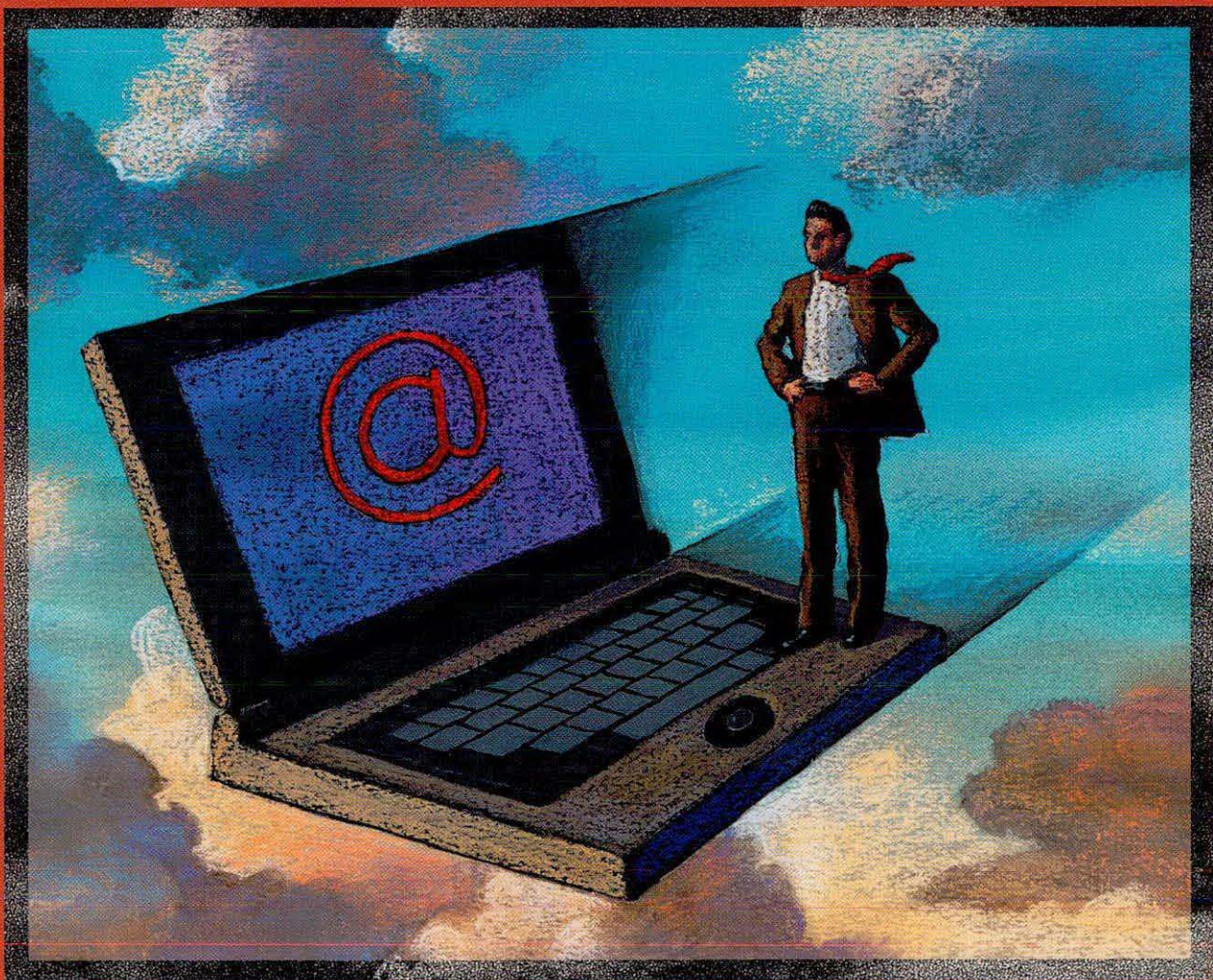


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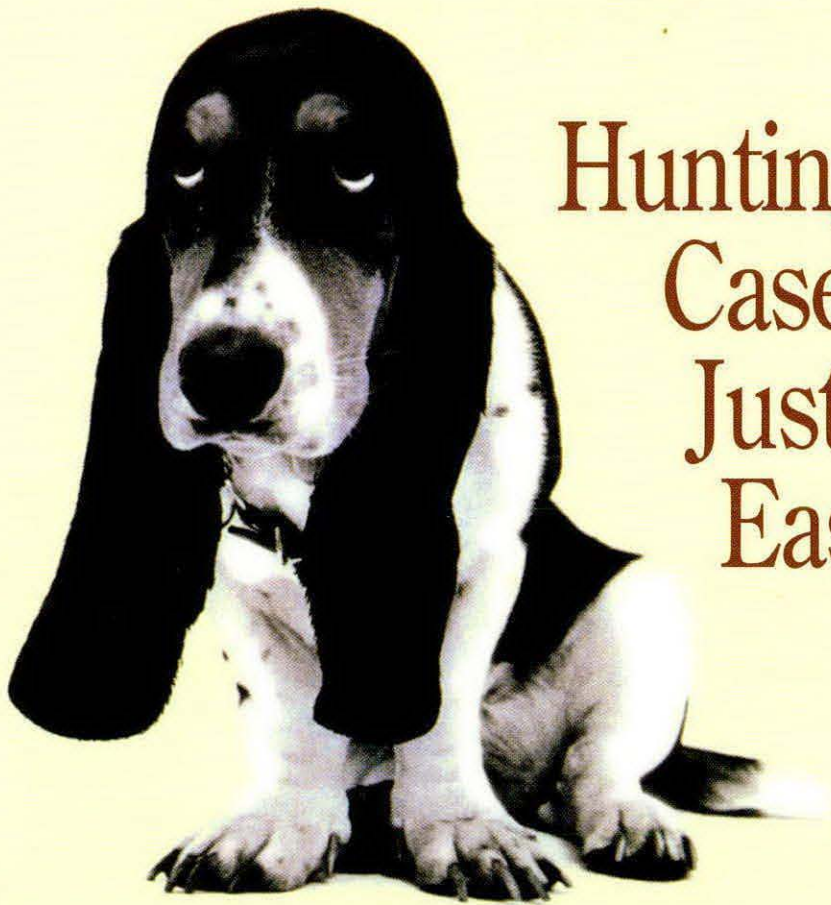
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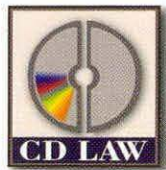


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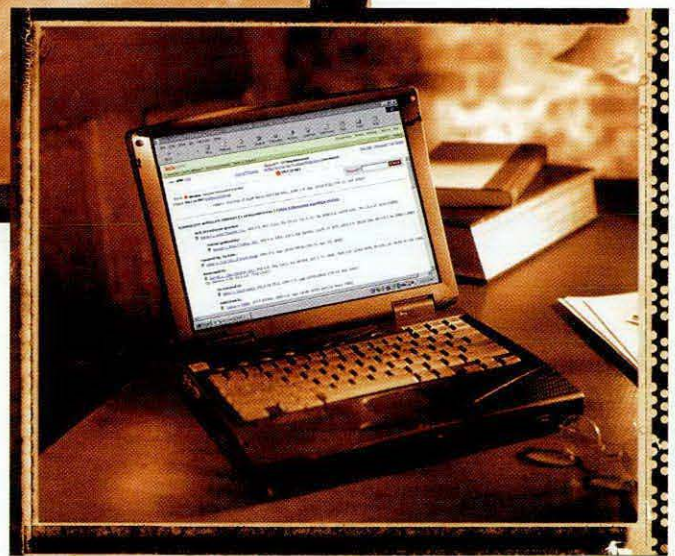
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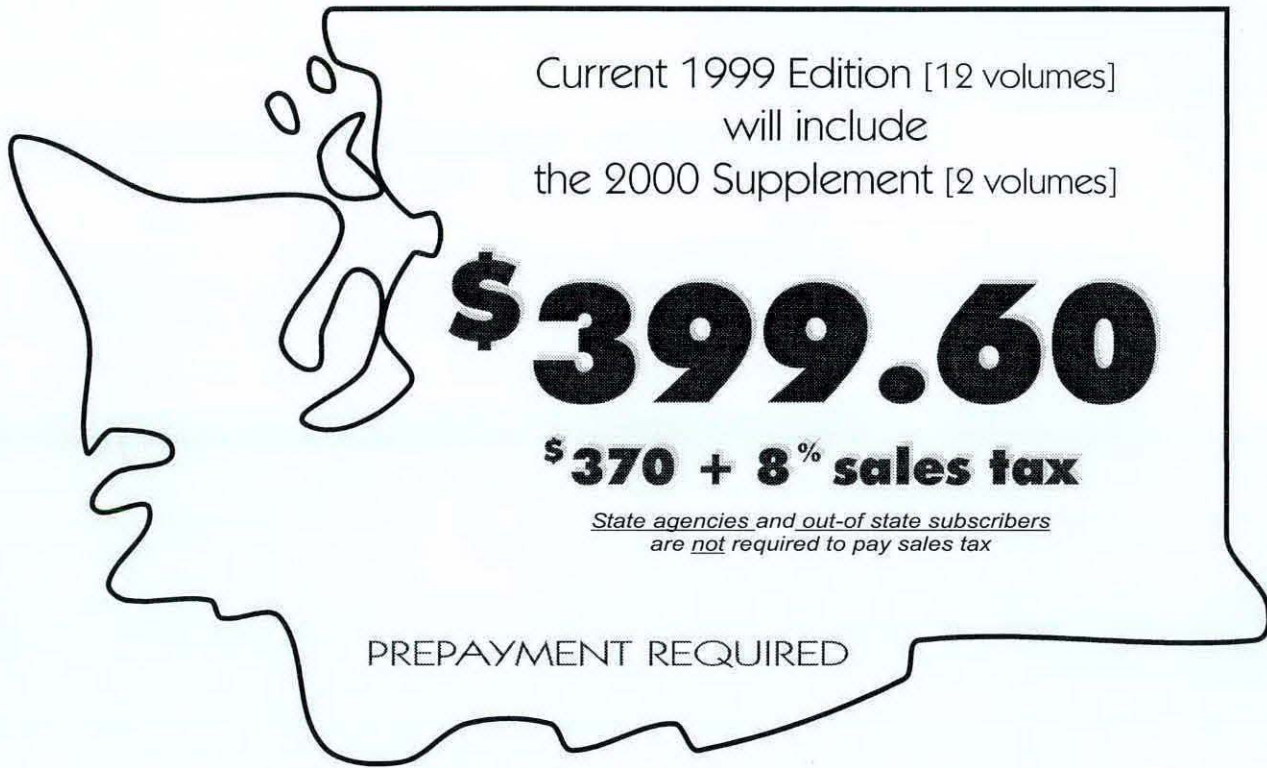
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Letters

Correction to Burrage Letter

In a letter from Judge Jeanette Burrage printed in the November issue of *Bar News* [p. 7], the phrase "although I applaud those who *do* volunteer their time and encourage others to do the same" was omitted at the end of the third paragraph.

We apologize for the error.

More Certainty Needed in Commercial Transactions

Editor:

I read with interest the article titled "Dr. Strangelaw or How I Learned to Love the Berg" [*Bar News*, September 1999]. Mr. Reisler concludes that the adoption of the subjective view of contract interpretation by the court in *Berg v. Hudesman*, 115 Wash.2d 657, 801 P.2d 222 (1990), should be hailed by all except those who wish to obtain "a literal, absurd and unfair result." WSBN at 29.

The debate over whether contract language is to be viewed "objectively" (thus denying the introduction of parol evidence to create an ambiguity where none appears from the face of the contract) or "subjectively" (thus admitting parol evidence to create an ambiguity) is not new. Williston opposed it, while Corbin advocated it.

However, the recent results of the courts' work in this area (i.e., adopting the "subjective" position) has been harmful to commercial interests generally, while very beneficial to the legal profession through the creation of much litigation.

The best judicial exchange in this debate is the adoption of the subjective view in California by Justice Traynor in *Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.*, 442 P.2d 641, 642-46 (Cal. 1968) and the criticism of it by Judge Kozinski in *Trident Center v. Conn. Gen. Life Ins. Co.*, 847 F.2d 564, 568-70 (9th Cir. 1988).

In *Pacific Gas*, Justice Traynor tells us that language is inherently ambiguous, and that the objective view of contract interpretation "reflects a judicial belief in the possibility of perfect verbal expression. This belief is a remnant of a primitive faith in the inherent potency and inherent meaning of words." 442 P.2d at 643-44. Since no one wants to be labeled "primitive," the only proper thing is to permit

extrinsic evidence where it "is relevant to prove a meaning to which the language of the instrument is reasonably susceptible." 442 P.2d at 644. Since "reasonableness" is in the eye of the beholder, it is the poor commercial litigator who cannot state a claim of ambiguity, which survives the inevitable motions to dismiss, and for summary judgment.

In *Trident*, Judge Kozinski wonders whether this method really gets to the true intentions of the parties better than the objective method: "Under *Pacific Gas*, it matters not how clearly a contract is writ-

ten, nor how completely it is integrated, nor how carefully it is negotiated, nor how squarely it addresses the issue before the court: the contract cannot be rendered impervious to attack by parol evidence. If one side is willing to claim that the parties intended one thing but the agreement provides for another, the court must consider extrinsic evidence of possible ambiguity. If that evidence raises the specter of ambiguity where there was none before, the contract language is displaced and the intention of the parties must be divined from self-serving testimony of-

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ferred by partisan witnesses whose recollection is hazy from passage of time and colored by their conflicting interests. (citation omitted.) We question whether this approach is more likely to divulge the original intention of the parties than reliance on the seemingly clear words they agreed upon at the time." 847 F.2d at 569.

As Judge Kozinski correctly notes, "*Pacific Gas* casts a long shadow of uncertainty over all transactions negotiated and executed under the law of California. As this case illustrates, even when the transaction is very sizeable, even if it involves only sophisticated parties, even if it was negotiated with the aid of counsel, even if it results in contract language that is devoid of ambiguity, costly and protracted litigation cannot be avoided if one party has a strong enough motive for challenging the contract. While this rule creates much business for lawyers and an occasional windfall to some clients, it leads only to frustration and delay for most litigants and clogs already overburdened courts." *Id.*

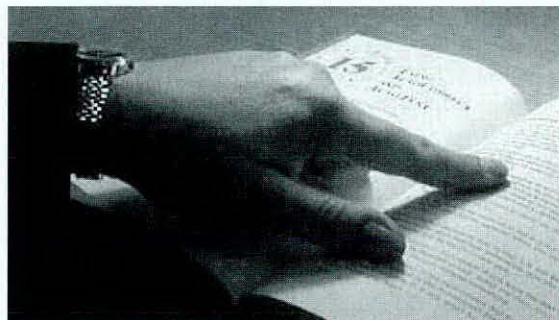
There was, and is, a reason for the pa-

rol evidence rule: Each party to a contract should be required to insert his intentions clearly in the instrument which is designed to capture the mutual intentions of the parties. If he fails in getting the other parties to agree to his intentions by writing them in the contract, he may not later be heard to argue that his intentions were really those of all parties, but unfortunately were not included in the written instrument. This is not the subjective view, however, and today the only purpose of a written contract is use as a foil during negotiations to try to provoke each party into explicitly stating hidden or assumed intentions so as to know whether one ought to enter the bargain at all. Savvy commercial lawyers must now, more than ever, advise their clients that they are much better to deal with a trustworthy party than to have any particular language in a written contract. A trustworthy person will honor a bargain even if the bargain turns out badly for him, while an untrustworthy person will seek to escape the downside of even a clear expression of the parties' intentions.

These cases pose a legal issue larger than contract interpretation. Judges ought to be most careful when they claim that words are inherently ambiguous, thus allowing the consideration of evidence extrinsic to the documents which house those words. While extrinsic materials may be helpful in illuminating the meaning of the words under scrutiny, one cannot posit a just legal system where all words in all documents are open to individual interpretation, including the potential contradiction of the apparently clear terms by the proffered testimony of an interested party seeking his own gain. How can president, a governor, an agency, a legislature, or a court presume to require a citizen to follow any particular ordinance, decree, law, regulation, or order, when the English language is incapable of making mere words into a clear direction?

Judge Kozinski noted this in *Trident*: "[The subjective view] also chips away at the foundation of our legal system. By giving credence to the idea that words are inadequate to express concepts, *Pacific Gas*

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undermines the basic principle that language provides a meaningful constraint on public and private conduct. If we are unwilling to say that parties, dealing face to face, can come up with language that binds them, how can we send anyone to jail for violating statutes consisting of mere words lacking 'absolute and constant referents'? How can courts ever enforce decrees, not written in language understandable to all, but encoded in a dialect reflecting only the 'linguistic background of the judge'? Can lower courts ever be faulted for failing to carry out the mandate of higher courts when 'perfect verbal expression' is impossible? Are all attempts to develop the law in a reasoned and principled fashion doomed to failure as 'remnant[s] of a primitive faith in the inherent potency and inherent meaning of words?'" *Id.*

The subjective interpretation of contracts is really not justice at all. Rather, it is the prideful substitution of the judge's view of "fairness" or "absurdity" for the parties' clear words which define their own view of what is right in the circumstance. Mr. Reisler's praise for *Berg* and its progeny is misplaced. He ought to be lamenting the death of written language as a sufficient vehicle for guiding courts, and the substitutionary decisions now emanating from our judiciary. One judge's view of "fairness" or "absurdity" is an insufficient basis for disturbing the clear language chosen by equals at a bargaining table. The right to compel a person to perform the literal obligation of a contract (initially thought to be preserved in Article I, Section 10, of our Constitution) is nearly dead.

Justice Mosk concurred in *Pacific Gas* and another 1968 opinion adopting the subjective view. Having had his fill of the doctrine's results, he reversed course towards the end of 1968, dissenting in *Delta Dynamics, Inc. v. Arioto*, 446 P.2d 785, 789-90 (Cal. 1968). He caught the essence of the problem which *Pacific Gas*, *Berg*, and their ilk cause in the day-to-day affairs of commercial attorneys like me: "It can be contended that there may be no evil per se in considering testimony about every discussion and conversation prior to and contemporaneous with the signing of a written instrument and that

social utility may result in some circumstances. The problem, however, is that which devolves upon members of the bar who are commissioned by clients to prepare a written instrument able to withstand future assaults. Given two experienced businessmen dealing at arm's length, both represented by competent counsel, it has become virtually impossible under recently evolving rules of evidence to draft a written contract that will produce predictable results in court. The written word, heretofore deemed immutable, is now at all times subject to alter-

ation by self-serving recitals based upon fading memories of antecedent events. This, I submit, is a serious impediment to the certainty required in commercial transactions."

Marc Bond
Anchorage AK

PS: I can't help but note that the last 40 years of contract jurisprudence coincides with another rather frightening development, commonly called "post-modernism" or "moral relativism." It is now very popular to take the position that there is

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no absolute truth. Tolerance is now defined not as acceptance of the diverse opinions found along the road in the great search for truth. Rather, one is required to accept a diverse opinion as being "right" for each holder of the opinion. In such a world, one must accept that Hitler's internment and killing of the Jews was "right for him," that Stalin's Gulag was his "truth," and that Mao's slaughter of Chinese in the Great Leap Forward and the Cultural Revolution was "appropriate for Mao." That is a scary world indeed.

I suggest those who waiver on the question of language and moral relativism read popular books like *Relativism: Feet Firmly Planted in Mid-Air* (1998) by Francis J. Beckwith and Gregory Koukl; *The New Absolutes* (1996) by William Watkins; *The New Tolerance* (1998) by Josh McDowell, Bob Hoste and Bob Hostetler; and *The Death of Truth: What's Wrong with Multiculturalism, the Rejection of Reason and the New Postmodern Diversity* (1996) by Dennis McCallum.

Keep Up the Good Work

Editor:

Congratulations on a great *Bar News*. I spent more time reading it than I have on any issue in the last 20 years. I enjoyed your article on our new President. Sounds like a good guy. I always enjoy Jeff Tolman. He's my small-town practice hero. I noted with interest the picture of those in practice for 50 years. One woman and no apparent ethnic diversity. We've come a long way!

But my reason in writing was to get the following message to our President. "Thank you! Thank you! Thank you!" I'm soooooo tired of stupid jokes and nitwit talk show people. He put it right and I'm waiting for more. Maybe the insurance companies will sit down and shut up now that State Farm has shown its colors, thanks to some great lawyering by plaintiffs' lawyers.

Years ago . . . 20 maybe . . . I regularly volunteered for committees. Always, the committees I volunteered for were full, year after year. (We always blame Seattle lawyers for such things.) I am still available if anyone were interested, but still pouting about prior rejections.

Keep up the good work. I enjoyed Lauren Bain's letter to the editor [October, p. 7]. What about more articles on: how to make clients happy; how to make more money; how to avoid malpractice; things we can do to get our Bar Association on our side to make it at least feel like the Association isn't our adversary; we're from the Bar Association, we're here to help you? (Might be the fourth biggest lie.)

Just some thoughts. Remember, "Illigitimus noncarborundum."

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Feedback from Law School on Tolman Article

Editor:

Recently [*Bar News*, October 99, Editor's Page] you poked fun at law school deans who name particular spaces in their law schools for donors who generously help defray the cost of building. When you finally exhausted your witty riffs on incongruous naming possibilities, you revealed your basic charge: the practice

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commercializes lady justice.

Let me respond. I admit the practice but plead not guilty to commercializing lady justice. First, the charge is so vague as to leave unclear precisely what the crime is. Would the crime of "commercializing lady justice" include, for example, the practice of personal injury attorneys refusing to represent injured plaintiffs unless they fork over to their attorney 25 to 50 percent of any recovery? Some might think that practice commercializes lady justice. And while I don't share that view, I'd understand why someone who didn't know how the system worked might make that mistake.

But perhaps your charge, though too vague, nevertheless has a nugget of truth. So let me give you a chance to amend your indictment to state a more plausible offense. Perhaps you meant to charge that the practice has the appearance of impropriety because it suggests someone (presumably the donor) gets something that she or he doesn't deserve. Certainly your colorful examples suggest that concern. But law schools aren't courts of law, dispensing justice with a blind eye toward the litigants' wealth and power. The only thing law schools sell is education; and I've never had a donor ask for legal education as a quid pro quo for a gift; and if one had, I would have refused it.

What most donors want is recognition — and more often than not — for someone else. One of our donors wanted to name a classroom for the nanny who reared their children. Another son and mother asked to name a study room for their father and husband, a distinguished member of the bar. Another group of donors wanted to recognize a recently retired Justice of the Washington Supreme Court, whose contributions to our state's legal and political life are legendary. Our moot courtroom will bear the name of another Supreme Court Justice because his family wanted to memorialize his substantial achievements in the way. My wife and I asked that our gift memorialize the service of our recently retired law librarian, who became director when the library was a hole in the ground on South Tacoma Way and over the next quarter century built our present 200,000-volume collection. Surely, you don't object

to our and the donors' recognition of such accomplishments as in any way improper.

Or perhaps you meant to charge both the donors and the law school with tasteless conduct, a kind of shameless self-promotion in which the law school is an implicit co-conspirator in the donors' preening. I can understand that concern because ours is unfortunately a profession in which many *do* hawk their services in ways that might make corporate America blush. But I assure you our recognition signage is very discreet — no neon lights, no cheesy jingles, no touched-up portraits. Moreover, the truth is that most donors do not seek any public recognition at all. I had to encourage those donors to let us publicly acknowledge their generosity, and I did so for one reason. Ours is a working-class law school; many of our students are the first in their family to attend law school. They need role models, and I want them to know that others just like them have graduated from this law school and gone on to achieve professional success. Ours is not a "top 50" law school, either. Some of our students applied to, and were rejected by, those law schools; and they often enter law school feeling that they're second class. I want them to know that our law school produces first-class lawyers, and so I seize every opportunity to showcase our most successful graduates. While donor recognition is just one of the ways in which I can do that, it is a very important one.

But what about institutional donors, you may ask? Many of our institutional donors, like many of our private donors, sought no recognition and insisted on anonymity. The fact that Boeing, The Seattle Times, and Safeco allowed us to use their names hardly suggests corporate preening on their part. The fact is that they are good corporate citizens, and we would be less than polite if we did not publicly acknowledge their generosity.

One final probability is that persons who have some beef with a particular donor will feel uncomfortable in the space, and that we can therefore be charged with having created a hostile environment. You yourself can test the reasonableness of this charge. On more than one occasion you have spoken to our students in the Weyerhaeuser Lounge of the old Norton Clapp

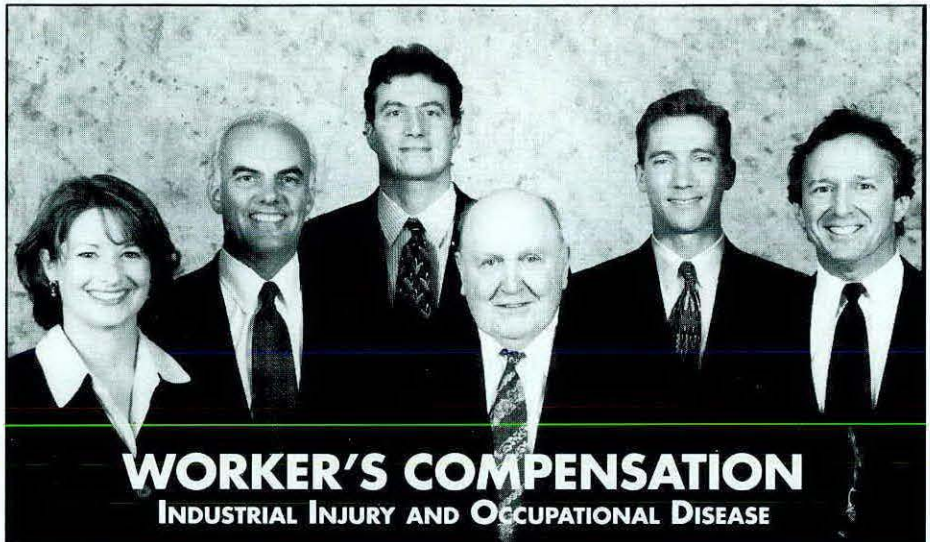
Law Center. Did you feel sickened? Compromised? Outraged? If you did, you didn't mention it; and, as always, you did a great job.

Perhaps you would better understand the practice of naming spaces for donors (which, incidentally, is not new and is in fact quite widespread, from Duke to Stanford, both of which are named for founding or rescuing donors) if you came to the law school someday and allowed me to show you around Sullivan Hall (named for a Jesuit priest who had no money to give us but whose whole life was dedicated to the greater glory of God). And on that day, I'd like to show you the art collection that now adorns our walls. It is intended to celebrate the human spirit in all its manifold dimensions. Many of the pieces were purchased with the gifts of donors who share our belief that lawyers need to understand the diversity, the richness and the complexity of humanity. Just this week, for example, I received a gift from one of our first graduates, who asked that it be used to purchase a work of art for the James Beaver Faculty Alcove, a space named for the founding member of our faculty, who was himself a man of many parts.

Perhaps we could linger in front of Fay Jones' *The Jury*, which depicts twelve jurors, each seeming at first to represent a stereotype but who, upon closer examination, appear to be quite unique, from the cynical to the idealistic, from the innocent to the experienced, from the gullible to the wary, from the self-confident to the mistaken. We could have a lot of fun deciding which juror each of us would be.

*James Bond
Seattle*

Readers are invited to submit letters of reasonable length to the editor. They should be typed on letterhead, signed and, if possible, also provided on disk in any conventional format. Letters may also be sent via e-mail to comm@wsba.org. Due date is the 10th 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.



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Hi, I'm Sherrie, and I'm a Techaholic...

by Sherrie Bennett
Editor

Being somewhat skeptical of Y2K and similar predicted technological disasters, I scoffed at the notion that the arrival of September 9, 1999 (9-9-99) could possibly mean anything except another routine day of techy success. Imagine my surprise that evening when I turned on my computer after a day spent in meetings to find that my hard drive had inexplicably crashed and burned in my absence. Initially, I was in denial. Like a Pavlovian animal conditioned to obtain food by manipulating levers, I repeatedly attempted to restart my computer, convinced that the world would right itself at any second, and I would be able to retrieve my e-mail. My initial disbelief then turned to anger: how dare my computer fail me at a time when I had pressing deadlines and no time in my schedule for technological snafus? Resisting the urge to dropkick my beloved machine, and by now sweating profusely, I searched frantically for the 1-800 hotline number for the computer-impaired which had come with the computer when I purchased it several months ago. The voice on the other end of the line gave me the bad news with all the tact of a doctor whose surgery could not save the patient: "I'm feeling your pain, ma'am, but I'd say she's a goner." There was nothing left to do but box "her" up for the sad trip back to ComputerPartsRUs to discuss the intricacies of warranty language.

The first full day without my computer I put up a brave front. After all, I reasoned, the human race had evolved over hundreds of thousands of years without even electricity, much less e-mail. Surely I could survive a couple of weeks computerless in Seattle. I searched my memory for clues as to how I had communicated with other people before e-mail. Oh, yeah, I could *telephone* or *go see someone face-to-face*. Shuddering at the inefficiency of it all, I tried to remember what I had done with my phone books, then realized I had been using them to rest my feet on as I keyboarded away.

Bravery turned into post-traumatic stress as the days ahead revealed the gaping holes blown in my everyday existence. Potential *Bar News* articles were suspended in cyber limbo, agonizingly unattainable. I was forced to needlessly kill trees

by sending things via snailmail. My child's soccer coach thought I was a big slacker for not having downloaded the soccer schedule. I even had to balance my checkbook the old-fashioned way, by phone. I could go on and on, but the gruesome details would just make you cry.

Like a Pavlovian animal conditioned to obtain food by manipulating levers, I repeatedly attempted to restart my computer, convinced that the world would right itself at any second, and I would be able to retrieve my e-mail.

Somewhere along the way, though, a surprising phenomenon took hold. After the first few days of e-mail withdrawal, I found myself not missing it that much. Not being chained to my computer left me with time to enjoy other interests, which had fallen aside since I'd taken up "net" surfing. Picking up the phone to communicate with someone, although undeniably slower, brings the reward of spon-

taneity and tonal texture, and a personal touch sometimes lacking out in cyberspace. Sitting down to read a newspaper cover to cover is a far more relaxing experience than scanning the headlines on your favorite news website (you know the one I'm talking about).

Now that my hard drive is up and running again and I am back in the e-mail business, I am trying to remind myself not to get mindlessly reattached to a technology which has the potential for using me, rather than me using it. I'm making a conscious effort to distinguish between accessing information merely because I can, and accessing information because I have a need for it at that particular moment.

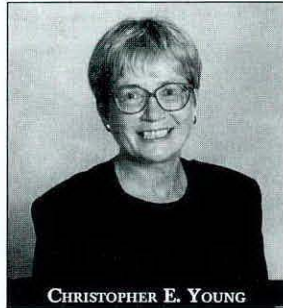
Could you be a techaholic? Here are some symptoms: You try to enter your password on the microwave. You haven't played solitaire with real cards in years. You e-mail the guy in the office right next to yours. You chat several times a day with a stranger from South Africa, but you haven't spoken to your next-door neighbor yet this year. Your reason for not staying in touch with friends is that they do not have e-mail addresses. You consider the U.S. mail painfully slow. You "hear" most of your jokes via e-mail instead of in person. If you recognize yourself, it may be time to join me in acknowledging that you've got a problem, and try to cut back, one day at a time.

The whole experience brought to mind the discussion around the WSBA offices the past couple of years regarding

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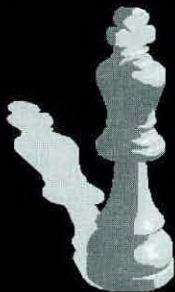
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the eventual demise of *Bar News* in its current monthly paper magazine format. The techies amongst us have predicted that new technology now being perfected will ultimately allow the WSBA to "push" the contents of *Bar News* to you via e-mail, making it unnecessary to kill trees and incur the expense of postage. I find, though, that I don't read newsletters I receive via e-mail as thoroughly as material sent via snailmail, as I tire of reading at my computer for long periods of time, and it seems wasteful to download massive amounts of information. There is also the advantage of the portability of a paper magazine. I have watched people read *Bar News* while waiting in court, on buses and even sitting in rush-hour traffic. Additionally, a tangible magazine shipped to you each month just keeps hanging around your office until you do something with it (read it, store it, stack it on your coffee table, trash it, or whatever else it is you do with your *Bar News*). I'm guessing it will be some time before an electronic version would be preferred over the paper magazine version sent via mail. I'd love to hear what you think on the topic... you can e-mail me, of course! ☺

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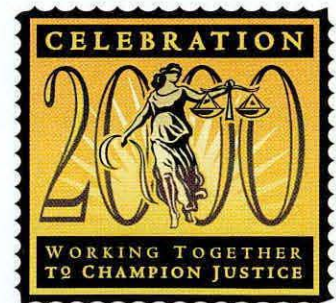
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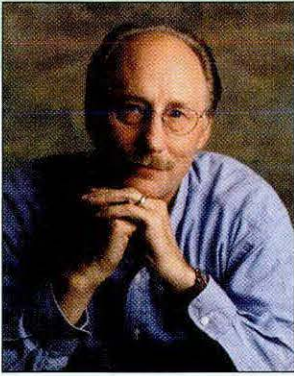
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Lawyers in Trouble — You Can Help

by **Richard C. Eymann**
WSBA President

This message is directed to every lawyer, judge or anyone else who notices a lawyer who appears to be distressed. All Washington lawyers need to be aware that the Washington State Bar Association is dedicated to the wellness of its members and has established a highly respected service program toward this end. The Lawyers' Assistance Program (LAP) offers confidential assistance for emotional, drug, alcohol, family, health and other personal problems (RLD 12.17). Services include assessment, referral, short- or long-term counseling, and group and individual therapy, as well as treatment follow-up and education.

All Washington lawyers need to be aware that the Washington State Bar Association is dedicated to the wellness of its members and has established a highly respected service program toward this end.

Who are the clients of the Lawyers' Assistance Program? People much like you and me. These lawyers, for the most part, act professionally, exhibit conscientious advocacy for their clients, act with civility toward their colleagues, and make generous contributions of time and expertise to their communities. However, in some cases, they may need assistance with issues affecting their personal or professional lives. Whether people come to LAP because they realize they are unable to cope with an addiction, are overwhelmed with depression, are feeling burnt out and dissatisfied with life, have a problem managing their anger or being around someone else's, their "problem" is not an inherent defect or disregard for the profession.

Barbara Harper, Director of the Lawyer Services Department, recently said, "Many of the lawyers seen by LAP report that while they are deeply committed to the practice of law and seeing justice done, they see their stress and depression as byproducts of the lack of collegiality and civility, the dearth of compassion and purpose, and the loss of conviction and values in the profession. They see these problems as good reasons to question why they should remain in the practice of law. The LAP clinical staff has treated an array of problems in lawyers, including stress, depression, aging and

retirement issues, and alcohol and drug addiction. We have also found (and studies have shown) that often these problems are interrelated."

One of the challenges the LAP clinical staff see lawyers facing is striving to live a personally and professionally congruent life. Lack of balance between personal and professional life can lead to new problems, or exacerbate existing problems for an individual lawyer.

Sometimes lawyers use alcohol or other drugs to "self-medicate" and alleviate the stresses of the profession. Other lawyers have a more serious problem with alcohol or other drugs which goes beyond an

outlet for stress. In either case, our LAP therapists are trained to identify and assess the problem, and then determine the best course of treatment.

The services of the Lawyers' Assistance Program are available to any Washington lawyer who needs help. Referrals from concerned third parties, including colleagues, judges or family members, are welcome and will remain confidential. And, be assured, LAP information is not shared with Disciplinary Counsel. Unfortunately in some instances, the lawyer in trouble has already come face-to-face with an investigation by the Washington State Bar Association's discipline staff before LAP has had a chance to intervene and deter the conduct leading to the grievance and/or investigation. This is an unfortunate circumstance that might be avoided with early assistance. If you or someone you know could benefit from the services provided by the WSBA Lawyers' Assistance Program, please call 206-727-8268. If you would like to volunteer as a LAP lawyer to assist those in need, please call this same telephone number.

A little effort in this direction could make a positive difference for yourself or a fellow lawyer, so please take the time to inform yourself so that you can make a difference. ☛

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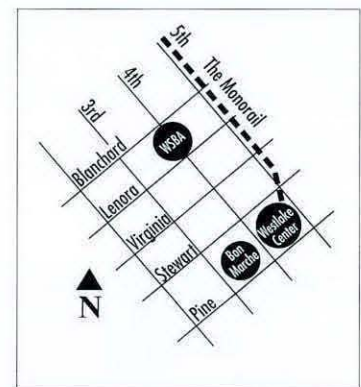
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Defining the Practice of Law

by Robert D. Welden
WSBA General Counsel

For as long as there have been lawyers, there has been a question of just what “the practice of law” is. An early Washington Supreme Court opinion tried to grapple with the issue, without much success:

While we lack an authoritative definition of practicing law, we may say here that, so far as this jurisdiction is concerned, it means doing or practicing that which an attorney or counselor at law is authorized to do and practice.¹

Why is it important to define the practice of law beyond saying it is what lawyers do? During the Board of Governors’ recent series of town meetings, we heard concerns from members about the unlicensed practice of law, multidisciplinary practice, and protection of consumer rights while, at the same time, maintaining high standards for legal services.

Defining “the practice of law” is a partial response to these concerns. It lies at the heart of any effort to protect the public from untrained and unregulated persons who hold themselves out as able to offer advice and counsel in matters customarily performed by lawyers that affect individuals’ legal rights, property and life. When licensed and regulated lawyers perform these functions, they are required to meet extensive educational requirements to become lawyers, required to maintain continuing legal education to stay current in the law, required to follow standards of ethical behavior with respect to their clients and others, and are subject to discipline up to and including suspension and disbarment. Nonlawyers are not required to meet any of these standards. The public has no recourse for poor, illegal or negligent performance of these functions by nonlawyers.

Along with the need to protect the public, there is a need to provide legal services for persons of limited means. The need for legal services is growing and in many cases does not appear to be met. There are many efforts to meet these needs, some sanctioned by the profession, the courts or the legislature, and others not sanctioned in any way. The growing presence of legal services by nonlawyers presents a dilemma for those who are concerned with both the protection of the

public from unqualified persons offering legal services and with the need to provide legal services to persons otherwise disenfranchised from the legal system.

A definition of the practice of law may enable the enactment of consumer protection legislation; it may aid in securing funding for legal services; it may assist the criminal prosecution of unlawful practitioners; and it will eliminate uncertainty for persons working in law-related areas about the propriety of their conduct.

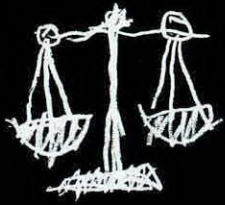
Any definition of the practice of law will be criticized. So long as there are persons who want to practice law without the necessity of studying and learning the law, meeting some form of entrance require-

ments, subscribing to a code of ethical conduct, and submitting to regulation and discipline, there will be critics of any attempts to curtail their activities.

If there are those who want to practice law without being lawyers, or who think that there are unmet legal needs which can best be met by nonlawyers, the WSBA has already provided an answer: The 1995 WSBA Nonlawyer Practice Task Force Report establishes a framework for licensing and regulating nonlawyers in the limited practice of law. The Task Force concluded that “any further consideration for creating limited licenses to practice must be triggered by outside parties requesting licensing in the future.” Those who argue that nonlawyers should be allowed to practice law should be proposing a system of licensing and regulation that protects the public in a manner consistent with the regulations of lawyers.

The Board of Governors has recommended a proposed rule to define the practice of law. It is the result of many months of study and debate by a very credible committee comprised of former members of the Supreme Court, a former Superior Court judge, present and former members of the Board of Governors, the Solicitor General, and several members of the Bar-at-large. The committee solicited a broad range of comment on the definition as it was being drafted, including notices in *Bar News* and on the WSBA website, establishment of a list serve on the issue, and holding a public hearing at which further comment was

Along with the need to protect the public, there is a need to provide legal services for persons of limited means. The need for legal services is growing and in many cases does not appear to be met.



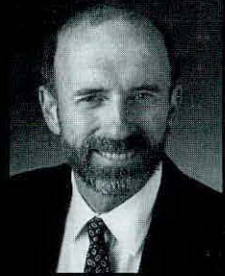
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received. The Board of Governors understands that this may not be a perfect definition of the practice of law that will please everyone. It is anticipated that it will be given further consideration over time and amended as appropriate. Notwithstanding, the Board believes that this current version is the result of careful and learned deliberation and debate, and that it is the best definition that could be crafted.

The Board has recommended that the Supreme Court adopt this proposal as General Rule 22. I encourage Bar members and the public to consider this proposal and to advise the Supreme Court of your thoughts. This is a historic opportunity for the Bar to make a difference for the respect of the profession and the protection of the public.

The full text of the rule may be found in the September 1999 issue of *Bar News*, p. 47, or at the WSBA website, www.wsba.org.

Robert Welden is the WSBA General Counsel and served as staff liaison to the Committee to Define the Practice of Law. He is also the liaison to the Consumer Protection Committee, which will be working on Critical Strategic Focus Goal # 5 of the Long-Range Strategic Plan:

"The WSBA will address in an appropriate way members' concerns about external influences and market pressures that impact the delivery of legal and law-related services, such as the unlicensed practice of law and multidisciplinary practice."

NOTES

1 *State v. Chamberlain*, 132 Wash. 520, 232 Pac. 337 (1925).

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Major Criminal Law Decisions of the United States Supreme Court's 1998-99 Term

by Craig Hemmens and Rolando V. del Carmen

Introduction

During its 1998-1999 term, the United State Supreme Court handed down signed opinions in 75 cases. This figure was down from 91 signed opinions in the previous term, is half the number of opinions issued during terms in the mid-1980s, and represents the fewest number of cases decided by signed opinion since the early 1950s. Over 8,000 cases reached the Court, the vast majority of which were denied review. Although the number of cases decided dropped dramatically, several decisions were of great significance. The Court issued rulings limiting the ability of Congress to regulate the states, interpreted the reach of the Americans with Disabilities Act, held that schools can be held liable for damages for student-on-student sexual harassment under Title IX, and issued several major Fourth Amendment rulings.

The Court reversed or vacated lower court decisions in approximately half of its decisions. The Ninth Circuit, a favorite target of the U.S. Supreme Court, was reviewed 11 times, with the high court affirming four decisions and reversing seven. The Eleventh Circuit fared even worse, being reversed in

five out of six cases. The Supreme Court reversed state supreme courts seven times, while affirming only twice. The Executive Branch and Congress did not fare much better, as the Court showed little deference to its co-equal branches, striking down several acts of Congress and the President.

There were 29 unanimous decisions (34 percent), and 51 decisions (68 percent) were decided by at least a 7-2 majority. While this presents a picture of general ideological agreement, it should be noted that there were 16 cases with 5-4 decisions (21 percent), and the dissents were often quite acrimonious. Clear ideological blocs have formed, with the Chief Justice and Justices Scalia and Thomas frequently aligned against Justices Stevens, Breyer, Ginsburg and Souter. Justices Kennedy and O'Connor are frequently in the center, providing the crucial votes in many cases; they both voted in the majority in all but one of the 16 5-4 decisions. Chief Justice Rehnquist and Justice Stevens disagreed the most, in 34 cases. In contrast, Chief Justice Rehnquist and Justice Thomas disagreed in only five cases.

Majority opinion authorship was fairly evenly divided. Justice O'Connor wrote the most majority opinions (10), while Justices Thomas and Stevens wrote the least (seven each). The most prolific opinion writer was Justice Stevens, with 29 majority, dissenting and concurring opinions. The least prolific writer was Justice Souter, with just 14 opinions. Following a trend of recent years, Justice Stevens filed the most dissents (19). Chief Justice Rehnquist was not far behind, authoring 15 dissents. Justices O'Connor and Kennedy filed the fewest dissenting opinions (eight each).

More than a third (27) of the written

opinions handed down by the high court dealt with criminal procedure issues. As usual, several cases involved the interpretation of federal statutes, including the recently enacted carjacking statute and the Federal Death Penalty Act. The Court issued several major decisions interpreting the reach of the Fourth Amendment. These included the expectation of privacy in a home, an anti-gang loitering ordinance, and several issues arising from traffic stops. Following is a summary of the significant criminal justice-related decisions of the 1998-1999 term, arranged alphabetically by subject. The case history, rationale of the Court, and the vote totals are included.

Death Penalty

Elledge v. Florida

67 USLW 4444 (October 13, 1998)

In an unusual dissent to a denial of a petition for a writ of certiorari, Justice Breyer suggested that spending a significant period of time on death row might constitute a violation of the Eighth Amendment's prohibition against cruel and unusual punishment. He stated that when a person spent so long under sentence of death not as a result of his own "frivolous appeals" but "because of the state's own faulty procedures," it might constitute a constitutional violation. The dissent came in the case of a Florida inmate who has been on death row for 23 years and has had four unsuccessful appeals. Justice Stevens had made a similar point in prior cases, but did not join Justice Breyer's sole dissent. The majority denied the petition without explanation in an 8-1 decision.

Jones v. United States

67 USLW 4508 (1999)

Jones was charged under the Federal

Death Penalty Act, 18 U.S.C. 3591 (1994) with kidnapping and murdering a member of the military, a crime punishable by either death or life in prison. At trial, the judge erroneously instructed the jury that failure to unanimously agree on the death penalty would result in either a sentence of life in prison or "some other sentence," and that if the jury recommended a lesser sentence, the court would "impose a sentence that is authorized by the law." The jury recommended, and Jones received, a death sentence. On appeal he claimed a violation of both the Eighth Amendment and the due process

clause of the Fifth Amendment. He argued that the jury instruction may have confused the jury, causing them to think that unless they gave him the death penalty he might end up with a less severe sentence than life in prison, when in fact he could not receive such a sentence. The Fifth Circuit upheld the conviction and sentence.

The Supreme Court narrowly upheld the death sentence. Writing for the majority, Justice Thomas held that the Eighth Amendment does not require that jurors be informed of the consequences of their failure to agree on a sentence of either

death or life imprisonment. Furthermore, the jury instruction in this case did not violate the due process clause because, while it was in error, the error was harmless, as the judge informed the jury he would impose a sentence "authorized by law," which implicitly meant a sentence of no less than life in prison. The dissent by Justice Ginsburg argued that the jury instruction led jurors to reasonably believe a sentence of less than life in prison might result if they failed to return a death sentence recommendation, thus rendering the jury verdict unreliable. 5-4 decision.

Stewart v. LaGrand

67 USLW 3557 (1999)

LaGrand was sentenced to death in Arizona in 1984. At the time, gas was the only means of execution in Arizona, and he did not challenge the method of execution on appeal in the state courts. The state subsequently added lethal injection as a means of execution, and allowed those sentenced to death to choose either gas or lethal injection. LaGrand chose the gas chamber, and then challenged the method of execution as violative of the Eighth Amendment's prohibition on cruel and unusual punishment. The Ninth Circuit denied his request for a stay of execution, but enjoined the state from using gas to execute LaGrand.

In a per curiam opinion issued without briefing or oral argument, a majority of the Supreme Court summarily reversed the Ninth Circuit. According to the majority, LaGrand's choice of gas as a method of execution served as a waiver of his claim that gas was an unconstitutional method of execution. Additionally, even if LaGrand had not waived his right to challenge lethal gas as a method of execution by choosing gas, he had procedurally defaulted by not objecting to gas as a method of execution on his original appeal. 8-1 decision.

Due Process

Chicago v. Morales

67 USLW 4415 (1999)

In an effort to combat the problem of street gangs, Chicago passed an ordinance permitting police officers to ask persons they reasonably believed to be members of a criminal street gang and who were loitering in a public place to disperse, and

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made it a crime to disobey this request. Several persons convicted of refusing to disperse appealed, alleging the ordinance violated their right to due process because it was too vague and provided police officers with too much discretion. The Illinois Supreme Court declared the ordinance void for vagueness because it failed to give ordinary people adequate notice of what constituted illegal conduct, and because it failed to provide sufficient guidance for police officers in the exercise of their discretion.

A bitterly divided U. S. Supreme Court affirmed the state supreme court. Writing for the majority, Justice Stevens asserted that the ordinance infringed on an individual's right to loiter for innocent purposes, as it did not require the state to establish a criminal intent; police could order anyone who was loitering to disperse. The ordinance also failed to provide adequate notice of what conduct was prohibited, and gave officers too much enforcement discretion.

Justice Scalia dissented, complaining that the majority had "elevat[ed] loitering to a constitutionally guaranteed right" and that the statute was not impermissibly vague. Justice Thomas also dissented, complaining the majority focused on the rights of criminals at the expense of innocent citizens living in these crime-ridden neighborhoods, "people who have seen their neighborhoods literally destroyed by gangs and violence and drugs . . . good, decent people who must struggle to overcome their desperate situation, against all odds, in order to raise their families." 6-3 decision.

Neder v. United States
67 USLW 4404 (1999)

Neder was convicted on a variety of federal fraud charges arising out of a land development deal and his efforts to underreport his income. A key issue at trial was whether his misrepresentations were "material." At the time of his trial, the practice was to allow judges to make that determination as a matter of law. Subsequent to his trial, however, in *United States v. Gaudin*, 515 U.S. 506 (1995), the Supreme Court held that materiality was an element of the offense and should therefore be determined by the jury. Neder appealed his conviction, claiming that removing an element of an offense from the

jury deprived him of his right to due process. The Eleventh Circuit affirmed, holding that since Neder did not contest the materiality of his statements at trial, the proper standard of review was harmless error, and that under that standard there was sufficient evidence to affirm the conviction.

The Supreme Court, in an opinion by Chief Justice Rehnquist, held that a jury instruction which omits an element of an offense does not per se render the trial fundamentally unfair. In prior cases, the Court had recognized a distinction between "structural errors" (which require automatic reversal) and "trial errors" (which merely require harmless error review). The improper jury instruction in this case was categorized by the majority as a mere trial error. Therefore, harmless error analysis was proper. Justice Scalia dissented, arguing that depriving a defendant of the right to have the jury determine every element of the crime charged should never be treated as harmless error. 6-3 decision.

Strickler v. Greene
67 USLW 4477 (1999)

Strickler received the death penalty for kidnapping and killing a woman. While there were a number of eyewitnesses to the kidnapping, which occurred outside a Virginia shopping mall, the most gripping testimony came from one woman who said at trial she had "absolutely no doubt" as to her identification of the defendant as the primary perpetrator. This witness did not speak to police until several months after the crime, and initially said she wasn't sure she could identify the perpetrator. During pretrial discovery the prosecution, which maintained what it called an "open door" policy, allowed the defense to see all the materials in the case file, pursuant to the rule in *Brady v. Maryland*, 373 U.S. 83 (1963), which requires prosecutors to turn over exculpatory as well as inculpatory evidence to the defense. However, the witness's initial statement to the police was not in the file at this time. After his direct appeals failed, Strickler filed a habeas appeal, and discovered the witness's statement in the police files. The district court concluded that the failure to disclose the statement constituted a *Brady* violation, but the Fourth Circuit disagreed, holding that the non-

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disclosure of the witness's initial statement was not prejudicial and that Strickler's claim was barred by his procedural default.

Justice Stevens authored the majority opinion upholding the dismissal of Strickler's habeas petition. He first noted that Strickler had procedurally defaulted on his *Brady* claim by failing to raise it at trial or in his state appeal. Consequently, Strickler had to show both cause for the default and that he had been prejudiced by the withholding of the evidence. Stevens acknowledged that the evidence was wrongly withheld and that it might

have altered Strickler's fate. That the result might have been different was not enough to demonstrate prejudice. Instead, Strickler had to show that there was a "reasonable probability" that the outcome would have been different. This is known as the "materiality" requirement. The majority noted that there was overwhelming evidence from other witnesses implicating Strickler, and that this overcame the prejudice caused by the exclusion of the statement of one witness. The dissent by Justice Souter noted that just one juror's reservations would have saved Strickler from the death penalty, and that

while there was a great deal of inculpatory evidence, it was possible that discrediting the certainty of the primary prosecution witness would have swayed one juror. Souter suggested reformulating the *Brady* test to require only a showing of a "significant probability" that the excluded evidence would have produced a different result. 7-2 decision.

Evidence

Kumbo Tire Company v. Carmichael
67 USLW 4179 (1999)

In a personal injury lawsuit for damages suffered in an automobile accident, the plaintiff sought to introduce into evidence the testimony of an expert in tire failure analysis. The trial court excluded the expert witness's testimony on the grounds that it did not pass the reliability requirement of Federal Rule of Evidence 702. This rule permits expert witness testimony on an issue involving "scientific, technical, or other specialized knowledge." The trial court based its decision on an interpretation of a recent Supreme Court decision on the admissibility of expert witness testimony (*Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993)). In that case the Court established a four-factor test that trial judges could use to determine the reliability of scientific expert witness testimony. The Eleventh Circuit reversed, holding that the *Daubert* test applied only to scientific expert testimony, not to technical expert testimony, and that the trial judge had therefore used the wrong test for determining the admissibility of the expert witness testimony.

The Supreme Court unanimously reversed the Eleventh Circuit, and held that the *Daubert* test is applicable to all forms of expert witness testimony. No distinction is made between scientific or technical or other specialized testimony, as the Federal Rules of Evidence make no distinction and doing so would be impractical. A trial judge is not required to use the four-factor test enunciated by the Court in *Daubert*, but must in some way ensure that all expert testimony is both relevant and reliable. The Court then applied the *Daubert* factors to the expert witness testimony in this case, and concluded that the proffered testimony was neither relevant nor reliable, and thus properly excluded by the trial court. 9-0 decision.

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Lilly v. Virginia

67 USLW 4435 (1999)

Lilly was one of three men charged with murder and carjacking. Prior to trial, one of his co-conspirators, his brother, made a statement to the police which implicated both of them, but identified Lilly as the instigator of the crime spree. When Lilly's brother asserted his Fifth Amendment right not to testify at Lilly's trial, the prosecution read into the record the entire statement to the police. The trial court admitted the out-of-court statement under the "declaration against penal interest" exception to the hearsay rule. Under this exception, the statement is assumed to be reliable because the speaker is admitting to wrongdoing, something the speaker is unlikely to do falsely. Lilly was convicted. On appeal, Lilly argued that his brother's statement was hearsay and therefore unreliable, and should have been excluded since Lilly was unable to test the credibility of the non-testifying witness at trial. The Virginia Supreme Court affirmed his conviction.

The U.S. Supreme Court reversed the state court. No opinion garnered a majority of the court. Justice Stevens' plurality opinion held that a confession by an

Lilly was one of three men charged with murder and carjacking. Prior to trial, one of his co-conspirators, his brother, made a statement to the police which implicated both of them but identified Lilly as the instigator of the crime spree.

accomplice that incriminates a defendant is not a "firmly rooted" exception to the hearsay rule. While prior cases permit the introduction of a confession which incriminates the speaker as a "declaration against penal interest," the exception should not apply to situations where the statement inculcates the speaker but also serves to incriminate the defendant. This is because the speaker has a strong motivation to alter the truth to help himself at the expense of his accomplice. Thus, while such a statement is partially against the speaker's interest, it is also against the defendant's interest, and since the witness

is not available for cross-examination, the statement is not reliable enough to be considered as an exception to the hearsay rule. Several concurring opinions were filed in which the justices argued that the plurality went farther than necessary in establishing that accomplice confessions, which also implicate others, are not an exception to the hearsay rule. Chief Justice Rehnquist argued there was no need to reach that issue in this case, as the confession here was not a true statement against penal interest. 9-0 decision.

Federal Statutes

Holloway v. United States

67 USLW 4148 (1999)

The defendant was convicted of three counts of carjacking under the federal carjacking statute. In each incident, the defendant threatened to shoot if the driver did not hand over the car keys, but testimony by his accomplice indicated that Holloway did not have the intent to kill or seriously injure the victim unless the victim refused to cooperate. The trial court instructed the jury that such "conditional intent" sufficed to meet the statutory requirement that the defendant had an intent to cause death or serious bodily harm.

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On appeal, Holloway argued that the carjacking statute required proof of unconditional intent, rather than conditional intent. The Second Circuit upheld the conviction, noting that the concept of conditional intent was well established and that Congress would have been aware of it when enacting the statute.

The majority opinion by Justice Stevens upheld the conviction, stating that a conviction was appropriate under the carjacking statute if conditional intent was established, as it was in this case. While the majority admitted that a possible read-

ing of the statute was to require unconditional intent, a better reading of the statute is that conditional intent is enough. Such an interpretation gives effect to Congress' purpose, which was to deter this particular criminal activity. In dissent, Justice Scalia, joined by Justice Thomas, argued that the ordinary meaning of intent does not include conditional intent, and that when a statute is written ambiguously, the rule of lenity in interpreting criminal statutes requires a resolution of the ambiguity in the defendant's favor. 7-2 decision.

Jones v. United States
67 USLW 4204 (1999)

Jones was convicted of carjacking in violation of the federal carjacking statute, 18 U.S.C. 2119. Under this statute, carjacking is subject to a sentence of up to 15 years in prison, unless accompanied by serious bodily injury, in which case the maximum sentence is 25 years. Jones' indictment made no reference to the victim suffering serious bodily injury, nor was any evidence to that effect presented at trial. Nonetheless, the district court noted that the presentence report revealed that the victim had suffered serious bodily injury during the carjacking, and used this as the basis for imposing a 25-year sentence. Jones appealed his sentence, claiming that the failure to either allege serious bodily injury in the indictment or prove such injury at trial, as an element of the offense, prevented the court from imposing the longer sentence. The Ninth Circuit affirmed the sentence, on the ground that the part of the statute referencing serious bodily injury did not refer to an element of the offense, but to a sentencing factor. In so holding, the Ninth Circuit was in agreement with all the other courts of appeal that had considered this issue.

The Supreme Court reversed by a narrow vote. The majority opinion, by Justice Souter, held that serious bodily injury was an offense element, not merely a sentencing factor. As such, it must be alleged in the indictment and proved to the jury beyond a reasonable doubt. Due process required such a reading, the majority felt, as the increase in the sentencing range from 15 to 25 years was significant, and that leaving the proof of injury to the judge was an impermissible limitation on the jury's role. The dissent, written by Justice Kennedy, argued that a prior case (*Almendarez-Torres v. United States*, 523 U.S. 224 (1998)) had already held that a mere increase in sentence range did not transform a sentencing factor into an offense element. 5-4 decision.

Richardson v. United States
67 USLW 4381 (1999)

Richardson, a leader of the Chicago street gang, the Vice Lords, was charged with a series of drug-related offenses, including violation of 21 U.S.C. 848(a), which makes it a crime to engage in a "continuing criminal enterprise" (CCE). The law

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was specifically aimed at so-called "drug kingpins." During trial the prosecutor presented evidence that Richardson had been involved in a number of drug transactions. The trial judge instructed the jury that in order to find him guilty of engaging in a CCE they must agree unanimously that the defendant committed at least three drug offenses. The judge refused a defense request to instruct the jury that they must all agree that the defendant committed the same three offenses. Richardson was convicted and sentenced to life in prison. On appeal Richardson argued that he could be found guilty of a CCE only if the jury unanimously agreed that he had committed at least three drug crimes, and they all agreed on the same acts. The Seventh Circuit upheld the conviction, creating a conflict in the circuits.

The U.S. Supreme Court, in a majority opinion written by Justice Breyer, reversed, holding that a jury must unanimously agree not only that a CCE defendant committed at least three discrete drug violations, but must also agree on the specific violations. According to the majority, the statute makes each drug violation a separate element of the crime of CCE. Consequently, each element must be proven to the jury beyond a reasonable doubt. The decision will make it more difficult for prosecutors to establish their cases in CCE prosecutions, as the dissent by Justice Kennedy noted. 6-3 decision.

United States v. Rodriguez-Moreno
67 USLW 4219 (1999)

The defendant kidnapped a man in Texas and drove him through several states, including Maryland. While in Maryland, he threatened the man with a gun. The defendant was eventually apprehended and brought to trial in New Jersey. He was charged and convicted on several counts, including kidnapping and a violation of 18 U.S.C. 924(c)(1), which makes it a crime to use a firearm while committing another federal crime. On appeal he argued that the firearms conviction was improper because the New Jersey court was not the appropriate venue, as he committed the firearm offense only in Maryland. The Third Circuit reversed, holding that the proper venue for the firearms charge was in the district where the firearm was used.

The U.S. Supreme Court disagreed

with the Third Circuit, and held that proper venue for the firearms charge was any federal district where the underlying crime was committed, even if the firearm was not used in that specific district. The majority opinion by Justice Thomas emphasized that the firearms offense was a part of the kidnapping, the underlying offense. Kidnapping is a continuing offense, meaning it can be prosecuted in any jurisdiction in which it occurs. In this case, the victim was kidnapped in Texas and driven across the country, including through Maryland and New Jersey. Venue for prosecution of this offense lay in any district in which the victim was transported. The firearms offense, which is intended by Congress to be added to the underlying offense and allow extra punishment for a violent crime with a gun, may also be tried with the kidnapping offense, regardless of precisely where the firearm was actually "used." Justice Scalia and Justice Stevens dissented, arguing that the plain meaning of the statute made venue proper only in the jurisdiction where the firearm was in fact used, and that the majority was ignoring the plain language of the statute in an effort to allow prosecutors the expediency of trying all the offenses in one jurisdiction. 7-2 decision.

United States v. Sun-Diamond Growers of California
67 USLW 4265 (1999)

The defendant, an agricultural trade association, was convicted of violating 18 U.S.C. 201, the federal illegal gratuity statute. The association gave gifts totaling approximately \$6,000 to the then-Secretary of Agriculture at a time when the Secretary was considering several matters in which the association had an interest. No evidence was offered that there existed a specific connection between the gifts and any actions of the Secretary. All that was established was that the gift was made because the Secretary was a public official. The jury was instructed that if the gifts were given because the recipient held public office it was a violation of the statute. The Court of Appeals of the District of Columbia reversed the conviction, ruling that the statute did not apply to the giving of gifts without proof of the intent to affect official conduct, and that the erroneous jury instructions did not constitute harmless error.



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Habeas Corpus Petitions

Calderon v. Coleman

67 USLW 3390 (1998)

Coleman was convicted of murder and sentenced to death in 1979. At trial the jury received an instruction that if Coleman received a life sentence without the possibility of parole, the Governor still retained the authority to commute the sentence (this is known as a Briggs instruction, and has been upheld as meeting federal constitutional requirements in *California v. Ramos*, 463 U.S. 992 (1983)). The jury was also told not to consider the Governor's power when determining the appropriate sentence. The California Supreme Court determined that the jury instruction informing the jury of the Governor's authority violated state constitutional law, but that the error was cured by the additional instruction not to consider the Governor's power. Coleman subsequently filed a habeas petition, arguing the incorrect jury instruction violated his right to due process. The district court and Ninth Circuit agreed, apparently reaching their conclusion without engaging in harmless error analysis, although such analysis is required under *Brecht v. Abrahamson*, 507 U.S. 619 (1993).

In a per curiam opinion, issued without briefing or oral argument, the Supreme Court reversed the lower courts on the ground that they had granted habeas relief without utilizing harmless error analysis. Under *Brecht*, relief due to a trial error may be granted only after a determination that the error had a "substantial and injurious effect or influence." Justice Stevens, joined by three others, dissented, arguing that the majority had

Peguero pled guilty in federal court to conspiracy to distribute cocaine and received a 22-year sentence. At his sentencing hearing, he was not advised by the court that he had a right to appeal his sentence, although Federal Rule of Criminal Procedure 32(a)(2) so required.

misread the Ninth Circuit opinion, and that the lower court had used harmless error analysis in reaching its determination that Coleman had suffered a violation of his constitutional rights, but had simply failed to make its mode of analysis clear. 5-4 decision.

O'Sullivan v. Boerckel

67 USLW 4389 (1999)

Boerckel was convicted of rape in Illinois in 1977. His conviction was upheld by the Illinois Court of Appeals. The Illinois Supreme Court, exercising its discretionary jurisdiction, refused to hear his case. He renewed his appeals in the 1990s in federal court, basing his appeal on three claims that were not included in his original appeal to the state Supreme Court. The federal district court judge rejected Boerckel's petition on the ground that the claims were not in his original petition to the Illinois Supreme Court, and that comity required federal courts to permit state courts to first consider all claims. This ruling had the effect of ending Boerckel's appeal, as the time period for filing his claims in state court had long passed; hence Boerckel had procedurally defaulted. The Seventh Circuit Court of Appeals reversed, on the ground that since the petitioner was not required by state law to seek discretionary review in the state Supreme Court, it was improper for the federal court to so require.

Justice O'Connor's majority opinion reversed the Seventh Circuit, and held that state prisoners must give state courts "one full opportunity" to resolve any federal constitutional issues. This means prisoners must follow the state's established appellate review process in its entirety.

This is so even if the chance of being heard is negligible (as it is in Illinois, where the state Supreme Court accepts less than five percent of all appeals). The Court acknowledged that while Boerckel had no right to review, he did have a right to petition the court for review. Consequently, he was required to raise all his claims in the state Supreme Court to satisfy the "exhaustion doctrine." Failure to do so barred him from federal court, and as the time had passed in state court, he was procedurally defaulted. The majority placed great emphasis on the importance of comity and respect for the integrity of the state judicial process, an issue of long-standing concern to Justice O'Connor. The dissent by Justice Stevens pointed out that while the majority based its decision on a reluctance to interfere in state proceedings, the actual effect of the decision is that it may increase the workload of state courts, as more petitions will be filed there. 6-3 decision.

Peguero v. United States

67 USLW 4154 (1999)

Peguero pled guilty in federal court to conspiracy to distribute cocaine and received a 22-year sentence. At his sentencing hearing, he was not advised by the court that he had a right to appeal his sentence, although Federal Rule of Criminal Procedure 32(a)(2) so required. Peguero was, despite this oversight, clearly aware of his right to appeal his sentence, as he discussed the advisability of an appeal with his attorney and decided not to appeal at that time in hopes of working out a deal with the prosecution. Several years later, Peguero filed a habeas petition alleging that the trial judge's failure to advise him of his right to appeal entitled him to a new sentencing hearing. The district court and court of appeals for the Third Circuit denied his petition, finding that while the sentencing judge erred, Peguero had suffered no prejudice, as he was aware of his right to appeal.

The Supreme Court, in a unanimous opinion by Justice Kennedy, affirmed the lower courts and denied Peguero's petition. The Court acknowledged that the district court has a duty, under the Federal Rules of Criminal Procedure, to notify a defendant at his sentencing hearing of his right to appeal his sentence.

While the district court erred in not doing so here, the defendant was not entitled to relief, as it was clearly demonstrated that he was nonetheless aware of his right to appeal, and thus suffered no prejudice as a result of the judge's error. Error itself was not enough to vacate the sentence; instead, the defendant must establish both the error and the harm caused by the error. 9-0 decision. ☞

Next month: The new U.S. Supreme Court cases on liability under Section 1983, prison law, search and seizure law, and self-incrimination.

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Rolando V. del Carmen is professor of criminal justice in the College of Criminal Justice, Sam Houston State University, in Huntsville, Texas. He has several law degrees and has written numerous books and articles on a variety of legal topics. The fifth edition of his best-selling textbook Criminal Procedure (West Publishing) is at press.

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Online Lawyer Directories: Do They Work?

by Donald B. Kramer

Along with virtually every other business, legal practice and law firm marketing are evolving in response to the Internet. One result of this evolution is the presence of several online lawyer directories. For those of you wondering whether such directories bring in clients, the answer is a resounding "Yes"! To combat the rising tide of online noise and attorney skepticism, legal directories spend hundreds of thousands of dollars per year to ensure continuing success. The directories have generated a number of clients for listed firms. A perfect example is the Atlanta law firm that received a \$150,000 valid claim from a directory user. The claim was against a major airline, and a settlement developed within the week.

Bringing in Clients

Attorneys who set up e-mail accounts and websites, and then merely submit the information to search engines cannot expect much to happen. Search engines receive thousands of similar requests.

If you search for a word like "attorney," the list returned will be enormous. Many of those listings are garbage, thereby frustrating the searcher and the attorney who wants to be found. The average lawyer can't afford to buy banners that pop up when someone does a search for "attorney," nor is it trivial to do the programming necessary to get your site to the top of the search list.

Even if you could afford to have your site pop up every time someone searched for "attorney," you probably wouldn't

want traffic unrelated to your practice. Lawyer directories resolve this problem by filtering search requests to the proper practice area and proper jurisdiction, so the lawyers listed in the directories receive the responses they desire at a reasonable price.

Each time a person views a directory banner ad on a search engine page, the directory owner placing this ad pays approximately five cents — even if the viewer does not click on the banner to go to the directory. The fees paid by attorneys for the directory listings in turn pay for those banner advertisements. To see an example of a directory banner, go to Infoseek (www.infoseek.com) and search the word "lawyer."

If you are still thinking about buying

banners, be advised that many search engines charge a \$1,000 monthly minimum, and if you have a worldwide banner you will get worldwide traffic, probably more than you're interested in.

A word of caution: some services will offer to submit your site's listing to hundreds of "search engines," and will do so for a small fee. Each of those "search engines," however, will acknowledge receipt and start corresponding with you, creating a flood of unwanted e-mail. You are much better off submitting only to the top 20 search engines, since these are the sites likely to do you the most good. I recommend submitting your site to the following: Yahoo, Infoseek, AltaVista, Lycos, AOL, Excite, Netscape, Hot Bot, Webcrawler, Switchboard, Look Smart and Snap.

Your Directory Listing

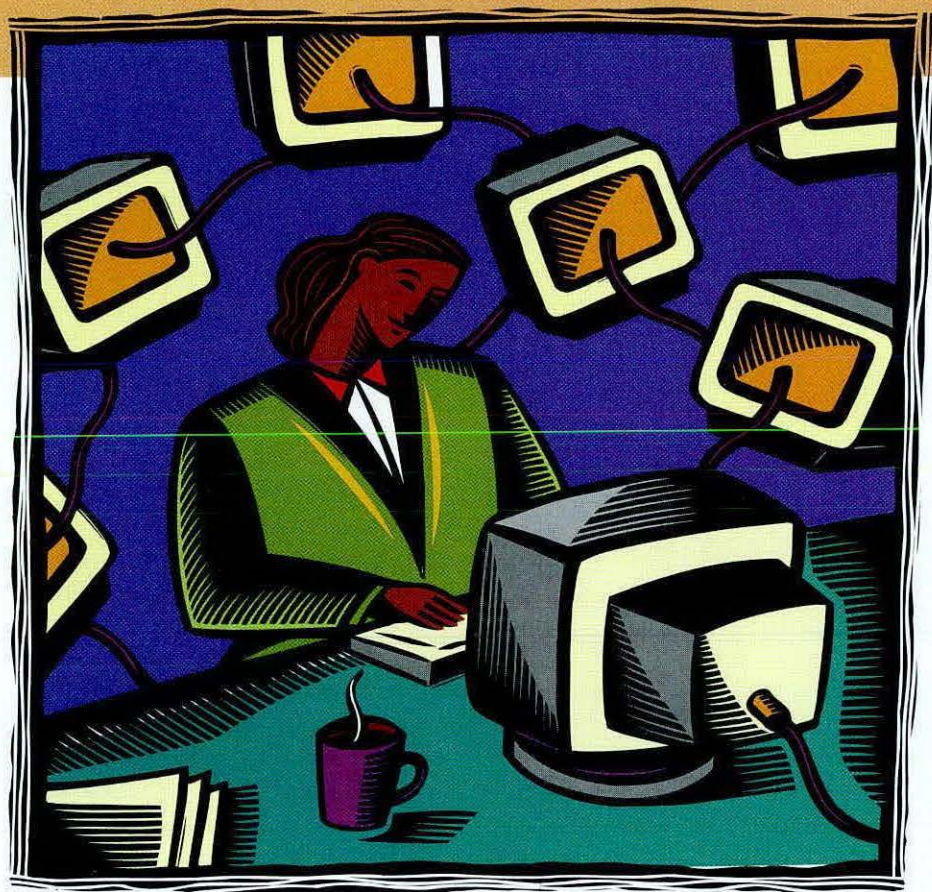
Make sure that your lawyer directory listing is correct. Many mistakes are made with the entry of e-mail addresses. Most law firms have a listing at www.Martindale.com (the Martindale-Hubbell directory), but have not confirmed the information provided there. Make sure your listing in any directory contains a link to your e-mail address and website, since Internet viewers want to act immediately, visit your site, and then "speak" by e-mail. You should read your e-mail several times a day, since Internet viewers expect prompt responses.

Building Your Website in the Directory

For those firms without a website, the directories provide you with the opportunity to create one. Here are a few tips:

- Make the site simple.
- Use color and pictures to make it look

A word of caution: some services will offer to submit your site's listing to hundreds of "search engines," and will do so for a small fee. Each of those "search engines," however, will acknowledge receipt and start corresponding with you, creating a flood of unwanted e-mail.



more professional. You do not, however, have to use animation, as the viewer is already there, and you don't have to catch their attention.

- Place an e-mail link in the site, so the viewer can easily make contact.
- Use META tags (ask your programmer) to hide words on your site that will be found by search engine robots which in turn will index your site in search engines based on the META tags you've chosen.
- Do not use numerous graphics that might slow the loading of the site. Internet viewers are impatient and will leave the site if it is not loading quickly.
- Once you build a website through a directory, you can use the same site anywhere on the Internet. The cost of building a simple site is small, and need not be more than a few hundred dollars for the small law firm.

Don't Expect a Flood of Business

A directory like Martindale's provides some 900,000 listings. A directory like "Attorneyfind" provides 4,500. If you are

in a major metropolitan area, and you have an e-mail link, a website link, and a proven directory that spends money in marketing, you can currently expect at least three good contacts per year for each \$100 spent on directory listings.

Do Directories Attract Executives or Just Consumers?

Many businesses and professions have been very slow to adapt to the Internet. Some 80 percent of business people have computers at home, but less than 20 percent are able to get on the Internet at work. However, the at-work user percentage rises every day. Within five years, it is expected that more than 80 percent of businesses will be using the Internet. To attract businesses with legal problems, it may be important to consider establishing a Web presence.

In the consumer arena, directories attract enormous numbers in the legal areas of divorce, collections, immigration (a natural for the Web), personal injury, wills, malpractice, real estate and criminal law. Some states are not yet Internet-

oriented, however, and the attorney who has an office in a small community cannot expect much from the Internet.

Is There Hope for Small Law Firms?

The nature of Internet directories gives the small law firm a great chance. A good website can equalize the small firm's market standing. The site can demonstrate the firm's true qualities like no other medium. The low annual directory fees are easily affordable for the small firm. Such costs are just a fraction of "Yellow Pages" ads, whereas websites provide just as much information.

Guidelines for Selecting a Directory

You should be in as many Internet directories as you can afford — but do your homework before making the selection. Make sure the directory seeks business with banners and listings throughout the Internet. Some directories have a counter on the home page. Review this over time to determine the traffic level. Make sure the directory you choose allows you to link in your e-mail address and website. Consider all expenses, since some directories charge for extra services like the linking of e-mail or the hosting of a site.

Make sure the listings are easy to find, and that the viewers do not have to look at four screens before they get to the directory portion. If you list in a directory, keep a record of the clients received through the listing, so when renewal time comes you will know if you are getting your money's worth.

As the world becomes dependent on the Internet, professionals who learn Internet marketing will certainly benefit immensely. Build as many directory listings as you can into your marketing budget. ☞

Donald B. Kramer (don@lawusa.com) is president of the St. Louis collection law firm of Kramer & Frank, P.C., and the creator of seven Internet directories. This article previously appeared in The Internet Lawyer (August 1999 issue).

Lawyer Advertising on the Internet

by **Barrie Althoff** • *WSBA Chief Disciplinary Counsel*

Opinions expressed herein are the author's and are not official or unofficial WSBA positions. This article reviews Washington's ethical rules on lawyer advertising, all adopted long before widespread use of the Internet, and then applies the rules to lawyer advertising on the Internet. It also looks briefly at ethical issues of e-mail, chat rooms and list serves, and then collects some useful resources in an appendix.

Introduction

A lawyer's right to advertise for and solicit clients is protected as a freedom of commercial speech under the First Amendment to the U.S. Constitution. The right, however, is subject to the Bar's mandate to protect the public from, among other things, deceptive practices and undue direct solicitation. While a lawyer has a broad constitutional right to engage in commercial speech, the right is not unlimited, but is subject to reasonable restrictions related to that form of free speech.¹

The Washington Supreme Court's Rules of Professional Conduct (RPCs) specify the minimum level of conduct required of lawyers to avoid disciplinary action. Washington's RPCs are largely based on the American Bar Association's Model Rules of Professional Conduct, adopted in 1983 and modified a number of times since. Washington's principal ethical rules applicable to lawyer advertising are RPC 7.1 (communications concerning a lawyer's services), RPC 7.2 (lawyer advertising), RPC 7.3 (soliciting clients), RPC 7.4 (communicating a lawyer's fields of practice), RPC 7.5 (use of firm names), and RPC 8.4(c) (specifying various acts of misconduct). None of Washington's RPCs makes any reference to the Internet.

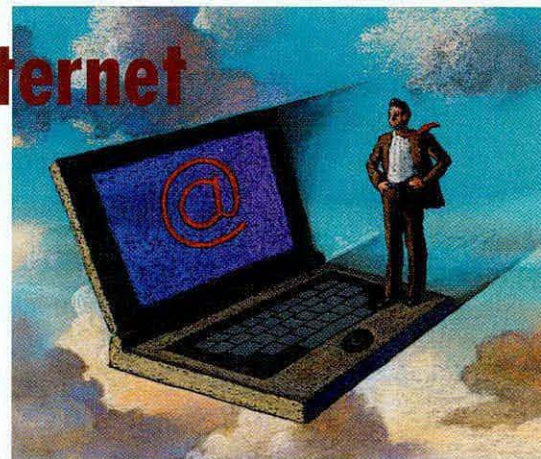
Truthful Statements Permitted (RPC 7.1)

RPC 7.1 generally permits a lawyer to say

anything so long as it is truthful and complete. The rule prohibits a lawyer from making false or misleading communications about the lawyer or about the lawyer's services. A communication is false or misleading if: (a) it materially misrepresents a fact or law, or omits a fact necessary to make the communication not materially misleading; or (b) it is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the RPCs or other law; or (c) it compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

Misrepresentations can be in words or pictures. For example, if a lawyer's practice was merely local, but her Internet website had a map of the United States in the background and the text implied a national practice, the materials would be misleading. Similarly, if a law firm's website contained a photograph of persons who impliedly are the firm's lawyers, but are in fact paid models, the photograph would be misleading.

The rule also precludes a lawyer from creating unjustified expectations about what the lawyer will accomplish for the client. Exaggerating education, skills, expertise, training, the size or capability of the lawyer's staff, or the lawyer's "connections" with important persons would be misrepresentations under RPC 7.1(a), and



would also likely create unjustified expectations of what the lawyer is capable of accomplishing and thus violate RPC 7.1(b). A lawyer generally may not use testimonials, or describe results obtained for other clients, because potential clients would likely expect similar results without regard to their own particular and unique factual and legal circumstances. The rule also generally prohibits non-factual comparisons with other lawyers.²

Internet websites are relatively inexpensive to create and maintain. A professionally developed site can positively portray a lawyer or firm so that a site visitor may infer the lawyer or firm has greater depth, talents, skills and experience than they in fact have, even if everything on the site is entirely factually accurate. Similarly, by seeing an expensively furnished office, or a lawyer driving an expensive car, a client may infer the lawyer is very successful and therefore must be a "good" lawyer. In each case the potential client or visitor may evaluate the lawyer on just the information that the lawyer chooses to provide. The ethics rules, however, are not intended to address such surface impressions.

More substantial issues of truthfulness arise in the manner in which a website is constructed and the use of the language that appears or is hidden on the site. Factual statements must obviously be truthful and complete. Internet search engines can index a website by the text of the site,

and by examining the various META tags inserted into the coded hypertext markup language used in the site. The tags can be hidden, embedded in coding, and thus will not be visible to the casual site visitor. The tags might not have any relationship to the site itself. Thus a lawyer who does not practice divorce law might hide "divorce" as a tag so that a person seeking a lawyer handling divorces would be directed to that lawyer's site. Similarly, a lawyer might use another well-known lawyer's name as a META tag to channel Internet inquiries to his or her own site. Both actions would violate RPC 7.1.

Internet communication can be very fast and change rapidly. Thus, there is a corresponding obligation on the lawyer to keep site information truthful at all times. Unlike a telephone directory, for example, which cannot be changed once printed and circulated, even though the information may become incorrect, website information can and should be kept accurate at all times. Information, correct when placed on a website, can become materially false through the change of circumstances. A lawyer has an ongoing obligation to assure that the information on the lawyer's website is at all times materially correct.

Authority to Advertise and Restrictions Thereon

RPC 7.2 contains the core of the Washington Supreme Court's regulation of lawyer advertising. Its four sections both authorize and restrict lawyer advertising.

- RPC 7.2(a) permits lawyer advertising if it is not false or misleading under RPC 7.1 and does not constitute direct solicitation prohibited under RPC 7.3 (discussed on p. 36).
- RPC 7.2(b) requires lawyers to keep copies of all advertisements for two years after their last use, to keep records of when and where the advertisements were run, and to provide them to the Bar on request.
- RPC 7.2(c) prohibits a lawyer from giving anything of value to a person

for recommending the lawyer's services, but permits a lawyer to pay the reasonable costs of advertising or written communications and may pay the usual charges for a not-for-profit lawyer referral service. The lawyer may not pay for persons (including "runners" or "shills") to recommend the lawyer to other persons, nor may the lawyer discount a fee for a client on the client's agreement to recommend the lawyer to others. The rule would also likely prohibit a lawyer from paying for Internet advertisements under any arrangement tying compensation to the number of hits at the lawyer's site or the number of clients resulting from the advertisement, or the number of potential clients channeled to the lawyer.

thorities do not address these questions.

What is Advertising and What is Restricted?

RPC 7.2(a) states: "a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television, or through written communication."

The listing of various media in RPC 7.2(a) is not exclusive. Subject to the restrictions of RPC 7.3 on direct solicitation, a lawyer may advertise his or her services using any public media, electronic or otherwise. A lawyer may use traditional media to sponsor a film festival, a Seafair float, a sports team or a ballet performance. A lawyer may also engage a sky-

Although there is no authority in Washington specifically permitting a lawyer to advertise on the Internet, ethics opinions from other jurisdictions conclude that lawyers may advertise on the Internet provided the advertisements otherwise comply with ethical restrictions.

- RPC 7.2(d) requires every advertisement to include the name of at least one lawyer responsible for its content, thus advertisements may not be anonymous. If a lawyer runs a "banner ad" on an Internet website other than his or her own, must the ad also contain the lawyer's name? Such ads are usually very small and contain minimal information. Would it be sufficient for the lawyer's name to appear only after the banner ad is clicked so the visitor is then directed to the lawyer's own website? How remote can the connection be? Does the rule require that the name of an individual lawyer appear in the advertisement, or is it sufficient for the name of the law firm to appear? Must the named lawyer be a living partner to fulfill the rule's requirement? Washington au-

thorities do not address these questions. Although there is no authority in Washington specifically permitting a lawyer to advertise on the Internet, ethics opinions from other jurisdictions conclude that lawyers may advertise on the Internet provided the advertisements otherwise comply with ethical restrictions. See, for example, *Arizona Ethics Opinion 97-04*, *Utah Ethics Opinion 97-10*, and other opinions listed in the appendix. The same conclusion may be reached by considering the Internet merely to be a multimedia form of existing communication media whereby traditional print/text is combined with visuals and sound and delivered directly to the recipient.

The RPCs do not define the terms "advertisement" or "advertising." By implication from the title of RPC 7.1 ("communications concerning a lawyer's ser-

vices”), advertising could include all communications about the lawyer or the lawyer’s services which are originated by the lawyer or with the lawyer’s authorization. But such an implied reading of the rules is too broad and would improperly restrict free speech. Not all information about a lawyer is client-development activity or necessarily advertising. The right of the Washington Supreme Court through the RPCs to limit or restrict a lawyer’s constitutional right of free speech should be read narrowly. Thus, communications by a lawyer which do not con-

stitute commercial speech should not be subject to the RPCs’ advertising limitations. Commercial speech has been identified by the U.S. Supreme Court as speech which has the purpose to “propose a commercial transaction” and speech which is “related solely to the economic interests of the speaker and its audience.” *City of Cincinnati v. Discovery Network Inc.*, 113 S.Ct. 1505, 1512 (1993), and *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 561 (1980). In practice, however, the distinction between commercial and

noncommercial free speech is far from clear, and where the two are “inextricably intermixed,” the mixture is likely to be subject to regulation as commercial speech.

The RPCs do not distinguish commercial from noncommercial speech. Title 7 of the RPCs, which includes the above-cited rules, for example, is entitled “Information about Legal Services.” RPC 7.1 is similarly entitled “Communications Concerning a Lawyer’s Services,” but its text covers both communications “about the lawyer” and about “the lawyer’s services.” While information about a lawyer would seem informational and non-commercial, information about the lawyer’s services are more likely commercial. Clearly not every communication under RPC 7.1 is an advertisement under RPC 7.2.

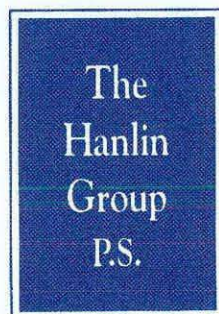
The distinction between communications that are “informational” and those that are “commercial,” or which constitute “advertising,” is not at all clear, and any attempt to establish definitive distinctions is likely to be both impracticable and unworkable. If these distinctions are viable and the conclusions are correct, however, then merely because materials are placed on a lawyer’s website does not mean they are necessarily subject to the advertising restrictions of the RPCs. While many materials on a site maintained or authorized by a lawyer which describe the lawyer or the lawyer’s services might be subject to the RPCs, other materials might not. A lawyer might, for example, maintain a website containing information about the lawyer’s practice or hobbies which demonstrate a lawyer’s talents, expertise or interests, but which do not explicitly beckon the reader to retain the lawyer for legal services. The implied “beckoning” for legal services should not be enough to subject such information to regulation as commercial speech or advertising. Similarly, the biography of a lawyer on a website should be viewed as informational. It should not matter who a visitor to the website is, whether a potential client or an opposing lawyer, since, if the distinction between informational and commercial depended on the identity or intent of the reader or visitor, the distinction would be unworkable. A lawyer’s website may thus be a mixture of information subject to regulation and in-

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formation not so subject, with the distinction between the two not being clear.

Washington has no authorities yet on point. Texas takes the position that the following items are generally *not* advertising: "newsletters; news articles; legal articles; editorial opinions; illustrations; questionnaires; fact or opinion survey forms; announcement of office openings and relocations; request for proposals or information from the public; legal product specifications; e-mail and e-mail response forms; attorney biographical information; announcement or personnel changes; attorney and support staff recruiting; job openings; legal development and events, including verdicts, judgments, court rulings, administrative rulings, and/or legislation; announcement of seminars and events, including on-line registration forms therefore; links to other Internet sites (legal or otherwise); and entertainment/amusement devices." *Interpretive Comment on Part 7 of the Texas Disciplinary Rules of Professional Conduct as Applied to the Internet* (see Appendix). A lawyer should not assume, however, that none of the listed items will ever be considered advertising, since depending on their content and context they may well be part of a solicitation and thus be subject to the advertising rules.

Materials or comments about the lawyer or the lawyer's services placed on the Internet by persons over whom the lawyer has no control should not be viewed as advertising. Thus, a satisfied or dissatisfied client could make statements on a site over which the lawyer has no control, which should not be subject to the RPCs. While RPC 8.4(a) prohibits a lawyer from doing indirectly what the RPCs prohibit the lawyer from doing directly, it is not clear that a lawyer is ethically obligated to seek removal of such statements unless the lawyer sought or encouraged such statements.

Website pages often are linked to other pages. Are those linked pages subject to the advertising and other restrictions of the RPCs? Does it matter whether the lawyer has any control over the content of the linked pages? When linking his or her site to others, a lawyer should take care to disclaim (assuming it is true) responsibility for the content of the linked pages. Without such disclaimer the reader may infer that the lawyer, by linking the

page, approves the linked page and that it is part of his or her own website. A lawyer may not link his or her website to testimonials of the lawyer's clients on their sites.

Names can be hijacked on the Internet so that messages appear to be coming from a specified location when in fact they are coming from elsewhere. Similarly, e-mails can be sent anonymously by being remailed. Even though a lawyer may not do indirectly what he or she is not permitted to do directly, the Internet may make doing so both easier and more difficult to hold an offender accountable.

Recordkeeping (RPC 7.2(b))

RPC 7.2(b) requires a lawyer to keep a copy or recording of each advertisement and a record of when and where the lawyer used it for two years after the advertisement was last disseminated. There is no requirement in Washington to file the advertisement with the Bar, nor that the Bar review it before the lawyer uses it. The rule requires the lawyer to provide copies, dissemination information, and supporting information to the Bar if it asks for it.

While compliance with the rule is fairly easy as to traditional print or broadcast

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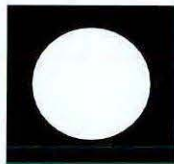
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media advertisements, it is more perplexing if the lawyer advertises on the Internet with a frequently updated site linked to other sites. There is no Washington authority, and thus some uncertainty, as to what this rule requires for Internet advertising.

If a lawyer advertises on the lawyer's website, the lawyer should keep a copy of each page of the lawyer's site, and not merely of those pages that might be deemed advertising, since the two may well be inextricably intertwined. Does the rule require a copy of, or just a record as to, each non-site page linked to the lawyer's site? If a copy is required, the rule is impracticable since the lawyer would have no practicable way to keep copies of every linked non-site page over which he or she has no control. However, a lawyer should at least keep a list of sites to which the lawyer's site is linked, and a calendar of when so linked, and make it clear on the lawyer's site that the linked sites are not maintained by the lawyer.

The rule does not specify the format for the copy, whether it is to be paper or electronic. If the page is merely one-dimensional text, a paper copy should suffice, but if the page has any multimedia components, those aspects should also be

site, and the time periods during which each item was used.

There are no Washington authorities on these issues. In the meanwhile, guidance may be available from other states, such as the Texas comment above cited; Florida Advertising Internet Guidelines (see Appendix for cite); Association of the Bar of the City of New York Committee on Professional and Judicial Ethics *Formal Opinion 98-2* (December 21, 1998); Utah *Ethics Opinion 97-10*; and Virginia State Bar *Lawyer Advertising Opinion A-0110* (April 14, 1998).

Prospecting for Clients (RPC 7.3)

RPC 7.3 restricts a lawyer's ability to directly solicit persons to become clients. RPC 7.3(a) applies to *in-person* or *by-telephone* solicitations, while RPC 7.3(b) applies to *written* solicitations. The concern underlying these restrictions is the high probability of undue influence, intimidation and overreaching in direct solicitations of vulnerable clients.

RPC 7.3(a) prohibits a lawyer from directly, or through a third person, soliciting professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, either in person or by telephone,

RPC 7.3(a) prohibits a lawyer from directly, or through a third person, soliciting professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, either in person or by telephone, when a significant motive for the lawyer doing so is the lawyer's pecuniary gain.

replicated in the copy. A lawyer should also retain copies of the hypertext markup language version of the website to establish META tag honesty. Where possible, the lawyer should maintain logs of "hits" to the site to establish the level of dissemination of the information. The lawyer should also keep backup or archive copies of every material change to the site so that at any given time the site can be recreated. The lawyer should also keep a record of the Internet address (that is, the uniform resource locator, "URL") for each site maintained by the lawyer or on which the lawyer places advertisements, as well as the identity of the provider hosting the

when a significant motive for the lawyer doing so is the lawyer's pecuniary gain. Such restrictions on direct in-person solicitation for gain have been upheld, for example, in *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, reh'g denied, 439 U.S. 883 (1978). If the lawyer is not soliciting the client for gain, however, but is part of a nonprofit organization seeking to advance a group right or interest, or is pursuing a federal class action, the lawyer may be able to engage in some direct solicitation of clients. See, for example, *In re Primus*, 436 U.S. 412 (1978), and *Gulf Oil Company v. Bernard*, 452 U.S. 89 (1981).

The Comment to ABA Model Rule

of Professional Conduct 7.3, on which Washington's rule is based, explains that the rationale behind this restriction is that in-person or live telephone conversations subject a layperson to being importuned at possible moments of need by a trained advocate. Further, the communication, unlike advertising, is not usually recorded and is open to dispute and cannot be readily scrutinized by a third party, thus increasing the possibility of material misrepresentations or omissions.

The limitation on direct in-person solicitation does not prohibit a lawyer from directly contacting organizations, such as medical facilities, retirement homes, labor unions, business trade associations, educational institutions or other organizations that may have access to groups of persons who may need the lawyer's services, and arranging with the organizations for the lawyer to either make in-person presentations to such assembled groups, or for the organization or the lawyer to directly send such persons letters soliciting their business. The lawyer may not, however, pay such organizations for such opportunities or referrals. The lawyer may make presentations to such assembled groups, and may send mailings directed to the members or attendees at the presentations. While the attendees or recipients on their own initiative may thereafter contact the lawyer for legal services, the lawyer may not follow up such group presentations or direct mailings with in-person or with telephone (or likely, e-mail) solicitations seeking their legal business.

RPC 7.3(b) prohibits a lawyer from sending a *written* communication to a prospective client only if the person has made known to the lawyer a desire not to receive communications from the lawyer. If the lawyer has not been so notified, the lawyer may freely engage in direct-mail solicitations so long as the lawyer's solicitations are not false or misleading. They are, in effect, treated like any other advertisement subject to the nonmisrepresentation and advertising rules of RPC 7.1 and 7.2.

A lawyer's right to freely solicit prospective clients by mail (even targeting specific clients the lawyer believes may need the lawyer's specific services) has been upheld in *Shapiro v. Kentucky Bar Association*, 486 U.S. 466 (1988) (lawyer solicited by mail persons whose homes were

possibly in foreclosure). Thus, a lawyer may, for example, send truthful letters (although perhaps not postcards because of confidentiality concerns) about the lawyer's ability to perform legal services generally to the public at large, as well as to specific persons whom the lawyer believes are in need of the lawyer's specific legal services (for example, accident victims, persons filing for marriage dissolutions or bankruptcy, or persons purchasing houses). Unless such persons thereafter contact the lawyer on their own, however, the lawyer may not follow up such letters with direct telephone calls or in-

person visits, nor may anyone else do that for the lawyer.

Similarly, the lawyer may review recent court filings or police reports to help identify persons whom the lawyer believes are likely in need of legal services. If the lawyer engages in direct mail solicitation of perhaps vulnerable potential clients, however, the lawyer should recognize that many persons consider such solicitations at such a time as "ambulance chasing" and in poor taste; thus the lawyer may equally well alienate potential clients, as well as other attorneys, particularly attorneys who are already representing such persons.³

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The right to directly solicit clients may be further limited to protect vulnerable potential clients. For example, the Supreme Court upheld the right of the Florida Bar to prohibit solicitation letters targeted to relatives of deceased accident victims until 30 days after an accident; see *Florida Bar v. Went For It, Inc.*, 115 S. Ct. 2371 (1995). Washington, not having yet experienced the type of abuse found in that case, has not yet adopted such restrictions on written solicitations.

Solicitation by e-mail. Suppose a lawyer wants to solicit clients by e-mail, or by using Internet chat rooms, or by user groups or list serves? Nowhere are these mentioned in the RPCs, nor are there any Washington authorities on point.

These new means of communication raise interesting questions under the rules, since they share characteristics of in-person or telephone communications (and usually take place over telephone lines), while they are also written communications. For example, e-mail shares some characteristics of in-person or telephone communication governed by RPC 7.3(a), but is in writing governed by RPC 7.3(b). Which rules apply? Does the RPC 7.3(a) prohibition of direct solicitation of potential clients prohibit a lawyer from sending e-mail solicitations to potential clients? Although these communications are not in person, they are more immediate and personal, and closer to "real time," than written mail solicitations. At the same time, they are written communications of the type permitted by RPC 7.3(b) and can be ignored or answered at leisure by the recipient. Since they are written communications, there is a clear record of what is said in them; thus, the ABA Model Rule's stated rationale that their content is open to dispute and not readily scrutinizable by third parties would not apply. It would appear logical that the restrictions of RPC 7.3(a) should not apply to e-mail solicitations and that they should instead be governed by RPC 7.3(b), whereby a lawyer could send unsolicited e-mails to potential clients soliciting their legal business unless the persons had previously advised the lawyer not to send them communications. In considering using e-mail solicitations, a lawyer should take care to comply with RCW 19.190, which prohibits sending e-mails which use a third party's Internet domain name with-

out that party's permission, misrepresent the message's point of origin, or contain untrue or misleading information in the e-mail's subject line.

Utah *Ethics Opinion 97-10*, for example, concludes that e-mail is not an in-person communication of the type barred by RPC 7.3 and that accordingly a lawyer may use e-mail to directly solicit potential clients. Under this reasoning, Washington's RPC 7.3 would not prohibit a lawyer from including on a lawyer's website an e-mail link for clients to seek additional information from the lawyer, and once so sought, from the lawyer responding directly to the potential client.

A word of caution: some services will offer to submit your site's listing to hundreds of "search engines," and will do so for a small fee. Each of those "search engines," however, will acknowledge receipt and will start corresponding with you, creating a flood of unwanted e-mail.

On the other hand, in a 1995 disciplinary action, *In re Canter* (see Appendix), Tennessee disciplined a lawyer for sending unsolicited e-mails advertising his immigration practice to a large number of persons, for failing to designate the communications as advertisements and to file them in advance with the Bar (Washington's rules do not require such designation or advance filing), and for improperly implying specialization of practice (Washington also prohibits). It is not clear whether Washington would have reached the same result.

Internet chat rooms. How do the RPC 7.3 solicitation rules apply to a lawyer's participation in or use of Internet chat groups/rooms or list serves for client development where written discussions are in "real time" and there is immediate and direct communication? There may or may not be any record of the "discussions," and if there is, it is unlikely to be as readily available as would be e-mails. Washington has no authority on the use of chat rooms. While Utah *Ethics Opinion 97-10* concludes that client development via Internet chat groups violates the ban on client solicitation, the Association of the Bar of the City of New York Committee on Professional and Judicial Ethics, in *Formal Opinion 1998-2* (see Appendix)

would permit a law firm to participate in list serve-type discussion areas, but cautions on the inherent dangers of those situations. In any case, the lawyer should recognize a high risk that any directed communication by the lawyer in response to a comment might well be viewed as the rendition of a legal opinion, and thus should use appropriate disclaimers.

Communicating Fields of Practice and Using Trade Names

RPC 7.4 allows a lawyer to truthfully communicate that the lawyer does or does not practice in particular fields of law, and restricts the lawyer's ability to claim to be

a specialist.⁴ Thus, if a lawyer states "practice limited to family law," or "practicing in the areas of real estate and commercial law," the statement must be true and not merely an aspiration on the lawyer's part. The mere statement that a lawyer practices in a particular area impliedly represents that the lawyer is competent to practice in that area.

The same rules apply to a lawyer advertising on the Internet. However, the Internet also gives rise to some new considerations. A lawyer's Internet address and e-mail address are selected by the lawyer. Thus, a general practitioner lawyer might select as an Internet address words such as "divorcelaw.com" which, if factually correct, would be permissible under the rules. A site name such as "superlawyer.com" or "worlds-best-lawyer.com," or an e-mail address such as bestlawyer@win-all-lawsuits.com, would state or imply a competency and comparison to other lawyers which cannot be factually substantiated and thus would be misleading in violation of RPC 7.1(c).

Some Related Internet and E-mail Questions

When a lawyer advertises on the Internet, the lawyer in effect advertises worldwide and announces to the entire world that

he or she is competent to handle legal problems. Does the lawyer's website make it clear what areas of law the lawyer is in fact competent to practice? Does it clarify that the lawyer is only admitted, for example, to practice law in the state of Washington, and is not competent to advise a client from, say, Mississippi on a local land-use or will-contest issue?

If a Washington lawyer through the Internet secures an out-of-jurisdiction client and handles the client's legal matters, has the lawyer engaged in the unauthorized practice of law in that other jurisdiction? Does it matter where the Internet host provider's computers are physically located? Does the lawyer's Internet advertising open the lawyer to charges of doing business in each jurisdiction (namely, everywhere in the world) in which the advertisement is sent or received? Must the lawyer be admitted to practice in those jurisdictions? Must the lawyer file copies of his or her website with the other jurisdictions? Must the lawyer pay income taxes to other jurisdictions on earnings attributable to the out-of-jurisdiction clients? Is the Internet any different than placing an advertisement in a nationwide publication or on national radio or television?

If a potential client e-mails the lawyer in response to the lawyer's Internet website and the lawyer responds, has the lawyer established the necessary conflict checks to assure that the lawyer's representation of the new client is not in conflict with existing clients and that the mandates of RPC 1.7 through RPC 1.11 are met?

If a lawyer communicates with a client through e-mail, has the lawyer taken precautions to assure that the client's confidences and secrets are maintained as mandated by RPC 1.6? Association of the Bar of the City of New York *Formal Opinion 1998-2* and ABA *Formal Opinion 99-413* each conclude that a lawyer may transmit information relating to a representation via unencrypted e-mail sent over the Internet, but that the lawyer should consult with the client as to the mode of transmitting highly sensitive information. The ABA opinion has been criticized, however, for not adequately recognizing malpractice and disciplinary issues. See Micalyn Harris article cited in Appendix.

Lawyers should at the very least consult with their clients before using e-mail,


especially unencrypted e-mail, and explain to them the risks and consequences if the communication goes astray, is intercepted, or is found not to be confidential or protected by the attorney-client privilege. While a cautionary message of the type widely used on fax transmissions is probably not required by the ethics rules, it may help establish a lawyer's attempt to preserve client confidences if the e-mail goes astray and leads to a malpractice or damages suit. While sending e-mails may theoretically be like sending a postcard accessible to anyone picking it up, it is probably less likely that any third party who cares about the e-mail will both find it and read it than that the average "snail-mail" letter carrier will read postcards.

Alternatively, e-mail communications could be viewed as the equivalent to leaving documents in an unlocked room where anyone can see them, while encrypted e-mail may be the equivalent to locking that room. North Dakota Ethics Committee *Opinion 99-03* (June 21, 1999) concludes that a law firm may use an online password-protected data-backup service for its files if the data transmission is secure and the information storage system adequately safeguards sensitive records. The opinion specifically likens the online service to e-mail and relies on the above-cited ABA opinion and on a North Dakota opinion.

The client should, in any case, be given the opportunity to make an informed

decision as to whether they want to run the probably remote risk that the otherwise confidential information may become public. Further, lawyers should carefully document the consultation to counter possible malpractice or disciplinary charges of not properly preserving client confidences.

Conclusion

The Washington RPCs on lawyer advertising do not currently address Internet advertising, or the use of e-mail or other electronic forms of communication to solicit potential clients. Such advertising and soliciting offers lawyers new opportunities to inexpensively reach potential new clients, and for those potential new clients to be better informed than ever before possible. Pending authoritative guidance under Washington's rules, lawyers should carefully analyze the rationale of the existing rules, research ethics rulings from other jurisdictions, and then document that analysis and research. The Appendix can start a lawyer on the right track. Doing so will likely result in the lawyer complying with both the letter and the spirit of Washington's RPCs. 

Appendix: Selected Further Reading

Further guidance and assistance may be found in the following selected materials, some of which, though dated, still contain useful analyses. The list is neither exhaustive nor complete. Electronic sources

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listed were available in late September 1999, but may not be available at later dates.⁵

- *A Re-examination of the ABA Model Rules of Professional Conduct Pertaining to Client Development in Light of Emerging Technologies: A White Paper Presented for the Purpose of Discussion by the American Bar Association Commission on Advertising* (July 1998); available at <http://www.abanet.org/legalserv/advertising.html>.
- *ABA Formal Opinion 99-413* regarding use of e-mail for communicating with clients; available at <http://www.abanet.org/cpr/fo99-413.html>. For a thoughtful critical analysis of that opinion, see Micalyn Harris, "E-mail Ethics for Attorney-Client Communications: Comments on ABA Opinion Regarding Unencrypted Internet E-mail" in *The Professional Lawyer* (Vol. 10, No. 3, Spring 1999).
- *ABA/BNA Lawyers' Manual on Professional Conduct*: (a) Section 81:551-571, "Advertising and Solicitation — Internet" provides useful analysis and background on advertising and collects numerous authorities; (b) Melinda M. Hanson, "Lawyers' Firms Vie for Visibility by Creative Use of Home Pages on Web" (Vol. 14, No. 9, May 27, 1998) describes lawyers' home pages and how the Internet is being used by lawyers to advertise and develop clients; (c) Joan C. Rogers, "How Do Advertising Rules Apply to Lawyers on the Net?" (Vol. 12, No. 2, February 21, 1996) collects and analyzes older authorities; and (d) Joan C. Rogers, "Ethics, Malpractice Concerns Cloud E-mail, On-line Advice" (Vol. 12, No. 3, March 6, 1996) continues the preceding article.
- Alaska Bar Association Ethics Committee *Opinion 98-2* (January 16, 1998) approves use of unencrypted email, but recommends prior client consultation; available at <http://www.alaska.net/~akctlib/eo98-2.txt>.
- Arizona Bar Association *Ethics Opinion 97-04* (April 7, 1997) discusses use of websites, e-mail, and chat rooms;

available at <http://www.azbar.org/EthicsOpinions/> (specify 97-04 in search window); *Ethics Opinion 99-06* prohibits a lawyer from participating in an Internet service sending legal questions from individuals to a lawyer based on the subject matter of the question and prohibits a lawyer from paying a fee for such a referral; available at <http://www.azbar.org/EthicsOpinions/> (specify 99.06 in search window).

- Cincinnati Bar Association Ethics Committee *Opinion 96-97-01* (undated) discusses lawyer home pages, a client's unsolicited and uncompensated listing of lawyer and linking to lawyer homepage on client's home page, and lawyer listing of client on lawyer's home page.
- Connecticut Bar Association Committee on Professional Ethics *Informal Opinion No. 97-29* (October 22, 1997) applies ethics advertising rules to Internet advertising; available via West-Law as 1997 WL 816050 (Conn. Bar. Assn.).
- District of Columbia Legal Ethics Committee *Opinion 281* generally approves use of unencrypted e-mail and provides a good review and analysis of other jurisdictions' ethics opinions on use of e-mail; available at http://www.dcbbar.org/attorney_resources/281.html.
- Florida Standing Committee on Advertising, Advertising Regulation Internet Guidelines, available at <http://www.flabar.org/newflabar/lawpractice/adreg/adguide.html>.
- Illinois State Bar Association Advisory Opinion on Professional Conduct *No. 96-10* (May 16, 1997) discusses e-mail, confidentiality, advertising and solicitation; available at <http://www.illinoisbar.org/CourtsBull/EthicsOpinions/96-10.html>.
- Iowa Supreme Court Board of Professional Ethics and Conduct: *Opinion 95-21* (February 22, 1996) discusses bar association directory of lawyers on a bulletin-board or Web page; *Opinion 95-30* (May 16, 1996) discusses law

firm Internet home pages and required disclosures, and requires encryption for transmission of sensitive material; *Opinion 96-1* (August 29, 1996) discusses lawyers' home pages and websites as advertising, requires disclosures in full and not by hypertext links, and further discusses transmission of sensitive materials; *Opinion 96-2* (August 29, 1996) discusses law firm advertising on the Internet and use of terms implying specialization; *Opinion 96-14* (December 12, 1996) concludes that Internet advertising by an out-of-state law firm which has a branch office in Iowa constitutes solicitation of Iowa residents and must comply with Iowa ethics rules; the opinion also concludes the firm could maintain two separate unlinked sites (one for the Iowa office, the other for the other offices) and in that case only the site directed to Iowa residents would have to comply with Iowa rules; *Opinion 96-33* concludes that password-protected documents may be sent over e-mail and discusses "sensitive documents"; *Opinion 97-1* (September 18, 1997) amends *96-1* and *96-33* to provide that the level of protection needed for e-mail is to be determined by lawyer-client consultation and written client consent; and *Opinion 97-23* (March 3, 1998) prohibits a lawyer from participating in an Internet advertising program that charges annual listing fees for listings.

- Kansas Bar Association Ethics Advisory Committee *Opinion 97-07* (October 15, 1997) concludes that a lawyer may not list his Martindale-Hubbell "AV" rating on his letterhead or use it on advertising (including on the Internet) without significant disclaimers.
- Kentucky Bar Association Ethics Opinion E-403 (undated) approves unencrypted e-mail "unless unusual circumstances require enhanced security measures" and permits Internet advertising; available at <http://www.uky.edu/Law/kyethics/kba403.htm>.
- The Legaethics.com website is a good place to start researching on the Internet for the topic of ethical issues involving Internet advertising, and is

regularly updated; available at <http://www.legalethics.com>.

- Maryland State Bar Association Committee on Ethics *Opinion 97-26* (July 17, 1997) permits a lawyer to use an Internet website to advertise law firm, but cautions that the lawyer must make clear the states in which the lawyer is authorized to practice law.
- Massachusetts Committee on Professional Ethics *Opinion 98-2* (May 27, 1998) discusses a bar association Internet membership directory with hotlinks to home pages of individual members, and use of chat rooms; available at <http://www.massbar.org/ethics/98-2.html>.
- Report of the Massachusetts Supreme Judicial Court Committee on Lawyer Advertising (Draft 10/28/98) considers and comments on proposed advertising and solicitation rule changes, including Internet-related aspects; available at <http://www.massbar.org/adrep/1-REPORT.html>.
- Michigan *Ethics Opinion RI-276* (July 11, 1996) discusses use of Internet, e-mail, solicitation and chat rooms; available at http://www.michbar.org/opinions/ethics/numbered_opinions/ri-276.htm.
- Office of the Missouri Chief Disciplinary *Informal Opinion 960151* (undated) concludes that a lawyer's website need not contain an advertising disclaimer [not required in Washington], but if the lawyer actively sends the materials to others it may need a disclaimer. *Informal Opinion 970010* (undated) suggests that a lawyer's website which encourages potential clients to contact the lawyer by e-mail should caution that e-mail may not be confidential. *Informal Opinion 970230* (undated) requires a lawyer to obtain prior client consent before using e-mail, and requires the lawyer's website to contain information about possible interception of e-mail.
- Nebraska State Bar Association Advisory Committee *Opinion 95-3* prohibits a lawyer from paying to participate

in a for-profit Internet lawyer referral program which provides an Internet directory of lawyers at on-line shopping malls; available at <http://www.nebar.com/disc/opinions/95-3.htm>.

- Association of the Bar of the City of New York Committee on Professional and Judicial Ethics *Formal Opinion 1998-2* (December 21, 1998) discusses, among other things, Internet advertising, use of list-serve discussion areas, and use of unencrypted e-mail; available at <http://www.abcnyc.org/eth1998.htm>.

- New York County Lawyer's Association Committee on Professional Ethics *Opinion 721* (May 14, 1997) permits lawyer advertising on an Internet site maintained by another, subject to certain restrictions; available at <http://www.legalethics.com/states/721.htm>.
- New York State Bar Association Committee on Professional Ethics *Opinion 704* (undated) permits a law firm to use e-mail and list its Internet website on its letterhead; available at <http://www.nysba.org/opinions/opinion704.html>. Ethics *Opinion 709* (September

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- 16, 1998) discusses use of the Internet to advertise and conduct trademarks law practice, e-mail use, and trade names; available at <http://www-1.nysba2.org/opinions/Opinion709.html>.
- North Carolina State Bar Ethics Committee *Opinion RPC 239* (October 16, 1996) permits use of Internet advertising; available at <http://www.barlinc.org/ethics/ethp239.html> and via WestLaw as 1996 WL 875828 (N.C. St. Bar.); *Opinion RPC 241* (October 16, 1996) permits, subject to some restrictions, a lawyer to participate in an Internet lawyer directory; available at <http://www.barlinc.org/ethics/ethp241.html>.
 - North Dakota State Bar Association Ethics Committee *Opinion 99-03* (June 21, 1999) approves law firm use of computer online backup of law firm electronic records if the firm takes appropriate care to ensure that the data is transmitted and stored securely.
 - Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility *Informal Opinion No. 96-17* (May 3, 1996) discusses lawyer advertising on the Internet; available via WestLaw as 1996 WL 928126 (Pa.Bar.Assn.Comm.Leg.Eth.Prof.Resp.). *Informal Opinion No. 96-112* (August 27, 1996) prohibits participation in an Internet real estate lead/referral service; available via WestLaw as 1996 WL 935273 (Pa.Bar.Assn.Comm.Leg. Eth. Prof.Resp.). *Informal Opinion 97-130* (September 26, 1997) discusses e-mail, consultation, encryption and warnings; available at http://www.legalethics.com/states/97_130.htm. *Informal Opinion No. 98-85* (July 24, 1998) discusses Internet advertising; available via WestLaw as 1996 WL 988187 (Pa.Bar.Assn.Comm.Leg.Eth.Prof.Resp.) and at http://www.legalethics.com/states/98_85.html.
 - Philadelphia Bar Association Professional Guidance Committee *Opinion 98-6* (March 1998) discusses use of Internet chat rooms and bulletin boards; available at http://www.philabar.org/ethops/e_98-06.html.
 - State Bar of South Dakota Ethics *Opinion 98-10* (January 12, 1999) prohibits participation in an Internet referral service; available at <http://www.sdbar.org/members/ethics/eo98-10.htm>.
 - Tennessee Board of Professional Responsibility *Formal Ethics Opinion 99-F-144* (June 14, 1999) discusses listing of law practice on the Internet. *Formal Opinion 98-A-650(a)* (November 19, 1998) allows use of e-mail to transmit client confidences. See also extract from a disciplinary proceeding, *In re Canter* (Dkt 95-831-O-H), suspending a lawyer for one year for abusive (spamming) Internet advertising of his immigration practice (and disbaring the lawyer for other violations); available at <http://www.legalethics.com/states/disbar.htm>. The case is discussed at <http://www.wired.com/news/news/politics/story/5060.html>.
 - The State Bar of Texas website collects advertising (including Internet) materials at <http://www.texasbar.com/attyinfo/adrev/main.htm>. See also *Interpretive Comment on Part 7 of the Texas Disciplinary Rules of Professional Conduct as Applied to the Internet* (January 1996); available at <http://www.texasbar.com/attyinfo/adrev/arcintcom.htm#HPFS>.
 - Utah State Bar Ethics Advisory Committee *Opinion No. 97-10* (October 24, 1997) discusses Internet advertising of legal services and use of newsgroup postings, chat rooms, solicitation; available at http://www.utahbar.org/opinions/html/body_97-10.html.
 - Vermont Bar Association Committee on Professional Responsibility *Opinion No. 97-5* (undated) permits unencrypted e-mail and requires a lawyer who uses a website to communicate with clients and potential clients to meet advertising/solicitation rules; available at <http://www.vtbar.org/AdvisoryEthicsOpinions/1997/97-05.htm>.
 - Virginia State Bar Legal Ethics *Opinion 1702* (November 24, 1997) discusses inadvertent receipt of e-mail; available at <http://www.vacle.org/opinions/1702.TXT>. *Lawyer Advertising Opinion A-0110* (April 14, 1998) discusses Internet advertising and use of chat rooms; available at <http://www.vsb.org/committees/standing/advertising/a110.htm>. 

NOTES

1 For a discussion of these issues and a survey of Washington's lawyer advertising/solicitation rules, see Althoff, "Lawyer Advertising and Solicitation," *Washington State Bar News*, May 1997, page 41, portions of which have been adapted for use in this article.

2 Often such comparisons are indirect. *WSBA Informal Opinion 91-2* gives examples of statements violative of RPC 7.1: "largest jury verdict," "largest recovery ever obtained," "Attorneys who get results," "Over 50 years' combined experience," and "Lawyers who work hard."

3 A lawyer may also directly communicate with an existing client, by mail or in person, when the lawyer is moving his or her practice to another firm. While the lawyer may notify a client of the lawyer's intent to move and of the client's right to decide who will continue to represent the client, and RPC 1.4 may obligate the lawyer to do so, the lawyer may not directly solicit the client to move with the lawyer. If the lawyer does, the lawyer may be open, for example, to charges by the old firm of breach of contract, breach of fiduciary duty, or tortious interference with relationships.

4 A lawyer may state, if true, that the lawyer has been admitted to engage in patent practice before the United States Patent and Trademark Office and to use the designation "patent lawyer." A lawyer may also, upon issuance of an identifying certificate, award or recognition by a group, use the terms "certified," "specialist," "expert" or similar term. To do so, however, the reference must be true, verifiable and not misleading; the group so certifying or identifying must be identified; and the reference must clearly indicate that the Washington Supreme Court does not recognize certification of specialties in the law and that such certification is not a requirement to practice law in Washington.

5 I thank Adam Levin, now a member of the Washington Bar, who as a law school student helped compile an earlier version of this appendix.

Diversity in the Practice of Law

by Kathleen Hopkins and J. Tate London

This article is the fourth in a series presented by a subcommittee of the WSBA Long-Range Strategic Planning Committee. The other articles were printed in the November issue of Bar News.

By the year 2010, women and minorities will comprise approximately 50 percent of this country's attorneys.¹ Although the Washington State Bar Association has a Committee for Diversity, a stronger, more direct commitment to recognizing and achieving broad-based diversity within and by the legal profession is needed. Such diversity would include, *inter alia*, diversity in gender, race, religion, sexual preference, physical abilities, age, socioeconomic background and environment.

The balance of this report cites the work of the American Bar Association (ABA) and the King County Bar Association (KCBA) on this topic, as well as current statistics and future trends.² It is suggested that steps taken by the ABA and/or suggested by the KCBA be replicated by the WSBA, to demonstrate the Bar's strong commitment to providing a positive environment for cultivating diversity, and to encourage employers and the courts to open their doors to those professionals.

Trends and Issues Affecting Women in the Profession

Demographics³

Today, women comprise 26 percent of the profession and 46 percent of law students.⁴ The profession is trending toward better representation of women, but there is a long way to go. For example:

- Between 1971 and 1991 the number of men in the profession doubled, and the number of women increased 16-fold.
- Seventy (70) percent of women attorneys are employed in private practice, compared to 74 percent of male attorneys.
- Women partners are underrepresented

by a factor of two (i.e., between 11-14 percent in 1995, up from 10 percent in 1991 and three percent in 1980); however, the larger the firm, the more likely it is that a woman will make partner (over 95 percent of firms with more than 50 attorneys had at least one woman partner, while less than 20 percent of small firms had a woman partner).⁵

- In private practice, 48 percent of female and 44 percent of male lawyers are solo practitioners.

Overall, minorities represent 7.5 percent of the profession (as of 1990), and 20 percent of law students (as of 1996). The racial integration of the profession has been slow, and there are "miles to go."

- Women are remaining associates longer than their male counterparts,⁶ and are more likely to be offered or employed in "non-equity" positions; they are seriously under-represented among law firm partners of all ages, and over-represented by a factor of two among older associates.
- Sixty-one (61) percent of U.S. law firms are all male; only one percent are all female.
- Of those firms that employ associates, 44 percent employ only men.
- Earnings comparisons document continuing gender disparity; newer female associates earn, on average, nine percent less than their male counterparts.
- Women in the judiciary have made great strides, but still lag in numerical parity in almost every court (at 22 percent, the U.S. Supreme Court is the closest federal court to achieving parity).
- Government remains the traditional bastion of woman attorneys, but the ratio of women attaining highest positions is not proportionate to their presence.
- Women are poorly represented in law school faculties; only eight percent are deans and 17 percent are law professors, and they disproportionately hold more non-tenured positions.

- Although women make up 26 percent of the legal community, they hold only 19 percent of private industry (in-house) positions.⁷

Issues

Although significant gains have been achieved, women are still foreclosed from parity in the legal workplace. Critical issues include:

- pay equity;
- equal partnership and promotion opportunities (including gender parity in the time required for partnership or promotion);
- equal access to judicial positions, political appointments, professional-association positions and management;
- the need to eliminate professional penalties systemically imposed on women (and some men) who are currently required to compromise their careers for family — a systemic glass ceiling.⁸ This is compounded by the increased competition for positions, which may lead to choosing the more flexible single male attorney to his female counterpart, or pressuring women out of more competitive markets;
- sexual discrimination and sexual harassment in the workplace and the courts;
- domestic violence; and
- outreach to women who have left the profession or are on leave.

Trends and Issues Affecting Minorities in the Profession

Demographics⁹

Overall, minorities represent 7.5 percent of the profession (as of 1990), and 20 percent of law students (as of 1996). The racial integration of the profession has been slow, and there are "miles to go." For example:

- In 1990, minorities comprised 25 percent of the U.S. population, but only 7.5 percent of the legal profession.
- Although minorities make up 10 percent of the associates in large law firms

nationwide, they make up less than three percent of all partners.

- Minority partners are more likely than their white counterparts to be non-equity or salaried partners.
- Minority representation among partners in law firms is increasing at a rate of only .02 percent annually.
- The distribution of minority attorneys remains heavily skewed toward government and public-interest jobs (only 42.1 percent of African-American attorneys enter private practice following graduation, compared to 57.3 percent of white attorneys).

Issues

Despite gains in law-student and entry-level representation, racial integration of the profession faces a number of challenges, including:

- bar passage rates that remain lower for minority graduates than their white counterparts;
- anti-affirmative-action policies, such as I-200, that pose a tremendous threat to minority entry and advancement within the profession (minority representation among law students has dropped for the first time in 10 years, markedly in California and Texas, after adoption of such policies);
- law firm attrition, especially for minority women (minority women are significantly outnumbered by minority men in most upper-level jobs and report that they are "ghettoized" in certain practice areas and treated as if they are incompetent by their employers);
- minority attorneys' lack of access to clients, which is the primary obstacle to their advancement;
- under-representation of minorities in all sectors of the legal profession; and
- methods of judicial selection that have a profound effect on the percentage of minorities who achieve judicial office (minorities are more likely to enter the bench through appointment methods such as merit selection than through election).

Trends and Issues Affecting Lesbians and Gays in the Legal Profession

A task force of the King County Bar Association (KCBA) worked from 1993 through 1995 compiling information on lesbians and gays in the legal community,

offering recommendations for reducing bias, and forming a standing committee to implement those recommendations. Since information on lesbians and gays throughout the WSBA membership is not available, this portion of the report summarizes the information contained in the KCBA's 1995 report: *In Pursuit of Equality, The Final Report of the KCBA Task Force on Lesbian and Gay Issues in the Legal Profession* (KCBA Report).¹⁰

Demographics

Accurate information on the demographics of lesbians and gays in the legal profession is more difficult to obtain than information on women or racial minorities. The KCBA surveyed its members and employers, and learned that "employers, especially private law firms, are not very hospitable to lesbian and gay attorneys."¹¹ Indeed, the KCBA Report identified situations in which bias arose during hiring, case assignments, professional development, compensation, promotion and termination. Accordingly, it is not surprising that the actual number of lesbian and gay WSBA members is not known. The KCBA's Task Force pointed to reports which place the number of lesbians and gays in our general population at anywhere from six to 20 percent. The Task Force noted, however, that it is possible the ratio of lesbians and gays is lower than the general population, because "barriers to full participation either deter people from entering the legal profession or, once in, cause them to leave."¹² In fact, the majority of the firms surveyed by the KCBA's Task Force said they did not have any attorneys or staff working for them who were openly gay or lesbian.¹³

Issues

- Bias in employment: The KCBA's Task Force identified bias throughout the entire spectrum of legal employment: "censoring" résumés by law students (to delete experiences which could reveal sexual orientation); blatant bias in the recruiting process (e.g., canceling interviews after the candidate revealed his sexual orientation); lack of articulated and/or enforced employment policies prohibiting discrimination based upon sexual orientation; discrimination in pay and benefits (including a disproportionate number of gay and lesbian attorneys

working in legal jobs that pay less, such as government, public interest, non-profit, small and solo firms); significant barriers to professional success (e.g., bias in work assignments, client-development opportunities, performance evaluations, discipline and advancement); social affairs (firms excluding homosexual partners from participating in activities); educational programs (putting the burden on gay and lesbian attorneys to educate their entire firm); and, ultimately, the creation of the Lavender Ghetto (i.e., finding a safe, tolerant work environment which might not offer the same economic and professional opportunities).¹⁴

- Bias in the courts: The KCBA's Task Force observed pervasive discrimination against lesbians and gays in the courts, with the most significant impact upon litigants "who do not think 'Equal Justice Under the Law' is being applied to them."¹⁵ The Task Force catalog of discrimination included: efforts to introduce evidence of sexual orientation in court (although rarely relevant to the proceeding at hand), judges singling out gay or lesbian defendants for embarrassment in crowded courtrooms, and harassment by opposing counsel directed at an attorney's sexual orientation.¹⁶

The ABA's Approach

ABA Goal Statement

In 1989, the ABA adopted Goal IX, which states: "To promote full and equal participation in the profession by women and minorities."

Commissions

In the ten years since adopting Goal IX, the ABA has formed two separate commissions, one for women and another for minorities. A subsection of the Women's Commission studies the special needs and concerns of minority women.

The Commission's objectives are to:

- develop programs, policies and publications to advance and assist women and minority attorneys;
- educate the profession about issues affecting women and minority attorneys;
- educate the profession on work/family issues that affect all attorneys.

The Commission's work includes:

- annual reports which track and analyze

- minority and women attorneys' participation within the ABA;
- statistical reports tracking minority and women attorneys in the profession, generally;
- reports and programs focusing on mentoring, part-time work, parental leave, case assignments, and balancing work and family;
- encouraging and facilitating law schools to develop minority and gender-friendly environments which include the changing demographics of their students, professors and deans;
- meeting with managing partners and private employers to encourage the use of progressive work policies and to promote trend-setting in legal and business communities; and
- outreach to women and minority attorneys to identify their most pressing issues.

Ongoing Commitment

The new ABA President, William Paul, has made diversity the cornerstone of his tenure. He started the new bar year by committing \$50,000 for a diversity scholarship, which his firm quickly matched, and which ABA members throughout the association are increasing daily. Mr. Paul has scheduled meetings with bar associations across the country to promote and encourage diversity; he met with the WSBA in September 1999.

The KCBA's Blueprint

Recommendations for Eliminating Bias Based upon Sexual Orientation.¹⁷

By disseminating, promoting and supporting the KCBA Task Force's recommendations for eliminating bias, the WSBA will enhance its own diversity and become more supportive of its members' needs. Listed below is a summary of the KCBA Task Force recommendations:

Recommendations for Employers

- Make a firm commitment to equality and diversity.
- Implement anti-discrimination and anti-harassment policies that include sexual orientation.
- Publicize and promote these policies.
- Provide equal benefits, including insurance, leave, parental, relocation and other benefits.

- Treat AIDS and HIV status like any other medical condition or disability under the firm's policies.
- Reach out to lesbian and gay law-student organizations. Invite interested students to apply, provide applicants with the names of lesbian or gay employees, list lesbian and gay pro bono and community activities, and train interviewers to be sensitive about issues concerning gay and lesbian applicants.
- Using professional trainers, educate and sensitize the workplace without glossing over sexual orientation issues; educate new attorneys about firm policies; and discuss legal developments affecting gays and lesbians.
- Implement a professional-development program inclusive to gays and lesbians, such as including gays and lesbians as mentors on hiring committees, eliminating bias in the evaluation process, creating a grievance mechanism, and paying attorneys' dues to participate in lesbian and gay organizations and pro bono activities.
- Integrate gays and lesbians into the firm's social environment by taking steps to make gay men and lesbians comfortable bringing their partners to social functions, using the word "guest or partner" instead of "spouse" on invitations, including partners in company rosters which traditionally include spouses, including news and items of interest to gay and lesbian employees in internal publications, and supporting the creation of networks and other opportunities for gay and lesbian employees to discuss common professional concerns.
- Exercise patience and persistence in taking whatever additional steps are necessary to eliminate bias and discrimination in the workplace.

Recommendations for Law Schools

- Expand law school curriculum to include laws and legal issues affecting gays and lesbians; include lesbian and gay issues in seminars.
- Appoint openly gay or lesbian faculty members.
- Establish a lawyer-student network for gays and lesbians.
- Adhere to nondiscriminatory recruiting standards, and ask employers to provide information about their anti-discrimination policies and demographics.

Recommendations for the Courts

- Stay involved in the process.
- Include sexual orientation bias in the court's internal committees.
- Strengthen the RPCs and the Code of Judicial Conduct.
- Gather information about bias.
- Appoint an ombudsperson or create an Office of Fairness in the Courts.

Recommendations for Individuals

- Pitch in.
- Speak up and stand up against homophobia.

NOTES

1 May 20, 1999 speech to ABA by Karen Mathis, Chair of the ABA Commission on Women in the Profession (ABA Speech).

2 Unfortunately, more than 39 percent of WSBA members fail to answer voluntary, confidential survey requests concerning diversity included in annual renewal forms. Accordingly, it has not been possible to obtain an accurate breakdown of the diversity in Washington's legal population, and the authors of this report were required to rely upon and extrapolate from the information provided by the ABA and the KCBA. It is strongly suggested that the WSBA perform a confidential, stand-alone census of its membership to ascertain its actual diversity (i.e., a survey not included in the WSBA annual renewal material and administered by a third party).

3 *Women in the Law, A Look at the Numbers*, ABA Commission on Women in the Professions (December 1995).

4 An incredible increase between WWII and 1969; the number of women law students ranged from three to five percent.

5 In 1991, 39 percent of firms hired female attorneys, but only 26 percent of firms had female partners.

6 A 1995 study of NY firms noted that 17 percent of males made partner "on track" while only five percent of women did; and this is down from the last decade, when the percentages were 21 percent and 15 percent, respectively.

7 A 1992 survey of corporate law departments reported that 14 percent of management and 89 percent of staff attorney positions were held by women. A 1994 study reflected pay disparity; male management attorneys earned, on average, eight percent more, and male staff attorneys earned, on average, 15 percent more than female attorneys.

8 Harrington, Mona, *Is Time Out for Family Unprofessional? ATLA Trial Magazine* (February 1997).

9 *Miles to Go: Progress of Minorities in the Legal Profession*, ABA Commission on Opportunities for Minorities in the Professions (1998).

10 It is strongly suggested that the reader obtain a copy of this report and review its recommendations and the complete Task Force work and appendix. These can be obtained from the KCBA by calling 206-340-2574.

11 KCBA Report at 1.

12 KCBA Report at 14.

13 KCBA Report at 16.

14 KCBA Report at 15-32.

15 KCBA Report at 33.

16 KCBA Report at 33-40.

17 KCBA Report at 40-57 includes a detailed list of recommendations for eliminating bias; this report simply summarizes the headings from that work.

It's The End of the World as We Know It (and I Feel Fine...)

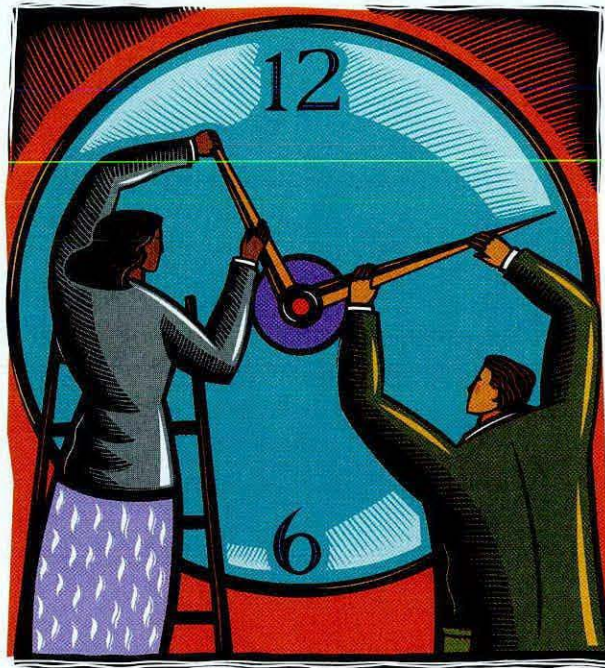
by Rob Apgood • roba@sidlon.com

The media has had a veritable field day in the past year or so with the coming millennium change. I have (very responsibly, I might add) avoided this parade, partly because the media has blown it out of proportion, and partly because I wanted to save my views for this last edition of the *Bar News* printed in the 20th century. After much thought and consideration on the topic, here is what is probably a more down-to-earth and pragmatic view of what we can expect this coming New Year's Eve.

The world is going to end at the stroke of midnight Friday, December 31, 1999, and I can prove it. I know I can prove it because the battery that maintains the clock on my PC died last week. I discovered its demise when I rebooted my PC and in that process, the true and absolute beginning of time was revealed to me. Time began January 1, 1970. Sorry folks, but we only get 30 years... and it's about up.

I know, I know. You're protesting that this is all a bunch of bunk because you can remember things that happened before January 1, 1970. Right. Ever heard of "false memories"? My old buddies in the computer industry assure me that January 1, 1970 is, to the best of their recollections, an arbitrary date that was collectively decided upon as the date when *all* computer clocks start. I've read their propeller-head mumbo jumbo explaining the technical reasons for using this date (which they call the "Computer Epoch"). Sure, it all sounds pretty good, and to non-computer-savvy folks it's plausible. But, I keep getting drawn back to the Theory of False Memories and remain unconvinced, especially since they keep qualifying their explanations as being "to the best of their recollections."

I've been watching the increasingly fre-



But, happily or unhappily, the world isn't going to come to an end. The same problems we have on Friday, December 31 are still going to be with us on Monday, January 3 (hopefully not joined by too many resulting from the millennial hiccup).

quent Y2K specials on cable TV lately. The persistent themes tend to fall in the doom-and-gloom predictions of the failure of the National Power Grid and the banking systems. Likewise, the water utilities are predicted to be affected as well.

The power-grid folks keep saying that they're ready for the clock-tick, but can't guarantee anything since the guys-on-the-grid-next-door may not have done their jobs properly and, if *they* fail, it *could* cause a domino-effect take-down of the whole system. After hearing them discuss the dependencies of the power system on "service clocks" that automatically route

power and increase and decrease distribution based upon computerized formulas acting on service-contract data in databases, and information acquired from Global Positioning System (GPS) satellites circling the earth (hey, I don't make this stuff up!), the listener is left with a clear impression that the power brokers really don't have a clue about what's going to happen at the critical movement of the second hand on the Greenwich atomic clock. This strikes me as just a bit on the alarmist side. You won't see me running out to pay exorbitant sums to acquire a gas-powered generator. No way!

The banker-boys interviewed all swear that *their* systems are Y2K-compliant, but they aren't too sure about the other banker-boys' systems, so they aren't making any guarantees either. And while they criticize the street advice to have plenty of cash on hand when the clock ticks, they aren't denying that the federal money printers have been working round-the-clock, making sure that there is a larger abundance of cash than normal in circulation, "just in case." When asked what *they're* doing about their own cash position, they tend to chuckle a lot and say little. I used to work for banks. I was involved in the creation and implementation of some of the original electronic funds management and transfer systems they use. My faith in the robustness and reliability of the electronic banking systems is unfazed by the impending New Year, and I refuse to change the degree of my belief in these systems one iota as a result of the Y2K scare. Look for me scrambling to my local ATM for a cash-cache in the last days of the year, and I won't be found! No sir!

Even the water carriers allow that the water supply "might" be affected. Some-

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www.wsba.org

thing about computers controlling the water supply and purification systems and all that. Aw, hogwash! Although I will admit to storing a "nominal" supply of bottled water in my cellar, I've always had a supply on store just in case we get hit with that big earthquake they keep threatening us with.

I know, too, that a lot of folks are a little antsy about airplanes and the end-of-the-world-as-we-know-it. But, I'd be perfectly content to be flying at 37,000 feet when the clock strikes midnight in Washington. Well, except that I'd miss a party somewhere.

But seriously — when the 12th bell strikes, some computers will crash. It's inevitable. And five minutes later, most of them will be back up and running again. Of the few remaining that aren't back up and running right away, the majority of those will be restarted the next day, or Monday, January 3, when the Information Systems (IS) staff gets back into the office. All but an insignificant fraction will have weathered the shift without measurable damage. And the few that don't probably need to be replaced anyway. Likewise, if the power grid is affected, the effects will be measured only in the range of hours to a few days. What will be measured in ranges of months to years will have the greatest impact.

The Gartner Group, an industry analysis company, has estimated that the costs of fixing Y2K problems will run in the \$300 billion to \$600 billion range worldwide. Frighteningly, they also estimate that fully 50 percent of companies with a problem will not be Y2K compliant when January 1 rolls around. This will inevitably lead to litigation. The Giga Information Group, an information technology advisory firm, estimates Y2K litigation costs nearing or exceeding \$1 trillion. This is a *staggering* figure when you consider that it would exceed the combined estimated legal costs of Superfund environmental litigation (\$1 billion per year), U.S. tort litigation (\$29 billion to \$36 billion for 1985) and asbestos litigation (\$1 billion per year). A \$1 trillion cost for Y2K litigation would exceed the estimated total annual direct and indirect costs of all civil litigation in

the United States (\$300 billion per year). True, these numbers are speculative. Actual litigation to date of Y2K problems is minimal. Also, until the witching hour strikes, we won't know how much of the required Y2K corrective work will have been accomplished. Nevertheless, companies' systems *will* fail, leading to contract breaches, business interruptions, delivery of defective goods and services, failure in delivery of goods and services, and industrial accidents, to mention a few.

Liability rolls downhill. Affected companies will, in turn, sue computer consultants who advised them on their computer system designs, and vendors and manufacturers of computer hardware and software who sold them non-compliant goods that form the non-compliant systems. This will ultimately lead to suits against insurers to recover litigation losses under errors and omissions policies, or directors and officers liability policies. Many insurers are querying their insureds to ascertain what steps they are taking to be Y2K compliant, looking to such items as: 1) whether the insured has a Y2K corrective plan in place; 2) whether their hardware and software have been tested; 3) whether corporate counsel have reviewed license and maintenance agreements to determine if hardware and software vendors have an obligation to make their products Y2K compliant; and 4) whether the insureds' critical suppliers are Y2K compliant. Likely, the insurers will adopt the position that Y2K problems are not "fortuitous events" designed to be covered under the policy, and that resulting business-interruption losses suffered due to Y2K are not covered. I'd sure enjoy sitting at counsel table when *that* precedent is set.

While some parties to Y2K actions are obvious defendants (hardware and software vendors and service providers, hardware/software consultants, corporate boards of directors and top-level management, employers of software programmers, product manufacturers, insurers, and financial institutions), the more interesting list will be that of plaintiffs. Aside from the obvious hardware and software consumers (curiously comprising the obvious list of defendants), Y2K plaintiffs will encompass a much greater realm: the

consumers of the goods and services provided by the companies failing to make the Y2K deadline. Even fully Y2K compliant companies may suffer serious damages from their business partners who are not compliant, leading to cross claims against these partners when the Y2K compliant company is sued for breaches caused by inability to perform on a contract. Yes, the fun is about to begin.

But, happily or unhappily, the world isn't going to come to an end. The same problems we have on Friday, December 31 are still going to be with us on Monday, January 3 (hopefully not joined by too many resulting from the millennial hiccup). As we move into the 21st century, we're going to have to make fewer of the mistakes we made in the 20th century. We're going to have to progress and become something better than what we are today. And perhaps, when dealing with the millennium bug, we can all try to be patient and remember that the creators of the bug are, after all, just human, too, and are deserving of our forgiveness whenever possible. We should try our best to find solutions other than litigation in dealing with the problem. But, if that *really good* case does come along, please remember that my consulting rates are very reasonable, and I can always be reached by e-mail or on my cell phone. That is assuming, of course, that they still work.... ☞

After spending 25 years in software engineering and development, Rob Apgood suffered a mid-life crisis that seriously affected his judgment. As a result, he relinquished his pocket-protector, acquired a law degree, and, when not out riding on his Harley, can be found most days at the law offices of Siderius Lonergan indulging in latent Luddite tendencies.

The Verdict

by Michael Hoff • LAP Peer Counselor

Madam Forewoman, you may read the verdict.” Judge Reser’s voice cracked almost imperceptibly in the hushed courtroom.

So deep it was nearly at cortex level, David A. Fitzhue III experienced a blip in his virtually catatonic state. Three months of trial; two years of preparation; running roughshod over the prep, research and trial teams; millions of heartbeats and hundreds of thousands of dollars in costs — and it all came down to this moment. Though his pale blue eyes were open, they were as sightless as his sense of touch was disconnected. He hovered weightless as an astronaut at plaintiff’s oak table, occupying the same leather chair which had become his workday home for over 22 weeks. Time itself had stopped.

“Mr. Fitzhue? Counsel? Did you hear Madam Forewoman?”

No response. Not one person at plaintiff’s table or its extension, added to make room for the army of support personnel, made a move.

David A. Fitzhue III, the third generation at Richdale and Fitzhue, now 144 lawyers strong, considered this case the high mark of his career. Anti-trust and restraint of trade in the marine industry had sounded dull to the average Joe on the street, but the transcript, he knew, would read like an Elmore Leonard novel. Intrigue, unbridled greed, and a cadre of ship owners who rigged rates with the brashness of Bluebeard: this was the stuff lawyers love, and love to present to a jury, one little surprise after another.

When “Trey,” as he was monikered, drew the series of circles on the white board during the three-day final argument, the jury was spellbound, more than a few nodding as Fitzhue connected the circles of conspiracy enclosing each and every defendant.

He was convinced to the core of the



The joy of it all — the possibilities endless now that his “ship” had arrived — overwhelmed him with appreciation for life and all its sweetness. Does it get any better than this?

justice of his cause, of the injustice done to his clients — virtually all of the freight forwarders and bulk shippers west of the Mississippi.

A light of Borealis proportions seemed to fill the courtroom. Lawyer Fitzhue felt the first of a cacophony of noises, praises accompanied by handshakes, backslaps, and, in a few unpleasant instances, hugs from his support team and his clients.

“Holy jumped up . . .” Richdale II, his fellow senior partner, had sneaked into the courtroom and elbowed his way to the plaintiff’s table, gripping Fitzhue’s hand and pumping it wildly up and down. Pump. Pump. Uncharacteristically, he danced like Rumpelstiltskin, eyes gleaming, as he congratulated his partner on a “great win.” Fitzhue finally heard the number: \$268 million and change. The figure was bandied back and forth among the congratulators — gloating, beaming, then touching Fitzhue, as if at this poignant moment some of his luck would rub off.

“Damn, Davie,” T. Thomas “Tommy” Richdale II slapped his partner for the umpteenth time on the back, a place becoming painful now.

“When you talked us all into the litigation contract, I thought we were givin’ away the farm! Man, you’re nothing short of a damn miracle!”

Tommy headed the marine personal injury, workers comp and medical malpractice side of the firm and came kicking and screaming to the position that trading treble damages for the right to appeal was a wise contractual arrangement. Now, his partner’s wisdom and read of the litigation was smack dab on! Two-hundred sixty-eight million dollars, and no right to appeal. (The defendants would attack the contract, but the 10 million dollars in escrow would be released before sundown. The “fees first” clause would operate by tomorrow!)

David Fitzhue’s attention shifted from the scattered environment back to his inner eye. The winners strolled victoriously

from the fifth floor courtroom of the United States Courthouse, feet not quite touching the floor. His senses, fully operable again, seemed exquisitely in touch with the joy he had created.

He could taste the champagne — and a couple of perfect martinis. The bouquets of flowers which would engulf his top-floor, Sound-side office tomorrow wafted pleasantly through his mind's olfactory anticipation. The taste of bouillabaisse in the incredible Bistro d' Frere, just three blocks east of the Eiffel Tower, Rive Gauche, was soon to be revisited. Maybe a year's sabbatical — plenty of time to select the proper yacht. Personally, he leaned toward a 65- to 70-foot Perry design, ketch rig, with two Perkins engines and custom-fitted interior, while his significant other, dear red-headed Katy, preferred a racier sloop rig — the exuberance of youth. He might even consider making her wife number three, though it seemed a risk which could ruin a lovely relationship. At least, now, they would have time together — time, too, for Davey and Barb. Funny, though, college-aged kids didn't seem to need their father much. Perhaps the Sorbonne for Barb, and someplace other than the University of Washington for Davey.

The joy of it all — the possibilities endless now that his "ship" had arrived — overwhelmed him with appreciation for life and all its sweetness. Does it get any better than this?

He wished they'd quit banging him on the back. Now, damn it, they were thumping him in front, for god's sake. So I won — but enough is enough already!

He was wondering who the chosen few would be — those privileged to catch the first elevator down to remain in his presence. The light above the brass engraved doors flashed red. A "ding" preceded the doors sliding open silently on wheels and ball bearings which some government employee must grease regularly.

David Fitzhue stepped forward into the "up and down room," as he had called it as a child. His first elevator ride had been in his grandfather's office building, close to the courthouse. It was still standing, a bulwark against progress, and still called "Hoge." Odd. The contraption had never

been so brightly lit. Like a thousand fluorescents hung inside the door and engulfing him. He shut his eyes, extinguishing everything but the thump, thump, thump.

Quiet enshrined the fifth-floor courtroom. Gladys Renfrow, Forewoman of the jury, held the verdict still — limp in her hand. Judge Reser was on the telephone again, its tightly curled cord snaking from under the bench.

"Well, they're not here yet, for god's sake!" He spat with judicial authority into the telephone as the wail of a Medic I Unit speared the courtroom window.

"Belay that," his Honor barked into the mouthpiece. "They're already here." Scarcely two minutes had gone by since his first call.

"Ya think we oughta poll the jury?"

Charlie Dwyer, lead attorney for the defendants, shook his head, startled at his co-counsel's suggestion. He continued his CPR pumping at 10 compressions followed by two breaths. He restarted the 10 pumps and answered in disgust:

"For god's sake, man. Look at him! I think he knows."

Charlie watched as Trey turned from pink to white to a hue of blue. The compressions created a pulse, but the aorta was probably blown. He'd learned that while defending Lifeline Ambulance Company in a suit brought by a Microsoft widow for gross negligence in causing her husband's death.

Mabel Rechisender, meticulous to a fault, removed the verdict form from Gladys Renfrow's grip. She double-holed

it at the top, placing it neatly into the court's file on her desk. Then she entered the notation in the docket: "Judgment for the defendants."

Charlie Dwyer turned his chore over to the paramedics as he mentally placed another case in the "win" column.

© September 1999, Michael Hoff

The lawyer in this story neglected his personal life and his health in pursuing his career exclusively and obsessively, and just at the point when he thought he would finally be able sit back and enjoy the fruits of his labor, he was struck with a fatal heart attack. If only he had taken more time to enjoy his family and the other good things in his life when he had the chance.

The WSBA's Lawyers' Assistance Program (LAP) can help before things get this bad. If you see signs of stress, overwork, depression, etc. in yourself or a colleague, a call to LAP could be the first step in getting help. LAP offers confidential assistance with emotional, drug/alcohol, family, health and other personal problems. Services include assessment, referral, short- or long-term counseling, group and individual therapy, as well as treatment follow-up and training. LAP's professional staff is qualified to identify, assess, treat and refer lawyers needing assistance. The extended staff includes LAP-trained peer counselors, lawyers who are available to support their colleagues through difficult times. For more information or to make an appointment, please call 206-727-8268. ☛

The WSBA Lawyer Services Department offers these four programs:

The Lawyers' Assistance Program (LAP) – 206-727-8268: Confidential assistance for lawyers with emotional, drug/alcohol or other personal problems.

The Law Office Management Assistance Program (LOMAP) – 206-727-8237: Offers consultation and information to help solo and small-firm practitioners deliver legal services of the highest quality.

The Professional Responsibility/Ethics Program – 206-727-8219: Lawyers can call a WSBA lawyer for assistance in resolving ethical dilemmas.

The Alternative Dispute Resolution Program (ADR) – 206-733-5923: Offers two low-cost methods of resolving disputes: voluntary fee arbitration and mediation.

Please call our department at the phone numbers listed above for additional information and/or assistance in these areas.

Changing Venues

What Do the WSBA, Garry Trudeau and George W. Bush Have in Common?

The Yale newspaper's exposé of George W. Bush's fraternity rituals, involving the alleged branding of the backsides of pledges, was reported by none other than WSBA member **Hugh Spitzer**. At the time (1967), publication of the story propelled Spitzer to the paper's managing editor position. And the student cartoonist who caricatured the fraternity rituals then and more recently? Garry Trudeau, of course.

Two New Law Schools in One Weekend

Both Seattle University and Gonzaga University recently dedicated new law schools in the same October weekend. Festivities at both schools included official dedication ceremonies and distinguished alumni speakers.

Honors and Awards

Kim Dunn and **William Stewart** have been appointed Washington state's newest Administrative Law Judges for the Office of Administrative Hearings. Both will be based in Spokane, where Dunn will conduct hearings and decide cases primarily involving unemployment benefits, and Stewart will hear cases primarily involving public assistance and child support issues.

Pamela A. Cairns and **Theodore J. Collins** were recently elected Fellows of the American Bar Foundation. The Fellows is an honorary organization of practicing attorneys, judges and law teachers whose professional, public and private careers have demonstrated outstanding dedication to the welfare of their communities.

The Spokane Chapter of Washington Women Lawyers has elected its 1999-2000 Board: President **Jody M. McCormick**, Vice President **Patricia Walker**, Secretary **Kathleen Paukert**, Treasurer **Margot Hamstra-Havermann**. First Past President **Rosanna Peterson** has been elected President-elect of the state chapter of Washington Women Lawyers.

Robert C. Mussehl of Mussehl & Rosenberg was recently elected Vice-chair of the ABA Dispute Resolution Section.

Movers and Shakers

J. Todd Tracy has joined Reed McClure's Seattle office as a principal in the bankruptcy practice group.

The law office of Paine Hamblen in Spokane has added **Robert H. Leeds, Jr.** as Of Counsel and **Michael T. Olsen** and **A. Stephen Waldrip** as associates. Leeds practices in the areas of real estate, probate, guardianship, personal injury, domestic relations, and small business formation and representation. Olsen's practice will emphasize intellectual property matters, including patent litigation, copyright, trademark, trade secret and unfair competition law. Waldrip's practice will focus on corporate taxation, mergers and acquisitions, and estate planning.

Ada Ko has joined the Seattle office of Lane Powell Spears Lubersky LLP as Counsel to the Firm. She concentrates her practice in international business and taxation, and state and local taxation. **Gabriel Baker**, who practices in the insurance litigation area, has joined the firm as an associate.

Terry F. Berman and **Kevin B. Hansen** are new associates in the Seattle office of Miller Nash LLP. Berman's practice concentrates on transactions and federal and



J. Todd Tracy



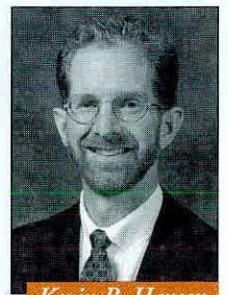
Ada Ko



Gabriel Baker



Terry F. Berman



Kevin B. Hansen

state regulatory matters relating to telecommunications and Internet law. Hansen practices in the labor department.

Gordon Murray Tilden in Seattle has welcomed **Maura Scott Blank** and **Christie L. Snyder** as associates. Blank will continue her practice in a broad range of complex civil litigation. Snyder maintains a broad-based civil litigation prac-

tice, which includes representation of policy-holders in insurance coverage disputes.

In Memoriam

Harold C. Fosso, partner at Julin Fosso McBride & Barnett, and molder of Washington state's auto insurance statutes, passed away October 12, 1999 at the age of 72.

George Henry Revelle, Jr., former King County Superior Court Judge, passed away in August. A 1936 graduate of the University of Washington School of Law, he was on the Superior Court bench for 28 years and performed numerous leadership roles in the judiciary, including President-Judge of the Association of Superior Court Judges of Washington State, Chairman of the National Conference of State Trial Judges, and member of the American Bar Association Special Committee on Standards of Judicial Conduct. Judge Revelle served for over 30 years in the U.S. Army Reserve, retiring as a Colonel of Infantry.

Charles Sheldon, Washington State University professor and state Supreme Court expert, passed away in September 1999.

Roland "Wightie" Wightman, a Spokane attorney and life-long advocate for the disabled, passed away September 10, 1999 at the age of 78. He served on the Spokane County Developmental Disabilities Board.

David Woolston, of the Seattle law firm of Woolston & Wheeler, passed away September 28, 1999 at the age of 37. He had a great love for the outdoors, and a passion for skiing, soccer, biking, hiking and fly fishing. He will be remembered for his sense of humor, determination, love of adventure, and loyalty to his friends and family. ☞

Supreme Court Considers MCLE Changes

by Jan Eric Peterson (Chair) and Jeff Belfiglio
MCLE Implementation Committee

The Supreme Court has before it changes to APR Rule 11 which will make the Mandatory Continuing Legal Education (MCLE) program more user-friendly, enhance the availability of courses and materials, and streamline CLE reporting. The MCLE Board, formally known as the Washington State Board of Continuing Legal Education, consists of six attorneys and one lay person, nominated by the Board of Governors and appointed by the Supreme Court, which approves courses for MCLE credit and determines whether attorneys have fulfilled their MCLE requirements. The WSBA Licensing Department is responsible for monitoring attorneys' compliance with MCLE requirements and provides staff support to the MCLE Board. These functions should not be confused with the WSBA CLE Department, which is a CLE course provider just like other nonprofit and commercial entities.

Course Approval

One of the major responsibilities of the MCLE Board is approval of courses for CLE credit. Currently, each course is individually approved – approval often not yet applied for when the course is offered and advertised. Attorneys who attend classes that are not approved (typically because a course is offered out of state or is not directed primarily to attorneys) may also apply individually for course accreditation. Even if a course cannot be accredited because it is not primarily a course for attorneys, you may still receive “nexus” credit for attending the course if it is related to your particular practice of law. The Board receives about 5,000 requests from individual attorneys for course credit approved annually, and approximately 2,500 applications for approval from CLE program providers.

The new rules make changes that will make course approval more certain. First, the rules allow the MCLE Board to periodically approve experienced providers as “accredited sponsors,” whose courses will automatically be approved. Law schools, commercial providers, the WSBA, bar sections, and other professional groups may become accredited sponsors during the year 2000. This will eliminate the need to apply for course-credit approval each time a seminar or program is offered. Further, you will be assured that programs you have paid for and attended which are provided by accredited sponsors will result in credits honored and accepted by MCLE. The rules will recognize that cross-disciplinary courses, such as in the areas of tax and estate planning, can be approved even if they are not “primarily” for lawyers (so long as they otherwise meet the accreditation requirements). This should greatly reduce the need for individual nexus applications. Additionally, in-house legal education (including seminars sponsored by law firms) with the same level of quality as current CLE courses will still be approved, subject to minimum attendance requirements. This affords considerable ease of access to CLE, provides more specialized education that may appeal to smaller audiences, and promotes collegiality. These changes are expected to be effective January 1, 2000.

Pro Bono CLE

If the Supreme Court approves a new rule, it will allow CLE credit for certain pro bono activities. Up to six hours of credit per reporting cycle (three years) will be available for attorneys who take a training course from a qualified legal services provider and perform pro bono legal services or mentor a participating attorney under the legal services program. The Board of Governors believes that this will encourage badly needed additional pro bono representation, while providing a significant educational experience for the attorney.

Primary Reporting Responsibility Shifts From You to the Providers

The new rules will require CLE providers to distribute and collect a standard attendance form on which you will verify your attendance at the course. Providers will then report attendance to the WSBA, which will maintain a database of such CLE attendance. Twice a year, you will receive a report showing your CLE credits on record as of the current reporting cycle. The database will also be accessible through the WSBA website, so you can check your CLE status (security will be strictly controlled so that each attorney can view only his or her individual information). You will be able to correct or supplement the database in writing or online with credits earned by self-study or writing, as allowed under the current and revised MCLE rules.

This new reporting and record-keeping system will be a significant new undertaking by the WSBA. This part of the new rule should be implemented by January 1, 2001.

Fees and Fines

The MCLE Board will be implementing a new system of fees for course providers, including accredited sponsors. The MCLE regulatory function is not a profit center for the WSBA, nor should it be. The goal is to be self-supporting and revenue neutral. The fees will be related to the costs the WSBA will bear, such as inputting attendance data in the record-keeping system. The new rules are designed to help members obtain and track MCLE credits more easily, thereby avoiding payment of late fees.

Summary

Most seminars will be pre-approved, so you can be confident that the time and money spent for CLEs results in earned credits. More courses will be available by including firm in-house seminars, government in-house seminars and multidiscipline credits. Your credits will be reported by the providers for you, tracked by the WSBA, and your credit status reported regularly to you. You will have online access to program schedules, credit status and your own additional reporting. More, better, easier! Your Bar Association serving you! ☞

The Board's Work

by Sherrie Bennett

Guardian Ad Litem (GAL) Proposed Rules to Go to Supreme Court

The revamping of guardian ad litem court rules held the attention of governors at the WSBA Board of Governors meeting in Lynnwood on October 22-23, 1999. In a 7-3 vote, the Board approved changes to the current guardian ad litem rules, which will be forwarded to the state Supreme Court. Over the course of three board meetings the last year, the Board heard from a staggering variety of lawyers and judges, and the rules endured many revisions and much rethinking before final approval. The new proposed rules provide guidelines for timely written reports by GALs, clear requirements to provide documentation in reports, and a strong statement prohibiting ex parte communications with courts. The rules would also limit the authority of guardians ad litem who are not statutory parties to an action, and make "parenting evaluators" in custody disputes subject to GAL rules. The full text of the proposed rules can be accessed at www.wsba.org/bog/home.htm.

Long-Range Strategic Planning Goal "Point Governors" Selected

In an effort to move along the implementation of the 11 goals established by the Board as part of a long-range strategic planning process, the following governors have been selected as "point persons" to contact if you have input on the WSBA goals:

1) Governor Lindsay Thompson on the WSBA goal of "providing and improving services and benefits to members statewide in response to their needs and desires."

2) Governors John Powers, Jenny Durkan, Steve Henderson and President-elect Jan Eric Peterson on the WSBA goal of "conducting a public legal education program to broaden public knowledge about the law, the rule of law, and the role of lawyers and judges in the justice system."

3) Governors Daryl Graves and Victoria Vreeland on the WSBA goal of "improving the professional development of new lawyers."

4) Governor Steve Henderson and President Dick Eymann on the WSBA goal of "promoting civility and professionalism in the practice of law."

5) Governor Jim Deno on the WSBA goal of "addressing in an appropriate way members' current concerns about external influences and market pressures that impact the delivery of legal and law-related services, such as unlicensed practice of law and multidisciplinary practice."

6) Governor Dick Manning on the continuing goal of "regulatory services which are responsible, accountable, timely and fair."

7) Governors Dale Carlisle and Dick Manning on the continuing goal of "continuing to provide leadership and support to programs and initiatives for the benefit of access to justice."

8) Governor Walt Krueger on the continuing goal of "being a leader in using and promoting technology for the benefit of members, the courts and the bar."

9) Governor Jenny Durkan on the continuing goal of "supporting the independence of the judiciary and appropriate court improvements."

10) Governor James Deno on the continuing goal of "promoting diversity and equality in the courts, the legal profession and the bar."

11) Governors Dale Carlisle and Steve Osborne on the continuing goal of "being fiscally responsible."

Way Paved for Electronic Meetings

The WSBA Bylaws were amended by the Board to read that "(a) meeting may be held by electronic means provided public notice of the meeting is posted on the WSBA website prior to the meeting. The notice shall include contact information for any person to arrange access to the meeting or record thereof."

Interested persons should contact the section chair or any committee for which they are interested in being put on a "notice list" for electronic meetings.

Reciprocity Becomes a Practical Reality

On the heels of the state Supreme Court's approval of a rule to permit lawyers from certain jurisdictions to be admitted to practice in Washington on the same terms that a Washington lawyer may be admitted in the other jurisdictions, comes the Board's approval of reciprocity application forms and an application fee of \$650 (the same amount charged to sit for the bar exam).

Appointments Galore

The Board appointed Richard Mitchell as a member of the Legislative Committee, and also appointed Rosemary Daszkiewicz as an ABA alternate delegate. Barry Bonnell was appointed as lay member on the Disciplinary Board.

New members appointed to the Law Examiners Committee include Dannette Allen, Lauri M. Boyd, Francesca D'Angelo, Mark Johnsen, Lisa Daeley Kelley, Doug Lambarth, Mark Lindsey, Paul McConnell, William Nielsen, Lee Tinney and Charles Vulliet.

New Special Disciplinary Counsel appointed by the Board include Kathleen Albrecht, Hugh Birgenheier, Sharon Brown, Paul Brummett, Anthony Butler, Joseph Calmes, Peter Camp, Michele Carney, Thomas Curtis, Laura Daviess-White, Michael Finney, Diane Fitzgerald, Linda Gallagher, E. Pennock Gheen, Eugene Golden, Paul Griffiths, Jonathan Hatch, Daniel Heid, Katherine Hendricks, Elliott Johnson, John Junke, James Kenny, Robert Kiesz, Mathew Knopp, Robert Leick, Howard Marshack, Russell Mazzola, Douglas McBroom, Terrence McCauley, Robin Rock, Sally Savage, Michael Scaringi, Nadine Scott, Ronald Shirley, Richard Shultheis, Bartlette Stroupe and Joe Woollett.

New Hearings Officers include Steve Hale, Diehl Rettig and David Savage.

The Board appointed Gregory Morrison to the Law Office Management Assistance Program Committee, and also appointed Mark J. Fucile to the Rules of Professional Conduct Committee.

Young Lawyers' GAAP Program Funded

The Board approved a \$20,000 request from the Young Lawyers' Division for the GAAP Program, designed to establish reduced-fee panels of attorneys to assist clients of modest means throughout the state.

Correction to October Board's

Work: Section (b)(3) of the Definition of the Practice of Law should refer to "lay representative," not "law representative."

A Better Opportunity Has Opened Up...

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or Deborah Wade at
1-800-552-7200,
ext. 7801 or 7804

In Spokane contact:
Jacque Young at
1-509-358-3919

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Disciplinary Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 11.2(c)(4) of the Supreme Court's Rules for Lawyer Discipline, and pursuant to the February 18, 1995 policy statement of the WSBA Board of Governors.

For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-727-8252, leaving the case name and your address.

Reprimanded

Catherine L. Fawley (WSBA No. 27754, admitted 1998), of Bainbridge Island, has been ordered reprimanded by the Supreme Court of Washington, effective August 31, 1999. The Supreme Court's order of reciprocal discipline, pursuant to Rule for Lawyer Discipline (RLD) 12.6, is based on the Michigan Attorney Discipline Board's March 11, 1999 Amended Order of Reprimand.

By Amended Judgment of Conviction, dated February 26, 1999, the U.S. District Court for the Western District of Washington convicted Ms. Fawley of an Act Affecting a Personal Financial Interest, in violation of 18 U.S.C. 208(a) and 216(a)(1), a misdemeanor.

Felice Congalton represented the Bar Association. Kurt Bulmer represented Ms. Fawley.

Censured

Keith Moskowitz (WSBA No. 16965, admitted 1987), of Boulder, Colorado, has been ordered censured by the Supreme Court of Washington, effective October 1, 1998. The Supreme Court's order of reciprocal discipline, pursuant to Rule for

Lawyer Discipline (RLD) 12.6, is based on the Supreme Court of the State of Colorado's September 2, 1997 order imposing a public censure.

Mr. Moskowitz filed an involuntary bankruptcy petition against a third party on behalf of two clients. The bankruptcy petition was dismissed with an order assessing, among other sanctions, \$66,271 in attorney's fees and actual damages against Mr. Moskowitz. The bankruptcy court found that Mr. Moskowitz either failed to make a diligent pre-filing inquiry, or recklessly chose to ignore evidence that the petition was groundless. Mr. Moskowitz and one of his clients were held jointly and severally liable for an additional \$3,209 in attorney's fees when the court denied his motion to vacate the bankruptcy court judgment. Mr. Moskowitz paid all attorney's fees assessed against him.

Mr. Moskowitz's conduct violated Colorado RPC 1.1, requiring a lawyer to provide competent representation and Colorado RPC 1.3, requiring lawyers to diligently represent clients.

Felice Congalton represented the Bar Association. Mr. Moskowitz represented himself.

Admonished

C. Nelson Berry III (WSBA No. 8851, admitted 1979), of Seattle, has been ordered admonished following a hearing. The disciplinary action is based upon his drafting an unenforceable agreement releasing one defendant from a lawsuit in exchange for a promise to testify truthfully at trial.

Mr. Berry represented plaintiffs in a

lawsuit against two loan brokers and a bank loan officer. On the eve of trial, Mr. Berry's clients requested that he draft an agreement between them and one pro se defendant. Mr. Berry drafted the agreement, which released the defendant from judgment if he "testified truthfully" at trial. At the time Mr. Berry prepared the agreement, he knew that the defendant had given conflicting testimony in the past, one version more favorable to his client than the other. He also knew that the agreement was unenforceable due to lack of consideration. The parties signed the agreement just prior to the beginning of trial. The defendant testified favorably to Mr. Berry's clients. The jury awarded Mr. Berry's clients a judgment in excess of \$1.7 million. Although the agreement was disclosed by chance, Mr. Berry did not give the statutorily required notice to the court or the other parties.

Mr. Berry's conduct violated RPC 3.4(b), prohibiting offering an inducement to a witness that is prohibited by law.

Marsha Matsumoto and Jonathan Burke represented the Bar Association. Robert Wayne represented Mr. Berry. Douglas Hoffman was the hearing officer.

NON-DISCIPLINARY NOTICE

Interim Suspension

Michael K. Tasker (WSBA No. 12426, admitted 1974), of Bellingham, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings pursuant to RLD 3.2 by Supreme Court order entered October 26, 1999. ☞

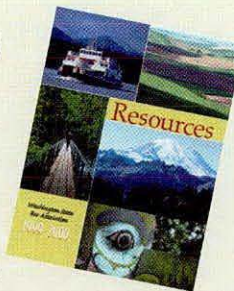
Resources

Annual WSBA Membership Directory (published every May)
The 1999-2000 *Resources* membership directory is now on sale at half-price:

- \$8.15 — WSBA members in-state
- \$7.50 — WSBA members out-of-state
- \$17.38 — non-WSBA members in-state
- \$16.00 — non-WSBA members out-of-state

To order, send a letter request with check (payable to WSBA):

Washington State Bar Association
Attn: Order Processing
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330



Questions? Call 800-945-WSBA
or 206-443-WSBA

USURY RATE

The average coupon equivalent yield from the first auction of 26-week treasury bills in November 1999 is 5.311 percent. The maximum allowable interest rate for December is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for January 1989 – June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date appears on the WSBA website at <http://www.wsba.org/barnews/usuryrate.html>.

Opportunities for Service

Washington State Access to Justice Board Announces Vacancies

The Washington State Access to Justice (ATJ) Board announces three vacancies, effective May 2000. These include: a representative of the Legal Foundation of Washington, currently held by Judge Paul Bastine; and two at-large representatives, currently held by Judge Marlin Appelwick and Isabel Safora.

The ATJ Board consists of nine attorney members nominated by the WSBA Board of Governors and appointed by the Supreme Court. The following groups are represented on the ATJ Board: Washington State Bar Association Board of Governors, Board for Judicial Administration, Legal Foundation of Washington, state and/or federally-funded legal services programs of Washington, and the pro bono community. Four at-large members are selected on the basis of a demonstrated commitment to, and familiarity with, access to justice issues. Board members may serve up to two three-year terms. The ATJ Board has full-day meetings approximately seven times per year, usually in Seattle.

The Washington State Supreme Court established the Access to Justice Board in 1994 to assure access for low- and moderate-income residents of the State of Washington to the civil justice system through high-quality legal services. The ATJ Board has become a nationally recognized model as a result of its effectiveness in developing, coordinating and implementing statewide initiatives to improve access to civil legal services for the unrepresented and underrepresented populations in Washington state. Examples of these initiatives include: implementing a comprehensive Plan for the Delivery of Civil Legal Services to Low-Income People in Washington State, which utilizes innovative technology for program sup-

port and client services; convening of annual Access to Justice Conferences; developing jurisprudential support for a right of access; supporting strategies to increase funding for civil legal services; removing systemic barriers for low- and moderate-income people to the administrative process; and developing telephone systems to improve accessibility to the legal system for moderate-income people.

The Access to Justice Board strives to have a membership that reflects ethnic, gender, geographic and other diversity. Interested individuals may apply by sending a letter and summary of qualifications to: Executive Director, Washington State Bar Association, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330. The deadline for applications is January 13, 2000. For more detailed information about the Access to Justice Board, please contact Joan Fairbanks, Justice Programs Manager at the Washington State Bar Association, 206-727-8282; joanf@wsba.org; or visit the Washington State Bar Association's website at www.wsba.org.

Limited Practice Board

Application Deadline: December 31, 1999

The Board of Governors of the WSBA is seeking applications to serve on the Limited Practice Board (one position at this time). This is a four-year term effective January 1, 2000. The incumbent is not eligible for reappointment.

The Limited Practice Board oversees administration of and compliance with the Limited Practice Office Rule (APR 12) and meets every other month.

If you are interested in serving, please submit a letter of interest and résumé to: Executive Director, Washington State Bar Association, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 or e-mail oed@wsba.org.

WSBA Elder Law Section Donates \$10,000 to Columbia Legal Services

Members of the WSBA's Elder Law Section voted unanimously to award \$10,000 of its carryover balance to Columbia Legal Services "in recognition of the services provided to aging people and their families by Columbia Legal Services through the publication of four Medicaid-related pamphlets," and its "unflinching dedication to the broad issues facing the aging population." The Elder Law Section's Immediate Past Chair, Jeanne Marie Clavere, further describes the basis for the award: "The Four Medicaid-related pamphlets communicate a highly readable, clear and accurate summary of the complex and confusing Medicaid qualification maze. Most elder law practitioners are faced with advising clients through this process when they have already been discouraged and upset and are faced with increasing burdens regarding their aging parents. The Columbia Legal Services publications are an invaluable and informative tool used for reference and reinforcement."

A recent draft WSBA policy gives its sections guidance and broad discretion on how to spend accumulated carryover balances. The entire access to justice community is extremely grateful to the Elder Law Section for its very generous gift and for recognizing the important partnerships between the private bar and the civil legal services providers in our state.

East King County Bar Association

The East King County Bar Association (EKCBBA) offers lawyers practicing on the east side of Lake Washington an excellent way to

increase their enjoyment of the practice of law. Activities include monthly luncheons featuring entertaining speakers and the opportunity to network with fellow Eastside lawyers, "EKCBBA Night at the Mariners," a golf tournament, and an annual holiday party and CLE. Its monthly section meetings include family law, real property, solo/small practice, and trust and probate. Additionally, the EKCBBA provides the opportunity to contribute to and volunteer for ELAP (the Eastside Legal Assistance Program). To join the EKCBBA, simply check the dual membership box on the King County Bar Association renewal form, or contact the EKCBBA directly at 425-637-3097.

Washington State Mandatory Pattern Forms Posted for Comment

In December 1999 the Pattern Forms Committee will publish revisions to the domestic relations, domestic violence, and juvenile court forms. In addition, the Pattern Forms Committee will publish for a 30-day comment period a new set of truancy forms and selected domestic relations forms. The forms may be viewed at or downloaded from the Washington State Court's Forms and Instructions Web page, www.wa.gov/courts/forms. The revised forms will be listed in the 1999 Summary of Changes.

If you have comments about the posted forms or questions or questions about the forms in general, contact Merrie Gough at merrie.gough@courts.wa.gov or 360-357-2128, fax 360-357-2127, or P.O. Box 41174, Olympia, WA 98504-1174.

Department of Revenue Electronic Filing Program

Legal professionals across the state are discovering the ease of filing their state excise taxes with the Washington Department of Revenue's new Electronic Filing (ELF) program. The Department reports that legal services ranks eighth for the number of businesses using ELF to file and pay their taxes over the Internet.

ELF is an easy-to-use, intuitive system that walks taxpayers through the return process, calculates taxes automatically, flags errors and omissions, and provides instant online access to the latest tax information. ELF is a secure system protected by sophisticated encryption and passwords. It allows taxpayers to customize their tax return and delivers an electronic confirmation message when it's received. Filing taxes with ELF takes less than 10 minutes, and it's free to every Washington state business owner.

To learn more about ELF and to see if you qualify, visit the Department of Revenue's website at <http://www.dor.wa.gov> or call toll-free 877-FILE-ELF.

New ABA Scholarship Fund

William G. Paul, President of the American Bar Association, has announced the creation of the ABA Legal Opportunity Scholarship Fund to enable persons of color to attend law school and become lawyers. Paul's goal is to raise at least \$1 million by the end of the first year of the fund, and he hopes to present the first scholarships next year. Diversity in the legal profession is a key theme of President Paul's, and he has announced the creation of working groups within the ABA to address diversity in legal education, corporate legal work, and law firms and bar associations. For information about making donations to the fund, contact Krista Kauper at 312-988-5404.

Receptions at Celebration 2000

Planning for Celebration 2000 continues, and excitement is building! One of the highlights of Celebration 2000 will be the opportunity to socialize with colleagues from around the state – renewing old friendships (perhaps catching up with people you haven't seen since law school), and forming new professional and personal relationships within our community.

The Celebration 2000 Planning Committee has set aside the evening of Friday, September 15 for law firms and other groups to host receptions. Friday evening will be kept open for receptions – no other activities will be scheduled after 5:00 p.m. In an effort to foster collegiality, the Planning Committee encourages all reception sponsors to hold receptions that will be open to all Celebration 2000 participants.

Groups interested in sponsoring receptions are responsible for making all necessary arrangements, including reserving the facility and ordering food and beverages. All costs incurred are the responsibility of the sponsoring organizations. For information about facilities close to Celebration 2000 events, please contact Sharlene Steele at the WSBA (206-727-8262 or sharlene@wsba.org).

A comprehensive list of all open receptions will be included in the Celebration 2000 information packet and distributed to all attendees (only information about those receptions open to all Celebration 2000 attendees will be included in the packets). In order for information to be as complete as possible, we are requesting that all groups sponsoring open receptions contact Sharlene Steele at the WSBA (206-727-8262 or sharlene@wsba.org) no later than **June 1, 2000**.

We hope to see you at Celebration 2000 – September 13-16 in Spokane.

Thank You to the First Class of WSBA Emeritus Attorneys

In January 1999, the WSBA conducted an educational seminar for the first class of WSBA Emeritus attorneys. During the year, a number of not-for-profit legal services provider organizations and their clients have benefited greatly from the gifts of time and expertise these Emeritus attorneys have given. The WSBA joins these organizations in expressing our appreciation, praise and enthusiasm for the work of the Emeritus attorneys:

Susan Murgatroyd Bell, King County Bar Volunteer Legal Services; **Stephanie A. Delaney**, Northwest Womens' Law Center; **Dean A. Fournier**, Northwest Justice Project; **C.T. Hatten**, Whatcom County Public Defender; **Valen H. Honeywell**, Tacoma-Pierce County Bar Volunteer Legal Services Program; **James C. Lynch**, Chelan/Douglas County Legal Aid; **Anthony J. Meyers**, Snohomish County Legal Services; **Claude Pearson**, Northwest Justice Project; **Vernon Pearson**, Columbia Legal Services; **Paul Senio**, Northwest Justice Project; **Karin B. Swope**, Fremont Public Association; **Sheila Umlauf**, King County Bar Volunteer Legal Services; **William Wesselhoeft**, King County Bar Volunteer Legal Services.

Bill Wesselhoeft has this to say about his volunteer experience: "Nearly all lawyers with Emeritus membership in the WSBA have had very many years in practice. Over the years, they have developed considerable knowledge and skill in their respective areas. The Emeritus status offers an opportunity for the semi-retired lawyer to exercise that knowledge and skill. Doing so is likely to bring a sense of satisfaction. Instead of merely indulging in retirement pastimes, he or she is providing useful expertise to benefit the public. Because of the nature of law itself, this work is far more challenging than crossword puzzles."

The Washington State Supreme Court approved the adoption of APR 8(e) in 1998, which creates a limited license status of Emeritus for otherwise retired attorneys to practice pro bono legal services through a qualified not-for-profit legal services organization whose primary purpose is to provide legal services to low-income clients. Emeritus attorneys may also serve as unpaid governing or advisory board members or trustees of, or provide legal counsel or service for no fee to a qualified legal services provider.

Videotapes of the January educational seminar are available to attorneys who are interested in changing their status to Emeritus. Seminars for 2000 will be held in all five service regions of Washington state in an effort to provide easier access to training for attorneys in eastern Washington and rural areas of the state.

If you are interested in learning more about the Emeritus Program, please call Sharlene Steele at the Washington State Bar Association, 206-727-8262.

Symantec Corporation Donates Software to Washington's Civil Equal Justice Community

Many thanks to the Symantec Corporation for its recent donation of over \$5,600 worth of Norton's Anti-Virus Software for distribution to volunteer and specialty legal services programs, which provide civil legal services to our state's low- and moderate-income residents. Robin Lester, chair of the Access to Justice Board's Communications and Technology Committee, commented, "We are most grateful for this generous donation. The donated software will protect pro bono programs newly connected to the Internet from computer virus infection while using e-mail, participating in our list serves, or conducting research on the Internet."

Rodney Zerr's name was excluded from the July 1999 Washington State Bar Examination pass list printed in the November issue of *Bar News*.

Announcements

Alhadeff Mediation Services

is pleased to announce the addition of
LYNN TUTTLE, JD, MBA, MS
to our mediation firm.

We are expanding our services to include family law, divorce and parenting disputes.

Lynn has practiced law with Foster Pepper and Shefelman (formerly Hatch & Leslie), and served as Disciplinary Counsel with the WSBA.

In 1994, she returned to graduate school and obtained a Masters Degree in counseling and family therapy. For the past two and one-half years, she has worked for Family Court Services mediating family law cases, teaching parenting seminars, and performing evaluations and domestic violence assessments.

Lynn has mediated more than 200 family law and civil cases since 1995.

<http://www.mediationservices.net>
or call 206-281-9950

ANDERSON HUNTER LAW FIRM, P.S.

is pleased to announce that

PATRICK F. HUSSEY

formerly of Velikanje, Moore & Shore, P.S.
in Yakima, Washington.

has become associated with the firm.

Mr. Hussey will continue his practice in the fields of Bankruptcy, Insolvency, Creditor/Debtor & Commercial Transactions.

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Everett, Washington 98201

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Fax: 425-258-3345

e-mail: phussey@andersonhunterlaw.com

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our friend and colleague

RUSSELL D. GARRETT

on his election to a three-year term
on the Executive Committee of the
Washington State Bar Debtor/Creditor Section.

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ELLIS, LI & MCKINSTRY PLLC

ATTORNEYS AT LAW

is pleased to announce that

Troy S. Anderson

has joined the firm as an associate

Ronald E. McKinstry	Heidi J. Abrams
Chi-Doo Li	Andrew J. Toles
Michael R. McKinstry	Troy S. Anderson
Jan P. Olson	Kyle D. Netterfield
Daniel J. Ichinaga	Nathaniel L. Taylor
Steven T. O'Ban	Kristen K. Waggoner
Keith A. Kemper	A. Chad Allred

and that January 2000 we are relocating to:

Two Union Square
601 Union Street, Suite 4900
Seattle, Washington 98101-3906
206-682-0565 • Fax 206-625-1052
elm@elmlaw.com

Announcements

RAFAL A. GORSKI

has joined the law firm of

LEGGETT & KRAM

as an associate.

Mr. Gorski was born in Lodz, Poland, and graduated *Cum Laude* from Michigan State University Law School.

Mr. Gorski's practice will emphasize bankruptcy, immigration, and domestic law. He speaks Polish and Russian.

Leggett & Kram

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Tacoma, Washington 98405
253-272-7929
206-467-7033

HALVORSON & SAUNDERS PLLC

LABOR AND EMPLOYMENT ATTORNEYS

are moving their law offices to:

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Larry E. Halvorson 206-386-7788
Michael B. Saunders 206-386-7789

We will continue to provide expertise in the areas of labor law, employment litigation, and employer counseling.

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Associate
Litigation Group

Paul J. Miller
Associate
Litigation Group

Blair C. Stone
Associate
Estate Planning Group

1999

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Seattle, Washington 98104-7096
Telephone: 206-682-7090
Fax: 206-625-9534

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ATTORNEYS AT LAW

is pleased to announce that

Melissa A. Weiland
(formerly with the Washington, D.C. firm of
Williams & Connolly)

has joined the firm as an associate.

Ms. Weiland is a graduate of the Stanford Law School and will be practicing in the firm's business group.

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Telephone 206-624-5950
Facsimile 206-624-5469
E-mail: mundtmac.com

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MACKENZIE, P.C.

is pleased to announce that

Kelly M. Montgomery

has joined the firm as an associate in its
Seattle office, practicing with Michael H. Weier
and Peter S. Hicks in the representation of
employers in workers' compensation litigation.

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Seattle, Washington 98101
Phone 206-622-7940
Fax 206-622-5902
email: firm@reinischweierlaw.com

The Law Office of
JEFFREY STEINBORN

is pleased to announce that

ALFRED KITCHING

has joined the firm.

Mr. Kitching was a public defender for
10 years in King and Snohomish Counties,
a personal injury lawyer (FELA/Admiralty)
for Groshong and Thornton, and a private
practitioner in Spokane, Washington.

Mr. Kitching's practice will focus on
criminal defense, forfeiture, civil rights
and personal injury cases.

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Office 206-622-5117 ♦ Fax 206-622-3848
E-mail kitching@jetcity.com

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Todd W. Gardner

of

SWANSON ♦ GARDNER

*Practice Limited to Personal Injury
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are pleased to announce that

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has joined the firm as an associate.

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Renton, Washington 98055
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425-226-5168 Facsimile
swansonlaw@msn.com

WASHINGTON ARBITRATION
& MEDIATION SERVICE
("WAMS")

is pleased to announce that
Everett attorney H. Scott Holte will be
joining the WAMS panel of professional
neutrals as of January 1, 2000.

Mr. Holte will be available to serve
as a mediator or arbitrator for personal injury,
commercial and real estate disputes in
WAMS' new Snohomish County office.

Hearings may be scheduled by
contacting WAMS at:

Seattle: 206-467-0793
telephone: 800-933-6348
facsimile: 206-467-7810
e-mail: wams@usamwa.com

Calendar

BUSINESS LAW

Interactive Negotiations

December 16 – Seattle. 7 CLE credits (incl. 1.5 ethics). By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CRIMINAL LAW

When Crime Isn't Your Business: Protecting Your Client (or Employer) from Exposure to Criminal Liability

December 2 – Portland. 3.5 CLE credits (incl. 1 ethics) pending. By Oregon State Bar; 503-684-7413.

CREDITOR-DEBTOR

Representing Consumer Debtors

December 7 – Seattle. Credits TBA. UW-CLE; 206-543-0059.

Collection of Judgments

December 9 – Spokane; December 10 – Seattle. 6.25 CLE credits (incl. 1 ethics). By WSBA-CLE; 800-943-WSBA or 206-443-WSBA.

ETHICS

Tele-CLE™ Ethics (Tele-seminar)

December 1 – Your office. (Business law)
December 1 – Your office. (Family law)
December 8 – Your office. (Real estate law)
December 14 – Your office. (Estate planning)
December 15 – Your office. (Litigation)
1.5 CLE ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics of Alternate Dispute Resolution

December 9 – Seattle. 3.5 ethics credits pending. By King County Bar Association; 206-340-2578.

Ethics on the Run

December 10 – Portland. 4 ethics credits pending. By Oregon State Bar; 503-684-7413.

Seventh Professional Responsibility Institute

December 11 – Seattle. Ethics credits TBA. By UW-CLE; 206-543-0059.

Ethics and Professionalism in Discovery

December 14 – Seattle. 2 ethics credits pending. By King County Bar Association; 206-340-2578.

Conflicts of Interest in Litigation

December 16 – Seattle. 6 ethics credits pending. By King County Bar Association; 206-340-2578.

Ethical Issues in PI Practice

December 16 – Seattle. CLE credits TBA. By WSTLA; 206-464-1011.

FAMILY LAW

Sixth Annual Family Law Institute

December 3 – Seattle. 6.25 CLE credits (incl. .75 ethics) pending. By King County Bar Association; 206-340-2578.

Drafting Marital Settlement Agreements

December 17 – Seattle. CLE credits TBA. By UW-CLE; 206-543-0059.

GENERAL

Access to Government

December 2 – Portland. 3.5 CLE credits (incl. 1 ethics) pending. By Oregon State Bar; 503-684-7413.

This information is submitted by providers. Please check with providers to verify approved CLE credits. To announce a seminar, please send information to:

WSBA Bar News Calendar
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330
fax: 206-727-8320
e-mail: comm@wsba.org

Information must be received by the 1st day of the month for placement in the following month's calendar.

Internet Legal Research Basic

December 2, 21 – Seattle. 3.5 CLE credits. By UW-CLE; 206-543-0059.

Creation of the U.S. Constitution

December 9 – Seattle. 3.5 CLE credits. By UW-CLE; 206-543-0059.

Best of CLE

December 9 – Seattle. 3.25 CLE credits (incl. up to 1.5 ethics, one-half day); 6.5 CLE credits (incl. up to 3 ethics, full day). By WSBA-CLE; 800-943-WSBA or 206-443-WSBA.

Start-ups & Beyond: How to Help Grow Technology Companies

December 10 – Seattle. 6 CLE credits pending. By King County Bar Association; 206-340-2578.

Trial Masters at Work

December 10 – Seattle. CLE credits TBA. By WSTLA; 206-464-1011

Water Law

December 10 – Seattle. 7 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CLE Video Roundup (topics vary)

December 20-22 – Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Cross-Training 101

December 22 – Seattle. 6 CLE credits pending. By King County Bar Association; 206-340-2578.

Best of KCBA CLE

December 29 – Seattle. CLE credits TBA. By King County Bar Association; 206-340-2578.

Best of CLEs

December 29-30 – Seattle. CLE credits TBA. By UW-CLE; 206-543-0059.

INTELLECTUAL PROPERTY

Electronic Commerce and Internet Law

December 17 – Seattle. 7.5 CLE credits (incl. .75 ethics). By WSBA-CLE; 800-943-WSBA or 206-443-WSBA.

LAND USE LAW

Advanced Land Use Training

December 15 – Seattle. CLE credits TBA. By UW-CLE; 206-543-0059.

REAL ESTATE

Seventh Annual Real Estate Institute

December 15 – Seattle. 7 CLE credits pending. By King County Bar Association; 206-340-2578.

Hot Topics in Commercial Real Estate Practice

December 16 – Portland. 6 CLE credits (incl. .5 ethics) pending. By Oregon State Bar; 503-684-7413.

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— John W. Davis

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Paul W. Chemnick organized
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\$59.95: 1999 WA State Child-Support Worksheets and Financial Declaration computer program. Program calculates wages, FICA, taxes (schedule A, head of household, daycare credit, earned-income credits, etc.), imputes income, residential-care credit and Arvey (split custody) allocation. 1999 update \$17.95. Call Law Office of Frederick L. Hetter 253-759-6853.

For sale: Eight-foot oak race track conference table (\$650); four rose chairs/oak arms and legs (\$50 each). Call Jeri-Beth Bowman 425-710-9829.

Practices available: Shoreline and South King County; other prospective practices. Call for latest listing. For confidential information, Louis M. Millman, CPA, Coldwell Banker Commercial, 425-453-6800; fax 425-646-5979; 800-459-8660; e-mail lmmillman@msn.com.

SPACE AVAILABLE

Sweeping, unobstructed view of Olympics and Elliott Bay (First Interstate Building, 41st Floor): elegant law office near courthouse. Reasonable rates include receptionist, basic messenger service, mail delivery, fax, two conference rooms, law library, fully equipped kitchen. For more information, please call AnnaMarie 206-624-9400.

Downtown Seattle office space: Bank of California Building, three offices available: large corner office with western and northern views (\$1,350); medium office with western view (\$900); large office with southern view (\$1,150); large secretarial office available (\$350). Includes conference rooms, library, receptionist, voice-mail and kitchen. Available now. 206-623-5221.

Unobstructed prime water-view office space, 1000 2nd Ave., 33rd Floor, available December 1st. Space provides receptionist, law library, fax, photocopier and kitchen. Contact Laurie Colman 206-621-0600; fax 206-621-6443.

Downtown Seattle office sharing: \$175 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.

Hoge Building (2nd & Cherry, Seattle). Space for one or two lawyers and support staff in four-lawyer suite with library, fax, etc. 206-624-7460.

University area (Laurelhurst): professional office suite. Share amenities with senior level professionals: attorney, CPA, insurance and elder care professionals. NE 45th, great location, attractive, pleasant environment. Optional joint marketing opportunities. Estate planning or elder law attorney preferred. Space available December 1. Please contact Carol at 206-523-6470.

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NCW firm seeks associate with at least two years' litigation/trial experience to join busy two-attorney, general practice. Emphasis on personal injury, family/criminal law. Wenatchee is a recreation-based community, great for raising families. Send résumé to: DeForest Neil Fuller, PO Box 3364, Wenatchee, WA 98807.

Kamisar Legal Search, Inc.: Gordon Kamisar, President & CEO of Kamisar Legal Search, is a Seattle attorney who recruits and places associates, partners and contract attorneys on behalf of corporations and law firms throughout Washington state, nationwide and internationally. He is a Duke Law School graduate and a member of the Washington State Bar Association. Direct all confidential inquiries to: Gordon Kamisar, Esq., President & CEO, Kamisar Legal Search, Inc., 1509 Queen Anne Ave. N., Ste. 298, Seattle, WA 98109. Phone 425-392-1969; fax 425-

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Quality attorneys sought to fill high-end permanent and contract positions in law firms and companies throughout Washington. Contact Legal Ease, LLC by phone 425-822-1157, fax 425-889-2775, or e-mail legalease@legalease.com.

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Davis Wright Tremaine LLP is seeking an experienced business transactions attorney at the partner level to join its Bellevue office. The successful candidate will have significant transactional and corporate experience, a strong commitment to client service, a healthy client base, and a desire to work as part of the team to build the existing office transactional practice. Leadership skills, community involvement and tax expertise are all a plus. Send résumé to: Ms. Christine Simpson, Recruiting Coordinator, Davis Wright Tremaine LLP, 10500 N.E. 8th St., Ste. 1800, Bellevue, WA 98004; e-mail christinesimpson@dwt.com.

Stoel Rives LLP, one of the largest firms in the Pacific Northwest, seeks corporate attorneys with a minimum of three years' experience dealing with corporate, securities and finance legal matters for its Portland, Oregon office. Stoel Rives' Corporate, Securities and Finance Practice Group offers the opportunity to participate in a well-established and growing corporate law practice in one of the most attractive areas in the country. Close to mountains, the coast and year-round outdoor recreation. Excellent academic record, writing ability and client relationship skills required. Send résumé in confidence to: Kara Jordan, Recruiting Manager, Stoel Rives LLP, 900 SW 5th Ave., Ste. 2600, Portland, OR, 97204; fax 503-220-2480; e-mail kajordan@stoel.com; <http://www.stoel.com>. EOE.

Attorney: Idaho's largest law firm seeks an attorney to join our Ketchum/Sun Valley office with at least two years' experience in general litigation. Some transactional experience also preferred. Strong academic credentials required. Direct confidential inquiries to: Hawley Troxell Ennis & Hawley LLP, Attn: Hiring Partner, PO Box 1617, Boise, ID 83701-1617; fax 208-342-3829; e-mail pvc@hteh.com; <http://www.hteh.com>.

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Cable, Langenbach, Kinerk & Bauer, LLP, an AV-rated eight-lawyer firm emphasizing general business, civil litigation and real estate, seeks litigation associate with at least three years' experience. Strong academic credentials and superior writing skills essential. Competitive salary and benefits. Please send résumé and writing sample to: Hiring Partner, 1000 2nd Ave., Ste. 3500, Seattle, WA 98104.

Associate attorney sought for Seattle office of plaintiff class-action law firm. The position is expected to primarily entail securities fraud litigation, but the firm's practice includes antitrust, employment discrimination, health care and consumer protection. Prefer candidates with a minimum of one year's experience, with strong writing skills, ability to handle significant responsibility in multi-firm litigation, and who are willing to travel. Competitive salary and benefits. Please send cover letter and résumé (no calls please) to: Steven J. Toll, Managing Partner; Cohen, Milstein, Hausfeld & Toll, PLLC; 999 3rd Ave., Ste. 3600, Seattle, WA 98104-4001. Cohen Milstein has offices in Seattle and Washington, D.C. Visit the firm's website at <http://www.cmht.com>.

Roach Law Offices, PS, seeks an attorney. At least two years' experience preferred. Associate would do family law and general practice work. Spanish language ability a plus. Salary DOQ. Send résumé to: 428 W. Shoshone, Pasco, WA 99301.

ERISA attorney, Seattle: Seeking attorney with at least four years' broad employee benefits experience, to work with Taft-Hartley funds, public sector clients and/or VEBA issues; California Bar admission very helpful; willing to relocate to Seattle. Twenty-seven year-old A/V-rated firm, 37 attorneys with three-member ERISA group; salary commensurate with experience. Send résumé to: saichek@carneylaw.com.

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Small Central Washington law firm in business for 52 years seeks a lawyer to engage in the general practice of law with an initial emphasis on family law. Inquiries should be made by sending a résumé to: Peters & Fowler, Inc., PS, PO Box 160, Selah, WA 98942; fax 509-697-5368; e-mail petersla@bentonrea.com.

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Cozen and O'Connor, a national law firm, seeks an associate with outstanding academic credentials and a minimum of two years' litigation experience for a position in its insurance coverage litigation practice group for the Northwest regional office in Seattle. Please submit a letter of introduction and a current résumé to: Daniel P. Mallove, Cozen and O'Connor, PC, 1201 3rd Ave., Ste. 5200, Seattle, WA 98101-3071.

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Snohomish County Public Utility District No. 1, the 12th largest public utility district in the United States, seeks an experienced labor and employment attorney to join its six-attorney legal department to advise the Utility on a broad range of employment and labor issues and to represent the Utility in labor arbitrations before administrative agencies and in state and federal court. Experience in electric and/or water utility-related issues is also desirable. Candidates should have at least three years' experience in employment law, labor law and litigation, preferably with a background in public employment, a Doctor of Jurisprudence, and be a member of the WSBA. Complete benefits plan and Washington State Retirement program. Send cover letter, résumé, references, transcript and writing sample to: Snohomish County PUD, Attn: Employee Resources, PO Box 1107, Everett, WA 98206; fax 425-258-8675; e-mail resumes@snopud.com. We are an EEO employer committed to a diverse workforce.

Danielson, Harrigan & Tollefson, AV-rated 13-lawyer firm concentrating on complex commercial and maritime litigation, seeks associate with a minimum of two years' experience. Superior academic credentials, research and writing skills required. Large-firm experience or judicial clerkship preferred. Please send résumé to: Michelle Buhler, Danielson, Harrigan & Tollefson, 999 3rd Ave., Ste. 4400, Seattle, WA 98104.

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Software licensing lawyer: Sierra On-Line, a leading publisher of entertainment software, is seeking a software licensing lawyer. Individual will work with various departments within Sierra on licensing issues and negotiate licensing issues with potential licensors/licensees and outside counsel. Heavy contract experience is beneficial. Must have the ability to multitask in an efficient, timely manner. A minimum of three years' experience working in the software licensing field required. Writing samples will be required upon request. Send résumé and salary requirements via e-mail to recruit@sierra.com. We offer a fun environment, medical, dental, vision, 401(k). Please check out our website at <http://www.sierra.com>.

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The Pacific Northwest National Laboratory (PNNL), located at Richland in Southeastern Washington and operated by Battelle for the U.S. Department of Energy, has an immediate need for a patent attorney. The Laboratory employs 3,500 and has an annual budget of more than \$500 million. PNNL is one of nine U.S. Department of Energy multi-program national laboratories and offers outstanding facilities and equipment, excellent benefits and competitive salaries. For more information about PNNL, please visit our website at <http://www.pnl.gov>. Responsibilities will include all phases of intellectual property protection, counseling numerous and diverse research organizations, preparing and prosecuting patent applications, and becoming an integral participant in the licensing and commercialization of inventions and intellectual property owned by the Laboratory. A bachelor's degree in science, engineering, or related technical field, a law degree and a minimum of six years' broad related professional experience as a patent attorney is required. To apply, electronically send your résumé to our external employ-

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