Application deadline: November 15.

Attorney recruitment: The Counsel Network is an international attorney recruitment firm with offices in Seattle and affiliations nationwide. Our focus is high-level permanent placement and our clients are generally larger domestic and international law firms and companies. We are continually seeking candidates with top credentials and superior experience for a broad range of positions with blue chip firm and in-house clients locally, nationally and internationally. The economy is great and salaries are rising; there has never been a better time to move. If you would like to explore your career options in complete confidence, please contact Stephen Nash (former attorney) at TCN in Seattle at (206) 224-3160, toll-free 1-800-COUNSEL, fax (800) 469-2233 or e-mail snash@headhunt.com.

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Contract attorney: experienced, accomplished trial and appellate attorney available. Fifteen-plus years' experience. Litigation and writing emphasized. References; reasonable rates. M. Scott Dutton (206) 324-2306, fax (206) 324-0435.

Investment services: professionally designed and managed portfolios made up of several no-load mutual funds. Wide range of clients, both institutions and individuals; small accounts welcome. Competitive fees. Investment Management Advisors, (206) 781-6777.

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Oregon accident? Unable to settle the case? Associate an experienced Oregon trial attorney to litigate the case and share the fee. OTLA member; references available. Zach Zabinsky (503) 223-8517.

Forensic engineer: board-certified forensic examiner specializing in fire reconstructions and accident analysis; autos/fires/P.I./product failure/construction defect. Ref: Martindale-Hubbell Law Directory, Best's Directory of Recommended Insurance Attorneys and Adjusters. Contact: John Caudron, MSS, BCFE (909) 598-8919.

Legal research is my forte! Experienced contract attorney performs legal writing for lawyers anywhere in Washington State. I use Westlaw online research and UW Law Library. Will draft trial briefs, motions, memoranda, CLE materials. Clerked in King County Superior Court, U.S. Bankruptcy Court. Elizabeth Dash Bottman, (206) 526-5777, fax (206) 528-4818, e-mail lizbottman@sprintmail.com.

Forensic document examiner: trained by Secret Service/U.S. Postal Crime Lab examiners. Court-qualified. Currently the examiner for the Eugene Police Dept. Only civil cases accepted. Jim Green (541) 485-0832.

Urologist: forensic consultant, M.D., J.D. boards, plaintiff or defense. (314) 361-7780.

Are your clients needing cash or monthly income? Seniors with home equity may be eligible for government-backed reverse mortgage loans. Call Seattle Mortgage Company (800) 643-6610 ext. 9.

Expert witness: experienced environmental consultant with excellent credentials and professional research skills. As such, you will always have the advantage of having access to the latest technical and regulatory information. Bill Saur (509) 448-3726; http://members.aol.com/bsaur/index.htm.

Feeling overworked? Let Fraser Robinson Speir, attorney outsource, take off some of the pressure. Contract research and writing at reasonable rates. Rush jobs no problem. References available upon request. (253) 564-3669, fax (253) 564-3552, e-mail reed@seanet.com.

Securities arbitration/mediation: retired industry insider with extensive knowledge of investments, securities sales practices, broker/dealer compliance, and operations procedures provides arbitration/mediation-consulting services. Contact John Hellyer (360) 563-9446.

WILL SEARCH

Anyone with information regarding the will of Jane A. MacRae, who died a resident of King County, please contact Philip L. Carter at Livengood, Carter, Tjossem, Fitzgerald & Alskog (425) 822-9281.

MISCELLANEOUS

Newport, OR: one-bedroom cottage overlooking Yaquina Bay. Five minutes from Oregon Coast Aquarium, bayfront and beaches; $49/night; $294/week. (541) 265-8553.

Cabo San Lucas: deluxe one-bedroom condo on waterfront. Fantastic view, pool, fully- equipped kitchen, A.C., TV/VCR, three private balconies overlooking marina, restaurant and bar on premises, prime location. $125/night. (503) 393-5059.

Lump sums cash paid for remaining payments on seller-financed real estate contracts, notes and deeds of trust, notes and mortgages, business notes, insurance settlements, lottery winnings. Cascade Funding (800) 476-9644.

AirTouch Cellular has the solution to high airtime rates — perfect for law offices. The "pooled plan" runs $9.99 per month per phone and $0.29 per minute. Free flip phone with service. For more information call Renée Cooper, AirTouch Cellular (206) 963-4242.

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Changing Venues

Lights, Camera, Action

Fred Hopkins, an employment law attorney for the firm of Clinton, Fleck, DeSmet & Thomson, is producing a new feature-length horror movie this summer, *The Horrible II*. Hopkins, who has a regular bad-movie-review program on KIRO FM, also produced and co-starred in the 1988 film *The Rock 'N' Roll Mobster Girls*, which featured a mobster who gets decapitated by an all-girl punk band. Reportedly, the plot of *The Horrible II* is better.

Batter Up

Pro Se, an all-attorney softball team recently concluded another successful season in the Seattle Parks Department league. Managed by Clem Barnes, this year's team included Waren Babb, Len Barson, Terry Cullen, Jim Feldman, Jim Fowler, Keith Kemper, Guy Michelson, Kyle Sugamele, John Theiss and Jim Varnell.

Judge, Fine Thyself

Pend Orielle County Superior Court Judge **Rebecca Baker** recently fined herself $150 after arriving at court 45 minutes late. The fine was disbursed in three equal payments to the petitioner's attorney, the respondent's attorney and the guardian ad litem who had waited patiently for her arrival.

Latté Update

Caffeine-deprived jurors and attorneys at the new Regional Justice Center in Kent will be getting a java boost via an espresso service run by the King County Work Training Program for at-risk youth.

Honors & Awards

James R. Rogers was recently inducted as a Fellow of the International Academy of Trial Lawyers at its annual meeting in Phoenix, Arizona.

The Washington State chapter of the American Immigration Lawyers Association recently elected the following Executive Committee: **Julia M. Bolz**, president; **Lisa Seifert**, vice president; **Gregg Rodgers**, secretary; **Michele N. Carney**, treasurer; **Douglas D. Osterlok**, program chair; and **Davis Bae**, membership chair.

Spokane attorney **C. Bradley Chinn** has been named to fill a new post as domestic violence commissioner in Spokane County District Court.

Newly elected officers of the Washington Association of Criminal Defense Lawyers include president **Mark Muenster** of Vancouver, president-elect **Jon Zulauf** of Seattle, vice president (west) **Steve Thayer** of Vancouver, vice-president (east) **Charles Dorn**, secretary Anna Robinson of Seattle, and treasurer **Mike Filipovic** of Seattle. New Board of Governors members include **Peter Mair**, **Stark Follis**, **Kathleen McCann**, **Vito de la Cruz**, **Carl Hueber**, **Anita Moceri**, **Marjorie Tedrick** and **Peter Offenbecher**. **Jeff Ellis**, **Linda Sullivan** and **Allen Bentley** were each re-elected to serve a second term as Governors. They join continuing board members **Barry Flegenheimer**, **Mimi Buescher**, **G. Saxon Rodgers**, **Garth Dano**, **John Nollette**, **Roger Hunko**, **Bill Fligeltaub**, **Donna Tucker**, **Keith MacFie**, **Margaret Smith** and **John W. Wolfe**.

Patricia Hall Clark has been appointed as a Member-At-Large of Girl Scouts-Totem Council's Board of Directors.

Douglas Oles of Oles Morrison & Rinker has been selected to serve as an editor of *The Construction Lawyer*, a national journal focused on construction law issues published by the American Bar Association.

Philip Talmadge, Washington State Supreme Court justice, has joined the Providence Mount St. Vincent Foundation Board of Directors.

Christopher M. Alston of Foster Pepper & Shefelman has been elected the new chairman of the board of directors of Family Services of King County.

REJOINDERS AND JOINDERS

David E. Myre, Jr. has rejoined the Seattle law firm of Hillis Clark Martin & Peterson as a principal. He was an associate with that firm from 1977 to 1981.

Mike Parson, **Ken Hart and Mark Shepherd** have formed the law firm of Larson Hart and Shepherd in downtown Seattle.

Scott Gelband has joined the Perkins Coie firm as a partner in its corporate finance practice.

John Kydd recently joined the Seattle law office of Helsell Fetterman as of counsel to the firm. Kydd co-founded the Washington State Mediation Consortium and Seattle-King County Dispute Resolution Center.

Gwendolyn Cecilia Payton has joined Lane Powell as an associate, concentrating her practice in product, premises and commercial litigation.

Elizabeth Berns has joined the business law firm group of Judd & Sailer, emphasizing business succession planning and exit strategies for the closely held or family-owned business.

The newly-formed Judicial Dispute Resolution includes former King County Superior Court judges **Charles S. Burdell, Jr**. and **Terrence A. Carroll**, former Washington State Court of Appeals Commissioner **JoAnne L. Tompkins**, **Roselle Pekelis** (with bench experience with the King County Superior Court, Washington State Court of Appeals and State Supreme Court), and **Jack Rosenow**, a former partner of Rosenow, Johnson and Graffe.

Gary L. Ikeda has been named vice president and division legal counsel for Kaiser/Group Health. Before going to Group Health in 1987, Ikeda worked in the Attorney General's office and the Pierce County Prosecuting Attorney's office. He has served on the WSBA's Civil Rights Committee and on the Nominating Committee of the American Civil Liberties Union.

J*A*M*S/ENDISPUTE recently added the Honorable **Daniel A. Moore**, Jr., retired Chief Justice of the Alaska Supreme Court, and **Fred R. Butterworth**.

Joel D. Cunningham of Luvera, Barnett, Brindley, Beninger & Cunningham in Seattle, has been accepted for induction as a fellow by the International Society of Barristers and the Damage Attorneys Round Table.

The *Tacoma-Pierce County Bar News* reports the following people have been honored for taking a pro bono case this month or for assisting clients at one of its evening clinics: **Patrick Palace**, **Gary Weber**, **Judd Gray**, **David Chapman**, **Doug Alling**, **Marc Christensen**, **Lee Pendergrass**, **Moe Birnbaum**, **Roosevelt Currie**, **Robert Nettleton**, **Julie Watson**, **Ron Ripley**, **Mary Dicke**, **Tammis Greene**, **Scott Candoo**, **Tom Faubion**, **Barbara Barronian**, **Richard Wooster**, **Katherine Stolz**, **Terry McCarthy**, **Colleen Grady**, **Tony Froehling**, **Kathleen Balcom-Jordan**, **Gary Branfeld**, **Ken Mitchell**, **Don Powell**, **Howard Comfort**, **Betsy Hollingsworth**, **Marla Hughes**, **Joe Quaintance**, **Greg Webley**, **Cynthia Burchfield**, **Jacqueline Ramsey**, **Renee Monoka**, **Clark Davis**, **Barbara Oliver**.

YOUNG LAWYERS DIVISION

The Washington Young Lawyers Division (WYLD) is working on a variety of public-service and public-interest projects.

In April, the WYLD, in conjunction with the Spokane County Young Lawyers, sponsored the Aspiring Youth Program at the Glover Middle School. The Aspiring Young Program is an after-school mentoring and sports program designed to assist at-risk middle school student by teaching them the importance of hard work and staying in school in an enjoyable manner. Students heard from several professional speakers including Court of Appeals Judge **John Schultheis**. They also participated in a basketball tournament, received free snacks provided by Spokane restaurants, and received various prizes for completing the program.

In Pierce County, the Tacoma/Pierce County Young Lawyers staged a successful Law and Government Scholarship Program. This program gave each participating student the opportunity to spend a day with an attorney to learn about the profession and what it takes to get there. The students also received a mentorship tour of both private and government law offices during the two-month program.

In Yakima, the WYLD assisted the Minority Pre-law Conference. This program was another student-oriented program designed to provide guidance to young persons to better understand and appreciate the role members of the legal profession play in society. Feedback on all three of these programs has been quite positive, and plans are afoot to run them again in the near future.

The WYLD also organized and manned a Federal Emergency Management Agency (FEMA) Disaster Legal Services Hotline to give free legal services to low-income and other qualifying victims of major disasters.

The WYLD looks forward to keeping members of the Bar up to date on their deeds and accomplishments in the future.

IN MEMORIAM

Mary Pat Dooley Olson of Seattle died recently at the age of 54. A graduate of Seattle U/UPS Law School, she was a social justice advocate.

Carl Maxey: Carl Maxey, who rose from poverty to become a prominent civil rights attorney and a leader in the Spokane black legal community, died July 18 at the age of 73. After becoming the first black WSBA member from Eastern Washington, he spent more than four decades advancing civil liberties and social justice. Most recently, he stepped in to represent black students at his alma mater, Gonzaga Law School, when they received racially motivated death threats in 1996.

Frank Hale: Tacoma native Frank Hale, who read for the law, died in June of kidney disease at age 85. As a paratrooper in the World War II, he fought at the Battle of the Bulge and liberated a concentration camp in Europe. Upon his return, he served as Pierce County Superior Court Judge for 13 years and then as Washington Supreme Court Justice for 12.

Whitney Rupprecht, Seattle attorney who died in Mazatlán April 19, was incorrectly listed as William G. Rupprecht on page 60 of the July issue. The *Bar News* apologizes for the error.

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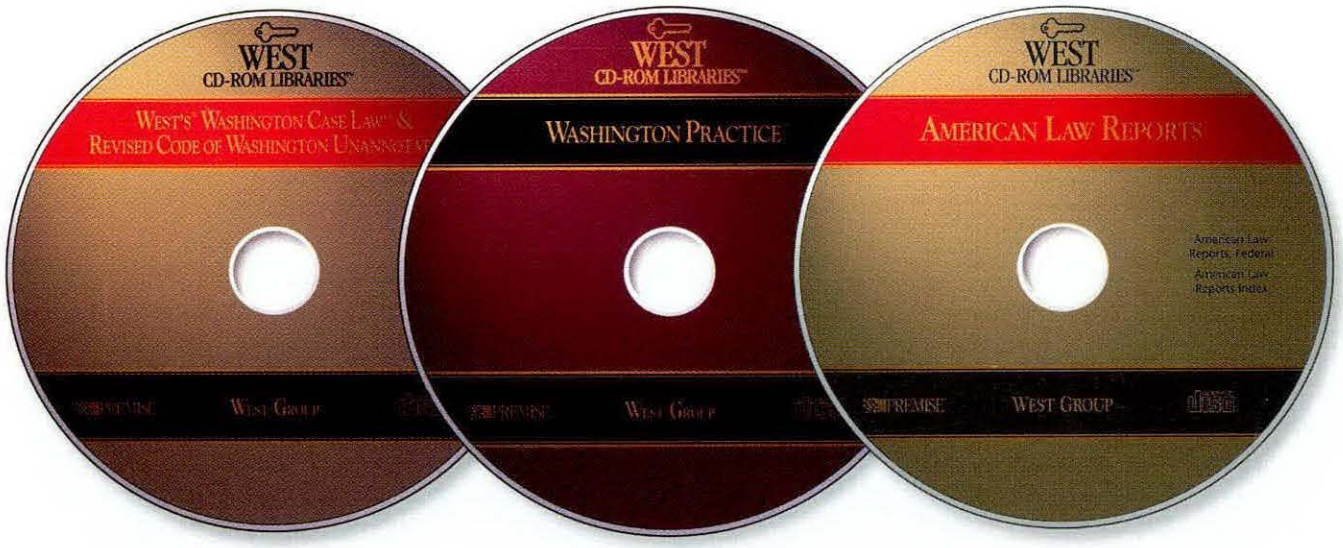

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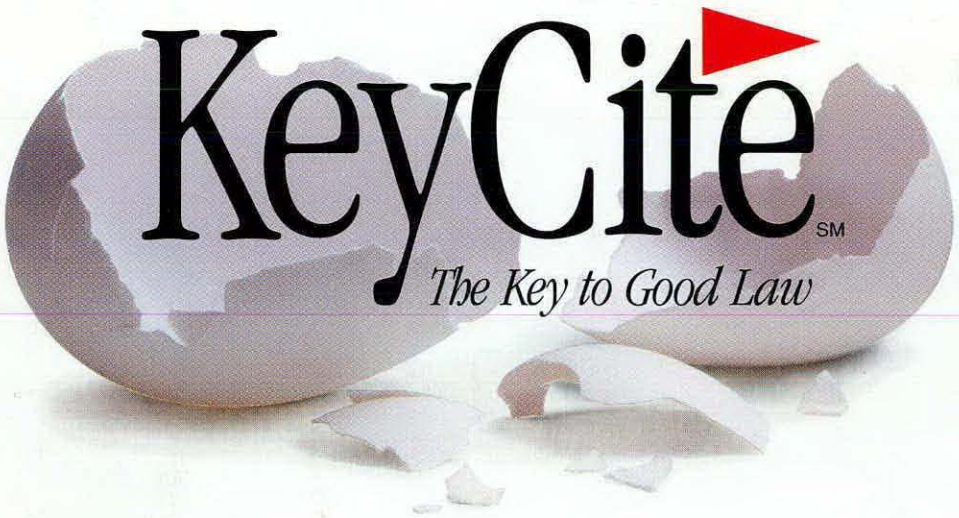

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