

Washington State
BAR NEWS

The Official Publication of the Washington State Bar

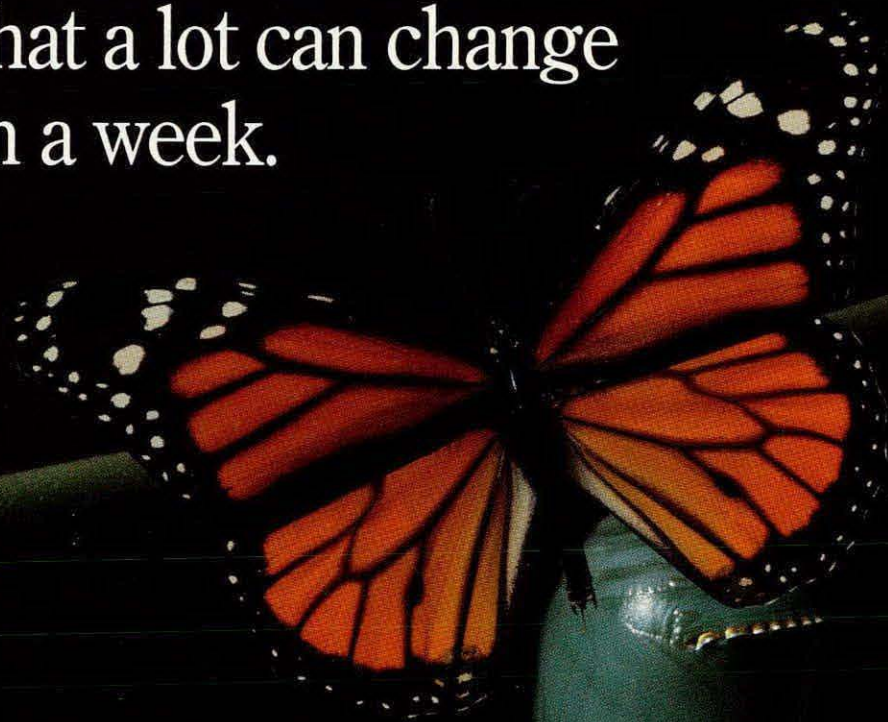
MARCH 1999



Smoke Meets High Tech:

The Wiring of Washington's Tobacco Case

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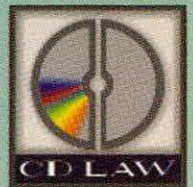
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MARCH 1999

Articles

- 22 Smoke Meets High Tech: *The Wiring of Washington's Tobacco Case*
by Gary Larson
- 29 Reforming State Supreme Court Elections
by Todd De Groff
- 33 On the Supreme Court
by Justice Philip Talmadge



P. 19

Columns

- 13 Editor's Page ■ *Listen Up!*
by Sherrie Bennett
- 15 President's Corner ■ *Raising the Bar — Planning for the Future*
by M. Wayne Blair
- 17 Executive's Report ■ *"Just the Facts, Ma'am"*
by Jan Michels



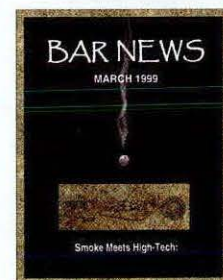
P. 34

Survey

- 19 Raising the Bar ■ *WSBA Member Input to the Strategic Plan*

Departments

- | | |
|-----------------------------|-------------------------|
| 7 Letters | 50 Disciplinary Notices |
| 34 The Greyhaired Cyberpunk | 54 FYI |
| 39 Lawyer Services | 56 Calendar |
| 41 The Board's Work | 58 Announcements |
| 43 Changing Venues | 60 Professionals |
| 45 Ethics & the Law | 61 Classifieds |



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The *Bar News* encourages correspondence and article submissions. The submission deadline is the 15th day of the month for the second issue following, e.g., March 15 for the May issue. We request a 3-1/2 inch disk (in any conventional format) and hard copy at the time of submission. Please include a SASE if you would like your material returned. Article submissions should run approximately 1,100 to 3,500 words. Graphics and illustrations are welcome. Address all correspondence and submissions to: *Bar News* Editor, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330.

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Page 35

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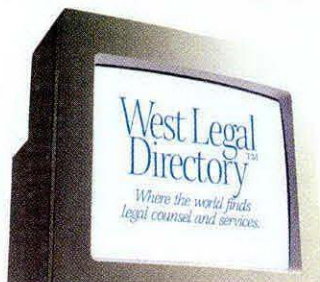
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Letters

Editor:

I read Mr. Jared's letter to the editor in the January *Bar News* yesterday and was seething with anger. I finally decided I had to respond.

Mr. Jared, I would like to know what studies you get your information from, particularly the statement that "women take more time off work than men." Maybe you got it from the man I interviewed with after graduating from law school, who asked me if I was married yet, because if I wasn't, I probably would be soon and then would be in a hurry to get pregnant before I got too old which meant I would be taking maternity leave (I am now 45 and have never had a child); or the other man who when I was 30 wouldn't hire me because I wasn't married — that meant I was obviously unstable; or the man in college who wouldn't rent to me and my two girlfriends because we were single women — single women were "trouble," since they entertained men.

Mr. Jared, until you have walked a mile in my shoes or the shoes of one of the countless numbers of women I know who have been denied a job or promotion which was given to a man because "he [had] a family to support and [needed] the job, extra money, etc. more," you should keep your ridiculous opinions to yourself.

Of course, in the white-bread, upper-middle-class world you were most likely raised in, everything was perfect and everyone was treated fairly and equally and still is. Your comments belie the ignorance of most people in the other classes to what the majority of women who work in menial, blue-collar and/or unskilled jobs have known for years — they don't get paid the same for doing the same work, and it hurts. Women like my mother, who worked hard in a machine shop, doing the work of men, side-by-side with men, but got paid a dollar an hour less because she was a woman, know about unequal pay. A dollar an hour may not mean much to people from your world, but an extra dollar an hour means a lot when you are making minimum wage and have a family to support.

Ending racist and sexist affirmative

action, as you call it, will only serve one purpose — people like you will continue to prosper at the expense of others.

*Denice L. Patrick
Lynnwood*

Editor:

Coming back from court today, I again learned that the rules don't mean what they propose to mean. Rule 36 of the Superior Court Civil Rules (Requests for Admission) proposes to advance the idea that a matter requested to be admitted or

denied is admitted unless the matter is answered or objected to within 30 days.

This plays out as follows: The requests are either not answered at all or they are eventually answered beyond the 30-day window. Then the movant, the attorney who failed to answer or answered late, moves the court to allow him or her to answer or to allow a late answer. The attorney who made the requests must come to court that day for the purpose of reading Rule 36 to the court. The judge grants the movant's motion and allows him or



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Why Some Washington Lawyers Get Rich... While Others Struggle To Earn A Living

TRABUCO, CA - Why do some lawyers make a fortune while others struggle just to get by? The answer, according to California lawyer David Ward, has nothing to do with talent, education, hard work, or even luck. "The lawyers who make the big money are not necessarily better lawyers," Ward says. "They have simply learned how to market their services."

Ward, a successful sole practitioner who once struggled to attract clients, credits his turnaround to a little-known marketing method he stumbled across six years ago. He tried it and almost immediately attracted a large number of referrals. "I went from dead broke and drowning in debt to earning \$300,000 a year, practically overnight."

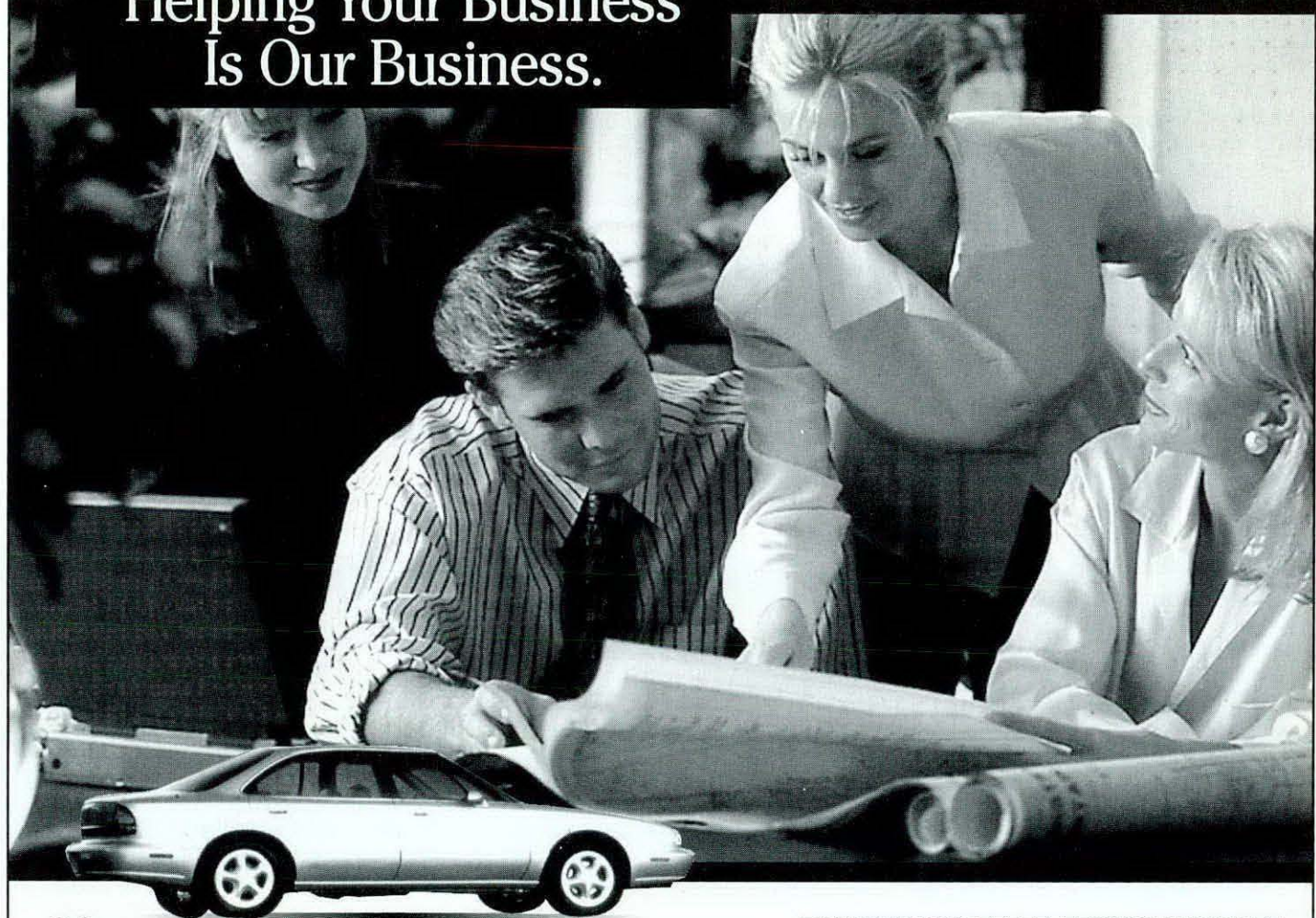
Ward points out that although most lawyers get the bulk of their business through referrals, not one in 100 has a referral system, which, he maintains, can increase referrals by as much as 1000%. "Without a system, referrals are unpredictable. You may get new business this month, you may not," he says.

A referral system, by contrast, can bring in a steady stream of new clients, month after month, year after year. "It feels great to come to the office every day knowing the phone is going to ring and new business will be on the line," Ward says.

Ward, who has taught his referral system to lawyers throughout the U.S., says that most lawyers' marketing "is somewhere between atrocious and non-existent." As a result, he says, a lawyer who uses a few simple marketing techniques can stand out from the competition. "When that happens, getting clients is easy."

Ward has written a report entitled, "**How To Get More Clients In A Month Than You Now Get All Year!**" which reveals how any lawyer can use this marketing system to get more clients and increase their income. For a **FREE** copy, call **1-800-562-4627** for a 24-hour **FREE** recorded message.

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Frankly, I always give more time when needed for interrogatories and requests for production because the time to answer is flexible ("Try to get them to me as soon as you can"). I thought CR 36 was meant to have more "meat" concerning time to respond: 30 days means 30 days or the requests are admitted. However, my continuing experience in having to read CR 36 to the judge shows that this is not the case. CR 36 is no longer (maybe it never was) a serious 30-day deadline in the legal community. CR 36 should be deleted from the Civil Rules. That would avoid wasting time in court in opposing motions to amend or to submit requests after 30 days have expired. I surely hope that when it is my turn to ask the court to forgive me and to give me more time to answer the admissions, I will be treated in a like manner.

*Glen Prior
Fife*

Editor:

In the early 90s, the Benton-Franklin County Bar Association proposed that the WSBA establish a system for providing WSBA members with free CLE credit. The idea had two parts: First, CLE rules would be amended to allow credit for individual tape listening. Second, the then-unused stock of recorded WSBA-CLE materials would be made available for free checkout from the WSBA office in Seattle, via mail or messenger. Unfortunately, despite vigorous advocacy by WSBA Governor John Schultz of Pasco, free CLE never did become generally available.

However, thanks to the efforts of Chief Justice Richard Guy, Justice Richard Sanders, Appellate Court Judge Dennis Sweeney, Superior Court Judge Evan Sperline, former WSBA President Tom Chambers, WSBA Chief Disciplinary Counsel Barrie Althoff, Deputy AGs Chip Holcomb and Jeffrey Even, and numerous attorneys in private practice, this has changed. In the recent past, these CLE authors have recorded CLE lectures with the understanding that I would make the

recordings available for free, via the Internet and CDs placed in public libraries.

Free CLE via Internet is available right now on the Washington Digital Law Library website (<http://www.freecle.com>). To listen you will need an Internet computer with a sound card and speakers along with the free version of RealAudio's sound software. This software is available via a link from the freecle.com site.

Alternatively, you can borrow a copy of Free CLE CD from a library. This CD comes self-contained with software suit-

able for use on any Windows 95/98/NT PC. In order to put 16 hours of program on the CD, a different computer-only audio format had to be used. So this CD will not work with music-format CD players, such as those found in automobile stereo systems.

Internet CLE is great because there are no distribution problems: the website is automatically available to any Internet user on the planet. However, free CLE via CD requires some scheme for physical distribution. By the time you read this,

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CDs will have been sent to the State Supreme Court Library, every law library, and most major public libraries in the state. Although some librarians have already agreed to carry the discs (Snohomish County Law, Benton-Franklin County Law), there is no guarantee that all will. If your library does not have the CD in its collection, please ask the librarian to initiate an interlibrary loan. Alternatively, you can ask the librarian to e-mail a request for a free disc to the fol-

lowing address: hiskes@freecle.com.

Version 1.0 of the CD has 16.5 approved CLE credits, including 6.75 hours of ethics credits. The website currently has approximately 9 hours of ethics material. An additional 6 hour trial practice CLE featuring Chief Justice Guy, Tom Chambers, and Monica Lewinsky's former counsel, William Ginsburg, is expected to be posted on the site approximately March 15.

Two additional points deserve men-

tion. First, with respect to CDs borrowed from libraries, users should keep in mind that most librarians do not have the ability to answer questions about computer problems or about CLE credit requirements. So please don't ask! To avoid wearing out the welcome for Free CLE at libraries, all technical and other questions should be submitted to me via e-mail.

Second, I've gotten quite a few anxious questions about how CLE credit gained from Internet or CD-listening actually gets registered with the Bar Association. No program is put on the website or CD until it has been fully approved by the Washington State Board of Continuing Legal Education. Approval and credit information is included in a viewable text file with each program. According to Neil Savage, assistant for course accreditation for the MCLE Board, all you must do is note your participation on the standard CLE affidavit which WSBA members file every three years. You do not need to report your participation to the CLE sponsor, and no additional paperwork needs to be filed with the WSBA. Internet and CD programs are considered to be A/V material. Thus, you can currently get only 15 hours of your 45-hour requirement in this form. All 6 of the required ethics credits may be A/V.

This project is still experimental, but it has already demonstrated that CLE delivery using computer technology is both feasible and surprisingly cheap. The current CD with 16.5 hours of credit costs about \$1 a copy to duplicate and another \$1 to ship, which figures out to about 12 cents per credit hour. But Internet delivery is the cheapest of all: about 3 cents per credit hour.

*Edward Hiskes
Richland*

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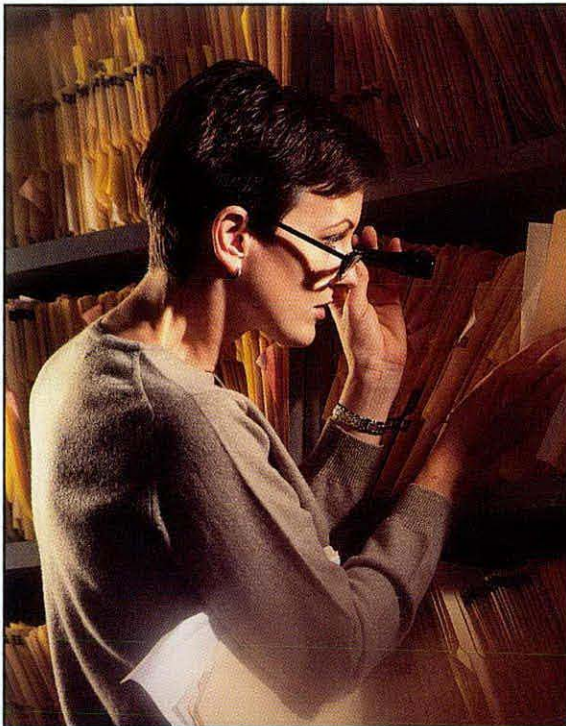
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Listen Up!

by Sherrie Bennett

Editor

My friend's recent solution for finding an attorney function in a hotel with identical unmarked reception halls worked perfectly: he just picked the one with the most noise emanating from it. He explained that he had noticed that a roomful of lawyers tends to be louder than a roomful of "normal people."

After finding this hypothesis accurate on several subsequent occasions, I thought about my mother's admonition that you should be quiet at least twice as often as you speak, because when you're talking you're not learning anything. Although my mother's advice may have simply been a desperate attempt to obtain some much-needed silence amidst the cacophony of children, it bears reflecting upon.

Are lawyers more likely to miss out on opportunities for observation and learning because we're too busy expounding to others our perspective on any given topic? Do we have a tendency to rush in and fix things up with our good advice, without taking the time to diagnose and deeply understand the problem first? Are we so focused on getting on to the next issue or client that we summarily dismiss people who are trying to explain their difficulties?

Stephen Covey, in his bestseller *The Seven Habits of Highly Effective People*, speaks on the power of empathic listening, which he describes as listening with the intent to understand the other person. Covey analogizes the process of listening with empathy to that of peeling an onion layer upon layer: the key to genuinely seeking the welfare of the other person is to let the person get to the problem and the solution at his own pace and time.

Sometimes your own talking can get in the way of understanding, especially if you are projecting your experiences onto the other person's perspective, assuming that what works for you will work for them. How often have we been on the receiving end of that kind of narcissistic arrogance? Covey uses the example of an optometrist who offers his own glasses to a patient, assuming that since the prescription helps him to see better, it should work equally well for his patient. Of course, we laugh at such a "shortsighted" diagnostic tech-

nique. But how often do we make the same mistake by not bothering to take the time to get all the facts from our clients, not to mention discerning feelings, concerns and motivations which are vitally relevant to a satisfactory conclusion to their legal problems?

Frequently, the only way to get to the true heart of your client's concern is through non-judgmental listening of their account of their predicament, seen through the eyes of their own experience. And even though you may not think you're

voicing disapproval openly, your body language may give you away. I'm reminded of one of my first attorney-client experiences as a Rule 9 intern. In violation of a restraining order, my client had broken into the family home occupied by his estranged wife and beaten up his wife and her new boyfriend. What he didn't tell me (I found out from opposing counsel during the contempt

hearing) was that he had also demolished the patrol car containing the police officers who had responded to his wife's plea for help. When I asked him why he hadn't told me about the damage done to the patrol car, he sheepishly replied that he was concerned that I might have thought less of him! After that experience, I knew I needed to work on making my listening as non-judgmental as possible to better meet my clients' needs.

Of course, truly empathic listening skills are also invaluable in negotiating compromise solutions short of litigation. After all, what better place to start in developing a proposal that the other party will accept, than by really listening to understand their priorities, concerns and motivations? I have often been amazed to discover in negotiations that uncovering the other party's articulated priorities exposes several areas in which my client would be happy to capitulate, as those issues are not high on my client's priority list. But you can't know what is important to the opposing party without careful listening and questioning, taking the time to allow some building of rapport and trust.

So how about it? Are you up for a little less talking? Are you *listening*? ☞

The only way to get to the true heart of your client's concern is through non-judgmental listening of their account of their predicament, seen through the eyes of their own experience.

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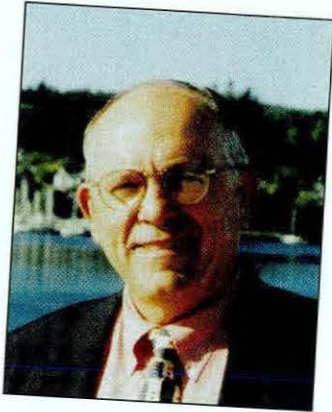
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Raising the Bar — Planning for the Future

by **M. Wayne Blair**
President

Dear Colleagues:

Let's plan together for the future and "Raise the Bar." With the millennium about 300 days away, and the last long-range plan of the WSBA having been submitted in 1991, the time has come to plan for the future in a more formal way. What kind of a bar association do we want over the next 5 to 10 years — and how do we get there?

The Long-Range Strategic Planning Committee of the WSBA has met regularly for over a year, and among its activities, has undertaken, as its name indicates, long-range planning for the WSBA. The committee members are: Walter Krueger, Terry Lee, Richard Eymann, Rafael Gonzales, Pat Dieken, Mary Fairhurst, Marijean Moschetto, Lish Whitson, Kathleen Hopkins, John Powers, Jim Deno, Jan Michels, Douglas Fair, Judith Berrett and Wayne Blair. Under the authority of the Board of Governors, the committee has engaged Christine Veit of SMG/Columbia Consulting Group to assist with our long-range planning.

Because the WSBA *is* its members, however, we need you — the members — to provide input to help us plan for the future. The committee is seeking your input in a variety of ways: written comments; individual conversations; personal visits by Jan Michels, me or others; "town meetings" described later in this article; and a survey that begins on page 19 of this issue of *Bar News*. Please take time to complete the survey and submit it to the WSBA offices by fax, 206-727-8320. If you prefer, you can also complete the survey via the Internet, by accessing the WSBA website at www.wsba.org.

I also hope you will write to me personally at the Washington State Bar Association, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 and respond to any of the questions on the following page.

In addition to soliciting answers to the survey and to the questions on page 16, the Long-Range Strategic Planning Committee will be conducting a number of "town meetings" (member meetings, if you prefer) around the state over the next couple of months. You are invited! The first such meeting was held February 5, in Bellevue. Approximately 20 people attended. The discussion about the future of the WSBA and the profession was both lively and very worthwhile. Much useful information was obtained. All of the participants agreed that these meetings should be held in other places around the state.

At this printing, the remaining meetings have not yet been scheduled. As additional meetings are scheduled, we will keep you advised through the *Bar News*, on the website, and through mailings in your area. I urge you to attend and to express your thoughts.

Your views are important to us as we plan for the future and endeavor to "Raise the Bar."

Sincerely,

M. Wayne Blair
WSBA President



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RAISING THE BAR (continued)

The Future of the Profession

- What are the major trends and challenges facing the legal profession as it enters the 21st century?
- How do you think these trends and challenges will impact your practice?
- Can the WSBA play a role in assisting you to adjust to any impact? What role should it play?
- How do you think these trends and challenges will impact the WSBA as an organization?

Practice Issues

- What keeps you up at night about your law practice?
- Is there something the WSBA could do to help you address these issues?

WSBA Organizational Focus

- The mission and purposes of the WSBA are broad and diverse. Please see the survey for a description of WSBA purposes as set forth in GR 12. Given that the WSBA has finite resources, where do you think the Bar should focus its efforts in the coming years?
- Where does the Bar need to improve most?
- Which "purposes" are most important?
- Does the Bar effectively address the purposes that you think are most important?
- As a member, what mandate would you like to direct to the Board of Governors?

WSBA Services

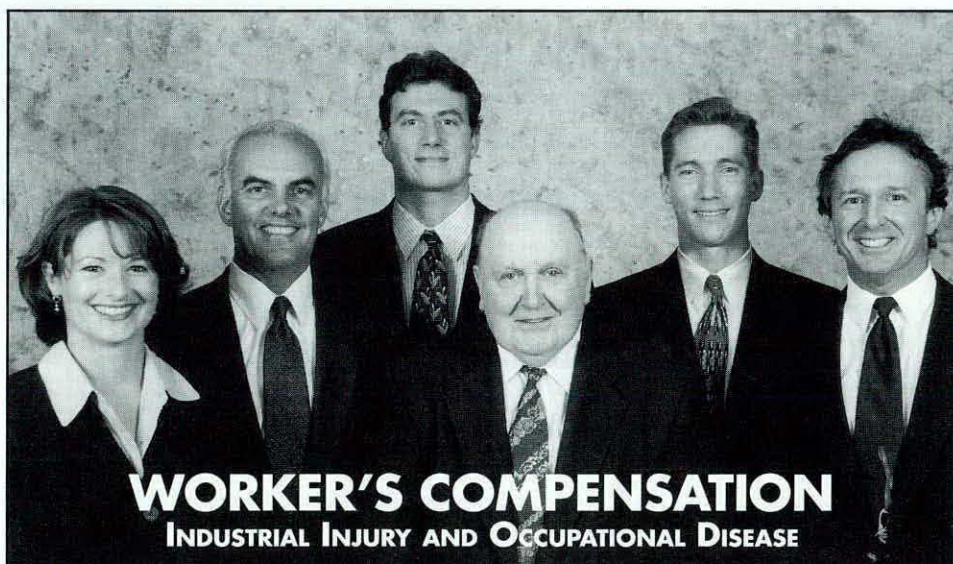
- Which services provided by the WSBA do you find the most valuable? Why?
- Which services provide the least value? Why?
- Which services should be improved?
- Should any services be eliminated?
- Are there other services you would like to see offered by the WSBA? If so, what are they?

WSBA Governance

- The WSBA Board of Governors is a body of 11 elected Governors from nine congressional districts, a President and a President-elect together with committees, sections and a Young Lawyers Division. As a member, would you change any aspect of WSBA governance? If so, what would you change?

If You Could Make One Change About the WSBA

- If you could change or improve one thing about the WSBA, what would it be? Why? ↵



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“Just the Facts, Ma’am”

by Jan Michels
Executive Director

In last month's column I wrote about relevance, and what it might take to make the WSBA more relevant to all its members. One aspect of relevance is recognizing that “it's not just about money” in the form of attorney licensing fees. Money does, however, become a symbol for other important issues. This month I'd like to “put my money where my mouth is” and provide some information about how the WSBA has put attorney license fees to use.

Members have a right and a need to know how their license fees support the WSBA. In our current efforts with members to review the past and plan our future, the following information is important background. It may also be useful in responding to the member survey presented in this issue (page 19).

License Fee History

In the late 1980s some members questioned whether a WSBA proposed increase in license fees was needed, though

it was allowed to take place. License fees were increased to \$195. This questioning mounted as a 1993 proposed increase to \$260 was met with a member referendum and license fee rollback to \$195. In 1996, after careful listening, negotiating and planning, the WSBA Board of Governors approved staggered increases to take place over the next four years, to \$290 in 2000. The increase addressed the need for increased spending for discipline and the re-establishment of programs that members thought important, such as Public Legal Education and Law Office Management.

What your License Fees Support

The following table presents data about what programs were supported by license fees in 1993 and are supported by license fees in 1998. Changes in the use of license fees have been deliberate and dictated by membership feedback as well as responsible leadership. Where no percentage or dollar amount is shown, the program is self-supporting. ↵

	1993 % OF LICENSE FEES	1998 % OF LICENSE FEES	OF THE \$281 LICENSE FEES
Discipline	40.00%	48.53%	\$136.37
Audit Programs (For Cause and Random)	3.40%	2.83%	\$7.96
Membership Records (track status, MCLE & public record)	5.50%	8.09%	\$22.73
Leadership (BOG & Committees)	7.30%	7.91%	\$22.22
Professional Responsibility*	0.00%	2.02%	\$5.68
Access To Justice	2.00%	5.06%	\$14.21
Lawyers' Assistance Program	6.80%	4.95%	\$13.92
Legislative/Rules	6.50%	4.04%	\$11.36
Young Lawyers Division	3.20%	2.83%	\$7.96
Alternative Dispute Resolution/Law Office Management*	1.00%	4.04%	\$11.36
Member Services*	1.00%	3.03%	\$8.52
Public Relations/Communications/Web ¹	9.00%	1.82%	\$5.11
Public Legal Education	1.00%	1.21%	\$3.41
Bar News (direct costs are self-supporting)	4.00%	3.62%	\$10.18
Lawyers' Fund for Client Protection*	3.80%	—	\$10.00 ²
Bar Exam & Admissions	1.50%	—	—
CLE Seminars	1.00%	—	—
CLE Publications	0.00%	—	—
Resources Directory	0.50%	—	—
Sections Operations/Support	2.50%	—	—
	100.00%	100.00%	\$291.00

* New Program since 1993

¹ Most communications and administrative costs are now distributed among all programs as indirect costs.

² Though this program requires a \$10 contribution as part of license renewal, it is not part of the license fee.

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RAISING THE BAR: WSBA Member Input to the Strategic Plan



Dear Members,

The Board of Governors takes seriously its role in carrying out the WSBA mission to promote justice and serve our members and the public. We have worked hard to improve the quality and efficiency of the WSBA and its activities. To build on our successes and learn from our mistakes, we need your input to set the WSBA's goals and priorities to "Raise the Bar" as we move into the 21st century. Your thoughtful response to this survey is much appreciated. Please complete this survey and fax it to **206-727-8320** or visit our website at **www.wsba.org** and complete an electronic version. Please attach to your fax any additional comments and suggestions you would like.

Please respond by May 15.

Thank you,
Wayne Blair
WSBA President

1. In your opinion, what are the three most important functions that the WSBA should focus on in the next 5 years? (Please be as specific as you can.)

- 1) _____
- 2) _____
- 3) _____

2a. What do you see as the number-one challenge facing the legal profession as it enters the 21st century? _____

2b. What do you think the WSBA should do about it? _____

3. In addition to the mission statement, the WSBA has 11 purposes that provide the framework for the services provided. Rate how effective the WSBA is in performing each of these purposes by checking the appropriate box on the rating scale.

PURPOSE:	Not at All Effective	Acceptable	Very Effective	Don't Know
1 Promote independence of the judiciary and the Bar.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 Promote an effective legal system, accessible to all.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 Provide services to its members.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 Foster and maintain high standards of competence, professionalism and ethics among its members.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 Foster collegiality among its members and good will between the Bar and the public.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 Promote diversity and equality in the courts, the legal profession and the Bar.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 Administer admissions to the bar and discipline of its members in a manner that protects the public.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8 Administer programs of legal education.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9 Promote an understanding of and respect for our legal system and the law.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 Operate a well-managed and financially sound association, with a positive work environment for its employees.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 Serve as a statewide voice to the public and the branches of government on matters relating to these purposes and the activities of the association.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4a. Are there purposes in the table above that should be eliminated? Which numbers?
 1 2 3 4 5 6 7 8 9 10 11

4b. Are there any purposes that should be added? _____

5a. Regulatory programs are supported by 70% of license fees. Rate the effectiveness of the following regulatory programs.

REGULATORY PROGRAMS:		Not at All Effective	Acceptable	Very Effective	Don't Know
Office of Disciplinary Counsel.	49%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Audit Program.	3%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Board of Governors, Bar Leadership, Maintaining Member Records, Admissions, Lawyers' Fund for Client Protection, Professional Responsibility Program.	18%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5b. Do you have any suggestions for how the WSBA regulatory programs could be improved? _____

6. 30% of license fees support discretionary programs. The table below lists discretionary programs and the percentage of license fees that support each. Rate the importance of each program and indicate whether you feel that funding from license fees for the program should increase, remain the same or be reduced.

DISCRETIONARY PROGRAMS:	Percent Of Fees	Importance					Funding Level:		
		Not At All Important	Moderately Important	Very Important	More	Same	Less		
Access to Justice – Includes the ATJ Board, Pro Bono & Legal Aid Committee that are supported by WSBA staff.	5%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lawyer Services Department Programs – Includes Lawyers' Assistance Program, Law Office Management Program, Alternative Dispute Resolution Program.	9%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legislation and Court Rule.	4%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
WSBA Service Center – staff and toll-free telephone number to respond to inquiries from members and the public.	3%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Public Legal Education.	1%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Web Communications.	2%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bar News Overhead (direct costs are self-supporting).	3%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Young Lawyers Division.	3%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7a. In addition to the services financed by licensing fees, WSBA members also benefit from a variety of self-supporting discretionary programs such as CLE publications and seminars, Resources directory, and operations and support for the WSBA sections. Are there any additional services or programs that WSBA could provide that would help promote justice or better serve our members and the public? (Check all that apply.)

- I would not add any more programs.
- Increase programs which support the image and role of lawyers and judges.
- Provide group insurance programs (e.g., liability, health, title) to members. Which type(s)? _____
- Provide assistance with taking advantage of technology in my practice (help lines, referrals, seminars).
- Sponsor social events like golf tournaments, ski packages, boating weekends, Bar conventions.
- Educational conventions.
- Other. Please describe: _____

7b. How would you fund the cost of the services you suggested in 7a. above?

- I would increase license fees to cover the cost.
- I would make the program self-supporting by requesting fees-for-service.
- A combination of license fees and fees-for-service.
- I would eliminate or reduce some current programs to fund the new program(s) I suggested. I would eliminate or reduce the following programs: _____

I would eliminate or reduce programs rather than increase license fees.

8. Select the statement that most clearly reflects your experience with the Internet and the World Wide Web.

- I am a "super-user." I can't imagine doing business today without the Internet!
- I'm not quite a "super-user," but I access the Web and use e-mail several times a week. It is a valuable tool for me.
- I access the World Wide Web and use e-mail occasionally. I would like to learn more.
- I access the World Wide Web and use e-mail occasionally. I am a reluctant user.
- I do not use the Internet now, but plan to do so within the next year.
- I do not use the Internet and have no plans to do so.

9. If there was one thing the WSBA could do or change to increase your satisfaction as a member, what would it be? Please be specific. _____

10. To help us better understand our members, please tell us a little about yourself.

Sex: Male Female Type of law practice: _____

of years in practice: _____ # of attorneys in your organization: _____

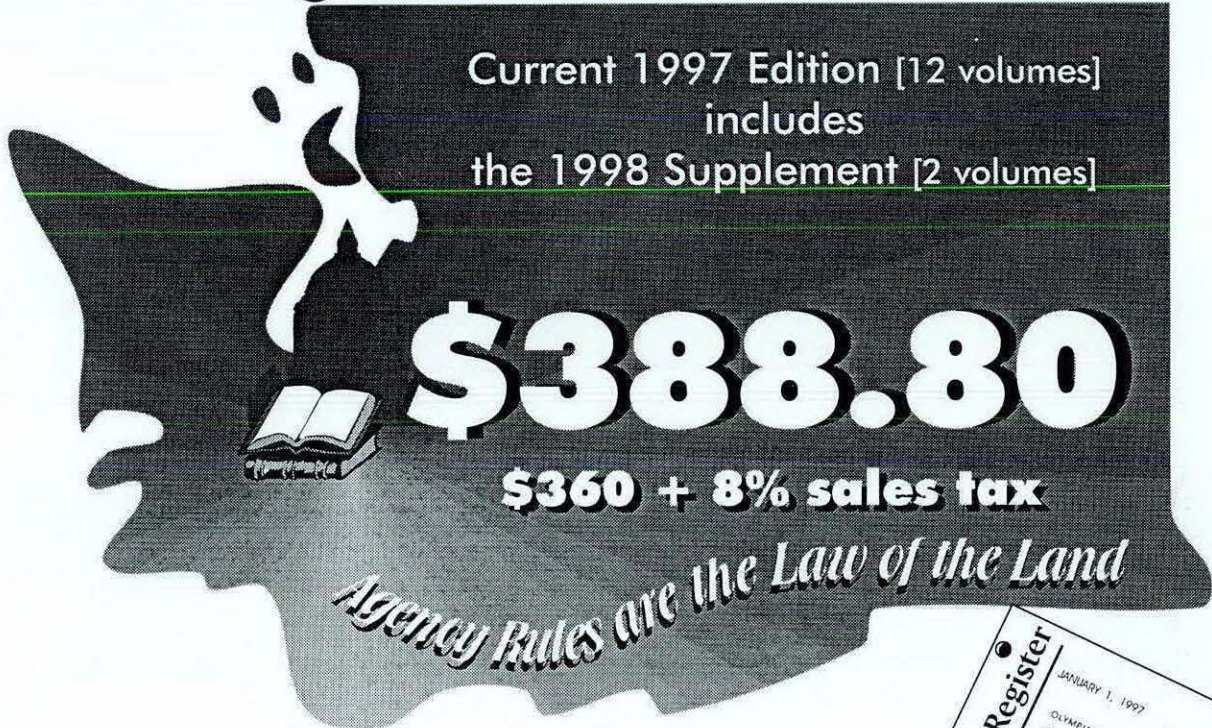
Zip code area of your home: _____

Do you participate in any WSBA Sections/Committees? Yes No

Ethnicity: African American American Indian/Alaskan Native Asian Caucasian Hispanic/Latino

More than one Other _____

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Smoke Meets High Tech:

The Wiring of Washington's Tobacco Case

By GARY LARSON

To appreciate the important role that high technology plays in modern litigation, consider what's required to produce 27 million pages of discovery documents. That was the task facing Washington Attorney General Christine Gregoire and her team of attorneys and support staff in 1996-97, as they worked to comply with a massive discovery request spawned by the state's multi-billion-dollar lawsuit against the U.S. tobacco industry.

Through negotiation, Gregoire's tobacco litigation team was able to significantly narrow the scope of discovery to "only" 27 million pages. But that still meant the team faced a monumental task when it came to locating, reproducing and redacting literally tons of records stored in numerous government offices, a records warehouse and the state Archives.

One of the fortunate circumstances that helped ease the task was the exist-



The experience altered previous thinking about what is possible to achieve during discovery in a complex-litigation case, making the production of millions of documents seem not quite so overwhelming.

ence of a state-of-the-art computerized indexing system at the Washington Records Center in Lacey. By importing that indexing database to their own computers, the state's attorneys could more easily determine which among a universe of 75,000 boxes — containing approximately 150 million pages of potentially

relevant documents — might hold records that were responsive to the discovery request.

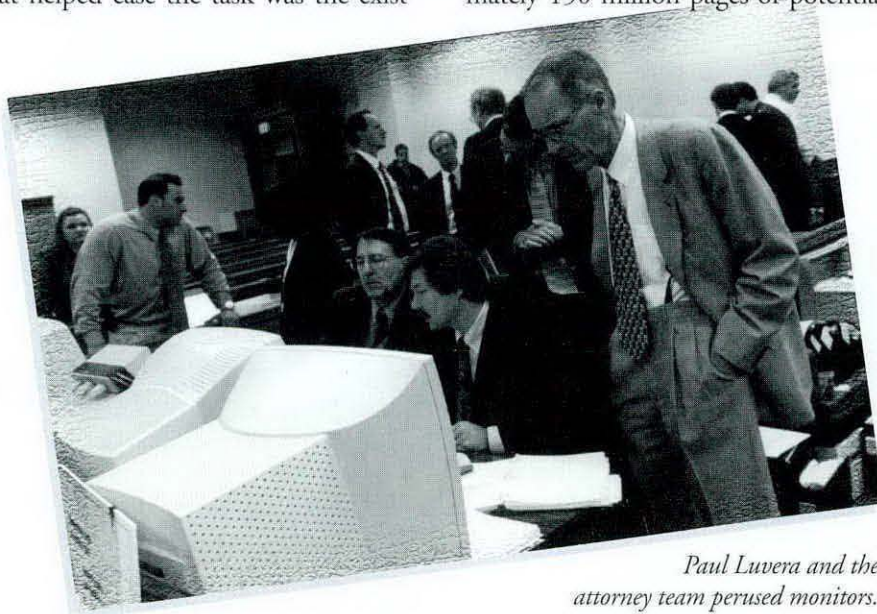
During the document review, the Attorney General's team sometimes quickly determined that whole batches of boxes were both responsive and free of privileged information, meaning they could be provided to the defendants *en masse* without further processing. In one instance, approximately 750 boxes containing 1.5 million pages of original documents were made available for inspection. Since the defendants said they wanted to look at all the boxes, they were removed to a viewing area by fork lift. After a few hours, the defendants tagged everything in 53 boxes and took them off for copying.

The experience altered previous thinking about what is possible to achieve during discovery in a complex-litigation case, making the production of millions of documents seem not quite so overwhelming.

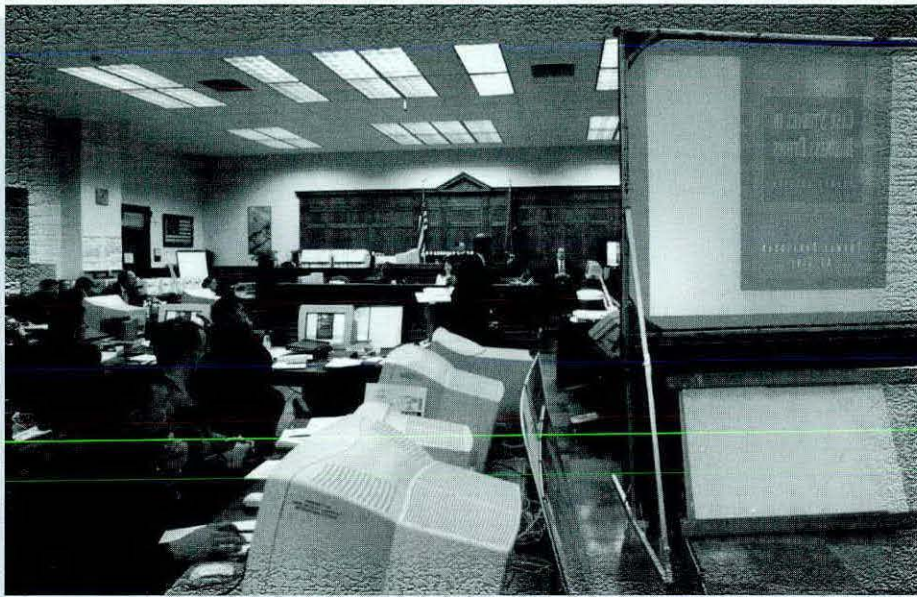
The extensive use of sophisticated discovery and trial preparation tools was only one of the larger-than-life aspects of the tobacco case, which was filed in King County on June 6, 1996. The lawsuit followed more than a year of research into tobacco-industry practices and the resulting damages they had caused to the health of millions of smokers.

Washington sought to recover costs resulting from the industry's alleged violation of antitrust and consumer-protection laws. Among other things, the state claimed that the defendants conspired to suppress information about the adverse health effects of tobacco, manipulate nicotine levels to keep smokers addicted, and withhold reduced-risk products from the market.

Initially, settlement negotiations by



Paul Luvera and the attorney team perused monitors.



Examination of expert witnesses was aided by large screen projectors.

Washington and other states were aimed at producing a tobacco agreement that Congress could implement on a nationwide basis. When congressional attempts to pass an initial tobacco settlement collapsed in June 1998, Gregoire and other attorneys general were forced back to the negotiating table, while their litigation teams continued preparing for the start of trial in September of this past year. Only after Washington's trial had entered its ninth week before King County Superior Court Judge George A. Finkle did the New York negotiations led by Gregoire produce the financial settlement that is considered by some to be the largest in history.

A strong state case against the tobacco industry — built with the aid of high-tech legal tools used during both discovery and trial — helped produce an out-of-court settlement that will require the tobacco defendants to make payments in perpetuity to Washington and 45 other states. Over the next 25 years, Washington will receive approximately \$4 billion. To settle the cases filed by Washington and other states, the industry also agreed to significant marketing restrictions on tobacco products.

Without powerful computers, digital scanners and other high-tech tools, the march toward trial and the eventual settlement might have hopelessly bogged down as the parties spent months, or even years, slogging through mountains of documen-

tary evidence produced by both sides.

The state's early decision to digitally image discovery documents and store them on compact disks made it easier to mount an effective trial presentation later on. High-tech tools used during the settlement-shortened tobacco trial included an advanced overhead-projection system, multiple computer monitors for presenting digital images of evidence, and software for producing digitized clips of videotaped depositions synchronized to rolling textual subtitles of the deposition testimony.

Responding to Defendants' Discovery Requests

From the first, the state faced the danger of becoming mired in discovery. Had Washington been forced to comply with the defendants' original discovery request, it might have had to produce as many as 500 million pages of documents from virtually every agency, commission, board and sub-unit of state government. Even with a narrowed scope, the production was so massive that the discovery phase could have dragged on well into the next millennium if new ways of doing things hadn't been found.

In addition to records stored at the state Records Center, millions of responsive documents were located in active agency files and at the state Archives. About 19 million out of 27 million total discovery

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Hoffer v. State, 110 Wn.2d 415 (1988)

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pages were produced as original documents, meaning the state did not photocopy or otherwise reproduce them for the defendants. For the remaining 8 million pages — which either contained privileged material or had to be quickly returned to an agency — attorneys decided to make copies on digital scanners and provide them to the defendants on com-

compact disks, called CD-ROMs.

Disk-based production had several advantages. For one thing, physical documents only had to be handled once — when the original was removed from the file, copied on the scanner and returned to the file. Traditional photocopying requires documents to be handled several times in order to make the multiple cop-


ies needed for discovery. That increases the potential for mistakes, while “burning” extra CDs to make digitized copies is a virtually error-free process. Production on disk also saves money by greatly reducing the cost of photocopying millions of pages and then securing the space necessary to store them. During Washington’s tobacco trial, an entire set of discovery documents on CD-ROMs fit onto a few shelves in a back room of a downtown Seattle office building.

The Attorney General’s Office had gained experience with digital imaging a few years earlier, when it used the procedure to manage about three million pages of discovery documents in a case involving the State Investment Board. Relying on experience gained in that litigation, the state turned to newer and more powerful computers to manage and process about 10 million pages of digitized discovery in the tobacco case.

One of the early obstacles in the digital-imaging process was finding a legal copying service or other contractor willing to undertake the scanning project. Some service bureaus had performed digital imaging before, but only with clean photocopies, not the creased or rough-edged originals often found at the records center and in agency files. Some of the service bureaus performing such work said a project like the one presented by the tobacco case had never been done before, was too big and would cost too much. After some searching, however, the state did find a contractor in Bellevue willing to take on the project.

State records often contain privileged information which must be redacted before the records can be produced. In the tobacco case, for example, the state had hundreds of thousands of pages of records containing confidential information about people who had received state services. That identifying information had to be blocked out, even though the remainder of the document was subject to discovery.


Another reason for imaging documents was the ability to redact the privileged information directly on the image of the document, rather than resorting to the time-intensive manual-redaction process. Anyone who has ever manually re-



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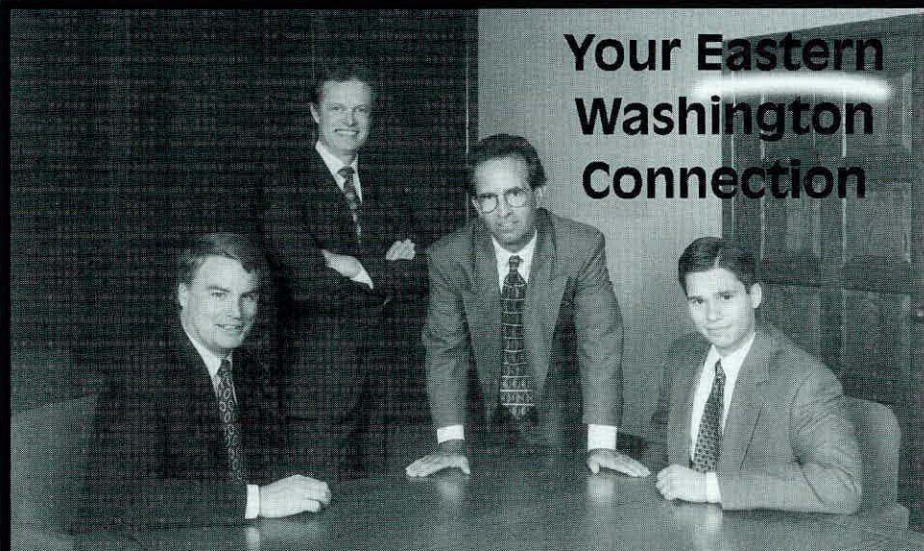
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Interest in high-tech trial aids — both among law firms and among companies hoping to fill a niche in the high-tech marketplace — continues to grow.

dacted documents, using the triple-photocopy, black-pen and sticky-tape method, knows how long this can take. Given the thousands of confidential documents the state was obligated to produce, manual redaction was out of the question. A means was needed to redact images directly, on-screen, as fast as possible.

Representatives of a Seattle-based database software company were confident that such a program could be written within the short time available to keep the state on schedule to meet discovery deadlines. Working with the tobacco team, the company created in only a few weeks a new "point and click" redaction program. A custom user interface enables the reviewer to focus on the decision to produce the image "as is" or to withhold or redact privileged information. The system tracks what was done to the document and speeds the reviewer on to the next image. CD-ROMs were then reproduced for defendants (containing only the images that were to be produced "as is" and those with blacked-out redactions).

By the summer of 1997, two shifts of 50 temporary employees each were busy making paperless redactions in a downtown Seattle office crammed with computer terminals. Once the system was up and running, one redaction-reviewer could review more than 2,000 pages a day. In the end, the state met its discovery deadline, and the defendants had received or reviewed 27 million pages of discovery documents. Among the eight million pages on CD-ROM were 800,000 pages of redacted documents. The task was accomplished with one of the lowest per-page discovery costs ever achieved by the Attorney General's Office.

Preparing for Trial

Technology is changing so rapidly that what was new in the courtroom yesterday is old hat today. Partly for that reason, strategies for effectively utilizing high-tech equipment in the courtroom must be re-examined every time a major new case comes to trial.

Interest in high-tech trial aids — both among law firms and among companies hoping to fill a niche in the high-tech marketplace — continues to grow. That is evidenced by attendance at annual technology conferences sponsored by organiza-

tions such as the National Association of Attorneys General and the ABA, whose Techshow last March drew 2,300 attendees and more than 100 companies displaying products and services.¹

One reason for the interest is the growing body of research suggesting that in the age of TV, jurors with short attention spans expect and appreciate an interesting or even entertaining presentation using multiple media. As two writers have stated, "Like it or not, with the advent of Court TV and the high-profile cases of the mid-1990s, jurors' expectations have

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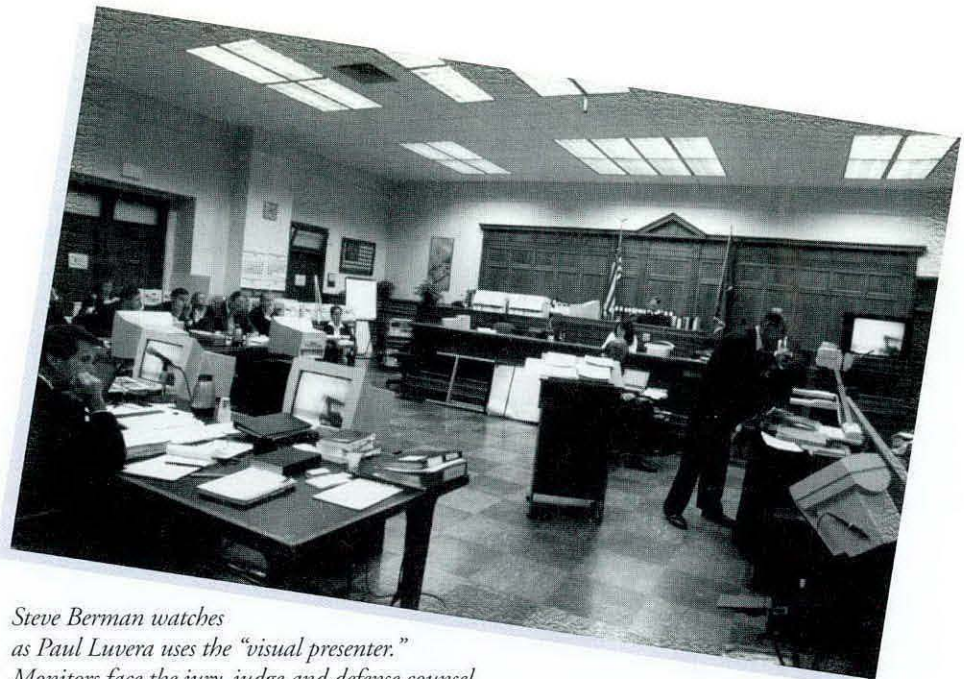
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changed; they have become demanding consumers of high technology in the courtroom."²

On the other hand, preoccupation with technology and glitzy presentations can result in losing sight of the real purpose of courtroom technology—the administration of justice within the adversarial system. “We can get so tied up with gadgetry, electronics, and television that we forget that these are simply tools,” said Frederic Lederer, a high-tech courtroom expert and Chancellor Professor of Law at William and Mary Law School.³ Many experts agree that litigators should resist the temptation to use high-tech gadgetry simply because they can. Employing technology requires careful planning and a lot of thought up front about presenting a case at trial. In some situations, it may be better to “use something simple and real instead of an electronic picture.”⁴ Old-fashioned poster board, for example, may be more practical for presenting timelines and organizational charts, which usually require a horizontal format. Also, anything that a lawyer wants to leave within the jury’s view may be better prepared as a static exhibit.

In order to prepare for the tobacco case,



Steve Berman watches as Paul Luvera uses the “visual presenter.” Monitors face the jury, judge and defense counsel.

Washington’s Attorney General appointed a Seattle attorney, Paul Luvera, as lead trial counsel and turned to other private firms for additional help. One firm that assisted the state on high-tech matters was South Carolina’s Ness, Motley, Loadholt, Richardson & Poole, which had conducted tobacco litigation in Mississippi,

Florida and Texas and is one of the country’s leading firms in mass tort litigation, especially in the field of asbestos.

Like the Washington Attorney General’s Office, Ness Motley was searching for a firm that could put together a package of high-tech tools for courtroom use. Both were interested in a trial pre-

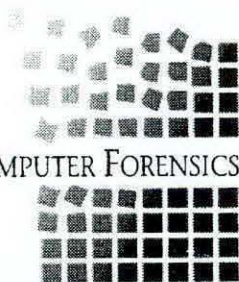


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sentation system that would present videotaped depositions and also project documents that had been captured electronically on CD-ROM onto a screen.

During the summer of 1998, representatives of the Attorney General's Office and Ness Motley interviewed four firms with high-tech courtroom capabilities. They settled on a Fort Lauderdale, Florida company with experience in high-tech courtroom presentation which had also provided static exhibits in such cases as the Oklahoma City bombing trial of Timothy McVeigh.

One of the major reasons this company was selected was its ability to use two important pieces of software technology: TrialDirector and DepositionDirector, products developed by an Arizona company. TrialDirector permits parties to present exhibits, videotaped depositions and animations stored in digital form and shown on computer monitors located around the courtroom. Rather than slow the trial while locating physical copies of such materials, TrialDirector allows an attorney to instantly present an exhibit by waving a laser pen over an appropriate bar code in a trial notebook. DepositionDirector is used to create digital clips of videotaped depositions accompanied by lines of transcript scrolling across the bottom of the image like subtitles in a foreign movie. Those clips can then be placed on CD-ROM and accessed like any other presentation through TrialDirector.

One of the pluses of the system is that deposition transcripts can be synchronized with the videotape, allowing jurors to read at the same time that they are listening. That is an advantage, since some people learn better by reading, while others learn better by listening.

Besides the software, the trial consultant company had developed its own system, called Courtroom Sentinel, to serve as a kind of central switching station for computers and monitors inside the courtroom.

Fear of "electronic mishaps" is one of the reasons some attorneys are reluctant to use such technology in front of a jury. In fact, trial consultants urge lawyers to spend time outside the courtroom getting to know the technology, thereby reduc-

ing their fears and the risk of slip-ups.⁵ Prior to the tobacco trial, staff from the Attorney General's office and Ness Motley jointly trained on the equipment that would be used during the tobacco trial.

As Washington's tobacco trial plans took shape, meetings were held with defense counsel to discuss courtroom arrangements and needs. The state's lawyers

learned that the defendants were not planning to present exhibits in computerized form, but did intend to make heavy use of another high-tech display device known by its brand name, ELMO. Similar to an overhead projector, the ELMO uses a camera to take pictures of objects from above, rather than projecting light from underneath and through a mirror-

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and-lens system to a screen. ELMO allows the user to display a variety of materials, from three-dimensional objects to sheets of paper or transparencies. ELMO images could be sent to courtroom monitors via an electronic signal passing through Courtroom Sentinel, thus making it possible to limit viewing of the images in certain parts of the courtroom as required. Under an agreement between the parties in the tobacco trial, the defendants provided an ELMO, along with a large screen and rear projector. The state provided computers and at least a dozen large computer monitors. Monitors located at the defense table were paid for by the defense, while those for the judge, witness and jury were split equally.

The parties jointly presented their plan to Judge Finkle, who supported the concept. But before the plans could proceed, the courtroom itself had to be prepared. Because a large number of spectators were expected to attend the tobacco trial, King County court administrators agreed to move the trial from Judge Finkle's courtroom to the county Courthouse's far more spacious presiding courtroom. But the older courtroom, with its hard benches, dark oak panels and linoleum floors, was



Early planning assures that high technology becomes a way of facilitating a case, rather than an end in itself or a ball and chain around the litigator's ankle.

not exactly the perfect setting for a high-tech trial in the late 1990s. For one thing, its electrical service proved inadequate to handle the large number of computers and other equipment envisioned by the parties. To solve that problem, two large power cables were run down through the courtroom's ceiling to the floor and along the walls on either side. Each cable had enough three-prong plugs to accommodate 20 hookups. It took two nights to string all the wires, hook up the computers and make the courtroom operational for pre-trial motions on September 14.

The effect on that day was a little like

walking into an old-style courtroom which had been morphed into a vision of Mission Control in Houston.

Conclusion

Analogizing the courtroom to Mission Control is appropriate in another way. For the Attorney General's Office, the tobacco lawsuit was a little like the Apollo space program. It provided incentives to do things that would otherwise have been thought impossible before. The experience suggested that with a little planning, high technology also can be made to work in situations that don't rise to the litigation equivalents of moon shots. For example, the redaction software developed for the tobacco trial is now being used by the Attorney General's Torts Division for 20,000-page document reviews. Now one paralegal can go through 10 boxes of documents and review every single page, redacting where necessary, in a matter of days. That would have been impossible to think about with the old manual system.

While we may not yet have reached the day when litigators "will throw out their old three-ring trial notebooks and replace them with laptop computers,"⁶ high technology remains an increasingly important consideration in discovery and trial planning. To take full advantage of these useful tools, lawyers need to think early about the possible uses of technology, given the needs and circumstances of a particular case. Early planning assures that high technology becomes a way of facilitating a case, rather than an end in itself or a ball and chain around the litigator's ankle. ◻

Gary Larson, a Public Information Officer in the Washington Attorney General's Office, is a trained paralegal and former newspaper reporter in the Seattle area.

NOTES

1 Debra Baker, *Electronic Future Is Now, Courtroom Innovations, Lawyer Tips at Techshow*, 98 A.B.A.J. 93, (May 1998).

2 David Island & Ursula Connolly, *Technology in the Courtroom: Reaching Jurors, Winning Cases*, N.Y.L.J., August 5, 1997, at 5.

3 Donald Dilworth, *Is Technology Changing Civil Justice?* Trial, March 1997 at 45.

4 James W. McElhane, *Gizmos in the Courtroom: Don't Use Technology at Trial Just Because You Can*, 83 A.B.A.J. 74 at 75 (1997).

5 Island, *supra* note 2, at 5.

6 Baker, *supra* note 1, at 93.

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Reforming State Supreme Court Elections

Washington Supreme Court Justice Richard Guy recently complained that the deliberations and internal relations of the state's high court lack civility. This lack of civility may affect the quality of the decisions the Court makes. As the Court's new Chief Justice, a largely administrative and ceremonial post, Justice Guy intends to use his position to restore civility to the Court.

Justice Guy is right that the Court has a civility deficit, but he misses the larger point. Lack of civility is the effect, not the cause, of the Supreme Court's problems. The cause is the over-politicization of the Supreme Court in particular and judicial elections in general. Members of the state Supreme Court are not only judges, they're politicians who have to run for election every six years. And in recent years they've behaved a lot more like politicians than judges.

The Supreme Court's unique position and vital function in our government demand different political treatment, and its political problems demand radical reform. The present system should be overhauled to elect Justices in special off-year elections, separated as much as possible from legislative and local races. Candidates should be rated by a special commission, and an intense public education effort should support the special judicial elections. Candidates would not be required to submit to the rating process, but those doing so and receiving a "qualified" rating would receive campaign money from a special state-managed fund, and would have the rating listed next to their name on the ballot. Finally, justices should be permitted to serve long, non-renewable terms, with a special provision for recall of justices for serious judicial misconduct.

This combination of reforms would strike the best balance between insulating the Court from short-term political pressures, which arguably have made the Court a political target for extreme and unqualified candidates, and keeping the Court responsive to the voters. This proposal may seem radical, but it isn't nearly as radical as taking choice away from the voters. About half of all states have adopted some form of the Missouri Plan, which eliminates popular election of judges and substitutes appointment by the executive and unopposed judicial retention elections. In 1996 a Washington state commission recommended a similar plan for this state. Before we adopt a judicial selection

model that puts the judiciary at an even greater remove from the citizens it serves, we should explore reforms that preserve the voters' right to choose their judges.

A few years ago, now-outgoing Chief Justice Barbara Durham helped push the Court into the political spotlight by championing a state constitutional amendment permitting the Court, among other things, to reduce its number from nine to seven members. This episode could serve as a case study of the political turmoil plaguing the Court in recent years. It wasn't clear why the constitutional change was necessary, and the Court itself couldn't agree on a rationale. Justice Durham claimed that drafts of judicial opinions were taking too long to circulate to nine judges, and fewer judges would translate into shorter deliberation time. Justice Robert Utter, who retired about the time the amendment was being considered, publicly disagreed, claiming the Court no longer needed nine justices because it no longer had enough cases to keep the justices busy.

The irony is that this public political fight and expenditure of valuable political capital was unnecessary. The "remedy" proposed by the amendment was essentially unrelated to the problem. If the Court really wanted to speed up decision time, all it had to do was voluntarily adopt an internal rule requiring it to issue opinions within a certain period of time and then stick by it.

Justice Durham also thrust the Court into the political spotlight last November election when she publicly declined to support the re-election bid of incumbent Justice Barbara Madsen and actively endorsed challenger Judge Jim Bates. Knowledgeable commentators observed that it was unprecedented for one incumbent to decline to support another.

In the final irony, Justice Durham is now stepping aside to take a position on the federal bench, where her lifetime appointment will effectively insulate her from political pressures.

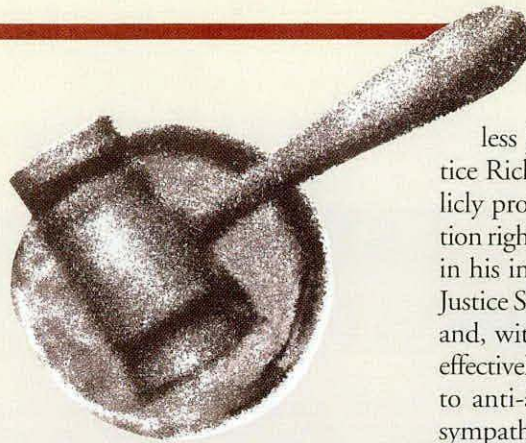
In the meantime, the Court has become another victim of the radical politicization of public service that has occurred in the last 10 years. The Court has become addicted to political conflict and political process. Candidates for the Supreme Court run in the politically charged atmosphere of legislative and local elections. Although judicial races are nonpartisan, judges

Before we adopt a judicial selection model that puts the judiciary at an even greater remove from the citizens it serves, we should explore reforms that preserve the voters' right to choose their judges.

run alongside party-identified candidates for state legislator, local water district commissioner, city auditor, Congress, county prosecutor and every other political office. Judicial candidates can suffer or benefit from the buzz created by partisan political candidates.

For example, if a particular judicial candidate identifies himself as "tough on crime," he can benefit from party and candidate ads advocating tougher criminal laws. Despite judicial conduct rules against making campaign promises, the judicial candidate can use identification with contentious issues and polarizing party candidates as an election springboard. Unfortunately, if the judicial candidate wins, he or she effectively takes the bench owing a political debt. Judicial races, however, are nonpartisan for a reason, and no judicial candidate should be placed in the position of even appearing to owe a political debt.

Candidate ratings from interest groups can also create the impression of a political debt. Judicial candidates seek ratings from organizations identifying themselves with particular issues and constituencies. These ratings could be interpreted as constituting a kind of non-specific promise by the candidate. At the very least, if a case involving the interest group



Candidate ratings from interest groups can also create the impression of a political debt...if a case involving the interest group ends up in front of that judge after the election, the judge won't be a blank slate. Depending on the rating the judge received, both sides will have an idea of the judge's sympathies or prejudices.

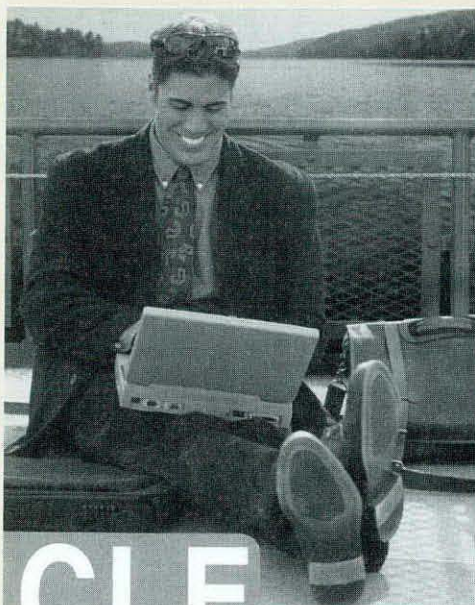
ends up in front of that judge after the election, the judge won't be a blank slate. Depending on the rating the judge received, both sides will have an idea of the judge's sympathies or prejudices.

A number of ideologically extreme candidates have sought seats on the Court in recent years, driving up the costs of elec-

tions and making the campaigns less judicial and more political. Justice Richard Sanders, for example, publicly proclaimed his opposition to abortion rights and support for property rights in his initial bid for the Court in 1995. Justice Sanders won election to the Court and, within minutes of being sworn in, effectively acknowledged his political debt to anti-abortion forces by delivering a sympathetic speech to a pro-life group. Although the speech raised questions of judicial propriety, a special panel of the state Court of Appeals later ruled that Justice Sanders' remarks did not violate the Code of Judicial Conduct.

Nonetheless, Justice Sanders' campaign style set a strong political tone for Supreme Court elections. This process of politicization came back to haunt Justice Sanders in 1998 when a challenger, state Senior Assistant Attorney General Greg Canova, utilized aggressive political tactics in an unsuccessful bid to unseat him. Fortunately, despite his politically controversial start, Justice Sanders has turned out to be a thoughtful Justice whose opinions have demonstrated a strong independent streak and have sometimes disappointed the ideologues who supported him.

Conflict on the Court has also turned inward, with occasional personal attacks by the justices on each other, sometimes in the text and footnotes of written opinions and sometimes from the bench while parties are trying to conduct business before the Court. This conflict has been reflected in the increasing number of concurring and dissenting opinions. Concurrences and dissents are sometimes essential to highlight sincere differences in interpretation. The Court, after all, has been presented with, and has accepted review in, increasingly more complicated and more politically oriented cases in recent years. It's also unrealistic to expect nine learned judges to agree on everything. Excessive dissents and concurrences, however, unarguably muddy the water for lower-court judges, parties and attorneys who have to interpret and apply the law.



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What can be done about this over-politicization? Let's begin by reminding ourselves of the structure and purpose of our system of checks and balances. The judicial branch does not exist to reflect the short-term opinions and momentary wishes of the citizens, and isn't suited to that role. For that, we have the legislative and executive branches, whose proactive authority places them closer to the popular will of the people. Courts are passive and reactive. They can't reach out and grab cases that seem interesting. They must wait for aggrieved parties to voluntarily file an actual case or controversy and ask the Court to help resolve a problem the parties, presumably, could not resolve themselves.

Once the people's momentary desires are expressed through legislation, the legislature passes the law and the governor signs it, it's up to the Court to deliberately and thoughtfully examine the law to see if it agrees with the broad principles of our state and federal Constitutions and the values on which our society is based. This deliberative process does not benefit from exposure to short-term political pressures. And practicing before the appellate courts of our state, one sometimes gets the feeling that the honorable and diligent judges of those courts are constantly looking over their shoulders, wondering and worrying about the political pressures that will be brought to bear in the next election.

Supreme Court elections should be moved to off-years and separated as much as possible from all state legislative races, U.S. congressional and senate elections, and the governor's race. A blue-ribbon commission of citizen representatives, sitting judges and attorneys should conduct evaluations of Supreme Court candidates, inquiring into their length of experience in the law and the significant cases they have handled. The evaluation process would also include interviews with the candidate's former colleagues, opposing counsel and judges before whom the candidate has appeared.

Candidates would be rated "qualified" or "unqualified," and "qualified" candidates would be identified as such on the ballot. This evaluation process would not

be mandatory, but qualified candidates would receive equal amounts of campaign money from a state-run fund and would therefore be relieved of the burden of raising money. Campaign expenditures would be limited to the amount received from the state fund.

Candidates declining to be rated, or rated as unqualified, could still run, but their names would not be identified on the ballot as qualified, and they would have to raise their own campaign funds.

Their expenditures would be limited to the amount given to the qualified candidates from the state-managed fund. Individuals, PACs and other political groups wishing to contribute to the campaigns of qualified candidates would have to contribute to the state-managed fund, which would then divide the contribution among the qualified candidates.

The most radical reform would be term limits for Supreme Court Justices. Unlike other term-limit proposals, the ra-

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tionale here is to protect the elected official from the public, rather than protecting the public from the elected official. Justices would be permitted to serve one 12-year term, but would be permitted to run again after sitting out for two years.

The single-term limitation would insulate the Court from short-term political pressure. A 12-year term, however, is long enough to provide institutional continuity and permit justices to develop a well-considered judicial philosophy. As a

point of comparison, a 12-year limitation would not deprive us of the service of any of the current Justices. Apart from Justice Durham, who is going to the federal bench, and Justice Dolliver, who is retiring, the longest-serving Justice is Charles Z. Smith, who was sworn in on July 18, 1988.

During their term, Justices would be subject to recall only for serious judicial misconduct. Complaints of serious misconduct would be investigated by the

Commission on Judicial Conduct (CJC). If, after investigation and fact-finding, the CJC found a basis for an allegation of serious misconduct, a recall election would be held. The recall decision, like the initial election, would therefore remain in the hands of the electorate.

This reform proposal also includes an intense voter-education effort, with an informational pamphlet highlighting all candidates' backgrounds, candidate profiles and an electronic bulletin board for voters' questions on the state website, as well as a series of state-sponsored candidate forums for qualified candidates.

This proposal strikes a balance between the present system and the judicial selection plan offered by the Walsh Commission in 1996. The Walsh Commission, a 24-member committee of citizens, judges and attorneys headed by Seattle journalist Ruth Walsh, proposed a modified version of the Missouri Plan. Under the Walsh Commission's proposal, judges would be appointed by the governor from recommendations made by a special nominating commission. Judges would then run in "contestable" elections after 12 months of service, and if re-elected would run in unopposed "retention" elections every so often.

The Walsh proposal, in effect, shows no confidence in the voters and drains all of the blood from the judicial election process. The citizens deserve a direct voice in the judicial selection process. Insulating Supreme Court justices from the sound and fury of short-term political pressures while preserving the right of the people to freely choose their judges is the best compromise. *LD*

Todd De Groff is a Seattle attorney and writer. He is the former editor of the Washington Young Lawyers Division newsletter, De Novo, and a former municipal court pro tem judge. The views expressed herein are the author's and do not reflect the opinions of the WSBA.

A different version of this article first appeared in the *Seattle Times*, January 3, 1999.

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On the Supreme Court

I read with great interest recent editorial commentaries decrying conflicts on Washington's Supreme Court, and suggesting solutions for minimizing such conflicts. Some suggest there is a lack of civility among the members of the Court, leading to too many dissenting and concurring opinions. There have been suggestions that these phenomena are the result of "politics," particularly in judicial selection, and the recommendation of the elimination of the present system of judicial elections in favor of election of justices for a single 12-year term after screening by a "blue ribbon" panel.

These criticisms are superficial and erroneous. I share the view expressed by Justice Jim Dolliver in a recent article in *Bar News* [November 1998, p. 13] that personal relations among the justices of the Washington Supreme Court are quite cordial today. I would echo the words of the late Justice William O. Douglas speaking of the United States Supreme Court: "The Court in my time always had amicable personal relations. The problem was to keep that feeling of compatibility active and alive, for the work of the Court involves fierce ideological conflicts of a very fundamental sort."¹

There are, indeed, stark philosophical differences on our Court, and those differences are expressed in vigorous and passionate opinions. Far from bad, this diversity of philosophies is healthy for the law. Issues that come to the Court are complex and difficult. Differing views on these issues are beneficial. I doubt the public would want the Court to answer profound socio-legal questions in lockstep, oblivious to the complexity of those problems.

I do fault the media's lackadaisical analysis of Court decisions. It is easy to focus on perceived personality conflicts of the judges, rather than analyze the views of the judges as expressed in their opinions. If the media spent more time understanding *why* the Justices have differing viewpoints, the public would be better informed about the Court as an institution.

As for changes in the selection process for Washington's judges, I strongly oppose any restrictions on the right of Washington citizens to elect their judges. Proponents of a "merit" selection system have not made their case for abandoning the present system for election of judges in Washington. Their selection alternatives create more problems than they solve.

The men and women who make up Washington's judiciary are very capable. Washington's judiciary has not had a hint of corruption or excessive influence of partisan politics leveled at it. Moreover, the process of judicial election in Washington, coupled

with the power of the Governor to appoint to vacancies in the judiciary, has generally resulted in a more diverse judiciary in Washington than is true in many other jurisdictions. Thus, if Washington's judiciary is strong and well-respected, the system by which these individuals were selected cannot be too seriously "defective."

The proponents of "merit" selection generally believe the selection process should be entrusted to a group of worthy citizens to make recommendations to the electorate. This is insulting to Washington's voters and assumes they are ill-informed or foolish. It is impossible to find a group of "philosopher-kings" who will give us better judges than Washington's present selection process. A group of worthy citizens presumably would include lawyers and judges. To confer even greater power on such a special group, apart from the electorate, must be viewed by the public as the legal establishment perpetuating itself.

I also seriously doubt "politics" will be avoided in any "blue ribbon" selection commission. Who selects the selectors? I suspect their appointment and decision-making will be influenced by various interest groups. Instead of "politics" in the open — in the electoral process —

politics will be present behind the closed doors of the "blue ribbon" commission. Politics will not magically disappear.

In the final analysis, I simply do not believe Washington citizens will abandon their cherished right to elect judges. Historically, Washington citizens have expressed a very strong desire to elect their public officials. This is the explanation for Washington's long ballot for election of numerous executive-branch officers, from the Land Commissioner to the Governor. Washington voters will not forgo their right to elect judges any more than they will forgo their right to elect legislators or executive-branch officers. It is an exercise in futility to recommend abandonment of the present system of election, as the voters will very likely reject such an effort at their earliest opportunity.

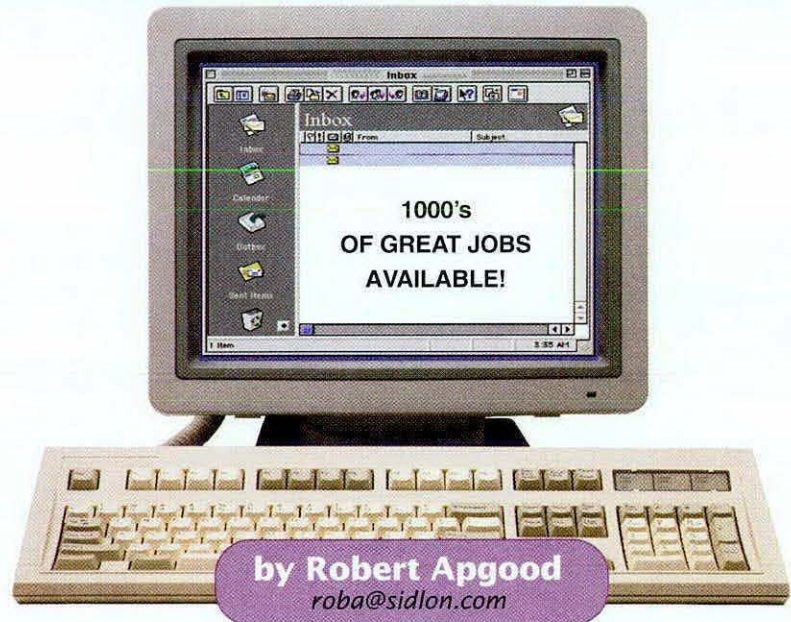
I urge you to reject superficial assertions that Washington's Supreme Court is somehow dysfunctional. It is far from that. I also urge you to reject radical alterations in our present judicial selection system that would restrict the people's right to elect their judges, whether such suggestions involve extended terms or, worse yet, the Missouri system of retention elections where citizens vote "yes" or "no" on a judge's tenure. ♣

**In the final analysis,
I simply do not believe Washington
citizens will abandon their
cherished right to elect judges.**

¹ *The Court Years, 1939 to 1975: The Autobiography of William O. Douglas*, p.37.

It is a common misconception that the CDA was intended to prohibit the distribution of obscenity over the Internet. In fact, the CDA had nothing to do with obscenity law, and the challenge by the ACLU did not challenge any prohibitions of obscenity. The ACLU challenge to the CDA dealt exclusively with the "indecent materials" provisions in the CDA.

CyberPorn Law is Born



Since I have been active on the Internet for a number of years, one or more of my various e-mail addresses has naturally been included on the lists of e-mail addresses that spammers sell to each other. It is a constant challenge for me to filter out the resulting spam through the use

Supreme Court Decisions: <http://supct.law.cornell.edu/supct>
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of blocking software and e-mail software configurations. Nevertheless, spam still finds its way in the door, and on any given day some 10 percent of the 150-200 messages I receive are spam in one form or another. Were I to pursue the subject vigorously, I could make about \$5,000 a month on the fines for spam that violates the Washington State Anti-Spam law.¹

Almost without exception, spam comes in thinly-disguised e-mail envelopes (i.e., the "From:" is a fictitious person, or the "Subject:" is misleading, e.g., "In response to your message"). Usually, the spam I get involves get-rich-quick schemes. Much less frequently, the message has some innocuous "Subject" like "1000's of Great Jobs available!" and, when opened, the message is detailed instructions on how to get to some new pornography site. Admittedly, these are rare. But I note this because my buddy Peter recently told me of a spam-mail he received that promised access to a new "super porn" site touted in the subject line. Somewhat taken aback that the promotion was so blatant, instead of deleting the message unopened (as is his usual response), he opened the message to discover that it was a well-disguised teaser to get him to point his web browser at (you guessed it!) a job board! I love this technology!

Which brings us to our topic for the month: Pornography on the Internet. Well, sort of... Pornography law was the impetus for one of the most important cases related to the Internet to date. Note that I say "impetus" and not "subject matter." The true subject matter of *ACLU v. Reno*,² a challenge to the Communications Decency Amendment³ (CDA) enacted as part of the Telecommunications Reform Act of 1996, was the defense of the First Amendment right to free speech. Heralded as a "clear, logical and correct statement which will be the cornerstone of free speech decision-making into the next century,"⁴ *ACLU v. Reno* answered questions about scope and pervasiveness which had been raised in attempts to apply prior holdings of the Court in the *Butler v. Michigan*,⁵ *Miller v. California*,⁶ *Pacific v. F.C.C.*,⁷

Sable Communications v. F.C.C.,⁸ and *Turner Broadcasting v. F.C.C.*⁹ cases, among others, to the Internet.

Before we discuss the impact of *Reno*, let's first look at some of the relevant terminology. Sadly, some of these terms have been used in an interchangeable fashion when, in fact, they are not interchangeable. For the sake of clarity, here are the legal definitions of the most important terms:

Pornography: material that presents or displays sexual content with the intent of being arousing. This material is presumptively legal and protected by the First Amendment (excluding *Child Pornography*, below).

Child Pornography: material that depicts a child engaging in explicit sexual acts, or posing in a "lewd and lascivious" manner. This material is illegal. Period. It cannot be trafficked, nor possessed in any manner or form in the United States or

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its territories. Verbal or textual material that involves children, however, is *not* child pornography (but may be “obscene”).

Obscenity: for material to be “obscene” it must meet the following three-part test defined in *Miller v. California, supra*:

1. a state statute must exist that describes with specificity the particular sexual (or excretory) acts that cannot be depicted;
2. the depiction of the sexual acts must be “patently offensive” and “appeal to the prurient interest” as judged by a reasonable man applying the standards

of the community *in which the depiction occurred*; and

3. the material *must* otherwise lack “serious” literary, artistic, scientific, political or other social value.

Simply put, it is “obscene” if it satisfies the first two prongs of the test, and cannot be redeemed under prong three of the test.

Indecency: something that contains “patently offensive” sexual content or profane language. On its surface, this seems to just about cover it all. This term, however, has legal significance *only in the context of broadcasting and so-called dial-a-porn services (telephone)*. These two media are under FCC jurisdiction. Traditional print media and the movie industry do not fall under this jurisdiction. Consequently, unless the medium is regulated by the FCC, the term “indecency” has no legal definition.

It was the intent of the CDA to broaden the scope of this definition to encompass the Internet. And, as we shall see later, it was precisely this attempted expansion that the Supreme Court found to be unconstitutionally vague and overbroad. It is a common misconception that the CDA was intended to prohibit the distribution of obscenity over the Internet. In fact, the CDA had *nothing* to do with obscenity law, and the challenge by the ACLU did not challenge any prohibitions of obscenity. The ACLU challenge to the CDA dealt exclusively with the “indecent materials” provisions in the CDA.

Largely as a result of arguably irresponsible journalism, a concocted “study” was published in the *Georgetown Law Journal* and simultaneously reported on the cover of *Time* magazine. The “study” purported to have scientifically quantified an alarming amount of pornography on “the information superhighway.” Although quickly discredited and shown primarily to be the work of an unqualified undergraduate student, the writing and its reporting in *Time* started what was to become known as the *Great Cyberporn Panic of 1995*. At about that same time, Senator Charles Grassley (R-Iowa) had the text of the

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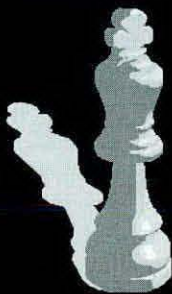
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"study" read into the Congressional Record, sparking the flames that eventually led to the passing into law of the CDA. As became apparent upon scrutiny of the language of the CDA, were it to be upheld, highly controversial speech that would be otherwise legal if published and sold at the corner bookstore would constitute a crime if published on the Internet.

On February 8, 1996, President Clinton signed the Telecommunications Reform Act into law. On that same day, the ACLU filed the *ACLU v. Reno* lawsuit. After some fairly spirited questioning, on June 12, 1996 a three-judge court unanimously granted an injunction against enforcement that effectively struck down the CDA¹⁰ as unconstitutional. Luckily, the district court judges "got it." The government sought review. Argument before the Supreme Court concluded on March 19, 1997, but the actual decision was not issued until the final week of the term in June 1997. Surprising many, the Justices voted 9-0 that the CDA was unconstitu-

tional. Although Justice O'Connor, joined by Chief Justice Rehnquist, dissented in part as to the majority's reasoning, the Court was united in its agreement with the District Court's holding.

The Court did leave the door open to Congress to draft legislation that was more narrowly tailored than the CDA had been. The Court, however, made it quite clear

As became apparent upon scrutiny of the language of the CDA, were it to be upheld, highly controversial speech that would be otherwise legal if published and sold at the corner bookstore would constitute a crime if published on the internet.

that it would again apply a strict-scrutiny test to any congressional attempts similar to the CDA. The Court's opinion, written by Justice John Paul Stevens, resoundingly rejected censorship of the online medium and established the fundamental principles that will guide judicial con-

sideration of the Internet for the 21st Century.

In October 1998, Congress passed and President Clinton signed into law the "Child Online Protection Act" (COPA), commonly dubbed "CDA II" or "Son of CDA."¹¹ A week later, the ACLU filed *ACLU v. Reno 2*, seeking a temporary restraining order against the enforcement of COPA. On November 19, 1998, Judge Lowell A. Reed, Jr. said that the groups have shown "a likelihood of success on the merits of at least some of their claims" that the federal Internet censorship law violates the First Amendment rights of adults. The government, Judge Reed said, presented "no binding authority or persuasive reason" why the court should not enjoin "total enforcement" of the law pending an outcome. On February 1, 1999, a federal judge imposed a preliminary injunction against government enforcement of COPA. And so the battle continues. If any version of the CDA passes judicial

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Francisco Duarte

Former Assistant Attorney General and King County Prosecutor; Member, Washington Association of Criminal Defense Lawyers; Graduate, National College of DUI Defense



muster, it will likely be in such a diluted form that it will not be easily identifiable with its predecessors.

The Supreme Court was clearly cognizant in the *ACLU v. Reno* opinion of the desires of CDA proponents to protect children from exposure to materials that are considered harmful to children. Although the Court observed that certain software products are available to "filter out" these materials, they acknowledged that a completely effective method is not technically available at this time. Never-

theless, the Court reasoned that the effect of the CDA was, essentially, "burning down the barn to roast the pig."

As Justice Stevens noted in the majority opinion:

"As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it. The interest in encouraging freedom of expression in a

democratic society outweighs any rhetorical but unproven benefit of censorship."

We can expect to hear more on this subject in the future. Likely, pro-CDA forces reason that if they endeavor long enough, something is bound to wend its way through congressional and judicial processes intact. Conversely, First Amendment supporters stand poised to continue to oppose regulation of this new medium when that regulation imposes on constitutional rights. It should be an interesting skirmish. ↵

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1 Full language of the bill can be found at http://leginfo.leg.wa.gov/pub/billinfo/house/2750-2774/2752-s_sl_032798.

2 521 U.S. 844; 117 S. Ct. 2329; 1997 U.S. LEXIS 4037; 138 L. Ed. 2d 874 (1996); http://www.epic.org/cda/cda_decision.html.

3 Added at 47 U.S.C. § 223(a), *et. seq.* The text of the amendment can be found at http://www.epic.org/free_speech/cda/cda.html.

4 Jonathan D. Wallace, *Extinguishing the CDA Fire*, 1996, <http://www.spectacle.org/cda/cdanl.html>.

5 352 U.S. 380, 383, 1 L. Ed. 2d 412, 77 S. Ct. 524 (1957) (ban on sale to adults of books deemed harmful to children unconstitutional).

6 413 U.S. 15, 37 L. Ed. 2d 419, 93 S. Ct. 2607 (1973) (established the *Miller* three-prong "obscenity" test).

7 438 U.S. 726, 57 L. Ed. 2d 1073, 98 S. Ct. 3026 (1978) (also known as the "Seven Dirty Words" case, *Pacific* established the "pervasiveness" doctrine that permits censorship in broadcast media). Of note, it was the "pervasiveness" doctrine that provided the basis for the platform from which CDA proponents launched their primary arguments in favor of passage of the amendment.

8 492 U.S. 115, 128, 106 L. Ed. 2d 93, 109 S. Ct. 2829 (1989) (the "dial-a-porn" case that established regulation of commercial phone calls). Although striking down a law that banned "indecent" outright, *Sable* intimated that "indecent" material could be regulated by the government regardless of the medium used.

9 512 U.S. 622, 637-638, 129 L. Ed. 2d 497, 114 S. Ct. 2445 (1994) (*See related case.* Turner I held that cable is *not* to be treated like television, and Turner II held that it is).

10 Full text of the decision can be found at http://www.access.digex.net/~epic/cda/cda_opinion.html (I strongly urge you to read this decision, particularly the Findings of Fact, which provide a very clear, concise and accurate description of the Internet).

11 For links to numerous press releases and the full text of the bill, see http://www.epic.org/free_speech/copa.html.

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by Zella Ozretich

WSBA Lawyer Services Coordinator

"It is so rare to attend a conference where *everybody* excels in their presentation. Yet this is what the LAP staff did one fine weekend in Chelan. I wish every lawyer in the state had had the opportunity that I did." WSBA Governor Dick Manning gave this report to the BOG after attending last year's Lawyers' Assistance Program (LAP) Statewide Conference.

This opportunity is available to Washington lawyers once again. The 2nd Annual LAP Statewide Conference is fast approaching; it will be held April 16-18 at Campbell's Resort at Lake Chelan.

It is worthwhile for LAP Peer Counselors, LAP Standing Committee members, and other Washington lawyers to attend this conference for several reasons. The LAP works to improve lawyers' lives, protect the public from harm, and improve the public's perception of the legal profession. All Washington lawyers, even those not directly involved with LAP's services, could benefit from having knowledge of the program. An informed lawyer can help an attorney friend or colleague know where to turn if he or she is in need of assistance with personal, mental health, or alcohol and/or substance abuse issues.

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the various stages all people go through as they prepare for significant life changes, both personal and professional. This presentation should help lawyers recognize

An informed lawyer can help an attorney friend or colleague know where to turn if he or she is in need of assistance with personal, mental health, or alcohol and/or substance abuse issues.

the strengths and weaknesses of their own style of working with people, and better enable them to assist clients, colleagues and peer counselees.

Saturday Morning – Diversity Training (4 ethics credits) presented by Dr. Yvonne Terrell-Powell and Betsey Barnett of Shoreline Community College. Last year, these two speakers gave a dynamic presentation on the majority's attitudes and their impact on ethnic minorities and persons of color. This year's presentation will follow up and expand on this topic, which is relevant for everyone in today's multicultural society.

Saturday Afternoon – Bankruptcy (2 credits) presented by Charlie Johnson, J.D., Seattle and Jake Miller, J.D., Spokane. The core principles of the federal bankruptcy law have remained constant since it was enacted by Congress in 1898. Because of dramatic increases in consumer filings and perceived abuses in the system, Congress is preparing to make sweeping changes. Johnson and Miller's presentation will explain the likely changes in the law in non-technical terms, discuss the wisdom of the changes, and examine the possible consequences of making it more difficult to discharge debts in bankruptcy.

Sunday Morning – Swimming with Sharks, Dancing with Dolphins: Leading a Balanced Life in the Legal Profession (2 credits) presented by Adrian Hill, LLB, LSM Barrister and Solicitor of Page Hill & Associates, Toronto, Canada. Hill is Executive Director of the Canadian Bar Association Legal Profession Assistance Program. Hill's presentation brings this conference into the international arena and focuses on an issue that is topical for all members of the high-stress legal profession.

The conference is being held for the second year at Campbell's Resort at Lake Chelan. Situated on the shores of the lake, Campbell's setting offers spectacular views of water, mountains and sky, and a relaxing atmosphere to enjoy quiet contemplation. Many outdoor activities are available for attendees and their guests to enjoy during "down time" — including golfing, hiking and boating. Strollers and runners can also enjoy nearby Riverwalk Park, and shopping is available in the town of Chelan, just two blocks from Campbell's.

All peer counselors, LAP Committee members and other interested lawyers are encouraged to attend the 2nd Annual LAP All-State Conference. The registration fee is \$25, and there is an additional cost for meals (except for Peer Counselors and LAP Standing Committee members). CLE credit will be offered for all of the presentations, and the conference provides an excellent opportunity for attorneys to interact both socially and professionally with each other, presenters and LAP staff.

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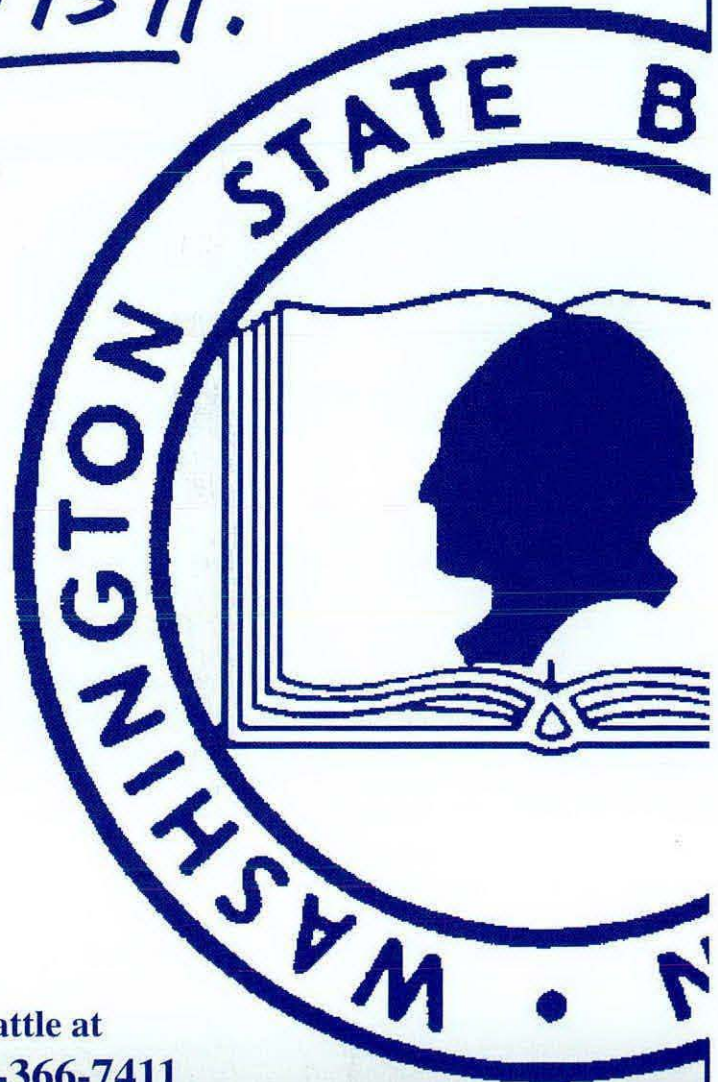
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The Board's Work

Board Adopts Formal Opinion Regarding Outside Auditing of Attorney Bills

The WSBA Board of Governors' February 12-13 meeting in Tacoma presented a tense climax on the issue of outside auditing of defense attorney bills by auditors hired by insurance companies. The local auditing services brought an attorney all the way from New York to argue that board adoption of the proposed formal ethics opinions would have antitrust consequences if interpreted as an unreasonable restraint on trade. Not to be outdone, defense attorneys countered that the proposal did not set fees or restrict competition, and *was* an ethical issue rather than one of pure economics. Former Governor Dennis LaPorte described the dilemma as an issue of protecting the public, in that the person buying and paying for the insurance does not know that an attorney representing him might be forced to disclose confidential information about him to an uninvolved fourth party. After Governor Osborne noted that it is the lawyer who is in the best position to plan trial strategy, the Board voted to adopt the following formal ethics opinions:

- *Disclosure of Client Confidences or Secrets in Detailed Billing Statements To Persons Other Than the Client*
- *Consent of the Client to Insurer's Review of Billing Statements by Outside Auditor*
- *Ethical Compliance with "Billing Guidelines" of a Person Other Than the Client*

Issue 1: May an attorney whose professional services are paid by a person other than the client, disclose to the person paying the bill, or to third parties such as an insurer's outside auditing service, client confidences or secrets in detailed, narrative billing statements which describe the professional services rendered?

Answer 1: An attorney cannot disclose to any insurer, without the client's consent, confidential information protected by RPC 1.6. except for disclosures that are impliedly authorized to carry out the representation. The exception for disclosures that are impliedly authorized is to be narrowly construed, and does not allow the attorney's disclosure, without spe-

cific client consent, of confidential client information to a third party hired by the insurance company.

Issue 2: May an attorney ethically comply with a requirement of a person other than the client who pays the attorney's billings, to seek or obtain the client's consent to the attorney disclosing client confidences or secrets in billing statements to be submitted to an outside audit service?

Answer 2: No. Such a requirement would put the attorney in an unethical dilemma, precluding the attorney from representing the client under RPC 1.7(b).

Issue 3: May an attorney whose professional services are paid by a person other than the client ethically comply with detailed, narrative billing guidelines of the person paying the billing?

Answer 3: An attorney whose professional services are paid by a person other than the client can ethically comply with "Billing Guidelines" of the person paying the billing, provided the billing guidelines do not: (1) require disclosure of confidential or secret information of the client, without the client's consent; (2) interfere with the attorney's independent professional judgment or with the attorney-client relationship; or (3) direct or regulate the attorney's independent professional judgment in rendering legal services to the client.

The full opinion, with background information and analysis, can be found at <http://www.wsba.org/barnews.html>

Legislative Update

WSBA lobbyists John Fattorini and Gail Stone updated the Board on pending legislation sponsored by WSBA, as well as other legislation sponsored by others on which the WSBA may be taking a position. Currently proposed bills impact court funding and improvements, trust and estate dispute resolution, disclaimer statutes, judicial removal of directors of nonprofit corporations, updating probate and trust law in line with IRS Code language, homestead exemptions, modifying parenting plans or custody decrees, administrative appeals judges in the environmental hearings arena, establishing bar ad-

mission requirements for judges, access to justice issues, crimes involving drug and alcohol, counterfeiting, adverse possession and prescriptive easements, sex offender sentencing, licensing, regulation and fees of escrow agents and officers, fees and costs regarding appeal of land use decisions, long-term care financial information and service options, full faith and credit for foreign protection orders, custodial sexual misconduct, communications between victims of domestic violence and victims' advocates, jurisdiction of superior courts in civil antiharassment actions, court filing fees, judgments, payment of property taxes, application of the Consumer Protection Act to violations of the Mobile Home Landlord/Tenant Act, creation of state child support lien registry, foster parents' rights, growth management, land division, relocation under parenting plans, authorization of mediation in guardianship proceedings, recording of surveys by county auditors, protection of vulnerable adults, creation of a unified family court, adoption information disclosure, post-judgment interest on tort judgments, aggravating circumstances affecting sentencing decisions, offers of settlement, comprehensive plans and development regulations, employment discrimination actions, motor vehicle dealers, real estate brokers' records, guardians ad litem and aquatic lands leases. For up-to-date information on these bills and others, access <http://www.leg.wa.gov>.

International Civil Rights Resolution

Jorgen Bader of the WSBA Civil Rights Committee presented, and the Board passed, a resolution affirming support for the rule of law in the international community, recognizing the need for an independent judiciary and lawyers, and noting with concern the reported arrest and detention or sentencing of lawyers in an increasing number of foreign countries because of their representation of individual clients.

Appointments

Lorraine Lee was appointed as the new alternate to the Judicial Conduct Commission.

Pamela J. De Rusha was appointed the Northwest Justice Project Board.

Access to Justice Board appointments included Pamela Feinstein (pro bono community position), Pete Dewell (Board of Governors position) and Christine Allen (at-large position).

J. Kirk Bromiley was appointed to the Limited Practice Board.

The Board appointed Scott Collier to the Washington State Pattern Forms Committee.

Wayne Blair volunteered for the available LASER Board position.

Celebration 2000 Plans Continue

A tentative "Access To Justice for All" theme has been set for the Celebration 2000 event scheduled for September 13-16, 2000, which will bring together WSBA members, the Access to Justice community and the state judiciary.

Seattle University Law School Report

Dean James Bond of Seattle University Law School reported to the Board on the new law school building currently under construction and scheduled for completion in the Fall of this year, immigration

clinical programs in process and hopes for an Access to Justice Institute staffed by first- and second-year law students.

Young Lawyers Division Presentations

A crowd of enthusiastic young lawyers (yes, they *do* exist) described ongoing projects, including at-risk youth intervention with judges and lawyers, FEMA hotlines, an Aspiring Youth Program (for at-risk middle schoolers during "latchkey" hours), Pre-Law Student Leadership Conference, GAP (taking cases on a reduced-fee basis), the YMCA Mock Trial Competition, TAP (trial advocacy program), and LAW TALK (video presentations on landlord/tenant, criminal, family law, domestic violence, sexual harassment, social security and employment issues). To meet some of these bright young leaders, join in at the WYLD Regional Mid-Year Conference on May 14-16 at the Skamania Resort in Stevenson, Washington.

Hotline Standards Proposed

Disproving the adage that "the third time's a charm," proposed hotline standards aimed at quality control of any telephonic legal hotlines in Washington state were once again tabled until the Board's next meeting at the end of March.

ABA MultiDisciplinary Practice Report

ABA House Delegate Tate London reported to the Board on the MultiDisciplinary Practice Report just completed by the ABA. Tate also described the "Spirit of Excellence" Award given by the ABA to Governor Locke.

Expense Policies Expanded

The Board voted to authorize WSBA committees to pay all expenses of members for telephone charges and meals during committee meetings, whether or not a particular member is designated as a "funded" member of the committee.

The Board also voted to reimburse governors for "reasonable transportation costs including a spouse or guest" for transportation within the state for Board meetings. ↵




UPCOMING 1999 SEMINARS

February 19	SOUTHWEST WASHINGTON SEMINAR Doubletree Hotel at the Quay Vancouver, WA
March 4-7	"SUNBREAK SEMINAR" Scottsdale, AZ
April 29	CENTRAL WASHINGTON SEMINAR 1/2 day Yakima, WA
May 21	EMPLOYMENT SEMINAR Seattle, WA
July 22-25	ANNUAL CONVENTION Whistler, B. C.

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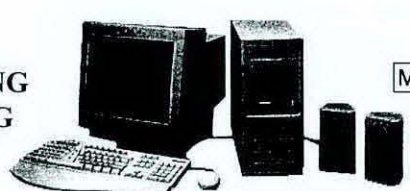
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to Lawyers Helping Hungry Children, who recently sent checks totaling \$20,000 to three local childhood hunger organizations. The group's annual fundraising breakfast in October, featuring keynote speaker Attorney General **Christine Gregoire**, raised the bulk of this year's contributions. For more information on getting involved, contact **Doree Armstrong** at 206-783-9856.

Spokane Lawyers Getting Bowled Over

Spokane lawyers are challenged to participate in the 1999 Bowl for Kids' Sake fundraiser to benefit Spokane County's Big Brothers and Big Sisters. The event is scheduled for a Saturday or Sunday in March. Contact **Carl Chrisknacht** at 509-328-8312 for information.

Feel the Earth Move

Michael Rossotto, new Director of the Legal Program at the Washington Environmental Council, is looking for a few good volunteer lawyers to move earth and heaven on environmental issues. You can contact Michael at 206-622-8103 or e-mail him at weclegal@aol.com.

This Balloon's for You...

The King County Bar Association and King County Bar Foundation recently recognized the contributions of 1,200 volunteer attorneys with gifts of colorful helium balloons donated by The Red Balloon Company and certificates for a free latte donated by Tully's Coffee. The volunteers had provided free legal representation to low-income clients in King County.

Honors and Awards

Roosevelt Currie, Jr. and **Nancy Thomas** have been appointed as the state's newest Administrative Law Judges for the Office of Administrative Hearings.

Movers and Shakers

Stan Carlson has retired from Seafirst Bank after 14 years as General Counsel.

Janet Irons and **Kim T. Morgan-Glass** have announced the formation of their new firm, Irons & Glass, which will em-

phasize civil litigation, personal injury and worker's compensation, as well as real estate, estate planning and general business law.

Charles Bates has been promoted to Director of Human Resources at Paccar Automotive, Inc.

Ann M. Gygi has become a principal in the Seattle firm of Hillis Clark Martin & Peterson, PS. Her practice emphasizes



James B. Lynch



Joseph M. Diaz



Darcy B. Luxenberg

land use and environmental law and government relations.

Tacoma's Davies Pearson P.C. has announced the selection of **James B. Lynch** as a shareholder in the firm. He practices in the areas of insurance defense, criminal law, personal injury and domestic relations. Joining the firm as associates are **Joseph M. Diaz**, whose practice emphasizes municipal defense and general litigation, and **Darcy B. Luxenberg**, who will practice in business law and transactions.

Sarah Weaver is now Of Counsel at Miller Nash Wiener Hager & Carlsen LLP, where she concentrates her practice in bankruptcy and real estate law. New associates at the firm include **Brandon J. Hollis** (who practices business, corporate and securities law) and **Roxanna Nowparast** (whose practice emphasizes insolvency and reorganization).

Brenda L. Bannon has become a Senior Associate at Keating, Bucklin & McCormack, Inc. P.S. Her practice will emphasize tort-based litigation and municipal liability.

Emmanuel Rivera has joined the Seattle office of Weiss Jensen Ellis & Howard.

Spokane's Workland & Witherspoon

PLLC firm has added **Douglas A. Saar** and **Robert R. Rowley** as new associates.

Heller Ehrman White & McAuliffe has announced the addition of five new associates to its Seattle office. **Kristin M. Bamford's** practice includes environmental law and land use permitting and litigation. **Marya N. Cotten** practices business law. **Kenneth E. Payson** focuses his practice in the general commercial litigation

arena. **Judith H. Ramseyer** will emphasize commercial and general litigation in her practice. **David J. Ward** will practice in the firm's litigation department.

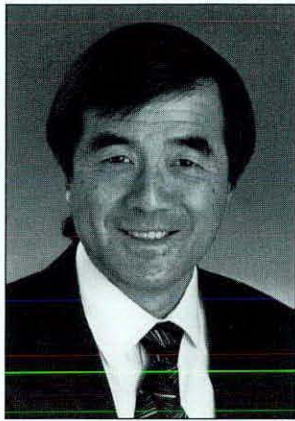
Mary Schultz & Associates PS in Spokane has added **Matthew Arpin** as a new associate. Arpin will practice in civil rights, personal injury, business litigation and appeals.

Rion J. Ramirez recently joined the Seattle office of Schwabe Williamson & Wyatt.

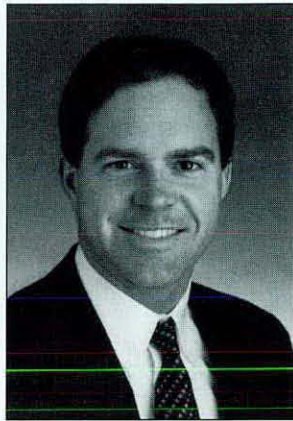
Dale Raugust's Spokane firm has announced the addition of **Robert C. Hahn III** as a new associate. His practice will emphasize family law, bankruptcy and civil litigation.

Three new associates have joined the ranks of Graham & James LLP/Riddell Williams PS in Seattle. **Andrew Arnold** is a member of the firm's Corporate Finance and Transactions Practice Group. **David Frockt** is a member of the Litigation Practice Group, where his practice focuses on general litigation and labor and employment law. **Nashra Rahman** has joined the firm's Litigation Practice Group.

Eric J. Roth has arrived as a new asso-



Daniel Woo



John S. Cullen

ciate at Witherspoon Kelley Davenport & Toole PS in Spokane. He will practice in business and employment law.

Paul S. Nelson has joined the firm of Chemnick, Moen and Greenstreet in Seattle. Nelson, who is also an anesthesiologist, will represent those with medical/legal claims.

Williams Kastner & Gibbs PLLC has added Daniel D. Woo as Of Counsel to the firm. He has more than 20 years experience advising and representing com-

panies in their intellectual property matters. Joining the firm as associates in the Seattle office are John S. Cullen (focusing on estate planning, business transactions and tax planning), Douglas M. Poulin (commercial litigation and products liability law), and S. Jay Terry (products liability, construction, medical malpractice and discipline).

Paine, Hamblen, Coffin, Brooke & Miller LLP has announced the addition of Dale A.

DeFelice, Jon D. Floyd, Patrick J. Kirby, Michael B. Love, James M. Kalamon and Mary Beth McCloud as associates.

The Seattle office of Preston Gates & Ellis LLP has added six new associates. Warren Clemans and Harold Taw will focus on business and intellectual property law. Jason Holtman will practice high-tech litigation and antitrust law. Myriam Jaidi's practice will emphasize municipal law. Paul Balkan's practice will focus on commercial litigation with an emphasis on construction law. Neil L. Meyers will concentrate in business law, with an emphasis in Asia-related transactions.

John Grasso has joined the Spokane County Prosecutor's Office.

The Seattle office of Holmes Weddle & Barcott PC has added two attorneys. Paul N. Daigle, a senior attorney, practices in the areas of commercial, maritime and insurance litigation. Nina M. Mitchell's practice emphasizes admiralty and maritime law.

Jennifer M. Ilenstine has joined the Seattle firm of Lee, Smart, Cook, Martin & Patterson, PS Inc., as a civil litigator.

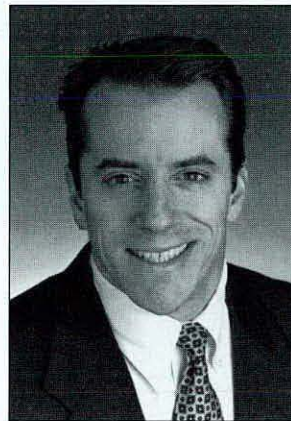
Daiva K. Tautvydas and Roger D. Wylie have become members at Christensen O'Connor Johnson & Kindness PLLC. Both are intellectual property lawyers with the firm.

In Memoriam

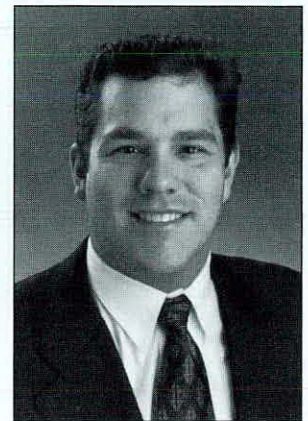
Seattle attorney Eugene Green passed away at the age of 52 on December 30, 1998. He was a member of The Breakfast Club, a gathering of professionals who met monthly with a mission to mentor young black men.

George Robinson Huff passed away on November 22, 1998 at the age of 68. Practicing law in Othello for over 40 years, he served for many years as president of the Adams County Bar Association and was a judge Pro Tem for the Adams County Superior Court.

Joseph P. ("Pen") Mathews, Jr. passed away December 21, 1998 at the age of



Douglas M. Poulin



S. Jay Terry

75. He was a city attorney for the City of Arlington and active in many community activities, including Kiwanis, school board and American Legion.

Dale W. Read, a long-time Vancouver attorney and civic leader, passed away on January 8, 1999. A former president of the Clark County Bar Association, he also served on the WSBA Board of Governors.

Charles T. Sharp, a former Asotin County prosecutor, municipal court judge and justice of the peace, passed away on October 4, 1998 at the age of 86.

Joseph G. Tucci, Jr. passed away on January 5, 1999 at the age of 44. A Tacoma attorney for 20 years, he was active in community sports activities and was a Rear Commander of the Tacoma Yacht Club. ☞

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Discovery Practices & Problems

by **Barrie Althoff**

WSBA Chief Disciplinary Counsel

Discovery is increasingly time-consuming, expensive and contentious, and requires significant preparation, skill and plain hard work to do well. Discovery also involves sometimes difficult practical and ethical issues. This article summarizes findings of a national survey on the nature, extent, cost and problems arising in discovery in federal civil cases. One or more subsequent articles will look at some of the ethical issues associated with discovery problems under Washington's Rules of Professional Conduct.

Introduction

In May 1997, staff of the Federal Judicial Center, the research arm of the federal judiciary, surveyed lawyers involved in federal civil cases as part of an examination of federal discovery rules by the Civil Rules Advisory Committee of the Judicial Conference. The survey was sent to about 2,000 lawyers (1,200 responded) involved in approximately 1,000 closed federal general civil cases deemed likely to have had some sort of discovery. Most responding lawyers practiced in firms with others, 12% were sole practitioners, and 8% were government lawyers. They averaged 16 years of practice, while 75% had practiced for more than 10 years.

The survey sought to learn the size, nature and cost of discovery being used in federal courts, as well as to identify problems, and perhaps solutions, with discovery. The staff issued its report, *Discovery and Disclosure Practice, Problems and Proposals for Change: A Case-based National Survey of Counsel in Closed Federal Civil Cases* (the "report") in November 1997.

Opinions expressed herein are the author's and are not official or unofficial WSBA positions.

Who Uses What Kind of Discovery?

The report shows extensive use of discovery in the federal cases, with about 85% of the cases having some discovery (including discovery planning) and some formal discovery or disclosure. In these cases, 94% of the lawyers stated that for-

The median cost of litigation in the surveyed cases was about \$13,000 per client, with plaintiffs and defendants each spending about the same amounts.

mal discovery had been used in their cases. The most frequently used discovery devices were as follows:

Document production	84%
Interrogatories	81%
Depositions	67%
Initial disclosures [FRCP 26(a)(1)]	58%
Expert disclosure [FRCP 26(a)(2)]	29%
Expert discovery	20%
Physical or mental exam	13%
Other (subpoena, inspection, etc.)	9%

Because Washington's Civil Rules for Superior Courts have no counterpart to the federal "laydown" disclosures of FRCP 26(a)(1) (in effect in the U.S. District Court for the Eastern, but not for the Western District of Washington), this article generally omits discussion of issues related to such disclosures.

Most lawyers (69%), including both plaintiffs' and defendants' lawyers, reported that discovery or disclosure generated about the right amount of information needed for a fair resolution of the case, although plaintiffs' lawyers (12%) were more likely than defendants' lawyers (5%)

to report that discovery gave too little information.

About two-thirds of the 94% who engaged in formal discovery also informally exchanged discoverable information without being required by rule to do so. This may include meeting and conferring with opposing counsel to plan for discovery in accordance with FRCP 26(f). For most lawyers (74%), a discovery plan or scheduling order was entered in their case. The median time limit imposed in scheduling orders for completion of discovery was six months.

Of lawyers who reported no formal discovery, 46% reported that they had exchanged information informally. These exchanges took place in 64% of non-contentious cases, as well as in 46% of contentious cases. Experienced lawyers voluntarily exchanged information more (63%) than inexperienced lawyers (50%). Voluntary information exchanges occurred more often in tort cases (69%) than in contract (54%), civil rights (54%) or other cases (52%). Lawyers who used informal exchanges were less likely to report discovery problems (38% reported problems) than those who did not use informal exchanges (58% reported problems). The report did not draw any cause/effect conclusions between the use of formal discovery, informal discovery, experience and so on.

What Does Discovery Cost?

The report found that the median cost of litigation in the surveyed cases was about \$13,000 per client, with plaintiffs and defendants each spending about the same amounts. Discovery expenses represented about 50% of total litigation expenses. About 40% of lawyers reported unnecessary discovery expenses due to discovery problems, and those unnecessarily incurred discovery expenses were estimated

to amount to about 9% of total discovery expenses or 4% of total litigation expenses.

The factor most closely related to the total litigation costs was the size of the monetary stakes. Other factors included the size of the law firm (the larger the firm, the higher the discovery costs, regardless of the complexity or size of the stakes), the type of case, and whether the case was complex or contentious. The median estimated monetary stakes per client were about \$150,000, with defendants estimating somewhat higher stakes than plaintiffs. The median percentage of discovery expenses was 3% of the amount at stake in the litigation, regardless of that amount. Thus, while the percentage did not vary with the size of the monetary stakes, the actual dollar amount rose proportionately as the stakes increased. The report notes that monetary stakes, while directly related to the cost of discovery, are not the only reflection of a case's importance to the parties, and that nearly 25% of lawyers reported that the dominant concern in their cases was non-monetary (such as

equitable relief being sought, or impact on future claims). These non-monetary concerns were of more importance in civil rights cases (70%), than in contract (43%) or tort (34%) cases. The report did not find any relationship, however, between non-monetary stakes and the amount spent on discovery.

As the amount at stake increased from \$4,000 or less (27% of lawyers reported having discovery problems) to over \$2,000,000, problems increased significantly (69% of lawyers reporting discovery problems). Discovery costs were generally highest in patent, trademark, securities and antitrust cases. In these cases, no single discovery activity tended to be disproportionately higher than another; rather, all discovery activities tended to be proportionately higher.

Although depositions were not the most frequently used discovery device, they were by far the most expensive part of discovery, accounting for about a third of normal median discovery expenses of about \$9,500, and accounting for more

than twice as much expense as any other discovery activity. The median expenses per client for each discovery activity was approximately as follows:

Depositions	\$3,500
Expert discovery and disclosure	\$1,375
Other discovery	\$1,300
Request for and production of documents	\$1,100
Interrogatories	\$1,000
Initial disclosure of documents	\$750
Meet and confer/discovery planning	\$600

What is the Size and Nature of Discovery Problems?

The report states that discovery problems vary more by the nature of the case than by the type of discovery used, and that where a lot of money is at stake, or the issues are personal injury or matters of principle, or the relationships are contentious and the issues complex, there is both more extensive discovery and more problems with discovery. The report notes, however, that there may be more discovery problems in large or complex or contentious cases, simply because there is more discovery.

About half (48%) of lawyers using discovery reported problems in discovery, with plaintiffs' lawyers reporting problems more frequently (58%) than defendants' lawyers (42%). The percentage of lawyers reporting problems in discovery was as follows:

Document production	44%
Initial disclosure	37%
Expert disclosure	27%
Depositions	26%

Document production, the discovery activity most widely used by responding lawyers (84%), also generated the most reported discovery problems (44%). The report observed that of all the discovery devices it examined, document production stood out as the most problem-laden; and that while the causes are elusive, the characteristics of complexity and conten-

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tiousness are often found in production-problem cases.

The five problems reported most often in document production were:

- ▶ failure to answer adequately (28%), with plaintiffs' counsel (33%) complaining more than defense counsel (24%);
- ▶ failure to respond in a timely manner (24%), with plaintiffs' and defense counsel complaining about equally;
- ▶ vague requests (16%), with defense counsel (20%) complaining more than plaintiffs' counsel (12%);
- ▶ excessive number of documents requested (15%), with defense counsel (19%) again complaining more than plaintiffs' counsel (11%); and
- ▶ materials provided were excessive or disordered (8%), with plaintiffs' counsel (10%) complaining slightly more than defense counsel (7%). Thus, plaintiffs' counsel were more likely to complain about failure to respond adequately, while defense counsel were more likely to complain that requests were vague or sought an excessive number of documents.

Document production problems increase significantly as the stakes in the cases increase: 36% of lawyers reported problems with stakes at \$4,000 to \$500,000; 56% with stakes of \$500,000 to \$2,000,000; and 75% with stakes over \$2,000,000. A similar increase in production problems was found as the complexity of the cases increased.

The most frequent problems associated with use of expert witnesses were claims that the disclosures were too brief or incomplete (13%) or too expensive (9%), or that the other party failed to supplement/update expert disclosures (9%).

Depositions were used by 67% of lawyers who reported using discovery, with the median number of individuals deposed being four (with a mean of six). One-fourth of the lawyers reported that only one or two individuals were deposed, while three-fourths reported that not more than seven individuals were deposed.

The most frequent deposition problem reported (by 12% of lawyers) was that too

much time was spent on the deposition. The median number of hours spent in all depositions was 10, with the lowest spending no more than five hours and three-fourths spending no more than 24 hours in depositions. The median length of the longest deposition was four hours, with 25% of the longest depositions taking seven or more hours.

Other problems were reported in three areas of deposition conduct: lawyers coaching witnesses (10%); instructing witnesses not to answer (8%); or other-

wise acting unreasonably to annoy, embarrass or oppress the deponent or counsel (9%). There was no significant difference in problems reported by plaintiffs' lawyers from those reported by defendants' lawyers, although lawyers in tort cases and civil rights cases (each 50%) reported discovery problems more often than lawyers in contract cases (36%) and all other cases (42%). Lawyers involved in very complex cases reported far more deposition problems (41%) than lawyers handling somewhat complex (24%) or

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non-complex (22%) cases.

About 55% of responding lawyers attributed discovery problems to intentional delays and complications by either a lawyer or a party, with plaintiffs' lawyers considerably more likely than defense counsel to attribute problems to intentional actions. A lesser percentage attribute discovery problems to lack of client participation, pursuit of disproportionate discovery, or incompetent or inexperienced counsel (as to which nearly twice as many defense counsel attributed problems to plaintiff's counsel as the reverse).

What are the Causes and Solutions for Discovery Problems?

The report tried to identify whether lawyers, clients, judges and others contributed to the identified discovery problems.

Lawyers were asked whether various activities of lawyers and clients were not factors, or were moderate factors, or were major factors, in causing the identified discovery problems. They responded as follows:

	Not a factor	Moderate factor	Major factor
Intentional delays/complications	45%	28%	27%
Lack of client cooperation	54%	29%	17%
Disproportionate discovery for case needs	62%	21%	17%
Incompetence or inexperience of counsel	59%	22%	19%

Thus, in general, between 45% and 62% of lawyers replied that the listed activities were not at all contributing causes to discovery problems. However, gener-

ally between 21% and 29% felt the activities were moderately contributing causes to the problems, and another 17% to 27% felt they were major contributing causes to the problems. Or, collectively, between about 39% and 55% of responding lawyers felt the factors were either a moderate or major contributing cause to the discovery problems, with intentional delays or complications being so considered by 55% of responding lawyers, lack of client cooperation by 46% of responding lawyers, disproportionate discovery by 38% of responding lawyers, and incompetence/inexperience by 41% of lawyers.

The report noted that plaintiffs' lawyers (63%), more often than defense lawyers (47%), attributed discovery problems

When asked how discovery costs could be reduced, responding lawyers recommended generally increased judicial management and availability; making contradictory changes in the federal initial discovery rule; and controlling attorneys through sanctions and a conduct code.

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to intentional acts by a party or attorney. Defense lawyers (52%), however, more often attributed discovery problems to incompetence or inexperience of counsel than did plaintiffs' lawyers (27%).

For 81% of responding lawyers, judges were involved in discovery, but mostly in the planning phases rather than in deciding motions or imposing sanctions. Judicial involvement was generally in holding a conference to consider a discovery plan (57%), to discuss discovery issues (42%), to rule on a discovery motion (25%), or to enforce federal rules limiting the number of interrogatories and depositions. The vast majority of lawyers (83%) reported no problems with the court's management of disclosure or discovery. The few lawyers who had problems generally complained that allowed discovery time was too short, the court was too rigid on deadlines, or discovery motion rulings took too long.

When asked how discovery costs could be reduced, responding lawyers recommended generally increased judicial management and availability; making contradictory changes in the federal initial discovery rule; and controlling attorneys through sanctions and a conduct code. More specifically, they recommended:

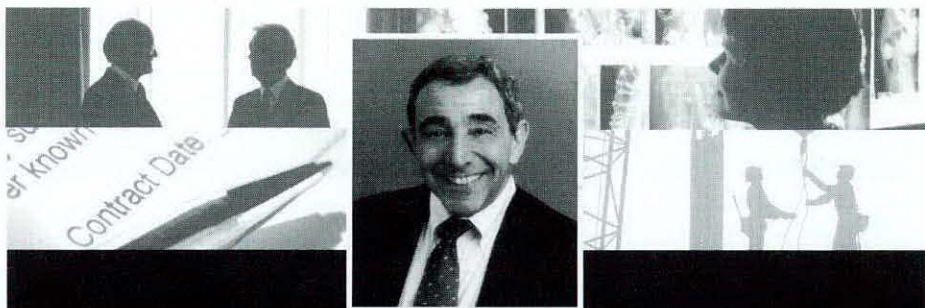
Increase availability of judges to resolve discovery disputes	54%
Adopt uniform initial disclosure rule for all federal courts	44%
Delete initial disclosure rule for all federal courts	31%
Impose sanctions more frequently and severely	42%
Adopt a civility code	42%
Increase court management of discovery	37%
Narrow definition of discoverable documents	31%

When lawyers were asked to identify the one most promising approach of three possibilities to reduce discovery problems, they most strongly identified increased judicial case management (47%) over rule

revisions to further control discovery (27%) and changing client/lawyer incentives regarding discovery (26%). Thus, the report concluded that the most promising approach to reducing problems in discovery was to increase judicial case management.

Conclusion

The report provides useful information, including statistics about the frequency of perceived problems in discovery. Some ethical issues associated with those and other discovery problems will be explored in one or more subsequent articles. ↵



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Disciplinary Notices

The following 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.

Disbarred

Tacoma lawyer John B. Atkinson (WSBA

No. 14715, admitted November 6, 1984) has been disbarred by order of the Supreme Court, effective January 7, 1999. The discipline is based upon his taking excess fees, failing to pay medical providers, and failing to properly account for client funds.

On May 14, 1998, the WSBA auditor reported the results of a random audit of Mr. Atkinson's trust account. The auditor found that during the period April 1, 1997 through April 16, 1998, Mr. Atkinson had removed \$5,513.70 more from his trust account than he had earned, and that his

trust account was \$20,537.36 short. The auditor concluded that much of the shortfall could be traced to Mr. Atkinson's failure to pay health-care providers.

Based on the results of the random audit, WSBA obtained an order for an expanded audit. This expanded audit showed that for the period January 1, 1994 through July 27, 1998, Mr. Atkinson took excess fees totaling \$14,933.10 from 15 clients and that his trust account was \$27,082.35 short. During the period between the first and second audits, Mr. Atkinson failed to correct the noted recordkeeping deficiencies.

Mr. Atkinson's conduct violated RPC 1.5, requiring reasonable fees; RPC 1.1(a), prohibiting acts of moral turpitude and acts reflecting disregard for the rule of law; RPC 8.4(c), prohibiting engaging in conduct involving dishonesty, deceit and misrepresentation; RPC 1.14, requiring lawyers to promptly deliver client funds to clients; and RPC 1.14(b)(3), requiring lawyers to preserve the identity of client funds and property.

Linda Eide represented the Bar Association. Mr. Atkinson represented himself.

Disbarred

Seattle lawyer Richard A. Basarab (WSBA No. 11444, admitted May 11, 1981) has been disbarred by order of the Supreme Court, effective January 7, 1999. The discipline is based upon his practicing law, and collecting fees from clients to practice law, while his license was suspended; failing to diligently represent his clients; and contacting a party represented by counsel.

On May 24, 1991, Mr. Basarab's license to practice law was suspended for non-payment of dues. His license remained suspended until he was disbarred. On May 15, 1997, Mr. Basarab pled guilty, pursuant to an Alford plea, to one count of first-degree theft, one count of second-degree theft, and two counts of unauthorized practice of law.

Matter 1. On October 4, 1993, Mr. Basarab agreed to represent a client in a wrongful discharge suit. Mr. Basarab signed the summons, but did not put his WSBA number on the complaint. He failed to conduct discovery and did not attempt to answer the opposing party's in-

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interrogatories, until after a motion to compel was filed. Mr. Basarab submitted the interrogatories unsigned and without the three binders of supporting documentation his client had provided. On May 1, 1995, the client learned that Mr. Basarab's license was suspended, terminated his services and requested her file. The client discovered a motion to compel scheduled for the day before she received her file. Mr. Basarab had not notified the client of this motion. The Court entered a \$1,000 judgment for terms against the client for failure to comply or appear at the motion. Mr. Basarab stated that he intended to find substitute counsel for his client, if litigation was necessary. However, the client terminated his services prior to his attempts to find other counsel.

Matter 2. In April 1995, Mr. Basarab agreed to draft an employment agreement for a parking lot construction estimator. Although Mr. Basarab told the client he could draft employment agreements, the contract draft contained mistakes that were not in the client's best interests. During this same meeting, the client told Mr. Basarab that he needed a civil suit filed because his former employer did not pay his medical insurance premiums. Mr. Basarab filed the lawsuit in January 1996, and promised to inform the client's creditors that they would be paid out of the settlement proceeds. Mr. Basarab altered a money order he received from another client to pay the \$110 filing fee for the client's complaint. Mr. Basarab also agreed to collect on a bounced commission check and file suit against another previous employer who failed to pay commissions. Mr. Basarab did not file the suit or collect the check. Finally, Mr. Basarab agreed to draft the contract for the sale of the client's company. Mr. Basarab completed the sale.

Matter 3. Between October 1992 and October 1993, a client paid Mr. Basarab \$750 to file a bankruptcy petition. Mr. Basarab did not file the bankruptcy petition. On October 5, 1995, the Lawyers' Fund for Client Protection paid the client. Mr. Basarab has not reimbursed the fund. Mr. Basarab stated that he agreed only to assist the client in preparing documents, not to appear as her lawyer.

Matter 4. In June 1994, Mr. Basarab

agreed to review a settlement proposal in a wrongful termination claim. Mr. Basarab told the client that he was experienced in labor law. Mr. Basarab and the client agreed that the settlement was not acceptable. Subsequently, the Human Rights Commission dismissed the client's complaint. Mr. Basarab agreed to file a civil lawsuit for the client. On January 16, 1996, the client sent Mr. Basarab a money order for \$110 for the filing fee. Mr. Basarab altered the money order and used it to pay for another client's filing fee. Mr. Basarab never filed the lawsuit or refunded the client's money.

Matter 5. In June 1995, Mr. Basarab agreed to represent the alleged father in a paternity action. The client gave Mr. Basarab the papers he received from the Office of Support Enforcement, and Mr. Basarab agreed to take care of the matters. Mr. Basarab did not respond to the Office of Support Enforcement. In October 1995, the King County Prosecuting Attorney filed a Motion for Default Judgment against the client, citing failure to appear. Mr. Basarab told his client that the Court was wrong, because he had filed a response the day the default order was entered. The client took no further action and DSHS began garnishing his paycheck.

Matter 6. In July 1995, Mr. Basarab agreed to represent the tenant in an unlawful detainer action.

Mr. Basarab drafted a Motion for an Order of Stay for the client to sign *pro se*. The client believed that he had retained Mr. Basarab as his lawyer. Mr. Basarab and his client went to court together and obtained a one-day stay. During the court appearance, Mr. Basarab told the court that he was assisting, not representing, the client. Later, the Snohomish County Sheriff removed the rented mobile home, because the medically disabled client was not able to pay the back rent.

Matter 7. Mr. Basarab represented a client in an American Arbitration Association (AAA) arbitration. Mr. Basarab told the parties and the arbitrator that he was not licensed to practice, and the arbitrator allowed him to represent the client. During the arbitration proceeding, Mr. Basarab presented exhibits, examined and cross-examined witnesses, and submitted

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memoranda on behalf of his client. The arbitrator awarded Mr. Basarab \$3,625 as "representative fees," pursuant to an attorney's-fees clause in the disputed contract. Following the arbitration, Mr. Basarab contacted the opposing party directly, instead of through counsel, to attempt to collect the fees. The opposing party challenged the award of fees, and the King County Superior Court denied Mr. Basarab's fees. The Court concluded that the contract allowed attorney's fees, and

Mr. Basarab could not have been acting as an attorney, because his license was suspended.

Matter 8. In late 1995, Mr. Basarab accepted \$750 and agreed to file a lawsuit for a client. In mid-1997, the client learned that Mr. Basarab's license was suspended and that he had not filed the lawsuit.

Matter 9. On May 6, 1998, Mr. Basarab appeared with a client in Poulsbo Municipal Court. Mr. Basarab requested, and the Court granted, a continuance of the

pre-trial conference scheduled to be heard that day. The Judge asked Mr. Basarab if he intended to file a notice of appearance in the case. Mr. Basarab stated that he would file a notice of appearance and hoped to reach an agreement after speaking to the prosecutor.

Mr. Basarab's conduct violated RPCs 8.4, prohibiting a lawyer from committing a crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer; RCW 2.48.180, making it a crime to engage in the unauthorized practice of law; RPC 5.5(a), prohibiting the practice of law where doing so violates the regulation of the legal profession; RLD 1.1(l), prohibiting a lawyer from engaging in the practice of law while suspended; RLD 1.1(p), prohibiting conduct demonstrating unfitness to practice law; RLD 8.2, prohibiting a disbarred or suspended attorney from accepting a retainer, giving legal advice, or acting as a lawyer for another in a legal matter; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; and RPC 1.4(a), requiring a lawyer to keep clients informed as to the status of their matters.

Sachia Stonefeld represented the Bar Association. Kevin Keefe represented Mr. Basarab. Geoffrey Revelle acted as the hearing officer.

Disbarred

Edmonds lawyer Sally J. Murray (WSBA No. 24851, admitted June 20, 1995) has been disbarred by order of the Supreme Court effective January 11, 1999. The discipline is based upon her charging an excessive fee, failing to return the unearned portion of a non-refundable retainer; failing to diligently represent her clients; and failing to comply with a court order.

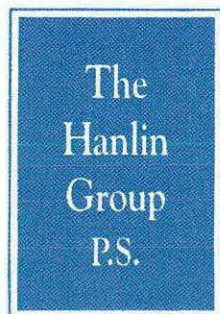
Ms. Murray agreed to draft a will for her client's terminally ill brother. Ms. Murray told the client that she had been in practice for four years, but had only actually been licensed for two and one-half years. Ms. Murray drafted the will, and the brother signed two days before he died. Ms. Murray's client was appointed executor of her brother's estate. The estate consisted of \$900,000, mostly in bank accounts. One account, with a balance of

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\$250,000, was held by the client and the brother as joint tenants with right of survivorship (JTWRS account). Ms. Murray advised her client that the assets in that account would pass to her outside probate and would not be subject to federal estate taxes. Excluding this account, the estate was worth more than \$600,000 and subject to federal estate taxes.

Ms. Murray told her client that the customary fee for probating an estate was 10 percent of the estate assets, but that she would take this case for 5 percent, or \$30,000. Ms. Murray did not prepare a written fee agreement or explain to the client that any portion of this fee was non-refundable. The client did not know that this was not the customary fee for a probate, and gave Ms. Murray two checks, one for \$28,000 for legal fees and another \$2,000 for costs. Ms. Murray deposited the \$2,000 check into her trust account and the \$28,000 check into another account.

Ms. Murray advised her client that to avoid federal estate tax, the client should write Ms. Murray an additional check for \$15,000, the amount subject to estate tax if the JTWRS account was included. Ms. Murray explained that she would place these funds in her trust account, and then return them to the client later. The client wrote this additional check and Ms. Murray deposited it in her trust account. Including this check, Ms. Murray collected \$45,000 from the client. During this same time period, Ms. Murray had not obtained non-intervention powers, obtained an order of solvency, published notice to creditors, or given notice to the heirs. RCW 11.48.210 requires an order of solvency and an order granting non-intervention powers prior to collecting a fee from the estate, unless the fee is approved by court order.

Christine Gray represented the Bar Association. Ms. Murray represented herself.

Censured

Island County lawyer Lorinda Noble (WSBA No. 9257, admitted October 30, 1979) has been ordered censured pursuant to a stipulation to censure approved by the Disciplinary Board on November 20, 1998. This discipline is based on Ms. Noble's assisting in the unauthorized prac-

tice of law and practicing law with a person who was not a lawyer.

From December 1990 through May 15, 1991, Ms. Noble worked as an independent contractor for Accident and Medical Investigations (AMI). AMI's brochure stated that it investigated and settled accident claims. Dick McClelland, who is not a lawyer, was the president of AMI. Although Ms. Noble did not give Mr. McClelland permission, she knew that he used her name on AMI's letterhead. This letterhead identified Mr. McClelland as "President" and Ms. Noble as "Associate Counsel." Ms. Noble received a paycheck from AMI every two weeks. Ms. Noble reviewed client files, ordered updated medical reports, and wrote demand letters. She did not receive or review any settlement checks. Ms. Noble wanted to be involved in the client's claims from beginning to end, and did not want Mr. McClelland to use her name on the letterhead. When these things did not change, Ms. Noble terminated her association with AMI. In September 1997, Mr. McClelland pled guilty to mail fraud, was sentenced to 24 months in prison, and was ordered to pay more than \$200,000 in restitution. Ms. Noble's conduct in allowing her name to be used on AMI's letterhead and on demand letters violated RPC 5.5(b), assisting the unauthorized practice of law. Her conduct in entering into an employment relationship with Mr. McClelland, and allowing him to direct and regulate her professional judgment violated RPC 5.4(c) and/or 5.4(d), which prohibits a lawyer from allowing an employer to regulate a lawyer's professional judgment and prohibits practicing with a nonlawyer.

Linda B. Eide represented the Bar Association. Ms. Noble represented herself.

NONDISCIPLINARY NOTICE

Interim suspension is pursuant to RLD title 3 and is not a disciplinary sanction.

Interim Suspension

Seattle lawyer Terry P. Watkins (WSBA No. 2333, admitted 1967) was ordered suspended from the practice of law pending the outcome of disability proceedings by Supreme Court order entered January 26, 1999. *Z*

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Preference Forms Available for 1999-2000 WSBA Committee, Board & Volunteer Panel Appointments

The preference form for applying for appointment to the various committees, boards, and panels of the WSBA has been mailed to all active members. Replies are due by March 12, 1999. The Board of Governors makes its appointments based on these forms. Since many of the appointments are reviewed and renewed annually, current members of the committees/boards/panels who are interested in reappointment must submit a new preference form each year. If you didn't receive the preference form, please contact the Office of Executive Director at the WSBA at 206-727-8244 or e-mail oed@wsba.org.

Judicial Information System Committee

The WSBA seeks a member interested in being nominated by the Chief Justice for a 3-year term to represent the WSBA on the Judicial Information System Committee (JISC). The JISC 2 specifically states that the Chief Justice shall consider for appointment only those individuals who have demonstrated an interest and commitment to judicial administration and to automation of judicial systems and functions.

The JISC is the policy-level steering committee for the court's automation system as described. The committee is chaired by Justice Talmadge and composed of four members from the appellate court level; four members from the superior court level; four members from the courts of limited jurisdiction; and three at-large members from outside the judiciary, one of whom will be a member of the Washington State Bar Association, one of whom will be a member of the Washington Association of Sheriffs and Police Chiefs and one of whom will be a member of the Washington State Association of Prosecuting Attorneys.

Persons wishing to be considered for this nomination should submit a letter of interest with résumé by March 31, 1999 to: Executive Director, WSBA, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330; e-mail: oed@wsba.org.

WSBA Presidential Selection

The Board of Governors of the Washington State Bar Association (WSBA) is seeking applicants to serve as President of WSBA for 2000-2001. Pursuant to Article IV(A)(2) of the WSBA, the President for that term shall have his/her primary place of business in King County. Applications will be accepted through May 15, 1999, and should be limited to a current résumé, a concise application letter and selected references. Endorsement letters must be received by May 31, 1999. *Applications and endorsement letters should be sent to the WSBA Executive Director, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330.*

Interviews will be conducted May 15-31, 1999. Finalists will be invited back to the June Board of Governors meeting for an interview before the full Board in open session. Applicants are discouraged from conducting active campaigns for this office. While prior experience on WSBA's Board of Governors (BOG) may be helpful, there is no requirement to have been a member of the BOG or to have had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA related travel, are reimbursed.

The commitment begins in June 1999. The term as President-elect will begin in September 1999. In September 2000, the President-elect will assume the position as President of the Association. The candidate will be expected to attend two-day Board meetings every six weeks, as well as attend numerous subcommittee, section, regional, national and local meetings. The candidate will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time will need to be devoted to communication by letter, electronic mail and telephone in connection with these responsibilities.

Speakers Bureau Seeks Volunteers

The WSBA Speakers Bureau is a public education program that promotes public understanding of the law, increases citizen awareness of legal rights and responsibilities, and builds positive community relations. Through the Speakers Bureau, lawyers volunteer their time and expertise to help citizens understand how the legal system works and how the law affects their lives. Lawyers speak to civic, professional and school groups on a variety of different topics and may also volunteer to guide students through mock trial programs.

The WSBA has made a concerted effort to rebuild the Speakers Bureau in recent months. Thanks to the attorneys who have already volunteered. While the speaker pool is expanding, there is still plenty of room for interested lawyers.

Some of the benefits to attorney-volunteers include: honing speaking skills, educating and inspiring others, achieving personal satisfaction, cultivating respect for lawyers and the legal system, and obtaining potential future clients.

Speaker referrals are already in progress. If you have ideas or questions or would like to join the Speakers Bureau, please contact the Speakers Bureau Coordinator at 206-727-8213 or comm@wsba.org.

Announcing the WSBA Lawyer Search Database

Find addresses, phone/fax/e-mail, membership status and committee membership information for Washington State attorneys at www.wsba.org

ABA Seeks Nominations For Awards Honoring Outstanding Public Lawyers And Public Law Offices

The American Bar Association's Government and Public Sector Lawyers Division is seeking nominations for three separate awards designed to recognize the extraordinary achievements of public lawyers.

The Hodson Award recognizes sustained outstanding service or a specific extraordinary accomplishment by a government or public-sector law office. The 1998 award went to two winners: the Naval Legal Service Office Pacific, for processing an enormous number of claims in support of military personnel stationed in Guam following Super Typhoon Paka; and the New York State Attorney General's office, for developing a policy allowing Assistant AGs to engage in pro bono work at the office.

The Nelson Award recognizes outstanding contributions to the ABA by an individual government or public-sector lawyer. Major Michael Warner Meadows, Air Force Liaison Officer and a professor at the Army Judge Advocate General's School, won the award in 1998. As an author and teacher active in the ABA's Young Lawyers Division and Public Contract Law Section, Meadows has worked to enhance the relationship between members of the military and the American Bar Association.

The Dorsey Award honors an outstanding public defender or legal-aid lawyer. In 1998, the award was presented to Judy Clarke, Executive Director of the Federal Defenders of Eastern Washington & Idaho, who has demonstrated unwavering commitment to delivering legal representation to the poor and needy for more than 20 years.

Nominations for the three awards are due April 5. The awards will be presented in Atlanta at the ABA Annual Meeting in August. To obtain the nomination brochure or for more information, please call Theona Salmon at 202-662-1023.

KCWWL Invites Spring Cleaning

King County Washington Women Lawyers will hold its fourth annual "Spring Cleaning for a Cause" on Tuesday, April 6, 1999, 7:30 -9:00 a.m. at the offices of Bullivant Houser Bailey

(1601 Fifth Ave., Ste. 2400, Seattle). The event is a networking open-house continental breakfast for KCWWL members and friends, and an opportunity to donate gently used women's professional clothing and accessories to the YWCA's "Working Wardrobe" program, which provides professional attire for homeless and low-income job-seekers. If you would like to participate, please contact Virginia Llewellyn at 206-521-6488 or virginia.llewellyn@bullivant.com.

Law Office Management Institute and Legal Expo

The 1999 Law Office Management Institute and Legal Expo with Marketing Your Law Firm Workshop will be held Wednesday, March 24, 1999 at the Washington State Convention and Trade Center in Seattle. The event is designed to help attorneys promote their firm, control law-firm costs, use cutting-edge technology, and find law-related services.

The LOM Institute features keynote speaker Winton Woods, director of the Courtroom of the Future Project, who will address "Y2K and the Prudent Law Firm: Preparing for the Law Office of the Future." Other topics include "Insurance Coverage and the Year 2000: Liability Considerations," "Protection," "Exclusions," "Choosing Software for Your Law Practice," and more.

Registration to tour the Legal Expo Exhibit Hall is free. In addition, the first 300 Expo Exhibit Hall Tour registrants, as well as the Institute registrants, will receive free admission to the Marketing Your Law Firm Workshop. Participants in the Expo can also enter drawings for door prizes.

View a brochure at <http://www.wsba.org/cle/expo99.html> or 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 February 1999 is 4.551 percent. The maximum allowable interest rate for March 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 June 1988 - June 1998 appear on page 52 of the June 1998 Bar News. Information from January 1987 to date appears at <http://www.wsba.org/barnews/>



Use Resources To Your Advantage

Would you like your name and/or firm listed under your area of practice in the Yellow Pages of the upcoming (May 1999) WSBA *Resources* annual directory? List yourself or your firm under Appeals, Workers' Compensation, Contract Attorneys, Environmental Law or any heading you choose.

Resources is used by thousands of your fellow attorneys, and the Yellow Pages is a one-stop shopping resource for all your legal-service needs. Find consultants, paralegals, contract attorneys, business appraisers and more.

The cost for a listing is still just \$25. Listings may include the firm name, individual's name, address, phone, fax, e-mail and website. (More than one phone number, such as an 800 number, may be listed.)

To reserve your Yellow Pages listing in the May 1999-2000 *Resources* directory, complete this form and return by March 15 with your check for \$25 (payable to WSBA) to:

Washington State Bar Association

Resources Yellow Pages

2101 Fourth Avenue - Fourth Floor

Seattle, WA 98121-2330

(If you wish to be listed under more than one category, the cost is \$25 for *each* listing.)

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

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Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

E-mail _____

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Category _____

Below is the text of the WSBA's proposed new APR 17 on reciprocal admission. Bar members are invited to submit comments by April 30, 1999 to the Supreme Court Clerk, Temple of Justice, PO Box 40929, Olympia, WA 98504-0929.

PROPOSED AMENDMENT

ADMISSION TO PRACTICE RULES (APR)

RULE 17 Admission of Lawyers Licensed in other States or Territories of the United States or the District of Columbia to Practice Law in Washington (new rule)

(a) **Purpose.** This rule prescribes the procedure, conditions and limitations for admission of lawyers from other states or territories of the United States or the District of Columbia, except as provided in rule 3. Lawyers from other states or territories or the District of Columbia will be admitted in Washington pursuant to this rule under procedures and conditions that, in the judgment of the Washington State Supreme Court, are substantially similar to the procedures and conditions under which the other licensing state or territory or the District of Columbia allows the admission of licensed Washington lawyers to their states.

(b) **Qualifications.** Before a lawyer licensed to practice law in another state or territory of the United States or the District of Columbia qualifies for admission to the practice of law in the State of Washington, the lawyer must:

- (1) Present satisfactory proof of both admission to the practice of law, together with current good standing, in another state or territory of the United States or the District of Columbia, and active legal experience as a lawyer or counselor at law at the time of the application; and
- (2) Possess the good moral character and fitness requisite for a member of the Bar of the State of Washington; and
- (3) Execute under oath and file with the Bar Association two copies of an application in such form as may be required by the Board of Governors; and
- (4) File with the application a certificate from the authority in such other state or territory or the District of Columbia having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice, and the date thereof, and as to the good standing of such lawyer or counselor at law or the equivalent; and
- (5) Provide with the application such other evidence of the applicant's educational and professional qualifications, good moral character and fitness and compliance with the requirements of this rule as the Board of Governors may require; and
- (6) Establish to the satisfaction of the Board of Governors that the state or territory or the District of Columbia that licensed the lawyer applicant allows the admission of licensed Washington lawyers under terms and conditions substantially similar to those set forth in these rules, provided that if the state or territory or the District of Columbia that licensed the lawyer applicant requires Washington lawyers to complete or meet other conditions or requirements, the applicant must meet a substantially similar requirement for admission in Washington; and
- (7) Pay upon the filing of the application the fee established for such admission which shall be at least equal to that required pursuant to rule 3(d)(2) to be paid by an lawyer applicant to take the bar examination.

(c) **Procedure.**

(1) The Board of Governors shall approve or disapprove applications for admission of lawyers admitted to the practice of law in other states or territories of the United States or the District of Columbia. The Board may require additional proof of any facts stated in the application. In the event of the failure or refusal of the applicant to furnish any information or proof, or to answer any inquiry of the Board pertinent to the pending application, the Board may deny the application. Upon approval of the application by the Board of Governors, the Board shall recommend to the Supreme Court the admission of the applicant for the purposes herein stated. The Supreme Court may enter an order admitting to practice those applicants it deems qualified, conditioned upon such applicant:

- (i) Taking and filing with the Clerk of the Supreme Court the Oath of Attorney pursuant to rule 5; and
 - (ii) Paying to the Bar Association its membership fee for the current year in the maximum amount required of active members; and
 - (iii) Filing with the Bar Association in writing his or her address in the State of Washington, together with a statement that the applicant has read the Rules of Professional Conduct and Rules for Lawyer Discipline, is familiar with their contents and agrees to abide by them.
- (2) Upon the entry of an order of admission, the filing of the required materials and payment of the membership fee, the applicant shall be admitted to the practice of law in the State of Washington as specified by this rule.

BUSINESS

Choice of Entity and Other Start Up Issues
March 4 - Spokane. 7 CLE credits (incl. 5 ethics). By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

Purchase & Sale of Smaller Businesses
March 5 - Seattle; March 12 - Spokane. 6 CLE credits (incl. .75 ethics). By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

**Counseling the Corporation:
A Guide to Success**

March 12 - Seattle. 7 CLE credits (incl. 1 ethics) pending. By WSBA-CLE and Corporate Law Department 800-945-WSBA or 206-443-WSBA.

Annual Intellectual Property Program

March 26 - Seattle. 6.5 CLE credits pending. By WSBA-CLE and Intellectual & Industrial Property Section 800-945-WSBA or 206-443-WSBA.

COLLECTIONS

**Complying with the Fair Debit
Collection Practices Act in WA**

March 16 - Seattle. 6.5 CLE credits. By NBI 715-835-8525.

Collection Law in WA

March 17 - Tacoma; March 18 - Seattle. 7 CLE credits. By Lorman 715-833-3940.

EMPLOYMENT LAW

Workers Compensation Seminar

March 12 - Seattle. 6 CLE credits. By WSTLA 206-464-1011.

Employment Law Institute

March 24-25 - Seattle. 6 CLE credits (incl. .75 ethics) for either day or 10.75 CLE credits (incl. 1.5 ethics) for both days. By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

Current Issues in WA Public Sector

Labor Law

March 25 - Seattle; March 26 - Spokane. 6.5 CLE credits (incl. 1 ethics). By NBI 715-835-8325.

Labor Law & Labor Arbitration

March 26 - Seattle. 7.5 CLE credits. By Labor ARB Institute 507-663-1220.

ESTATE PLANNING

**Use of Limited Liability Companies in
Business & Estate Planning in WA**

March 11 - Spokane. 7 CLE credits (incl. .5 ethics). By Lorman 715-833-3940.

Advanced Will Drafting

March 17 - Seattle; March 19 - Spokane. 6.75 CLE credits. By WSBA-CLE and RPPT Section 800-945-WSBA or 206-443-WSBA.

ETHICS

Ethics and Professionalism in Family Law
March 12 – Seattle. 7.5 CLE ethics credits. By American Academy of Matrimonial Lawyers 425-822-1220.

The Disciplinary Process/Common Ethics Problems

March 18 – Seattle. CLE credits TBA. By WSBA YLD CLE 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

3rd Annual Inter-County Guardian Ad Litem Workshop Forum

March 3 – Seattle. 7 CLE credits (incl. 1 ethics). By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

Adoption Law in WA

March 12 – Seattle. 7.25 CLE credits. By Lorman 715-833-3940.

Child Abuse Investigation & Interviewing

March 25-26 – Vancouver, WA. 15 CLE credits. By Harborview Medical Center 360-417-5404.

FISHERY LAW

1999 National Fishery Law Symposium

March 25-26 – Seattle. 10 CLE credits. By UW CLE 206-543-0059.

GENERAL

Domestic Violence Training for Rural and Tribal Courts

March 1 – Bellingham. 6.75 CLE credits. By Office of the Administrator for the Courts 360-705-5341.

Nuts and Bolts of Local Government Law

March 9 – Seattle. 3 CLE credits. By UW CLE 206-543-0059.

Road & Access Law in WA

March 9 – Seattle. 6.5 CLE credits (incl. .5 ethics). By NBI 715-835-8525.

The Drug Recognition Expert Mystery

March 11 – Spokane; March 12 – Seattle. 8.25 CLE credits. By La Pier & Associates 280-754-4643.

Legal Citations

March 16 – Tacoma. 3.5 CLE credits. By AGO (AV) 360-493-9500.

Communication in the Courtroom

March 16 – Bellevue; March 24 – Vancouver, WA. 7.5 CLE credits. By Carl Grant 800-862-9922.

Current Issues in Forensic Practice

March 18 – Seattle. 2 CLE credits. By Seattle Forensic Institute of WA 206-624-6454.

This information is submitted by providers. Please check with providers to verify CLE credits approved.

To announce a seminar, please send 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 of the month for placement in the following month's calendar.

Premises Liability

March 25 – Seattle. 6.25 CLE credits pending. By WSTLA 206-464-1011.

Successful Permitting Strategies

March 25-26 – Seattle. 13 CLE credits (incl. 1 ethics). By Law Seminars International 206-621-1938.

LAW OFFICE MANAGEMENT

Law Office Management Institute & Legal EXPO Exhibit Hall

March 24 – Seattle. 6.25 CLE credits (incl. 1 ethics). By WSBA-CLE and Law Office Management Section, and Association of Legal Administrators, Puget Sound Chapter 800-945-WSBA or 206-443-WSBA.

LITIGATION

6th Annual Litigation Institute

March 5-6 – Stevenson. 11.25 CLE credits. By Oregon State Bar 503-684-7413.

Spring Training for Litigators

March 17-20 – Seattle. 9 CLE credits (incl. ethics). By WSTLA 206-464-1011.

MARRIAGE DISSOLUTION

Drafting Marital Property Settlements in the 21st Century

March 5 – Seattle. 6.5 CLE credits. By UW CLE 206-543-0059.

REAL ESTATE

Project Development from A to Z

March 3 – Spokane. 6 CLE credits (incl. .75 ethics). By WSBA-CLE and RPPTS 800-945-WSBA or 206-443-WSBA.

TAXATION

Taxation Law Section

March 16 – Seattle. 3.25 CLE credits. By WSBA-CLE and WSBA Tax Section 800-945-WSBA or 206-443-WSBA.

Y2K

Y2K Issues and Dilemmas

March 3-4 – Seattle. 11.75 CLE credits. By Law Seminars International 206-463-4400.

U.W. CLE Announces Its General Practice Program Series

Half-day CLE programs about matters encountered in general practice are now offered by University of Washington School of Law CLE Department. Complementary topics are scheduled in the morning and afternoon. Half-day and full-day registrations are available.

- | | |
|----------|--|
| March 9 | Nuts & Bolts of Local Government Law (morning)
Nuts & Bolts of State & Local Taxation (afternoon) |
| April 20 | How to Draw a Valid Will in Washington (morning)
Simple Probate of a Family Estate (afternoon) |
| April 23 | Courts of Limited Jurisdiction - Rules & Procedures (morning)
Courts of Limited Jurisdiction - Significant Changes in the Law; Views from the Bench (afternoon) |

This series is designed to afford busy lawyers a review of fundamental subjects.

For more information call
U. W. CLE at 206-543-0059 or 1-800-CLE-UNIV.

Announcements

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Patrick Downs

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have joined the firm as associates

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fax 425-259-2033

Law Offices

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has become a partner of the firm

JANUARY 1999

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Richard Y. LeMaster,
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January 1999

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Philip P. Mann

has joined the firm Of Counsel

and that

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John W. Branch
Marcia A. Tunheim
R. Douglas Bradley
Patrick J. S. Inouye
John E. Whitaker**

became associates with the firm in 1998.

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E-mail: stevezshu@aol.com

APPEALS

"A discourse on argument on an appeal would come with superior force from the judge who is in his judicial person the target and trier of the argument . . . Supposing fishes had the gift of speech, who would listen to a fisherman's weary discourse on fly-casting . . . if the fish himself could be induced to give his views on the most effective methods of approach?"
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FOR SALE

Law library, updated through August 1, 1998: Washington Practice; RCW; Washington Digest 2d; Washington Appellate Reports; Washington Reports; and Washington Reports 2d. Make offer 425-259-3915.

For sale: Washington Practice, RCWA and Washington Digest 2d (all current through May 1996); AmJur Legal Forms 2d (current through June 1996). Best offer for any or all sets. 360-423-5220.

For sale: Washington Reports, Washington Reports 2nd; Washington Appellate Reports; RCWs; Washington Digest 2d; Mita Copier, model #3585; contact Richard D. Smith 253-474-9571.

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1890s golden oak office furniture in excellent condition: 11 pieces including 18-drawer 5x5 quarter sawn partners desk, combination standup desk, and two leather-back side chairs. Must sell by end of April. Phone 509-448-1414 or e-mail bondgeg@juno.com.

Library for sale: Washington Reports 2nd, Washington Appellate Reports and West RCWA, all current. \$3,000. Call Becky at 206-682-2616.

The Commission on Supreme Court Reports has volumes of the Washington Court Reports available for sale. All books are new, in excellent condition with buckram binding. Partial sets are available for each title. Price per volume is \$2.50, plus eight percent sales tax; minimum order of 10 volumes required. Orders must be in writing and must be prepaid by check or money order. Make checks payable to the Commission on the Supreme Court Reports and mail orders to: Commission on Supreme Court Reports, PO Box 40922, Olympia, WA 98504-0922. Orders and payment must be received on or before March 31, 1999. Include your shipping address and a phone number. All sales final; no returns or exchanges. If you have questions or need further information, call Deborah Norwood at 360-357-2146.

Complete library for sale: WA Reports 2d, vols. 1-130; WA Appellate Report, vols. 1-86; WA Digest 2d; Michies RCWA, Shepard's WA Citations. All current. \$2,900.00/obo. 206-447-1420.

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Charles R. Meyer, Attorney at Law, is going on the bench effective January 1999. Will lease beautiful office space for up to three attorneys plus staff. Complete turn-key operation available. Call 360-793-1222 for more information. Office is located at 106 4th St., Sultan, WA 98294.

Sole Practitioners: 1, 2, 3 persons' executive suites fully serviced, complete with conference room, fax, copy equipment, receptionist, and accounting services available. New high-level offices located on the Denny Regrade. Available March 1, 1999. Call 206-467-9777.

Ballard: office space available in long-established Ballard law office; secretarial space and/or share secretary; library, fax, copier, parking; close to banks and post office. Call Jonsson 206-783-4100.

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.

Downtown Seattle law firm in Class A building has available one or two furnished exterior view office(s) plus additional interior space for staff. Great opportunity for person(s) either to join our boutique tax/business practice or to share resources and costs. Relaxed environment. Completely equipped law office, including conference rooms, library, tax return processing software, kitchen, and extra file storage. Call Kelly at 206-621-9480.

Space available/referral opportunity: in Lynnwood, large comfortable office for one lawyer. Easy freeway access to both Seattle and Everett. Space sharing with two-lawyer business firm. Up-to-date amenities, reception and bookkeeping available in a pleasant working environment. Space available for one legal staff person and potential for shared use. Commercial litigation referrals available and cross-referral relationship contemplated. Call Paula at 425-771-9033.

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 at 624-9400.

Bellevue downtown: views of downtown Bellevue, Lake Washington and Seattle skyline in prestigious City Center Bellevue. Reception, library, conference room, kitchen included. Possible referrals. 425-451-8301.

Mercer Island office sharing: lake view, prime location, class "A" building, secretarial available. Call 206-275-0770.

Downtown: Share three-office suite with Family Law Practitioner. Close to courthouse. Most amenities and possible shared secretary. Great environment. Reasonable rent. 206-628-0208.

Capitol Hill: gracious home, highly visible location in dynamic area (710 10th Ave. E.) Currently set up and furnished for three attorneys' offices, plus conference room, conference/library room, reception area, plus word processing and accounting area, and kitchenette. Off-street parking. Available for lease, \$2,800/month. Call 206-329-0577.

POSITIONS AVAILABLE

Regulatory consultant: Harbor Consulting Group Inc., an established regulatory consulting firm serving telecommunications clients throughout the U.S., has an immediate employment opportunity for a full-time regulatory consultant. Responsibilities pertain to all phases of regulatory compliance, including preparation and submission of certification applications, tariffs, client coordination, research and project management. Successful candidates will possess experience in telecommunications, legal research, writing and project management and should be proficient in Microsoft Word. The position offers a competitive compensation package; benefits; and a challenging, professional work environment. Send résumé and writing sample to Mark Nyhus, PO Box 470, Gig Harbor, WA 98335.

Tousley Brain PLLC is expanding its real estate litigation practice, and is actively recruiting a mid-to senior-level associate with substantial experience in this area. The company is also recruiting an entry-level associate for its sophisticated commercial litigation practice. Each position requires a solid academic record, as well as a demonstrated ability to excel in a fast-paced, client-focused environment. Tousley Brain PLLC provides extensive benefits and tremendous opportunities for professional growth. Please send cover letter, résumé, and writing sample to John Battin, Admin-

istrator, Tousley Brain PLLC 700 Fifth Ave., Ste. 5600, Seattle, WA 98104.

Family law associate: Hellsell Fetterman LLP, a 32-attorney law firm in Seattle seeks a family law associate with a minimum of 3 years' experience to join their growing family law department. Excellent writing ability, academic credentials, teamwork and client relationship skills are required. Opportunities for writing and child advocacy work on a national and international level available. Send résumé to: Hellsell Fetterman LLP, 1500 Puget Sound Plaza, 1325 4th Ave., Seattle, WA 98101. Attn: HR/FAM. EOE.

Contract attorney position/Of counsel opportunity. Small corporate finance, M&A and tax firm with sophisticated, international business practice seeks lawyer with at least five years' securities law experience for ongoing assistance with early-stage and middle market financing transactions and related matters. Of counsel association leading to membership also available. Send résumé to WSBA Bar News Box 571.

Tax attorney: Landerholm, Memovich, Lansverk & Whitesides, PS, a 22-attorney law firm in Vancouver, WA, seeks a business tax attorney with an LL.M. in taxation for an associate position in the firm's fast-growing business practice. Applicants must have a minimum of two years' experience. The attorney's practice will focus on the formation; capitalization; and sale of, and tax planning for, closely held corporations, partnerships and limited liability companies and unique state and federal tax issues involving the structuring of cross-border (Washington-Oregon-California) mergers and taxable and tax-free acquisitions. The position involves frequent client contact and responsibility for negotiations and appeals with state departments of revenue and the Internal Revenue Service. Must have strong academic credentials and an ability to manage rapid practice growth in a thriving business practice. Please send résumé, law school transcript and a short writing sample to Executive Director, Landerholm, Memovich, Lansverk & Whitesides, PS, PO Box 1086, Vancouver, WA 98666.

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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Deadline: Text and payment received (not postmarked) by 1st of each

month for issue following, e.g., February 1 for March issue. No cancellations after deadline. **Mail to:** WSBA Bar News Classifieds, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330.

Qualifying experience for positions available: State and federal law all-low minimum, but prohibit maximum, qualifying experience. No ranges (e.g., "5-10 years").

Questions? 206-727-8213; comm@wsba.org

tions, solo practitioners, and government agencies. If you are interested, please call 206-328-5100 for an interview.

Spokane, WA intellectual property law firm of 12 attorneys and one patent agent has excellent opportunities for highly motivated attorneys. We have one opening primarily for a combination of litigation and patent prosecution, and one opening primarily for preparation and prosecution. Preferred: EE, physics, or semiconductor-processing background/experience and at least one year of patent law practice. The positions involve all phases of intellectual property. Client contact and responsibility are provided. The firm represents small to prominent multinational Fortune 500 companies. The firm enjoys continuing growth and a very bright future in a beautiful part of the country. Spokane is noted for its outstanding quality of life and a wide range of outdoor activities. Rural living is still available. We enjoy the best of both worlds: (1) a growing, stimulating and first rate law practice, and (2) a first-class lifestyle without most of the hassles of larger cities and long commutes. Excellent salary and benefits. Reply in confidence to Linda Haft at Wells, St. John, Roberts, Gregory & Markin, PS, 601 West First Avenue, Spokane, WA 99201-3828; telephone 509-624-4276; fax 509-838-3424.

Business Attorney: Landerholm, Memovich, Lansverk & Whitesides, PS, a 22-attorney firm in Vancouver, WA, seeks a business law attorney for an associate position in the firm's fast-growing business practice. Applicants must have a minimum of two years' experience in the areas of general corporate and business matters, with emphasis on business organizations (corporations, limited liability companies and partnerships), business transactions and commercial matters. Experience in federal and state tax matters and research is preferred, but not required. Must have an ability to manage rapid practice growth in a thriving business practice, possess a superior academic background and excellent writing and interpersonal skills. Please send résumé, law school transcript and a short writing sample to Executive Director, Landerholm, Memovich, Lansverk & Whitesides, PS, PO Box 1086, Vancouver, WA 98666.

An experienced attorney sought to assume felony defense caseload, private caseload possible. Attorney must be willing to relocate and interested in long-term situation. Please send résumé and statement of professional goals to WSBA *Bar News* Box 570.

Corporate/tax attorney: small, well established AV-rated Portland firm seeks attorney with four-plus years' significant corporate and tax experience to join growing corporate, tax planning and transactional practice. Send résumé in confidence to Calvin W. Collins, Newcomb, Sabin, Schwartz & Landsverk LLP, 111 SW Fifth Avenue, Suite 4040, Portland, Oregon 97204.

Attorney jobs: Harvard Law School calls our publication "probably the most comprehensive source of nationwide and international job openings received by our office and should be the starting

point of any job search by lawyers looking to change jobs." Each monthly issue contains 500-600 current (public/private sector) jobs. \$45/three months. Contact: *Legal Employment Report*, 1010 Vermont Ave. NW, Ste. 408-WB, Washington, DC 20005. 800-296-9611. Visa/MC/AmEx. <http://www.attorneyjobs.com/>

A 13-lawyer, AV-rated firm in South King County with offices adjacent to the Regional Justice Center, has an immediate opening for an attorney in the area of general civil litigation. Applicants must have a minimum of five years' experience. Our office is committed to finding a balance between working hard for our clients, and spending time with family and friends. Send résumé in confidence to Curran Mendoza PS, PO Box 140, Kent, WA 98035-0140, Attn: Pearl Emery.

Seattle transactional law firm with national practice emphasizing commercial real estate seeks an attorney with a minimum of five years' experience. Must be able to handle multiple projects; work within limited time frames and deal with out of state clients via phone, fax and overnight couriers. Send résumé to PO Box 26, Seattle, WA 98111-0026.

Business & estate planning: seeking experienced lawyer with excellent academic credentials and minimum of two years' experience handling business planning and transactions and/or sophisticated estate planning. LL.M. (tax) or CPA required. Send résumé to Smith and Zuccarini, PS 2250 Rainier Plaza, 777 108th Avenue NE, Bellevue, WA 98004.

Office of the Prosecuting Attorney, Colville Confederated Tribes. Deputy Prosecuting Attorney position available. Prosecution of child dependency cases will be major part of the work for the position. Experience in Indian Law and Tribal Court Practice preferred, but not required. Member WSBA or willingness to take bar examination in one year required. Member of Colville Tribal Court Bar required. Indian preference applies, but all qualified candidates will be considered. Salary is competitive and DOQ. Apply or inquire: Personnel Office, Colville Confederated Tribes, PO Box 150, Nespelem, WA 99155 or 509-634-2835.

Seeking an attorney for a small, growing, Spokane firm concentrating on estate planning, elder law, trust and probate administration. Please forward résumé to WSBA *Bar News* Box 572.

The King County Prosecuting Attorney's Office, Criminal Division, is accepting résumés for deputy prosecuting attorney positions to begin in Spring 1999. These openings are for those interested in gaining trial and other law practice skills, as well as making a difference in their community. Those interested in applying must be U.S. citizens and be admitted to the Washington State Bar at the time of application. Candidates must have excellent written and oral communication skills and have an interest in criminal trial practice. Prior prosecutorial experience is a plus. Salary range: \$38,700-\$49,200 depending upon experience. We offer an excellent benefits package.

Send résumé and cover letter to Heidi Parkington, Personnel Manager, W554 King County Courthouse, 516 -3rd Ave., Seattle, WA 98104. Applications must be received by the close of business on March 31, 1999. Please see our website for additional information: www.metrokc.gov/proatty. EOE.

Well-established, small Pierce County law firm with large plaintiff personal injury case load needs attorney with case management and negotiation experience. Legal-medical knowledge a plus. Strong organization, writing, verbal and client relationship skills essential. Must have a sincere desire to help people. Send résumé and cover letter discussing goals and experience to Law Office POB 1758, Tacoma, WA 98401-1758; e-mail: awlin29@mail.idt.net.

Lone Star Northwest, Inc., a leader in the construction materials industry with 11 concrete operations, seven aggregate mines and processing operations and three cement distribution operations in the Northwest, is seeking an enthusiastic Manager of Environmental Affairs. The primary responsibility is to draft a written environmental management manual that outlines environmental regulations, permits and responsibilities for each facility. This position also supervises two regional environmental managers. The successful candidate is a practical, energetic, hardworking individual with a minimum of five years' experience practicing environmental law. Send résumés to: PO Box 1730, Attn: Shawn Lilley, Seattle, WA, 98111.

Real estate, land use and environmental law firm seeks associate. Send résumé, writing sample and transcript to: Executive Director, PO Box 61634, Vancouver, Washington 98666.

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 areas include antitrust, race discrimination, environmental contamination 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 of Cohen, Milstein, Hausfeld and Toll, PLLC, 999 Third Avenue, Suite 3600, Seattle, WA 98188. Cohen Milstein has offices in Seattle and D.C. Visit the firm's website at www.cmht.com.

Real estate attorney: medium-sized law firm (10 attorneys) in Boise, Idaho, has a position available for an associate attorney with at least 3 years' experience in commercial real estate law. Shopping center experience preferable. Salary commensurate with market plus bonus. Send confidential résumé to Hiring Partner at Meuleman and Miller LLP, PO Box 995, Boise, ID 83701 or e-mail to mollerup@idaholaw.com.

Attorney, Bellevue, WA: Unigard Insurance has an immediate opening for a corporate attorney. Conduct broad legal assignments covering complex and important legal problems. Assist with

corporate law and regulatory work. Handle legal research, analysis and counseling for various county departments. A minimum of seven years' as a practicing attorney, preferably focusing on basic trial and insurance defense work, or equivalent corporate legal work plus continuing education Legal analysis, negotiation, oral/written communication, & strong interpersonal skills. We desire prior in-house corporate attorney experience, and knowledge of WA state corporate law and business insurance, PC skills, trial and negligence practice. See us on the web at www.unigard.com. Send résumé to Unigard Insurance, Attn: HR/attorney, 15805 NE 24th St., Bellevue, WA 98008. fax: (425)644-5210. EOE.

Junior partner wanted. Established high-volume plaintiff's PI firm in the Tri-Cities needs aggressive litigator to help with matters in mandatory arbitration and district and superior court. Will share fees on each case plus provide monthly draw or salary. Health care and retirement benefits available; excellent work environment. Send résumé and writing sample to PO Box 7163, Kennewick, WA 99336.

Litigation attorney with a minimum of two years' experience. Family law and criminal law helpful. Possible part time and/or full time position. AV-rated firm. Send résumé to Hiring Partner, 2200 6th Ave., Ste. 1122, Seattle, WA 98121.

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

Contract attorney: Duke University/UW School of Law graduate seeks engagements in all areas of law. Experienced. Efficient, prompt, very reasonable rates. References. David B. Kaz 206-378-0771.

Legal Research Solutions 1-800-627-8047. Our services include raw research, court-ready trial and appellate briefs, summations of law, drafting of pleadings, motions and discovery. All areas of law and all jurisdictions available. State and Federal. Our large network includes attorneys with many years of practical experience in vast areas of the law who are all top-quality researchers and writers. Areas of emphasis are also available, including tax, environmental, insurance among others. No additional charges for computerized research. Flat fee or hourly rates available. 7 days per week. Rush/long-term projects welcome. Fast turnaround. MasterCard/Visa accepted.

"The DRE Mystery": La Pier & Associates, specializing in DUI/DWI/Drug Recognition Expert case evaluations, presents "The Drug Recognition Expert Mystery." This 8-hour CLE program is designed to help attorneys in defending clients arrested for DUI/DWI where a Drug Recognition Evaluation and Standardized Field Sobriety Testing has been conducted. The DRE program focuses on a set of examinations' procedures that must be properly administered by the DRE. These procedures are psychophysical evaluations, eye exams, vital signs and chemical testing, just to name a few. Considering a thorough understanding of these procedures your ability to successfully defend your client will be greatly enhanced. This program will be presented April 1, 1999 at the Convention Center, 334 West Spokane Falls, Spokane, WA and April 2, 1999 at the Crowne Plaza Seattle, 1113 6th Ave., Seattle, WA. This program has been approved for 8.25 CLE credits by the WSBA and 7.75 CLE credits by the Idaho State Bar. Early bird registration by March 5 \$210. Regular registration after March 5 \$250; at-the-door registration \$285. For further information and registration call La Pier & Associates at 800-257-4643 or e-mail consult@lapier.com.

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

Spring into action with a contract attorney: I perform legal research and writing for Washington lawyers. Located 10 minutes from the UW Law Library. Will draft trial briefs and motions; review & organize documents, and help you prepare for trial. Elizabeth Dash Bottman, 6031 50th Ave. NE, Seattle, WA 98115. Telephone: 206-526-5777.

Minzel & Associates is a temporary placement agency for lawyers and paralegals. We provide highly qualified attorneys and paralegals on a contract basis to law firms, corporations, solo practitioners and government agencies. Jeff Minzel, who worked at Davis Wright Tremaine for a number of years, carefully screens all attorneys and paralegals. Highlights of the screening process include a personal interview, a detailed review of the applicant's legal and non-legal work experience, a review of the applicant's educational background, an evaluation of the applicant's legal skills, reference checks, a review for bar complaints and malpractice suits, and verification of good-standing status. These lawyers and paralegals can help you enhance profits, control costs, manage growth, increase flexibility, improve client service, and increase career satisfaction. For more information, please call us at 206-328-5100 or e-mail us at M-and-A@msn.com.

Independent jewelry appraiser: portable gem laboratory to resolve estate, probate, or divorce valuations. Nine years' experience. In your office or your client's home. Available as expert witness. John Vivian, GG, NJA, Washington Gemological Laboratory. 306-459-1441.

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Contract attorney: complex litigation. Eight years' experience including jury trials and appeals. Large firm experience. Excellent research, writing, case preparation, depositions, motions, etc. Bob 206-892-2252; e-mail hedrick@speakeasy.org.

Expert witness for computing: providing consulting services on the use of computing systems in business. Includes areas of enterprise architecture, application architecture and design, computing standards, product development, and Internet usage. Contact Richard Tennent 425-228-6266 or e-mail dtennent@wolfenet.com.

Business practice, litigation and estates assistance: business agreements, formation, licensing and transactions. Also commercial and other civil litigation including briefs, appeals, discovery, research, trial preparation. Wills, trusts, probate. Yale and Stanford law graduate. Colorado bar member. High quality work. Very experienced. Affordable hourly. William Goldstein 206-322-2204 or 206-720-0782.

WILL SEARCH

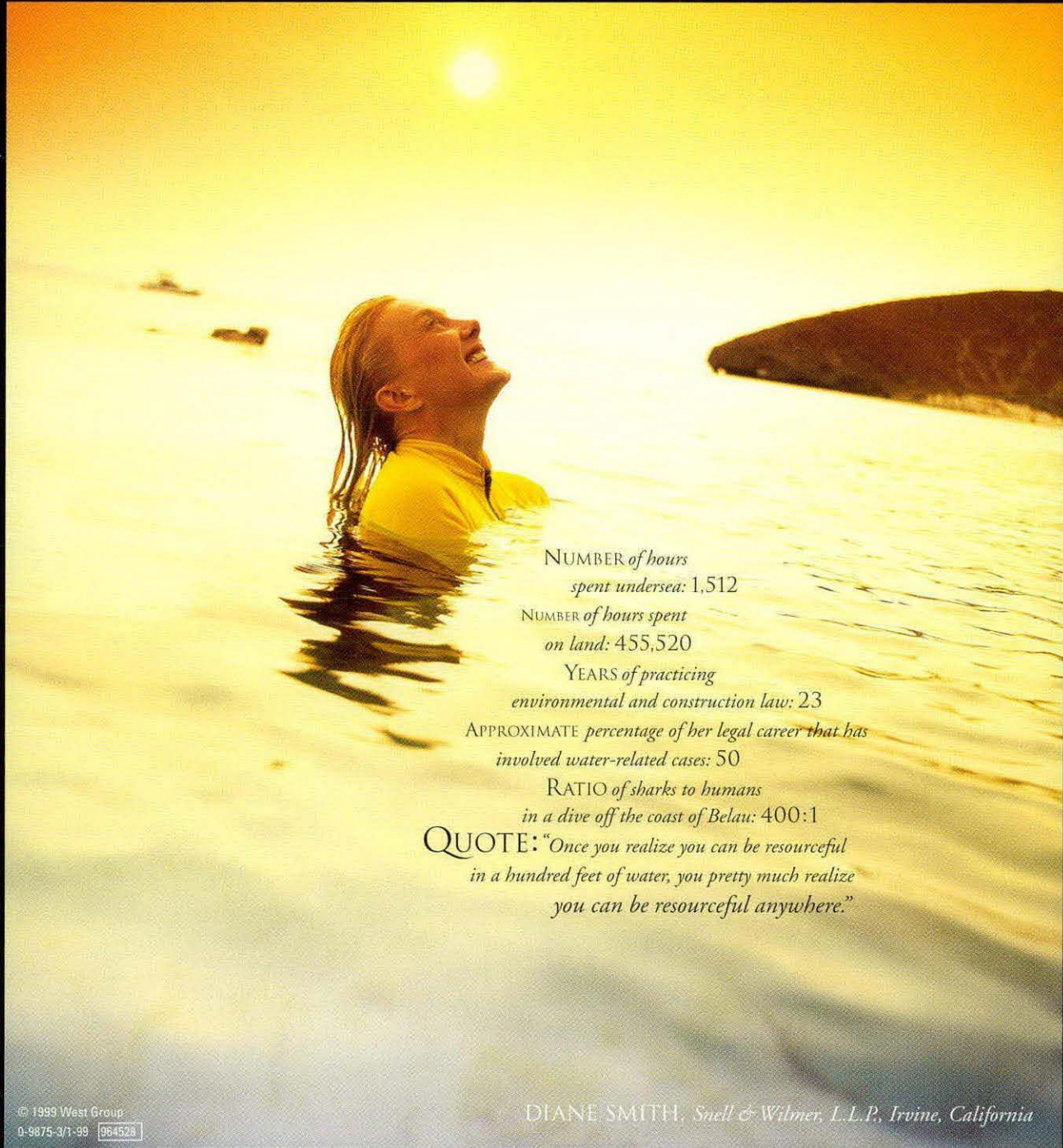
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NUMBER of hours
spent undersea: 1,512

NUMBER of hours spent
on land: 455,520

YEARS of practicing
environmental and construction law: 23

APPROXIMATE percentage of her legal career that has
involved water-related cases: 50

RATIO of sharks to humans
in a dive off the coast of Belau: 400:1

QUOTE: "Once you realize you can be resourceful
in a hundred feet of water, you pretty much realize
you can be resourceful anywhere."

DIANE SMITH, *Snell & Wilmer, L.L.P., Irvine, California*

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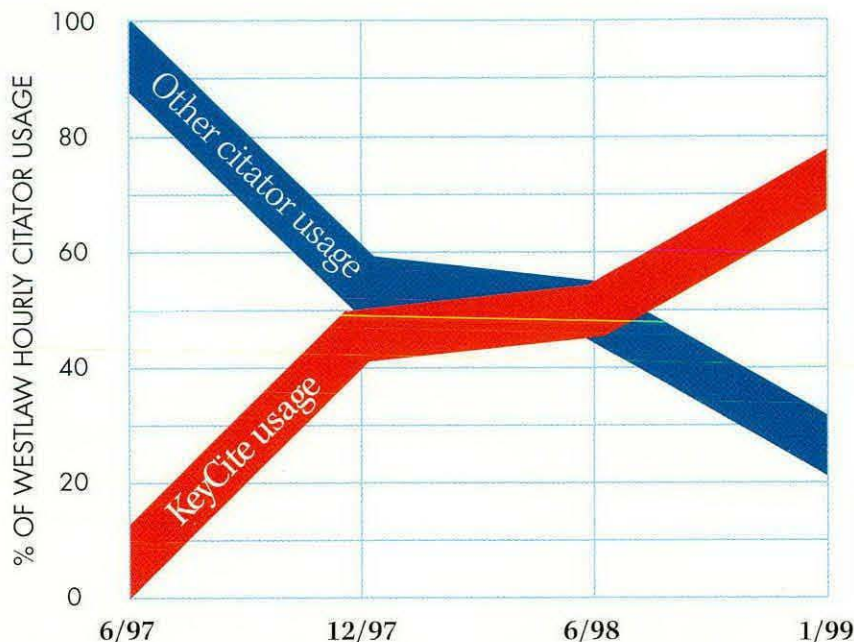
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