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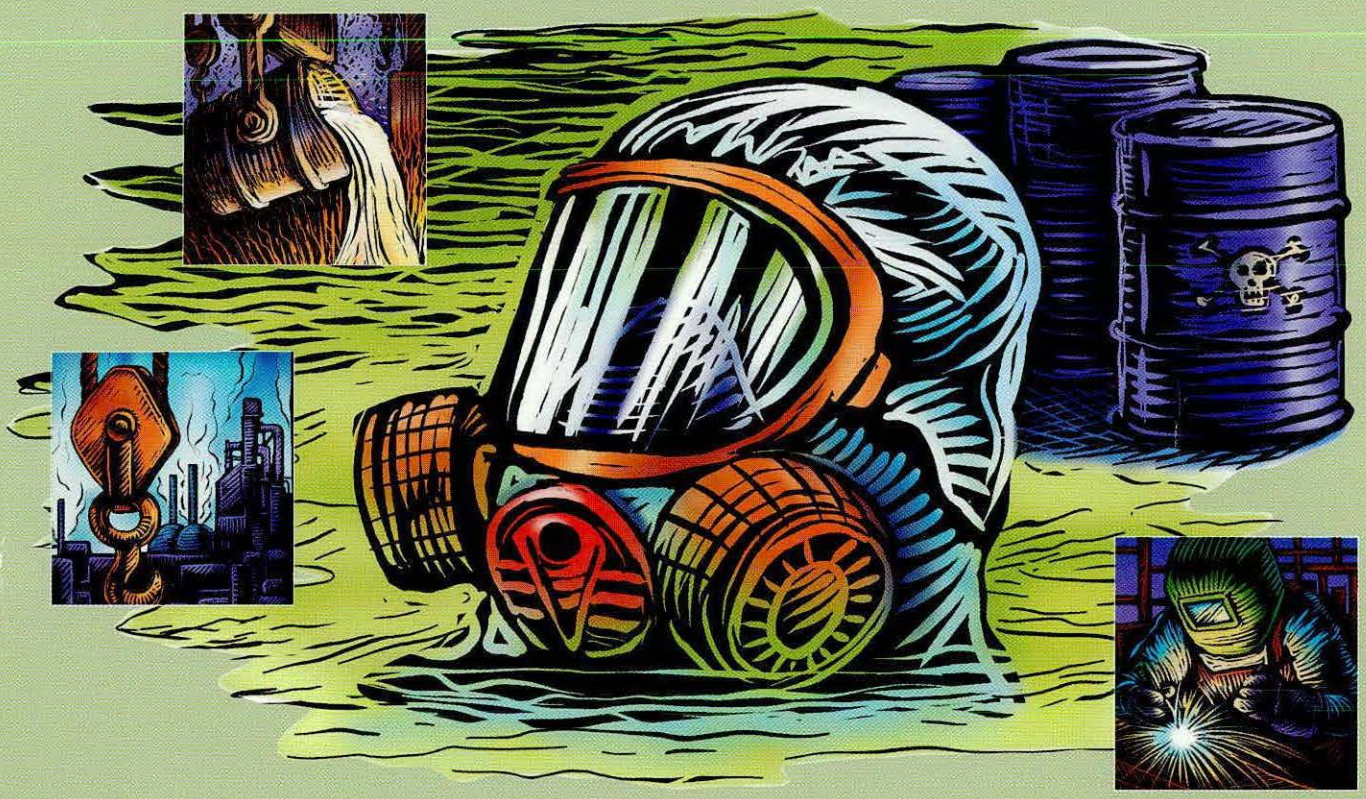

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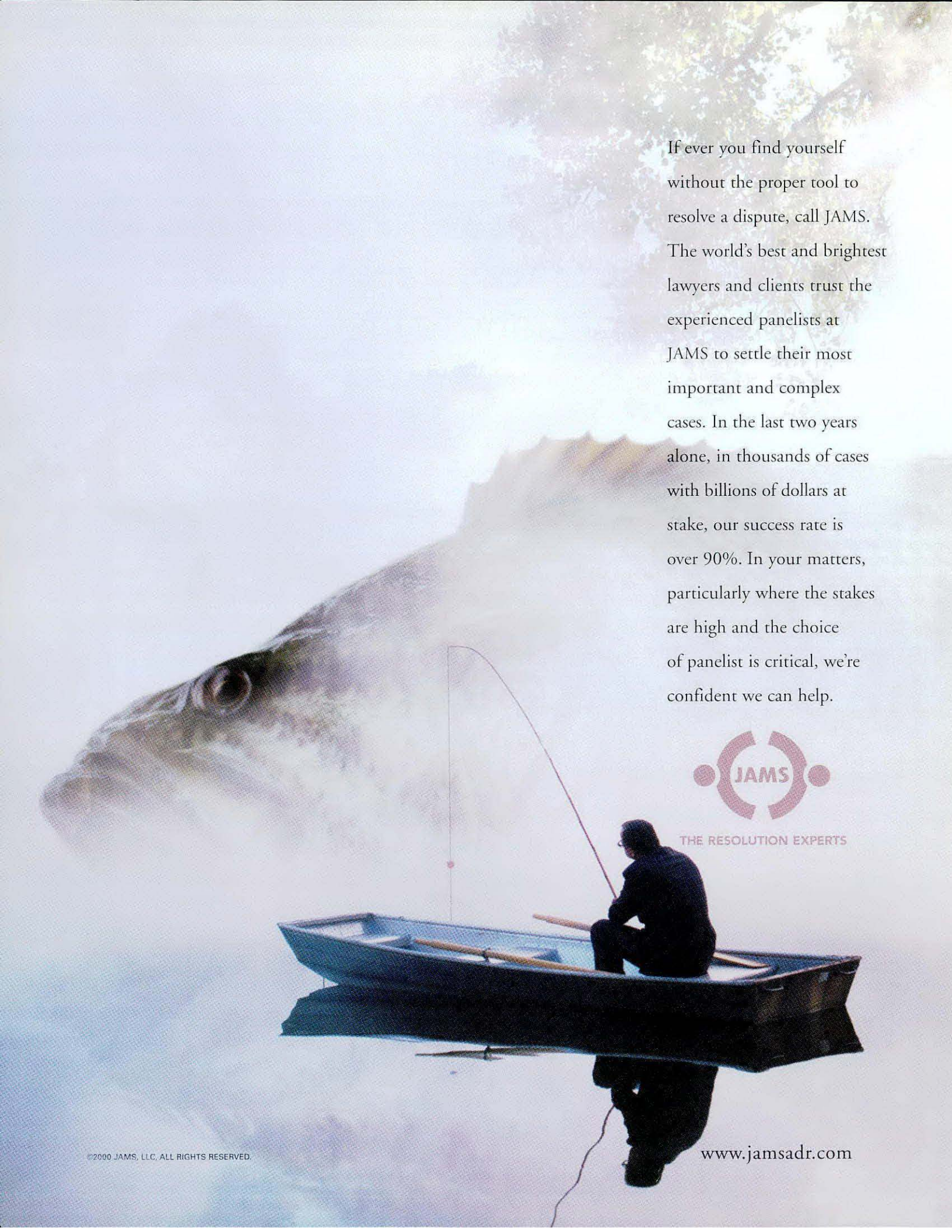

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Contents

Articles

Columns

Departments

Features

Listings

Cover illustrations by Chet Phillips

P. 26

P. 54

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Bar News
The Official Publication of the Washington State Bar Association

Submission Guidelines

Readers are invited to submit correspondence and articles. They may be sent via e-mail to comm@wsba.org or provided on disk in any conventional format with accompanying hard copy and sent to *Bar News* Editor, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330. The due date for submissions is the 10th of the month for the second issue following, e.g., November 10 for publication consideration in the January issue. Article submissions should run approximately 1,500 to 4,000 words. Graphics and illustrations are welcome.

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Submissions in Electronic Format Would Greatly Assist Courts

Editor:

I am writing to urge members of the Bar to consider voluntarily submitting appellate records and briefing in electronic format in addition to the traditional paper record. In *Aluminum Company of America v. Aetna Casualty Insurance Co.*, 140 Wn.2d 517, 521 n.1, 998 P.2d 856 (2000), a recent decision of the Washington Supreme Court, we noted the voluminous record and briefing were submitted electronically to the Court. The submission of cases in electronic format can do a great deal to assist appellate courts in the handling of their workloads.

I would recommend appellate counsel advise opposing counsel of their intention in advance and consult with the appropriate appellate court as to the preferable format for the electronic submission. I hope members of the Bar Association will consider this opportunity to employ technology to enhance case handling in our appellate courts.

Philip A. Talmadge
Olympia

Response to Diamond Letter

Editor:

As lawyers, we know that people are entitled to their own opinions, but not their own facts. Yet a recent letter to the editor by Maria S. Diamond, the president of the Washington State Trial Lawyers Association, seemed to present not only a unique opinion but also a unique set of facts. Like the fact that the letter blamed Governor Bush for tort reform laws that were passed in 1993, two years before Governor Bush took office.

Setting that aside, it is indeed true that Governor Bush supports reasonable, responsible efforts to ensure that that our courts are used for legitimate lawsuits. Many lawyers share the concern that our courts and our lawyers are being misused by some in our society who would rather sue than solve a problem.

That is why Governor Bush has supported common-sense legislation to reform tort laws in Texas. The core of the argument put forward by the trial lawyers president is that Bush supported a law in Texas that placed a $750,000 cap on non-economic damages. This much is true. But that in no way restricts the ability of the courts to award other damages. In Texas, if you are seriously hurt, you will receive a serious recovery in court. In fact, there is no limit to what can be awarded in actual damages. But you won't be able to win millions of dollars in non-economic damages for hot coffee spilled on you.

The next issue raised by the letter attacks Governor Bush for planning to support similar common sense legislation as president. But again, the facts are important. And the fact is a litigation explosion is clogging America's courts, costing U.S. high-tech companies, small businesses, and consumers more than $150 billion a year. As lawyers, we should all be concerned about this. As a young lawyer, Abraham Lincoln often talked about how he saw his job as one of being a "peacemaker" who can "persuade your neighbors to compromise." This is our tradition — being problem solvers. Yet, too often today we are not allowed to serve this purpose.

The remaining two-thirds of Ms. Diamond's letter is devoted to attacking various groups that support tort reform. We are not writing to defend those groups.

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We are writing to defend Governor Bush, his record, and his agenda.

The truth is Governor Bush is not proposing anything that should concern any lawyer. Like Lincoln, he believes that our value is not measured in overblown damages, but in positive results. That's why many lawyers are supporting Governor Bush. He will work with us, not against us, to bring some common sense solutions to our court system.

William D. Hyslop, Spokane
Stephen L. Johnson, Kent
Michael D. McKay, Seattle

Spitzer Article Inspires Comment

Editor:

I read, with interest, Professor Spitzer's article (September *Bar News*, p. 20) regarding why attorneys have been hated throughout history. I was surprised, however, by his reminiscence that when he began work on his essay he thought he might find, at some point in history, there existed a golden age when all lawyers were beloved by the populace.

My surprise was based on the experience of lawyers from the beginning of the practice of legal advocacy. There are always two sides to a legal dispute and one must lose. Therefore, 50 percent of the represented — the losers — hate their advocate. In addition, a remarkable percentage of prevailing parties hate their advocate because he or she did not extract more from or impose more on the loser.

Based on the above, it should not be unexpected that many of the populace have hated, do hate, and will continue to hate attorneys.

While the vast majority of attorneys do not deserve such a strong negative emotional reaction, sadly there are those few who have earned it.

Cliff Carlisle
Farmington, Utah

Editor:

Hugh Spitzer's article, "Why Lawyers Have Often Worn Strange Clothes...," in the September *Bar News* was excellent reading. I appreciate the time and effort he put into gathering the history for the article and putting his thoughts on paper. It was also a good reminder as to why many of us enjoy practicing law — to provide good service to the community while earning a living at the same time. Sometimes with the weight of billable hours, accounts receivable and accounts payable hanging over our heads, we may forget the service to the community element.

Steve D. Smith
Wenatchee

Offer of Help from Skagit Attorney

Editor:

In his letter to the editor last month (September *Bar News*, p. 9), William F. West of Bothell complains of inequitable billing practices of the *Skagit Valley Herald* with regard to King County attorneys versus Skagit County attorneys. Mr. West suggests that the entire organized bar should target "Skagit County newspapers and/or Skagit County attorneys who are practicing in our territory."

I don't think this is going to work. Most Skagit County attorneys don't go to King County. We cannot justify the expense of the drive, parking fees, and long wait to argue a motion for temporary possession of the pickup truck and the hunting dogs.

If Mr. West would have called me prior

to publishing his notice to creditors, I would have told him to advertise in the *Skagit Argus*, where all my fellow attorneys do their legal publications. It's a lot cheaper.

Just give us a call, Mr. West. We will be glad to help. If you can't make it up to the courthouse to present your final papers, most local attorneys would present them for you without charge. We consider this type of help to be common courtesy to fellow members of the Bar, no matter where they reside.

Ken Evans
Mount Vernon

Restructure Judicial Election Process

Editor:

The array of candidates for the King County Superior Court on the ballot at the last primary was bewildering, even to me as a King County lawyer. I have practiced law for some 37 years and I didn't know much more about the candidates than most nonlawyers. On the eve of the election I called a usually well-informed colleague for his opinion and he wasn't sure who was running. Studying the voters pamphlet helped a little, but only superficially. The problem is the lack of adequate and reliable information about the candidates.

The solution is for the state or bar associations to put more effort and fairness into the selection process. This is an important process — important enough to spend some real money on.

First, the rating process conducted by bar committees is flawed. It is flawed in the makeup of the evaluators, their apparent biases, and the lack of time and effort they put into the task. Since the evaluators are volunteer lawyers, they can spend only a few hours away from their practices on committee work. That's inadequate. What can a volunteer committee really learn about a candidate by reviewing a questionnaire and, as a group, interviewing him/her for 20 minutes around a big table? Committee members do not always have time to contact and talk to all or even most of the candidate's references. I would guess from some of the ratings I've seen that few committee members have ever taken the time to sit in on a trial conducted by very many, if any, judicial candidates.

It stands to reason that most bar committee members come from the large downtown law offices because they are the firms that can afford to give their associates or partners time off — or even encourage time off — to serve on bar committees. As a result the committees tend to have an establishment bias that favors deputy prosecutors, assistant AGs, city attorneys and sometimes public defenders. Incidentally, it seems that lawyers from the big, prestige downtown law firms don't often seek superior court positions. So that leaves candidates coming from the public sector, who are better known by the committee, as their preferred candidates. A candidate from a small law firm with varied civil and criminal experience with outstanding qualifications, such as Richard Sanders (who was a private attorney from a small firm when he ran for Supreme Court a few years ago), will usually get an "unqualified" rating or at best "adequate." Fortunately, the voters paid little attention to now Justice Sanders' undeserved low rating. But the rating itself, in the face of his demonstrated ability and qualifications, is glaring proof of my point.

Many have speculated that voters are influenced by the candidate's name, favor-

ing a name with a familiar or pleasing ring to it. That should be researched by political scientists or polling organizations. Clearly, though, the name factor would diminish markedly if voters had more reliable information about the candidates.

One way to do that is for bar committees to establish a published set of defined criteria, assigning points to different levels of the criteria. Criteria elements should be as objective as possible. So, for example, if the committee thought this important, it could assign a point for each year of practice. Certain points could be assigned to different types of experience and the number and length of trials of various kinds that each candidate had during the previous years — civil, criminal, divorce, etc. If being a government lawyer, a court commissioner, a pro-tem judge, etc. is to be given weight, then fine; just make it known up front that these experience factors have defined point values. Then the results, which would be more objective, uniform and predictable, could be published in terms of total judicial evaluation points.

More importantly, during the months leading up to the election the bar should be given some money to hire full-time evaluators, perhaps retired judges from other counties, to study the local candidates. Any announced candidate who is not already a judge should be given immediate assignments as a pro-tem judge and/or arbitrator. Then the corps of evaluators would, on a rotating basis, observe the trials or hearings conducted by all candidates, both sitting judges and lawyers. These evaluators would also conduct in-depth interviews with each candidate and would meet face-to-face with (not just attempt a fleeting phone call to) all persons listed as references, e.g., lawyers who had tried cases before judges running for re-election or who had tried cases with or against a lawyer candidate. The evaluation corps would then make a report on the performance of the candidates to the committee and the report itself would be available to the public.

Judicial races can be influenced by campaign spending at least as much as, if not more than, other political races. Some candidates have gone out and essentially bought the position. We should end the practice of lawyers contributing to judicial candidates and start right here with public financing of these campaigns, including televised forums on the major TV stations. Never again should we be hit by surprise with a large field of candidates of varying renown.

Outright appointment of judges would be as flawed as the present system is, i.e., by political considerations, an emphasis on who the selectors know, and a "good-old-boys" network. Selection of judges is so important that we must do and spend whatever is necessary to give voters the most complete and reliable guidance possible in making their choices at the polls.

Jerry Cronk
Shoreline, WA

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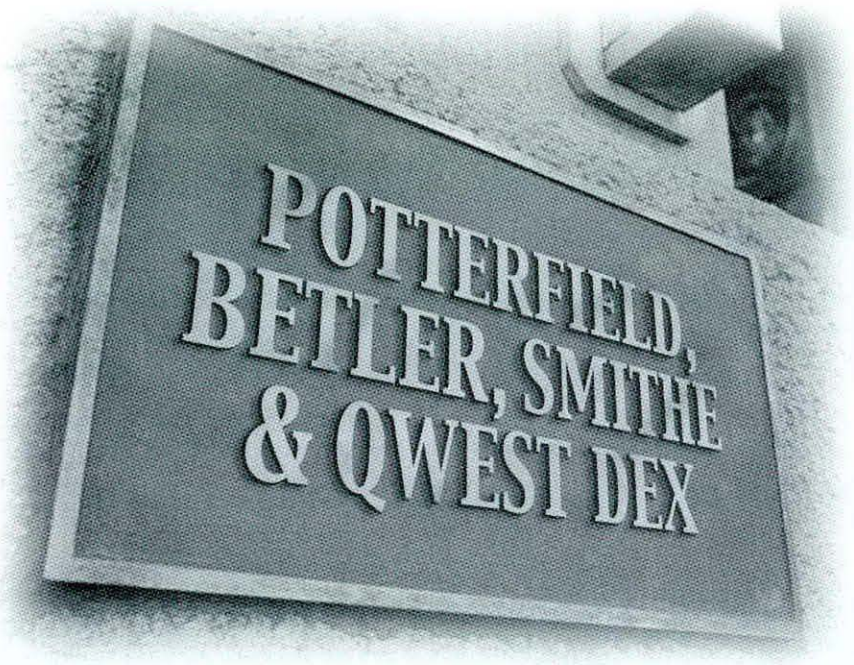

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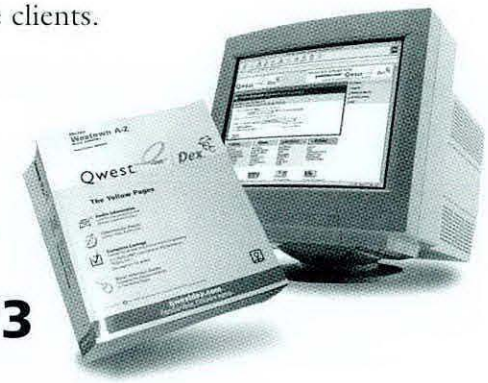

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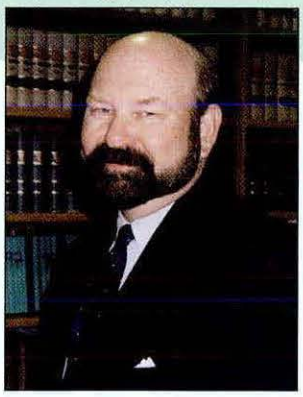

Public Trust, Confidence and Respect:
Be Part of the Solution

by Jan Eric Peterson
WSBA President

Last month I wrote that I am campaigning for a proud profession. I stated that it begins with each of us, by being proud of who we are and what we do, and reclaiming the position of respect we should be afforded as members of one of the learned professions. So what can we do about it? An old saying from the '60s still rings true today: If you are not part of the solution, you are part of the problem.

To be afforded respect, we must earn it. The easiest way to change public perception is to change reality. The three respected learned professions used to be doctors, lawyers and clergy. What sets them apart from other "professionals" who get paid for a special skill, from Ph.D.s who have mastered a body of knowledge? They are helping professions serving the highest values: health and well-being, spiritual fulfillment and justice. The public's trust, confidence and respect for lawyers is at an all-time low because many are convinced we have lost sight of our fundamental purpose and core values; we have become more a business and less a learned profession. Lawyers are seen as too expensive, too greedy, too slow, and too contentious, causing more problems than they solve. We are not perceived in our role as counselors, problem solvers or public servants. We must make some fundamental changes to earn back the public's trust, confidence and respect. We must bear in mind that our role is to serve our clients and the public interest first and provide valuable and affordable service in a timely manner, or risk becoming irrelevant.

We must bear in mind that our role is to serve our clients and the public interest first and provide valuable and affordable service in a timely manner, or risk becoming irrelevant.

Access to justice is key if we are to regain our position as one of the respected, helping professions. One of the promises of America is equal justice for all. It's written on the Supreme Court building. It's in the Pledge of Allegiance. When that promise is broken, nothing else we do will earn the public's trust, confidence and respect. It's not just lawyers' responsibility, it is society's responsibility. Adequate funding for civil legal services and the courts must be a number-one priority for the Bar.

The next priority is public legal education. It's shocking to know that 60 percent of the populace can't name the three branches of government. A civics course is not required to receive a high school diploma in Washington. Jury summons response is down to 20 percent. The third branch of government, the judiciary, is equally important, but judicial elections remind us how little the public thinks about it. I was frustrated when trying to find judicial race returns on television the night of the recent primary election. I couldn't find one. Obviously, the message from the media was "it's not important"! In a system of self-government, it is essential that the public appreciate, understand and participate in the institutions of society. There is no more important principle than the rule of law, no more important institution than the justice system. There can be no freedom without justice. Studies and surveys show that the more people know and the more actual experience they have with the justice system, such as serving as jurors, the more trust, confidence and respect they express.

You can help me do something about it. Be part of the solution. I have formed the President's Initiative Task Force to conduct the campaign for a proud profession. A multitude of ideas have been proposed. But yours are certainly encouraged and welcomed. Write, call or e-mail me. Following are a few things that can happen if we have the will to volunteer. Join me in one specific effort to be part of the solution:

Law Week

The goal is to place a lawyer in every classroom in every school in the state during Law Week, the week of May 1. Last year's pilot project was a resounding success. This year, under the leadership of Ron Bemis, the program will be expanded. Volunteer lawyers will be connected with teachers and schools to teach about the law by conducting mock trials, showing videos, answering questions, etc. We need you to volunteer. Contact Lisa KauzLoric at 206-733-5944 or lisak@wsba.org. Be part of the solution.

Pro Bono Volunteer

The Volunteer Attorneys Legal Services program (VALS) and the local county bar associations provide innumerable op-

portunities for pro bono service, one case at a time. You do have the time to do *something.* Every time a lawyer does something for nothing, at least three things are accomplished: (1) Someone is helped who needs justice, (2) enormous public good will is engendered for the profession, and (3) the lawyer gets a great deal of personal satisfaction for having done the right thing for all the right reasons. Call your local bar and volunteer; access the WSBA website access to justice page at www.wsba.org/atj; contact Sharlene Steele at 206-727-8262 or sharlene@wsba.org. Be part of the solution.

New Admittee Mentorship Program

Under the leadership of WSBA Governor Steve Henderson, and with the coordination of the Professionalism Committee, we are determined to create and implement a meaningful mentorship program for every new admittee to our bar. This means providing each new lawyer with a qualified, trained mentor, armed with materials and annually accountable for actually having done the job. A learned profession nurtures its own. Volunteer by contacting Tom Russell at 206-727-8220 or cle@wsba.org. Be part of the solution.

Local Heroes — Spreading the Word

Every time you hear about a lawyer who has done something especially good, honor that person in any number of ways: Acknowledge what they have done by writing, calling or personally congratulating them. Call your daily or community newspaper, radio station or other media outlet and tell them about it. Gather testimonials and thank yous about lawyers and send them to us. We'll get them to the media, we'll publish them on our website, we'll spread the news. Contact Director of Communications Judy Berrett at WSBA, 2101 Fourth Ave., 4th Fl., Seattle, WA 98121-2330; 206-727-8212, judithb@wsba.org. Be part of the solution.

Public Outreach

We intend to produce public service announcements; develop an office pamphlet or brochure entitled "Proud to Be a Lawyer" for you to give to your clients, teachers and friends; write op/ed pieces, editorials and letters to the editor for newspapers; and revitalize the Speakers Bureau with a kit and an outreach program to get lawyers to speak to community organizations, service clubs and the like. If any of these ideas interest you — volunteer, either on your own or through Judy Berrett in the Communications Department of the WSBA. Be part of the solution.

Don't give anyone a reason to make a joke about you. Through our daily interactions with clients, witnesses, jurors and our communities, we can be seen as trying to help if in fact we are. The jokes will disappear when the facts improve and the public perception catches up. Someone asked how I want to be remembered after my year as president is over. I had to think about it, because it's looking at what you want to do from the other end of the tunnel. I'd like people to say: He made me proud to be a lawyer; he helped me be part of the solution. Please help me.

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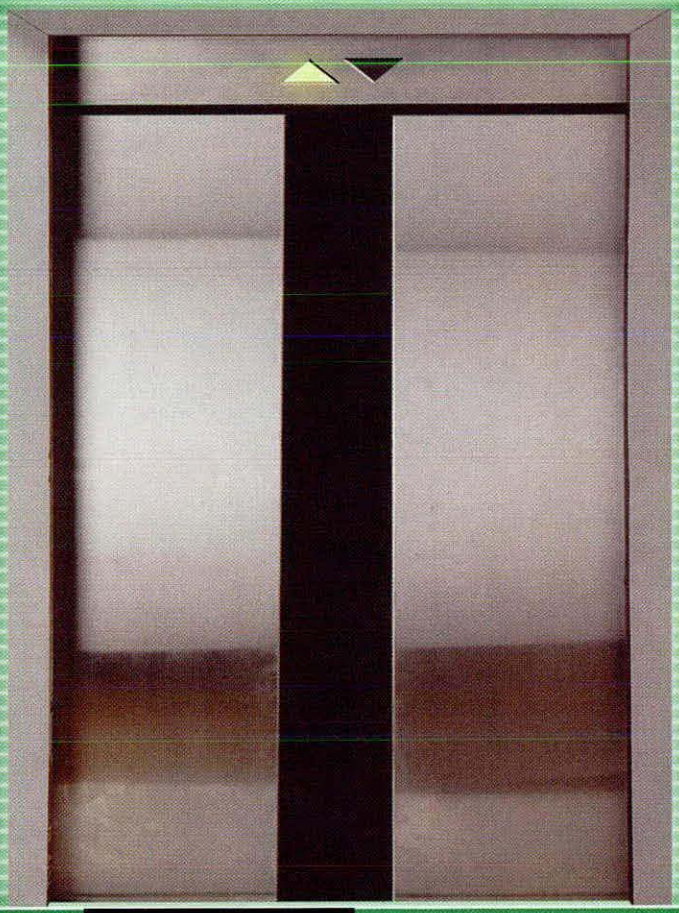

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Celebration 2000: The Week That Was

by Jan Michels
WSBA Executive Director

For all of you dying to know how it went … Celebration 2000 was a dynamite success. I don't declare this falsely or for any other purpose than to let WSBA members, the judiciary, the legal services community and others know that the event "worked," and to recap a few of the lessons learned.

Early registrations came in strong, then waivered during the summer. There were more than 80 on-site registrations, making the total registration of 260 judges, 240 access to justice registrants, and 430 lawyers and guests close to our target goal. While not an overwhelming response or edict for a return to an annual convention, the numbers were strong enough to declare the event a financial success (i.e., revenue meeting expenses) and indicate interest in periodic gatherings.

… we think the success factors were the joint conference with the judiciary, the enthusiasm and energy of the bar president and board, … and the hunger of attendees to interact and enjoy each other's company.

Highlights

The real highlights were the programs and workshops, though some attendees complained that there were so many choices they had to miss many events that interested them. There was the exemplary opening session by Clay Jenkinson in the persona of Thomas Jefferson and response discussion by high-tech experts in technology and human genetics. There were inspiring stories about the WSBA's award recipients. The "blockbuster" jury trial, staged by WSTLA's Bryan Harnetiaux and portrayed by some of Washington's most renowned trial lawyers, was excellent. Three-hundred high school and law students joined the conference for this event, which included a program and study guide. Each of the four conference tracks — judiciary, access to justice, bar leaders and WSBA, featured specialized new learning opportunities and presented unique challenges to the profession in the information age. Each of these programs deserves its own tribute. All programs stressed the importance of diversity in the future planning and delivery of justice services. We can no longer expect to thrive without a full understanding of the life experiences of not-like-me persons.

Celebration in Review

There were over 45 choice sessions, and each is worthy of printed and published wisdom. My world view changed during the judicial workshop *When Bias Compounds* about the special challenge of being both female and a racial minority. The *Future of the Profession* panel for bar leaders produced three pages of notes for me to recap in a future column. We're getting national inquiries for material from the *Cyberspace and the Quill Pen* seminar in the access to justice (ATJ) track. Another ATJ track program included a fascinating exploration of concrete action plans for creating a multi-cultural "justice imperative."

The two social highlights of the convention were the raucous and slightly funky ATJ skit, *When Indifference Strikes*, written and staged by Marla Elliot, and the more subdued (but only slightly by late evening) night of receptions. The theme of the ATJ skit was that by working together, superheroes like Superior-judge, Barman and Justiceguy can defeat the villainous Mr. Status Quo and his henchmen, Prejudice, Apathy and Bias. Given the number of connections and conversations I enjoyed on reception night and the reports of similar experiences from others, I feel assured that we achieved our renewal-of-collegiality goals. Receptions and parties hosted by law schools, WSTLA, Law Fund and specialty bar associations attracted people who might not otherwise spend time together for the proverbial "networking and renewing."

We had modest attendance at the family and social events that the Spokane County Bar Association worked so hard to put together. The weather (some of us "wetheads" have heard of such weather, but seldom experienced it for an entire week) was hot and dry. Dick Eymann took personal credit for that!

Lessons Learned

By not having a convention for over nine years, we lost some intuition about conference logistics. To encourage crossover attendance, we should have had more of the various tracks' sessions in the conference center rather then spread to different hotels. The location of our vendor fair was too isolated to encourage strong attendance, and the program was too tight

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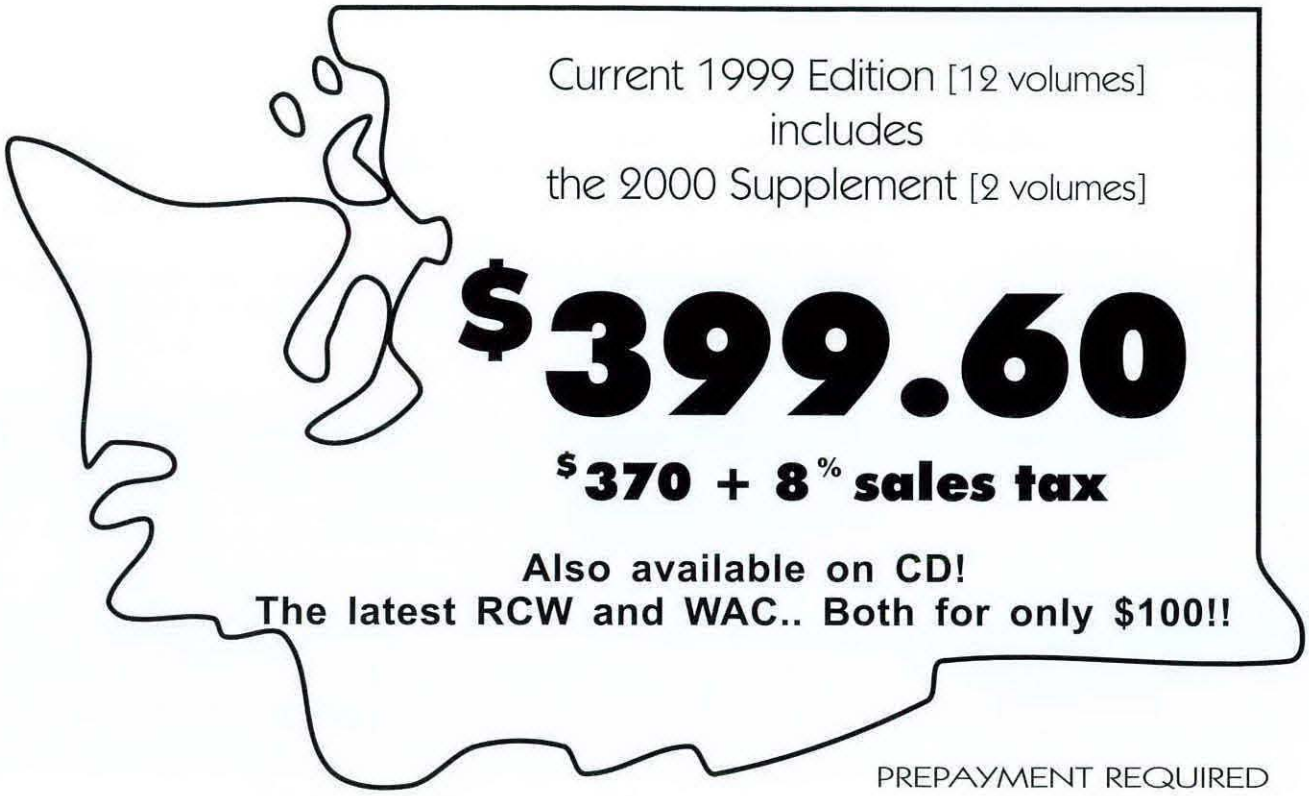

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to allow much milling-around time. We should consider scheduling a future convention for longer than three days. Too many people missed the closing and what I deem as one of the best speakers and messages of Celebration 2000, *Chasing the Justice and Equality Dream* by Northeastern University Provost David Hall. (His speech will be reprinted in the December issue of *Bar News*.)

Overall, we think the success factors were the joint conference with the judiciary, the enthusiasm and energy of the bar president and board, the overwhelming spirit of fun and good will, and the hunger of attendees to interact and enjoy each other's company.

Lastly, our logo, the symbol of Celebration 2000, really worked to help brand the event. In a prototype of a winged and diaphanously dressed lady justice, Mary McQueen of the Office of the Administrator for the Courts (and Superhero "OAC-Lady") suggested that we "ditch the wings and dress her." We have a few mouse pads and mugs left over and will offer them in the general CLE store at year's end.

Will we do it again? Probably, but not right away!

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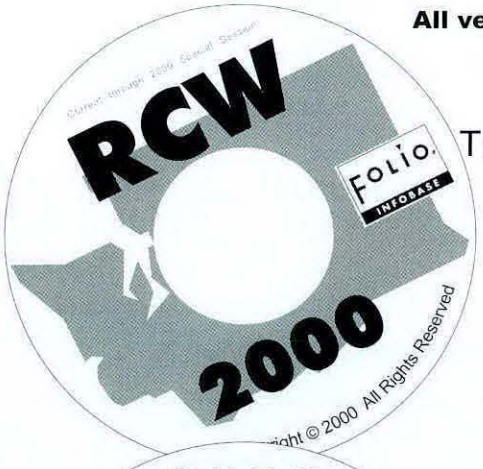

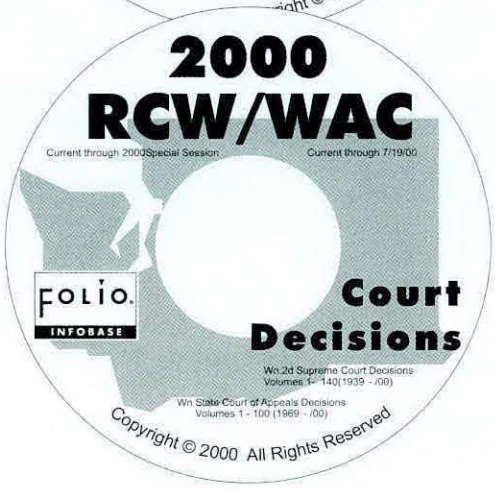

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by Jay Flynn

Proud to Be a Lawyer

In the coming months, I'd like to use this space to introduce you to members of the state Bar who remind me that we have a lot to be proud of in this profession.

As part of a profession that is often reviled by the media, I sometimes have to sit back and reflect on the fact that, for the most part, the lawyers I have met during 20 years of practice have been genuinely good people trying to do the right thing. I have always felt that law by its nature attracts interesting, smart, sharp people.

Hollywood is a valid reflection of society's subconscious and, let's face it, Newman, Redford, Travolta, Cruise and Roberts are not going to be starring in any films about accountants or engineers (Julia Roberts in "The Pelican Spreadsheet"?). The entertainment industry knows that people, in general, consider attorneys to be good individuals no matter what may be outwardly said.

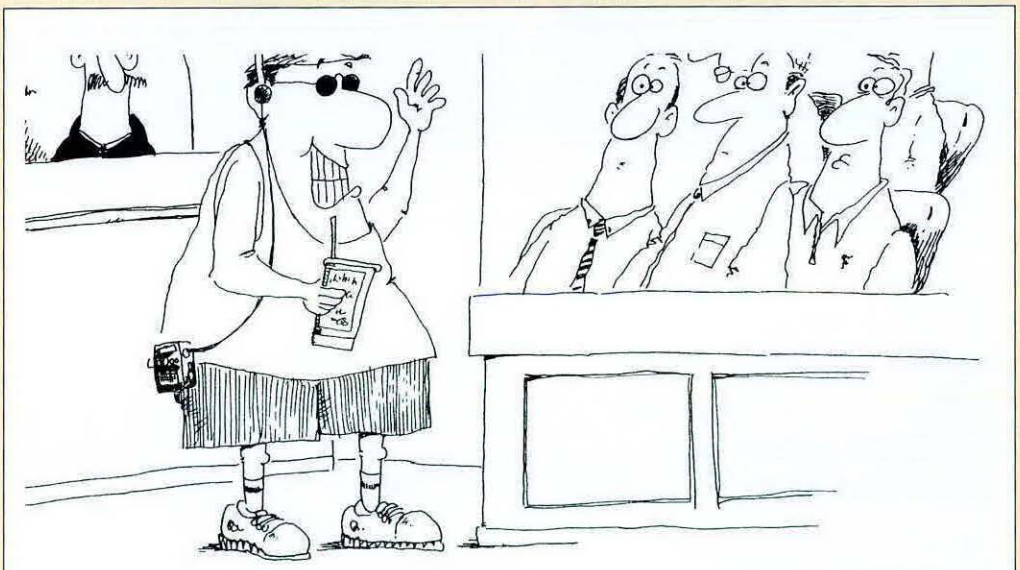
These days, it's tough to know all the attorneys in a small area like the Tri-Cities, where I practice, much less to get an idea of some of the great things they are doing. I can only imagine how difficult it is to get to know fellow attorneys in the Seattle area. In the coming months, I'd like to use this space to introduce you to members of the state Bar who remind me that we have a lot to be proud of in this profession.

I'm not necessarily talking about the big things we do that get lots of press or professional notoriety. I'm much more interested in the between-the-lines stuff. For example, I'm looking for the attorney who takes three afternoons off each week to coach, leaving a desk full of screaming client files behind, or the attorney who does the right thing in a case even when nobody will necessarily pat him on the back for it. In our everyday practices we run into attorneys who do things that cause us to stop and consider that we are rarely the brash, arrogant sharks we are so often portrayed to be.

As I am writing this article, the Torts Division of the Washington State Attorney General's Office has caught a lot of heat and is being portrayed poorly in rather broad brush strokes. Hearing pointed criticism of the office's attorneys by a politician the other day caused me to think of my last case with the Torts Division Office a couple of years ago.

My case was one of several involved in a tragic auto accident. The state's attorney was Bob Lipson, a very good trial attorney and honorable man who showed me during one deposition the proper way to practice law and conduct my life. The case was three-quarters of the way through, and it was time for my client's deposition. The client was one of those great people you like a lot and want to protect. However, since our case was one involving psychological damages, and there was some serious past psychological baggage which made my client an easy target to hammer on, she was fragile and panic-stricken. I tried my best to prepare her for what I felt would be an ugly three hours at the hands of Mr. Lipson. After all, he was from the Attorney General's Office, and they were reportedly taking everything to trial.

When the deposition ended, I was stunned. Bob had skillfully obtained the key information he needed quickly, without bullying, scaring, intimidating or pounding on my client regarding the juicy, but to me irrelevant, side issues. He was handed these issues on the silver platter of the client's psychological records, yet he gave up the golden opportunity to fly back to Seattle, walk into his office, and crow, "I destroyed Flynn's client."



IN A DISASTEROUS DECISION, ATTORNEY BOB FELDER TAKES THE LESSONS HE LEARNED AT HIS LAST C.L.E. "THE KEY TO TRIAL SUCCESS.... BE YOURSELF!" A LITTLE TOO LITERALLY.

Jay Flynn

After the deposition, I talked with Bob and told him that I truly appreciated the considerate manner in which he handled it, and that he could have done some long-term psychological damage to my client if he had taken another tack. Bob looked at me very matter-of-factly and said, "Jay, my job is to be an effective advocate for my client, but that doesn't mean I have to harm your client in the process." Now I'm thinking, "Wait a minute, Bob. Don't you want my client to be a mass of quivering flesh on the floor after this deposition?" We ended up settling the case at mediation for a moderate sum. Leaving the mediation, Bob gave his heartfelt wish that my client would recover from the incident and wished her well.

I've often reflected on this deposition and Bob's comments afterward. I called him the other day (we hadn't spoken since the case finished) and mentioned the deposition to him. He remembered the case well. He had the same thoughtful analysis on the practice of law and doing what's right. Most attorneys, he told me, are caring, intelligent people. The attorneys who have problems are those who do not stay in sync with their values. Once a lawyer stops listening to himself, he may serve his clients, but not his own values, and it becomes harder for the attorney to listen in other areas. The more a person takes time to stop and listen, the easier listening becomes, and the easier it is to know the right thing to do.

Okay, the guy was nice in a deposition, so what? Did he cure cancer? Did he develop a breakthrough legal theory? The answer is obviously no, but let's face it, that's not what most of us do in our everyday lives anyway. We have small chances each day to show the world that we are good people as well as good attorneys, not just advocates who will do anything to win.

Bob showed me during a one-hour deposition, in the middle of a hot August day, in a poorly air-conditioned conference room, on a "small potatoes" case, that you can be an effective attorney and a good person. He again reiterated what I already knew — that the majority of my legal brethren in Washington are good people trying to do the right thing in life as well as the law. People like Bob make me proud to be a lawyer.

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by Randolph I. Gordon
and Amy F. Cook

The "Deliberate Intention" Exception to the Industrial Insurance Act after *Birklid v. Boeing*: A Guidebook for Bench & Bar

"The cruelest thing of all was that nearly all of them – all of those who used knives – were unable to wear gloves, and their arms would be white with frost and their hands would grow numb, and then of course there would be accidents. Also the air would be full of steam, from the hot water and the hot blood, so that you could not see five feet before you; and then, with men rushing about at the speed they kept up on the killing beds, and all with butcher knives, like razors, in their hands – well, it was to be counted as a wonder that there were not more men slaughtered than cattle." — From Upton Sinclair's *The Jungle*

Every day something like this happens: two people are accidentally injured in about the same way, one in the workplace, one elsewhere. From this point on, each is treated differently. Different procedures. Different compensation. Different law. The worker's exclusive remedy is workers' compensation as established under the Industrial Insurance Act (IIA), a "no fault" administrative system which holds the employer immune from any tort liability and abolishes the jurisdiction of the courts to hear such matters.[1] The other person's injury is handled through the civil justice system based upon principles of tort liability with damages established by a jury.

Since 1911 when the IIA was enacted, there has been a statutory exception to this "exclusive remedy" rule: the immunity from civil liability does not apply to employers who deliberately injure their employees. RCW 51.24.020 provides:

> If injury results to a worker from the deliberate intention of his or her employer to produce such injury, the worker ... shall have the privilege to take under this title and also have cause of action against the employer as if this title had not been enacted, for any damages in excess of compensation and benefits paid or payable under this title.[2]

For the first 84 of its 89 years, interpretation of the exception was simple enough. As Justice Talmadge, writing for a unanimous Washington Supreme Court in *Birklid v. Boeing*, 127 Wn.2d 853, 861-62, 904 P.2d 278, 283-84 (1995), wrote:

> In summary, our courts have found "deliberate intention" only when there has been a physical assault by one worker against another. Our courts have effectively read the statutory exception to the IIA's exclusive remedy policy nearly out of existence." The court went on to conclude, "[t]he statutory words must ... mean something more.... *Id.* at 863.

What that "something more" is in the context of corporate conduct is being daily worked out in Washington's courtrooms. It is the particular aspiration of the authors to assist both trial judges and trial lawyers with an accessible and useful body of material in four areas: (1) an overview of the historic application of the law in this area from 1911 to 1995; (2) the development of the law in *Birklid* (1995) and its progeny; (3) a matrix of factors and fact patterns which the courts have found to support or negate a finding of "deliberate intention" in the context of corporate conduct; and (4) an analytic construct to assist in the consistent application of the *Birklid* principle in the future. In sum, this article seeks to serve as a guide to bench and bar in order to facilitate an orderly and principled development of the law of "something more."

I. Overview of the History of the "Deliberate Intention" Exception Pre-*Birklid*

A. The "Great Compromise" of 1911 and Abandonment of the Common Law

Nearly 90 years ago, in the "great compromise" of 1911, the Industrial Insurance Act (IIA) was born in the Washington Legislature. The enactment of the IIA gave rise to an administrative alternative

to the common-law system of compensation aimed at providing relief for "accidents" in the workplace. In the most general terms, the employer traded common-law defenses[3] to liability existing at the turn of the last century for a "no fault" administrative system providing limited compensation according to a schedule of damages. After all these years, what is most surprising is how many workers are surprised to learn that workers' compensation is their exclusive remedy and how few have been schooled in the mythos surrounding the birth of the Industrial Insurance Act. This is the official version:

> [O]ur act came of a great compromise between employers and employed. Both had suffered under the old system, the employers by heavy judgments of which half was opposing lawyers' booty, the workers through the old defenses or exhaustion in wasteful litigation. Both wanted peace. The master in exchange for limited liability was willing to pay on some claims in the future where in the past there had been no liability at all. The servant was willing not only to give up trial by jury but to accept far less than he had often won in court, provided he was sure to get the small sum without having to fight for it. All agreed that the blood of the workman was a cost of production, that the industry should bear the charge. *Newby v. Gerry*, 88 Wash. App. 812, 816 (1984).

B. The Jenkins-Delthony Standard for Finding Intentional Injury by Employers

Washington courts, for the better part of the last century, looked to Oregon for their interpretation of the "deliberate intention" exception. Not only did Oregon and its younger sister state, Washington, enjoy a natural affinity and shared history, but Oregon's statute contained language virtually identical to that of Washington.[4] It followed, when Mr. Delthony was injured in his workplace by an exploding boiler and contended that his employer's knowledge of the dangerous and unsafe condition of the boiler rose to the level of deliberate intent, that the Washington court looked south for guidance. *Delthony v. Standard Furniture Co.*, 119 Wash. 298, 300, 205 P. 379 (1922).

The Oregon precedent embraced by the Washington court had been established six years before in *Jenkins v. Carman Mfg. Co.*, 79 Ore. 448, 155 P. 703 (1916). Jenkins had been injured by a broken log roller, which threw a piece of lumber at him. Jenkins' employer failed to repair the broken roller for a year before Jenkins' injury. The Oregon court found the employer's decision to risk the "danger of injury" to its employees did not rise to the level of an employer deliberately intending to produce such injury. As such, the court interpreted the "deliberate intention" exception to apply in only the most narrow of circumstances: "If defendant deliberately intended to wound plaintiff or his fellow workman and intentionally used this broken roll as he would have used an axe or a club to produce the injury, it is liable; otherwise it is not."

Relying upon three murder cases to develop its definition of "deliberate intention," the Jenkins court focused on deliberation and premeditation as applied in the criminal law in appraising an employer's actions rather than intentional tort standards. The specific language from the *Jenkins* holding which was to serve as a touchstone for Washington courts[5] for over 80 years is:

> We think by the words "deliberate intention to produce injury" that the lawmakers meant to imply that the employer must have determined to injure an employee and used some means appropriate to that end; that there must be *specific intent,* and not merely carelessness or negligence, however gross. *Jenkins*, at 453, 454.

The Washington State Supreme Court denied Delthony's attempt to overcome summary judgment and to present his case to a jury.

C. Washington Cases Rejecting a Finding of Intentional Injury

With few exceptions [see §I.D. infra], an overview of the application of the deliberate intention exception in Washington state presents an unrelieved landscape of denial of workers' claims based upon the *Jenkins-Delthony* holding.

In *Biggs v. Donovan-Corkery Logging Co.*, 185 Wash. 284, 285, 54 P.2d 235 (1936), a statute governing the maximum safe working load for cables and requiring that use be discontinued when cables suffered damage or deterioration was violated. A day or two before the accident, an engineer called the attention of the superintendent of the employer to the condition of the line, which had been badly burned in a forest fire three years before, and told him that it was not fit for use. The superintendent laughed and continued to use the same line. As one familiar with review of this body of case authority comes to expect, shortly thereafter the cable broke, causing injuries to Biggs' left arm, wrist and hand. The *Biggs* court declined to depart from the *Delthony-Jenkins* analysis. Case dismissed.

Winterroth's employer received six Department of Labor and Industries correction orders prior to Winterroth's hand becoming caught in a meat grinder without a safety guard. The court held: "One may be guilty of serious and willful misconduct by knowingly refusing to comply with a statute or rule intended to protect a workman without necessarily having a 'deliberate intention to produce such injury' to the employee." *Winterroth v. Meats, Inc.*, 10 Wn. App. 7, 12, 516 P.2d 522 (1973).

Higley was sitting in the quad saw operator's cage located in direct line with

the saw's rotating cutter head at a Weyerhaeuser mill. A piece of the cutter head broke loose, breaking through a Plexiglas shield and driving a piece of the shield into Higley's right eye. The complaint alleged that "the negligence and acts of omission on the part of [Weyerhaeuser] was so gross and irresponsible as to become tantamount to that of an intentional act." Notwithstanding allegations regarding the frequency of flying cutter heads and the inadequacy of safety shielding, even a high risk of injury rising to the level of substantial certainty would not suffice to demonstrate deliberate intent. The court reaffirmed its decision in *Winterroth. Higley v. Weyerhaeuser Co.*, 13 Wn. App. 269, 270, 272, 534 P.2d 596 (1975).

Foster, employed by defendant Allsop Automatic, Inc., operated a 90-ton hydraulic punch press equipped with a two-handed tripping device, which required the operator to use both hands to activate the press, thus keeping hands away from the moving parts of the machine. This safety device often was circumvented by placing a screwdriver in one of the tripping switches so that the press could be activated with only one hand. The shift supervisor was aware of this practice and told plaintiff that this was proper. When Foster became momentarily distracted while operating the press with one hand, his other hand was struck by the press. The court held that Foster had not "submitted facts from which a reasonable inference could be drawn that defendant possessed the specific intent to produce injury required by the statute." *Foster v. Allsop Automatic, Inc.*, 86 Wn.2d 579, 585, 547 P.2d 856 (1976). The required intention was held to relate to the injury, not the act causing it. *Foster* at 584.

In *Peterick v. State*, 22 Wn. App. 163, 189, 589 P.2d 250 (1977), *review denied*, 90 Wn.2d 1024 (1978) *overruled on other grounds, Stenberg v. Pacific Power & Light Co.*, 104 Wn.2d 710, 709 P.2d 793 (1985), explosion of a liquid explosive killed two workers. The court made it clear that violation of safety standards does not establish deliberate intention to injure:

> Here, the plaintiffs' allegations of calculated evasionary conduct in violation of recognized safety standards, even if taken as true, failed to meet the burden set forth in *Winterroth*, *Higley* and *Foster*. The plaintiffs have not produced evidence that the employer had a specific intent to injure the decedents, and therefore they cannot claim that their cases come within the statutory exception of RCW 51.24.020.

Nielson was unloading chemicals from a railroad car at a fertilizer plant operated by Wolfkill Feed & Fertilizer Corporation. A screw auger pushed the chemicals from an opening under the railroad tracks through a metal trough into a warehouse. Because the auger was prone to jamming, it was typically operated with its cover removed in order to observe the flow of chemicals through the trough. As Nielson was shoveling fertilizer at the edge of the trough, he slipped and fell, catching his foot in the rotating blades of the auger. The auger pulled him into the trough, amputating both legs and an arm. It was determined that Wolfkill had violated safety regulations by operating the auger without a cover. Nielson brought suit against Wolfkill, alleging that his injuries were occasioned by the "intentional and malicious conduct" of Wolfkill. *Nielson v. Wolfkill Corp.*, 47 Wn. App. 352, 734 P.2d 961 (1987). Case dismissed.

D. Washington Cases Finding Intentional Injury

Shortly after *Delthony*, the Washington State Supreme Court decided *Perry v. Beverage*, 121 Wash. 652, 659, 209 P. 1102 (1922). Perry's supervisor, Beverage, struck Mr. Perry on the left side of the face with a ceramic pitcher. Asked how hard he had struck Mr. Perry, the supervisor responded: "I struck him with all my might. I don't know just how hard I did strike him." Based upon this testimony, the court held that the jury was entitled to find a deliberate intention to cause injury.[6]

Six decades later, Newby sued his employer, claiming that his co-worker/supervisor, defendant Gerry, had approached him from behind, shouted, and grabbed him by the ankles, causing him to fall from the scaffolding. *Newby v. Gerry*, 38 Wash. App. 812, 819, 690 P.2d 603 (1984). For the first time since *Perry* (1922), a Washington appellate court allowed a worker to survive a motion for summary dismissal to have the facts of his case heard by a jury. The *Newby* court made an important policy statement: "Compensating worker-victims of intentional torts by employers, and forcing those employers to pay for intentional injuries they inflict, predominates over the need for a swift and sure remedy for workplace injuries."

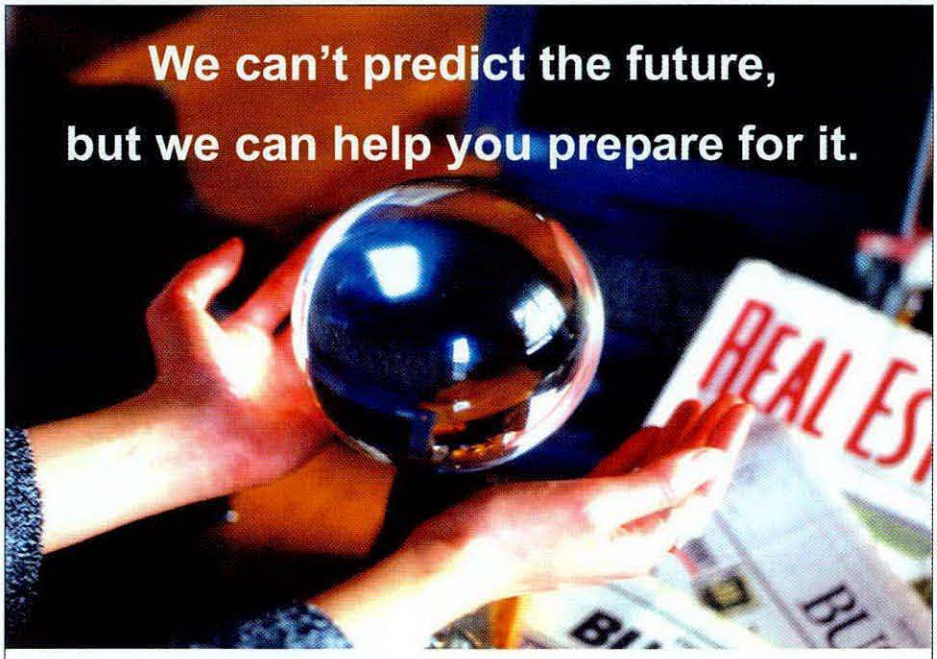
Lonnie Barrett, the "lead person" on a forklift crew, had a disciplinary tool for crewmembers that proved problematic for his employer: "ramming by forklift." Having used this technique on numerous occasions, on one occasion Mr. Barrett drove a forklift truck with a drum on it into Mr. Mason's back, pinning him against another drum that Mr. Mason was cleaning, causing permanent back injuries. The focus of the inquiry concerned whether Barrett was operating within the scope of his supervisory duties, not whether he had intended injury; summary judgment dismissing the claim was reversed based on a question of fact respecting this question. *Mason v. Kenyon Zero Storage*, 71 Wash. App. 5, 11, 856 P.2d 410 (1993). Mr. Barrett's deliberate intent was not disputed. *Id.* at 9.

These three cases form the complete body of Washington case authority finding a deliberate intention to cause injury until *Birklid* (1995). Thus, we see in this review a justification for Justice Talmadge's conclusion in *Birklid v. Boeing*, at 861-62: "In summary, our courts have found 'deliberate intention' only when there has been a physical assault by one worker against another. Our courts have effectively read the statutory exception to the IIA's exclusive remedy policy nearly out of existence."

E. Themes Developing in Other Jurisdictions

1. The Evolution of Oregon Law: the "Conscious Weighing" Test

After *Jenkins v. Carman Mfg. Co.*, Oregon law began to evolve in the face of challenging cases, while Washington courts continued to follow, undiluted, the Oregon direction established in *Jenkins*. In *Weis v. Allen*, 147 Ore. 679, 35 P.2d 478



(1934), employer Allen set spring-loaded guns on his property in an attempt to prevent burglaries and, that failing, to injure the intruders. Before Weis was injured, a watchman had been injured and Allen had been told by the police to take the guns down. Allen asserted that there was no evidence of any deliberate intention on his part to inflict the injury suffered by Weis.

The court distinguished *Weis* from *Jenkins*, *Heikkila* and *Delthony* and permitted the case to survive summary judgment: "The fact that the defendant was, with knowledge and in defiance of the law, maintaining spring guns, shows wantonness on his part...." The court, overlooking the apparent absence of a specific intent to cause injury to *an employee*, held:

> It was not necessary here to prove that the defendant had singled the plaintiff out and set the gun with the express purpose of injuring him and no one else. The act which the defendant did was unlawful and was deliberately committed by him with the intention of inflicting injury." *Id.* at 681-82.

It must be noted that the *Weis* court flirts with, but does not embrace, the language of a Texas "spring gun" case:

> Every man is held to the necessary, natural, and probable consequences of his act, the contemplation of which the law presumes, whether or not he does so in fact.[7]

To do so would have moved Oregon from the specific intent to cause injury to a species of "constructive" intent.

Later cases would continue to try the Oregon courts' resolve.

Painting mobile homes fabricated by his employer, Mr. Lusk "worked in a cloud of paint mist and vapors." *Lusk v. Monaco*, 97 Ore. App 182, 184, 775 P.2d 891 (1989). Lusk became sick from working with the paint and ultimately was permanently disabled and was unable to work as a painter. The court expressly rejected the plaintiff's argument under Restatement (Second) Torts, § 8A, comment b, that if "[d]efendant knows [that] the consequences of his refusal to provide a fresh air supply to a painter ... are 'substantially certain' to occur, yet he still refuses to provide one, 'he is treated by the law as if he had in fact desired to produce the result.'" The court concluded that plaintiff wrongly interpreted the statutory standard by assuming that the statutory phrase "deliberate intention ... to produce such injury" established the same standard as does the term "intent" in the common law of intentional torts. *Id.* at 186. Yet, Lusk was allowed to present his case to the jury because the jury could infer specific intent to cause injury from the fact that his employer had had an opportunity to consciously weigh the risks to its employee and still subjected him to dangerous conditions:

> The affidavits suggest that defendant failed to provide the respirator because of the cost. Such a reason, while perhaps not laudable, is not a specific intent to produce an injury. However, the trial court on summary judgment, like a jury, need not accept defendant's proffered reason in isolation. Specific intent to injure may be inferred from the circumstances. [Citation omitted]. Here, a jury could infer, from all of the circumstances, that defendant failed to provide the respirator because it wished to injure plaintiff: Defendant knew that the paint was highly toxic and that plaintiff's resulting injury was substantial and continuing; it did not follow the warnings of the paint manufacturer and the urging of its insurer to furnish a supplied-air respirator; plaintiff and his supervisor had complained about the problem repeatedly; and the cost of proper, available equipment (which defendant knew would soon be required by the state) was not prohibitive. A specific intent to produce injury is not the only permissible inference to be drawn from defendant's apparent obstinacy, but it is one that a jury should be permitted to consider.... The trial court erred, therefore, in granting defendant's motion for summary judgment. *Id.* at 189.

In *Gulden v. Crown Zellerbach Corp.*, 890 F.2d 195, 196-197 (9th Cir. 1989), a transformer failure released a toxic level of polychlorinated biphenyls (PCBs) onto the floor of Crown Zellerbach's mill in West Linn, Oregon. After three attempts by hazardous waste specialists failed to

reduce the PCB level to nontoxic levels, Crown Zellerbach ordered employees Robert Gulden and Gregory Steele to finish the cleanup by scrubbing the floor while on their hands and knees without protective clothing. Both workers acquired body levels of PCBs beyond that considered safe. The 9th Circuit converted the *Lusk* opinion into a trend by permitting a jury to consider whether Crown Zellerbach had a deliberate intention to injure Messrs. Gulden and Steele. The 9th Circuit concluded:

> Under Oregon law, a jury could conclude that the intention to injure — in this case, to expose Gulden and Steele to toxic levels of PCB — was deliberate where the employer had an opportunity to weigh the consequences and to make a conscious choice among possible courses of action.

2. The "Substantial Certainty" Test: *Beauchamp v. Dow* (1986)

Unlike Washington, the Michigan workers' compensation statute failed specifically to exclude intentionally caused injuries from the ambit of the act. Nonetheless, *in Beauchamp v. Dow*, 427 Mich. 1, 11, 398 N.W.2d 882 (1986), where a research chemist claimed injury from exposure to "Agent Orange," the court, focusing on the original legislative intent of the act to compensate for *accidental* injury, concluded that the exclusive remedy provision "does not preclude an action by an employee who alleges that his employer committed an intentional tort against him." In order to prevent a corporation from costing out "an investment decision to kill workers," the court adopted the "substantial certainty" standard of liability. *Id.* at 25, quoting *Blankenship v. Cincinnati Milacron Chemical*, 69 Ohio St. 2d 608 (1982). "If the injury is substantially certain to occur as a consequence of actions the employer intended, the employer is deemed to have intended the injuries as well." *Beauchamp* at 22.

Within 142 days of the *Beauchamp* opinion, the Michigan Legislature amended the Michigan deliberate intention statute to narrow the standard created by the court.[8]

Michigan authority would have little interest to us today, were it not for the fact that the Washington Supreme Court would adopt the Michigan statutory language as its own when crafting the *Birklid v. Boeing* decision eight years later.

II. *Birklid v. Boeing* and its Progeny

A. Birklid v. Boeing: *"There is no accident here."*

Seventeen Boeing factory workers contended that their employer had intentionally exposed them to toxic phenol-formaldehyde fumes arising from sheets of pre-impregnated space-age composites (pre-preg) and that they had suffered injury as a result. The pre-preg materials would be removed from refrigeration, where they had been placed to keep volatile vapors from off gassing and the material from curing prematurely, and workers would pull off, cut and shape sections of the phenolic pre-preg, often using a heat gun to increase malleability. They would work without respirators and often without gloves. Interior aircraft parts would be fabricated by the "laying up" of ply upon ply of the material. The building where fabrication was done was a vintage structure reportedly used as a morgue during the Second World War; it was cold in the winter, and during summer months, temperatures rose to nearly 110 degrees Fahren-

heit, as confirmed by Boeing internal documents. On more than one occasion, workers collapsed at their workstations and were removed by ambulance. Workers reported illness shortly following the introduction of the novel composites into the workplace, as was confirmed in Boeing internal memoranda. One memo from a Boeing supervisor requested additional ventilation, noting:

> During MR & D [Material Research and Development] lay-up of phenolic pre-preg, obnoxious odors were present. Employees complained of dizziness, dryness in nose and throat, burning eyes, and upset stomach. We anticipate this problem to increase as temperatures rise and production increases.

The request for ventilation was denied the following month: "The odor level of the phenolic prepregs relative to other materials currently used ... does not warrant expenditure of funds for additional ventilation at this time."

Affidavits from workers stated that Boeing refused to heed worker reports of illness, denying any relationship between the composite materials and illness; discouraged workers from reporting symptoms to Boeing medical; threatened workers with medical restrictions with termination unless their restrictions were "pulled"; removed product labels; refused or failed to provide safety equipment or access to Material Safety Data Sheets (MSDS); and initiated changes in workplace conditions and production in advance of air monitoring by government agencies — with conditions being restored to the pre-inspection condition immediately thereafter. Production continued.

In 1991, the workers filed suit in King County Superior Court and the action was promptly removed by defendants to the United States District Court for the Western District of Washington. The district court judge, applying Washington law on motion by defendant Boeing, dismissed the intentional injury claim as failing to meet the "deliberate intention" standard under RCW 51.24.020. Plaintiffs appealed to the 9th Circuit Court of Appeals, which certified the issue to the Washington Supreme Court as follows:

> Whether the evidence produced by the plaintiffs in their response to the motion for summary judgment could, under Washington law, justify a jury in finding the "deliberate intention" exception specified in RCW 51.24.020, and, if so, the requirements of Washington law to permit such a finding?

The Washington Supreme Court had come to recognize that the case law preceding *Birklid* created a nearly impossible standard for an injured worker to meet, even in circumstances that would constitute an intentional tort under ordinary tort principles.[9] In oral argument, plaintiffs' counsel contended that the existing law was designed "to make it difficult, but not impossible" to find deliberate intention on the part of an employer. But, absent a corporate directive to injure workers, how could such deliberate intention be demonstrated?

Boeing counsel submitted its own formulation, arguing that "[e]vidence that an employer has deliberately engaged in conduct that results in occupational injuries or disease within its workforce is *not* evidence of deliberate intent to injure members of that workforce for purposes of RCW 51.24.020 so long as that conduct was reasonably calculated to advance an essential business purpose." Plaintiffs'

counsel responded that such a standard would permit industry to sacrifice employees to its business purposes and would subjugate the welfare of workers to the profit motive of their employer. This, counsel argued, would undermine the public policy underlying RCW 51.04.010, which states: "The welfare of the state depends upon its industries, and even more upon the welfare of its wageworker."

After a review of existing law, Justice Talmadge, writing for a unanimous court, for the first time since *Delthony*, undertook to explain what constituted deliberate intention to cause injury with these words: "The facts in the case at bar serve to illuminate the meaning of the statute."

> The central distinguishing fact in this case from all the other Washington cases that have discussed the meaning of "deliberate intention" in RCW 51.24.020 is that Boeing here knew in advance its workers would become ill from the phenol-formaldehyde fumes, yet put the new resin into production. [Footnote omitted.] After beginning to use the resin, Boeing then observed its workers becoming ill from the exposure. In all the other Washington cases, while the employer may have been aware that it was exposing workers to unsafe conditions, its workers were not being injured until the accident leading to litigation occurred. There was no accident here. The present case is the first case to reach this court in which the acts alleged go beyond gross negligence of the employer, and involve willful disregard of actual knowledge by the employer of continuing injuries to employees. *Id.* at 863.

The Court declined to adopt either the "conscious weighing" test of the Oregon courts or the "substantial certainty" test adopted in Michigan, South Dakota, Louisiana and North Carolina, stating: "[w]e are mindful of the narrow interpretation Washington courts have historically given to RCW 51.24.020, and of the appropriate deference four generations of Washington judges have shown to the legislative intent embodied in RCW 51.04.010." *Id.* at 865. The Court adopted in part, the statutory language crafted in the Michigan Legislature in reaction to the *Beauchamp* decision: "We hold the phrase 'deliberate intention' in RCW 51.24.020 means the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge." *Id.* at 865.

B. The Birklid *Progeny: Washington Cases Finding "Deliberate Intention"*

Since *Birklid*, application of the "deliberate intention" exception has been presented to Washington trial courts in the context of motions for summary judgment. Washington appellate courts have now had the opportunity to review the application of the *Birklid* standard, and these cases are instructive.

In *Baker v. Schatz*, 80 Wash. App. 775, 782-84, 912 P.2d 501 (Div. 2)(1996), the first Washington post-*Birklid* case, the Court of Appeals affirmed the denial of defendant employer General Plastics' motion for summary judgment on two distinct grounds. First, although General Plastics had expressly denied that it intended to injure any employee, which before *Birklid* would have established a *prima facie* case and shifted to the worker the burden to produce facts creating a genuine issue of the employer's "deliberate intention" to injure its employee, the court held management might still have known that injury was certain to occur,

and might willfully have disregarded that knowledge. Since General Plastics never demonstrated the absence of an issue of material fact, it had never made out a *prima facie* case, and the burden never shifted to the employees to produce any evidence to oppose summary judgment. The court held: "We could uphold the denial of summary judgment on this ground alone."

Second, plaintiffs alleged that General Plastics' supervisors knew that the employees were suffering from chemical-related illnesses and that, unless the working environment was changed, continuing injury was certain. Plaintiffs alleged that, although the plant supervisors knew that the Material Safety Data Sheet (MSDS) for methylene chloride stated that one should avoid skin contact with the substance, supervisors instructed them to wash their hands and arms with methyl chloride. Management admitted that employees complained repeatedly to General Plastics' supervisors that the chemicals in the plant were causing health problems. The evidence supported inferences of continuing injury: that supervisors "had actual knowledge that the plant's practices with regard to methylene chloride exposed employees to certain, continuing injury" and "that General Plastics willfully disregarded the knowledge that the working environment at the plant would cause continuing injury to its employees." *Id.* at 783.

These facts, together with the absence of evidence that the employer undertook to alter or improve the working environment at the plant, were sufficient to create a genuine issue whether General Plastics willfully disregarded knowledge that the chemical environment at the plant was injuring its workers. *Id.* at 784.

In *Stenger v. Stanwood School District*, 95 Wash. App. 802, 804, 977 P.2d 660, 134 Ed. Law Rep. 1036 (Div. 1)(1999), the court reversed the trial court dismissal, noting:

> Here, the appellants have produced evidence that the district knew its employees would continue to be injured by the student, despite their efforts to modify his behavior or restrain him. Notwithstanding this knowledge, the district continued to require its employees to work with the boy, and the appellants were seriously injured. We

conclude that the evidence in its entirety would permit a trier of fact to conclude that the appellants have satisfied the test for intentional injury....

The plaintiffs worked for the Stanwood School District as instructional aides in special education classes and were injured while working with a severely disabled special education student. The *Stenger* court analyzed the Birklid rule as a two-pronged test: (1) actual knowledge of certain injury, and (2) willful disregard of that knowledge.

Evidence of actual knowledge of certain injury was supported by testimony that the student caused between 1,316 and 1,347 injuries to district staff, inflicting injuries almost on a daily basis. The injuries included scratches; gouges; bites; upper body strain; scalp, breast, neck, back, shoulder, leg, arm, wrist, hand and finger injuries; and bruising. Six accident reports documenting neck, back, arm strain, and shoulder injuries were submitted between 1992 and 1995, and three Labor and Industry (L&I) claims, including one for a back, neck and side injury, were filed in the three years prior to Stenger's injury.

To meet the second prong of the *Birklid* test, plaintiff presented facts that both the director of special services and the assistant principal were aware of the injuries to staff and believed that despite their precautions, the staff would continue to suffer some level of injury from working with the student. Since the school district did not pursue any other placement alternatives for the student despite his repeated attacks on other students and staff, and chose not to follow an assessment indicating a more restrictive placement for him, the court held that the determination of the adequacy of the district's response was not appropriate for summary judgment and should be a question for the trier of fact.

C. The Birklid *Progeny: Washington Cases Not Finding "Deliberate Intention"*

In *Atkinson v. United Parcel Service*, 96 Wash. App. 1042, 1999 WL 504196 Wash. App. (Div. 2, Jul 16, 1999), plaintiff UPS drivers asserted that UPS's conduct in refusing to allow them to use hand trucks for loads under 70 pounds "suggests that the employer may be engaging in a deliberate intent to injure these employees." Summary dismissal was upheld: "Because the drivers failed to adduce any evidence showing that UPS knew the drivers would be injured if they did not use a hand truck, summary judgment on this claim was proper."

In *Goad v. Hambridge*, 85 Wash. App. 98, 100-01, 931 P.2d 200 (Div. 3, Feb 18, 1997), Mr. Goad's hand was severely injured when he reached in to remove a loose piece of wood from the planer at Springdale's sawmill. The Goads later sued Springdale and its owners, alleging Springdale willfully and deliberately failed to make the equipment safe and to warn of dangers associated with it.

> [A]ll persons who operated the planer (including Mr. Goad) were told not to reach into the machine while it was operating. Mr. Goad admitted he was aware of the danger of reaching into the machine, and it would have been easy for him to shut it down before reaching inside. He characterized his action as a "lapse in thought" resulting from "absent-mindedness," but testified he would not have reached inside if Springdale had placed more emphasis on safety, installed guards and warn-

ing signs, and instituted a lock-out procedure. Mr. Goad conceded no one instructed him to reach into the planer, nor did he believe anyone wanted him to be hurt. *Id.*

The Goads presented no evidence that Springdale had actual knowledge that Mr. Goad's injury was certain to occur. At best, Springdale knew of the potential of an injury similar to Mr. Goad's, which was held insufficient to satisfy the *Birklid* standard.

In *Henson v. Crisp*, 88 Wash. App. 957, 946 P.2d 1252, 1253-54, 13 IER Cases 890 (Div. 3, Dec 2, 1997), even drawing all inferences favorable to the nonmoving party, summary dismissal was upheld. Intentional pointing and firing of a toy gun at the plaintiff, while intended to produce a mild startled response, allegedly resulted in severe emotional distress. Plaintiffs contended that Mr. Crisp intended to produce the kind of injury Ms. Henson suffered, and that the fact that he did not intend the extent of the injury was immaterial. But, citing *Foster v. Allsop Automatic, Inc.*, *supra*, the court held that it was the injury, not merely the conduct, which must be intentional. The court held: "*Birklid* expands the definition of intentional injury beyond assault and battery, but not enough to include this claim." Summary judgment was appropriate, as "Ms. Henson presented no evidence Mr. Crisp had actual knowledge she would suffer prolonged and incapacitating emotional distress in response to his prank."

Estates of two fast-food restaurant employees murdered during a restaurant robbery sued the employer, the restaurant franchiser and a security firm. The Superior Court, Spokane County, granted summary judgment to franchiser and security firm, but denied the employer's summary judgment motion as to immunity under the Industrial Insurance Act (IIA). Petitions for discretionary review were granted. The Supreme Court held the evidence did not support a finding of the employer's "deliberate intention" to cause employees' injuries, and thus, the employer did not lose civil suit immunity under IIA. The evidence that the employer may have known that the security system was no longer active, that keeping cash in the restaurant may invite a robbery, and that the former employee who committed the murders had a criminal history of violent felonies did not demonstrate actual knowledge of certain injury. *Folsom v. Burger King*, 135 Wn.2d 658, 958 P.2d 301 (1998).

D. Relevant Out-of-State Authority Regarding "Deliberate Intention"

Michigan authority interpreting the statutory language from which *Birklid*'s holding was derived continues to be of value.

Travis v. Dreis & Krump Mfg. Co., 453 Mich. 149, 551 N.W.2d 132 (1996), presents a fascinating juxtaposition of two cases consolidated for review.[9] In *Travis*, the court did not find evidence sufficient for the question of deliberate intention to cause injury to be considered by a jury; in *Golec*, with which it was consolidated on appeal, the court did. Both cases presented an opportunity to observe application to a corporate employer of the standard established by the Michigan statute from which the language of *Birklid* was derived.

A plaintiff may establish a corporate employer's actual knowledge by showing that a supervisory or managerial employee had actual knowledge that an injury would follow from what the

employer deliberately did or did not do. *Id.* at 173-74.

The *Travis* court took care to clarify the statutory standard of actual knowledge of certain injury and willful disregard of that knowledge. The court correctly noted that: "[j]ust because something has happened before on occasion does not mean that it is certain to occur again. Likewise, just because something has never happened before is not proof that it is not certain to occur." *Id.* at 174. Conclusory statements by experts to the effect that injury is substantially certain to occur are insufficient to allege the certainty of injury required by the statute. *Id.* at 175.

What does it take for an employer to have knowledge of "certain injury" according to the *Travis* court? The facts in *Gulden v. Crown Zellerbach Corp.*, discussed *supra*, were deemed sufficient to allege certainty of injury. Another example of factual circumstances giving rise to "certain injury" according to the *Travis* court were those set out in *People v. Film Recovery Systems*, 194 Ill. App.3d 79, 141 Ill. Dec.44, 550 N.E.2d 1090 (1990) as discussed in *Beauchamp*, *supra* at 23 and by Professor Larson in his treatise on workers' compensation. 2A Larson, Workmen's Compensation, § 68.15(e), pp. 13-105 to 13-106.

Despite this knowledge of a specific danger and of other burn injuries sustained in the past, the employer ... ordered Mr. Golec to continue loading the wet scrap that contained pressurized canisters into the furnace vat with an unshielded tractor while not properly attired with protective clothing.

Film Recovery Systems was in the business of recovering silver from film negatives by placing the negatives into vats of cyanide.

> [W]orkers were not told that they were working with cyanide or that the compound put into the vats could be harmful when inhaled; although ceiling fans existed above the vats, ventilation in the plant was poor; workers were not informed they were working with cyanide and were given no safety instruction; workers were given no goggles to protect their eyes; workers were given no protective clothing and, as a result, workers' clothing would become wet with the solution used in the vats; there were small puddles of that solution as well as film chips on the plant floor around the vats; the solution burned exposed skin; a strong and foul odor permeated the plant; the condition of air in the plant made breathing difficult and painful; and, finally, workers experienced dizziness, nausea, headaches, and bouts of vomiting. *People v. Film Recovery Systems*, *supra* at 90-91.

Eventually, one worker died and several others were seriously injured because of cyanide poisoning. The corporate officers were convicted of involuntary manslaughter. *Beauchamp*, *supra* at 427 Mich. at 23-24, 398 N.W.2d 882 (1986). Considering these facts, the *Travis* court, quoting Professor Larson's analysis, stated:

> [T]he fumes ... were continuously operative, and the employer knew it.... The exposure to fumes did in fact occur. The only possible "unknown" might have been the effect of inhaling the fumes, but this unknown was removed by the plain warning on the package. The hiring of only workers who could not read warning labels confirms that the employer wanted those

	Birklid v. Boeing (1995)	Baker v. Schatz (1996)	Golec v. Metal * (1996)	Travis v. Dreis* (1996)	Goad v. Hambridge (1997)	Henson v. Crisp (1997)	Folsom v. Burger King (1998)	Stenger v. Stanwood (1999)
Deliberate Intent Exception Applied	**Yes**	**Yes**	**Yes**	**No**	**No**	**No**	**No**	**Yes**
Number of Employees								
One employee			X	X	X	X		
More than one employee	X	X					X	X
Type of Injury								
Accident (1 shift)			X	X	X	X	X	
Occupational disease (more than 1 shift)	X	X						X
Cause of Injury								
Toxic chemical	X	X						
Equipment/materials			X	X	X			
Co-worker						X		
Former employee							X	
Student								X
Employer's Actual Knowledge								
Internal memoranda	X							X
Grievances/complaints/reports	X	X	X	X	X		X	X
Employee requests for protective equipment	X	X						
Employee(s) injured under similar conditions	X	X	X					X
Continuously operative dangerous condition	X	X	X					X
Employer's Willful Disregard								
Failure to correct dangerous condition/concealing/denial	X	X	X	X			X	
Employer orders employees to work despite safety risk	X	X	X				X	

* MICHIGAN cases with valuable analysis: *Golec* and *Travis* consolidated on appeal.

employees to continue to inhale these and suffer these known consequences. A court could well say that this amounted to intending the injury. [2A Larson, Workmen's Compensation, § 68.15(e), pp. 13-105 to 13-106.]

We agree with Professor Larson's reasoning. When an employer subjects an employee to a continuously operative dangerous condition that it knows will cause an injury, yet refrains from informing the employee about the dangerous condition so that he is unable to take steps to keep from being injured, a fact finder may conclude that the employer had knowledge that an injury is certain to occur. *Travis, supra* at 178.

The court, with this clarification in hand, denied plaintiff Travis' recovery for serious hand injuries from a malfunctioning press which would descend a second time even when the operator's hands were below. (Recall *Foster v. Allsop Automatic, Inc., supra.*) Although the supervisor had actual knowledge that the press was malfunctioning, he did not have knowledge that an injury was certain to occur. While concealing a known danger from a novice employee who has no independent knowledge of the danger may be evidence of an intent to injure "in this case, unlike *Film Recovery, supra*, plaintiff was not required to confront a continually operating dangerous condition. The press double cycled only intermittently... the press cycled so slowly that no one had ever been injured when the press double cycled previously. All prior operators were able to withdraw their hands in time. We find that an injury was not certain to occur because plaintiff was not required to confront a continuously operating dangerous condition." *Id.* at 182. The court concluded:

> Unlike a situation in which an employer orders an employee to confront a continuously operating danger while concealing the danger from the employee, the evidence does not suggest that Clarke disregarded a continuously operative dangerous condition that would lead to certain injury. *Id.* at 183.

By contrast, in *Golec v. Metal Exchange Corp.*, 208 Mich. App. 380, 384 (1995), consolidated on appeal in *Travis, supra,* the worker's claim was not barred on summary judgment by the exclusive remedy provision of the Worker's Compensation Act. Mr. Golec, a furnace loader, sustained injuries during course of his employment when an explosion in the furnace caused molten aluminum to splash on him. Golec alleged that the employer knew that the roof leaked over the scrap aluminum, which caused the scrap he was instructed to load into the furnace to become wet, and knew that wet aluminum can cause an explosion of molten aluminum that can cause burn injuries. Additionally, Golec alleged that his employer knew that sealed canisters were contained in the pile of scrap and that these canisters would also cause an explosion of molten aluminum if placed in the vat. The Metal Exchange Corporation also knew that Golec was not wearing proper protective clothing, that he was working by supervisory directive in an unshielded tractor, and that he had been injured earlier that same shift from an explosion of molten aluminum.

Despite this knowledge of a specific danger and of other burn injuries sustained in the past, the employer, through the chain of command, ordered Mr. Golec to continue loading the wet scrap that contained pressurized canisters into the furnace vat with an unshielded tractor while not properly attired with protective clothing. The defendant argued that while it may have been negligent to require the plaintiff to load wet scrap containing aerosol cans, the defendant did not willfully disregard a certain injury because no explosion of this magnitude had occurred previously. While this is true, plaintiff presented evidence that, despite knowledge of the earlier explosion, defendant failed to remedy the condition that caused it. *Id.* at 186.

III. The Matrix: Facts and Factors Supporting or Negating a Finding of Deliberate Intention to Cause Injury on Summary Judgment

The matrix on page 38, even on a cursory examination, suggests a nexus between the presence of certain factual findings and application of the exception for deliberate intention articulated in *Birklid.* Although logically, deliberate intention to cause injury does not require that other

employees have been injured before the plaintiff seeking a remedy, it is undoubtedly true that the two most potent factors establishing actual knowledge of certain injury are a history of injury to other workers similarly situated and the presence of a continuously operative dangerous condition. Thus, as the Michigan court stated: "We do not conclude that an injury resulting from a single highly risky task could not, under appropriate circumstances, form the basis of a claim for relief. [T]he continuation of risk with knowledge of its dangerous characteristics thus allows a circumstantial inference of intent sufficient to state a claim." *Travis, supra* at 181.

Actual knowledge of a history of injuries antecedent to that giving rise to the case at issue, when combined with denial or concealment of risks and a failure to address the injury-producing conditions, has consistently triggered application of the exception. An employer affirmatively requiring a worker to enter unknowingly into a zone of danger or, through inaction, permitting a worker to be exposed to continuously operative dangerous conditions, may equally serve to establish a willful disregard for worker safety.

The *Travis/Golec* cases considered by the Michigan court bring into sharp focus the significance of a continuously operative dangerous condition. Recall that *Travis* fell short in large part because the press was only "intermittently" hazardous and because other workers had been able to move their hands out of danger before the malfunctioning press crushed them. How fast would the press have to descend in order for injury to become certain? This is the same issue as that presented in *Higley v. Weyerhaeuser*: with what frequency must flying cutter heads hit inadequate shielding in order to become a continuously operative dangerous condition? In *Stenger*, how often must the student attack his instructional aides before an intermittent hazard is transformed into a continuously operative dangerous condition?

These questions are not merely rhetorical. The difficulty we have in responding to them reveals an irresolvable "gray area" in the law that reflects the statistical nature of "intentionality" itself. The whole notion of intentionality in the real world (including, undoubtedly, the workplace) is circumscribed by the "law of unintended consequences." The only reason we can say that we "intend" to do something is that experientially there is a fair correlation between our intentions and our actions and the outcomes realized. In a chaotic universe, were our intentions to become disconnected from the outcomes achieved, notions of intentionality would dissolve into statistical probabilities. Things which happened with high probability, or to put it another way, things which were the predictable outcome of specific actions would be deemed to have been intended on the part of the actor.

As Marcus Aurelius said: "[M]en sin without intending it." Yet, few things are more certain.

As Marcus Aurelius said: "[M]en sin without intending it." Yet, few things are more certain. We will consider below how *Birklid* enables us to fix responsibility on corporate conduct and to distinguish between actions properly characterized as "accidental" and properly characterized as "intentional" without being consumed by philosophy.

IV. An Analytic Framework: Accidental Injury in the Corporate Environment

The Industrial Insurance Act is intended to provide the exclusive remedy for *accidental* injuries. Injuries resulting from the *deliberate* intention of the employer have never been covered by the IIA. Immunity from tort liability under such circumstances would contravene the basic policy of the IIA to protect the wageworker. By spreading the cost of intentional torts among all employers contributing to the industrial insurance fund such immunity would insulate the wrongdoer from the consequences of its wrongs.

Distinguishing between "accidental" and "deliberate" injury is central. The *Birklid* court stated: "There is no accident here." *Id.* at 863. What, then, is an accident? In *Truck Insurance Exchange v. Rohde*, 49 Wash.2d 465, 469, 303 P.2d 659 (1956), the Washington Supreme Court held: "An accident is '... an undesigned and unforeseen occurrence of an afflictive or unfortunate character ...'" "Design" and "foreseeability" are antithetical to the notion of an accident.

In *Weis v. Allen*, the Oregon court recognized that a spring gun was designed to injure and that such injury was foreseeable, although its precise victim was not. Intention was found, despite the protestations of the employer as to his lack of specific intent.

In the corporate context, the workplace environment is likewise a product of design: the chemicals employed, the machinery installed, the safety equipment made available, the information disseminated are all exclusively subject to corporate authority. In the corporate context, injury becomes foreseeable based upon actual knowledge of the characteristics of chemicals, of Material Safety Data Sheets, of previous health reports or injuries, and knowledge of the hazards and dangers of the workplace environment.

If a corporation designs a workplace which has within it a continuously operative dangerous condition and injury is clearly foreseeable (if, indeed, it has not already occurred), then such an injury is the product of both design and foresight and cannot be properly termed "accidental." It is no more an "accident" than a spring gun set to discharge or a bucket of water set to spill on someone's head upon entering the room. In this sense, an "accident waiting to happen" which is foreseen or expected to occur by the employer and which arises from the employer's design is no accident at all.

The law does not distinguish between the instrumentality of harm when determining whether an injury was the product of accident or deliberate intention. Injury can equally be inflicted by a water pitcher, a pitchfork, a forklift – or toxic fumes. Yet, to a student of the subject matter, it is evident that there is something distinct about toxic chemical exposure cases which facilitates a finding of deliberate intention to cause injury. What differs is that the capacity of toxic fumes to injure is no accident and, unlike most machines, no defect or accident is required for toxics to manifest their harmful properties. The distinctive feature must surely be this: unlike a cable which snaps (Biggs), unlike a hand which slips beneath a descending punch press (*Foster*, *Goad* or *Travis*) or a meat grinder (*Winterroth*), a fall into an open hatch (*Nielsen*), a flying

cutter head (*Higley*), an explosion (*Delthony* or *Peterick*), and other foreseeable hazards, toxic chemical exposures have no intervening "accident" to disrupt the causal chain linking the design of the work environment, with its foreseeable and expected dangers, to the manifestation of risks foreseen. So it is that in *Baker*, *Lusk*, *Gulden*, *Beauchamp* and *Film Recovery*, it may be said, as it was in *Birklid*, "[t]here is no accident here."

Corporate liability for non-accidental injury should arise when the injury flows from a workplace environment designed by the employer with known or foreseeably harmful conditions where no intervening "accident" is required for the harm to become manifest. In other words, if the workplace designed by the employer has mechanical or human elements which, in the course of anticipated operations, generate injury, such injury cannot properly be regarded as "accidental."

Thus, in *Stenger*, the continuously present injury-producing condition presented by the special-education student, which resulted in over a thousand injuries on over a thousand occasions, became a feature of the working environment once aides were required to work in that environment without effective amelioration by their employer. This is not without precedent. In admiralty law, it has long been recognized that a crew member with a known propensity for violence and a vicious or savage disposition could, himself or herself, become an "unseaworthy condition" for which the vessel owner could become liable. *Boudoin v. Lykes Bros. S.S. Co.*, 348 U.S. 336, 339-40 (1955).

It is important to recognize that it is unnecessary to attempt to impute to the hazardous condition itself, whether it originates in purely mechanical operations or has a human component, independent intentionality. It is enough that the dangerous condition has become a continuously operative feature of the working environment with a known propensity for injury which is expected to manifest in the ordinary course without intervening negligence. Injury cannot be regarded as "accidental" in a workplace with spring guns, with car bombs which explode on ignition, with known toxic fumes generated during expected operations causing injury, or unfed and uncaged lions and tigers roaming the premises consuming workers.

Corporations are not human beings. Corporations act through their human employees, but are legal entities in their own right. Generating profit is the corporate raison d'être. Barring control of a corporate entity by a particularly beneficent or particularly evil human board of directors prone to issuing corporate directives and statements of purpose to the contrary, a "for profit" corporation has as its purpose maximizing the return to its shareholders. As Chaucer wrote in the *Pardoner's Tale*: "My speech is one and ever has been: Radix malorum est cupiditas." (The root of all evil is avarice.) So, too, corporate speech is one: profit. In *Lusk*, for instance, the corporate defense to the claim of deliberate intention to cause injury was that it denied respirators for reasons of cost, not for any specific intention to cause injury.

What is the compass for corporate conduct and conscience if not the "cost-benefit" analysis? Yet, it is apparent that the wageworker in Washington has no meaningful protection so long as corporate employers can sacrifice worker safety to profit and corporate plans are permitted to embrace inevitable worker injury as a cost of production. Compared with tort liability, the Industrial Insurance Act provides minimal financial disincentives for unsafe work practices. Tort liability for non-accidental injury provides an economic fillip for workplace safety consistent with the stated public policy of the IIA.

For over 80 years, workers were stymied by the fact that corporations are incapable of forming the same sort of personal animus or malicious motive as a rogue supervisor. So long as corporate tort liability was contingent upon workers establishing deliberate intention by the corporation to cause injury, corporations were immunized from the consequences of acts which, had they been done by humans, would have been regarded as intentional. The fact that a corporation is structurally incapable of harboring any "motive" other than maximizing profit to the shareholders renders it incapable, except in rare instances, of forming what we would regard as a specific intention to cause injury.

Birklid is properly viewed as a way to distinguish between "accidental" and "intentional" injury in the context of corporate entities and to pierce the legal fiction requiring us to find "intentionality" in corporate entities which lack the capacity to form "deliberate intention." When the *Birklid* court stated: "[D]eliberate intention" in RCW 51.24.020 means the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge," a basis for finding corporate intentionality was found which made it difficult, but not impossible, to hold corporations accountable.

Thus, *Birklid* preserves the balance established by the Industrial Insurance Act:

> The grand compromise of 1911 established in Washington's Industrial Insurance Act remains intact. Although the court in *Stertz v. Indus. Ins. Comm'n*, 91 Wash. 588, 590-91, 158 P.256 (1916), may have been correct in stating that in 1916 everyone "agreed that the blood of the workman was a cost of production," that statement no longer reflects the public policy or the law of Washington. *Birklid* at 873-74.

Randolph I. Gordon practices in Bellevue, Washington, currently serves on the adjunct faculty at Seattle University School of Law and, with Jim Hailey, was co-counsel for plaintiffs in the Birklid case. Both Randy and Jim were awarded the 1998 Public Justice Award from the Washington State Trial Lawyers Association for their work on Birklid; Randy would like to acknowledge the inestimable contributions made by Jim Hailey as co-counsel.

Amy F. Cook is scheduled to graduate from the Seattle University School of Law evening program in December 2000. Amy is a military police officer serving in the Washington National Guard at Camp Murray.

The authors wish to thank Washington State Supreme Court Justice Philip Talmadge and his judicial assistant, Bernie Friedman, for their comments and for their sharing a copy of the preparing memorandum in the Birklid case.

NOTES

1 RCW 51.04.010 ("... and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided.")

2 Laws of 1911, ch. 74, §6; Laws of 1919, ch. 131, §5; Laws of 1927, ch. 310, §5; Laws of 1957, ch. 70, §24; Laws of 1961, ch. 23, § 51.24.020, now RCW 51.24.020.

3 Three common law defenses, sometimes called the "unholy trinity," existed to protect the early twentieth century employer: assumption of the risk, the fellow-servant doctrine, and contributory negligence. The first was based on the principle that the worker voluntarily agreed to as-

sume the dangers that normally arose incident to his employment; the second allowed an employer to escape liability when a worker was injured by the negligence of a co-worker; the third barred recovery for injured workers if the employer was able to show that the worker failed to exercise reasonable care for his own safety, however small the contribution of fault on the part of the worker – not to be confused with the modern-day version, which is properly called "comparative negligence." Legal historians, such as Prof. Morton Horwitz of Harvard Law School, have suggested that these defenses, soon discarded at common law, were invoked as a "subsidy" for industry during years of industrial expansion.

4 ORS 656.156 [Intentional injuries]: "If injury or death results to a worker from the deliberate intention of the employer of the worker to produce such injury or death, the worker, the widow, widower, child or dependent of the worker may take under this chapter, and also have cause for action against the employer, as if such statutes had not been passed, for damages over the amount payable under those statutes."

5 Delthony v. Standard Furniture Co., 119 Wash. 298 (1922); Biggs v. Donovan-Corkery Logging Co., 185 Wash. 284 (1936); Higley v. Weyerhaeuser, 13 Wn. App. 269 (1975); *see also* Heikkila v. Ewen Transfer Co., 135 Or. 631, 634 (1931) ("Reckless disregard of the consequences, for the purpose of using the truck driven by plaintiff as a brake for the other truck does not charge an intent to injure plaintiff.")

6 Although *Perry* is hailed as the first case finding an employer liable for deliberate intention exception to cause injury, the court affirmed the judgment against Beverage, individually, but reversed the jury verdict against the employer because Perry had failed to show what he would have received under workers' compensation.

7 Grant v. Hass, 31 Tex. Civ. App. 688, 75 S.W. 342, 344.

8 The Michigan State Legislature modified the holding in Beauchamp in 1987, enacting Mich. Stat. Ann. § 17.237(131) (Callaghan 1988), M.C.L. §418.131(1), which reads in relevant part:

> The right to recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court.

9 Preparing Memorandum, Birklid v. Boeing, Washington State Supreme Court, p. 9 (1995).

10 The Michigan appellate court consolidated Golec v. Metal Exchange Corp., 208 Mich. App. 380, 384 (1995) with Travis for consideration on appeal. The juxtaposition of fact patterns is particularly valuable.

The Board's Work

by Judith Berrett

The final board meeting of Bar Year 1999-2000 took place in Spokane on September 13 in conjunction with Celebration 2000. The board effectively and efficiently moved through a very full agenda in an effort to complete the many issues that marked the year. It was the last board meeting for President **Dick Eymann** and Governors **Walt Krueger**, **Dick Manning** and **John Powers**. Two items, completion of work on the definition of the practice of law and confirmation of the appointment of a new *Bar News* editor, were acted upon in a conference call on October 6.

New Governor

Six exceptionally well-qualified candidates for the position of sixth-district governor appeared before the board. (The position had been made vacant with the election of Dale Carlisle as president-elect.) The governors' job was not to be envied, as each candidate had outstanding credentials and was extremely impressive. Congratulations to **S. Brooke Taylor** of Port Angeles, who was elected new governor (see page 56).

Diversity Position on the Board

Governor **Jim Deno** led the board through a thought-provoking discussion about adding a position of diversity to the board. This issue has been under consideration for nearly a year, and several groups, including the minority bar associations and the Committee for Diversity, have weighed in in favor of a new position. Governor Deno began by telling the board that he was asking them "to make a very difficult decision – to change our form of governance." He remarked that the Board of Governors is very concerned about diversity and ensuring that the Association's governance include and represent all members.

Seattle attorney **Lem Howell**, member of the Board of Governors from 1989-1992, and the only person of color ever to have served on the board, spoke persuasively and movingly about the need for representation. "A need is perceived, and if you perceive there is a need, you must do something." He stated that "there will be more sensitivity" with a minority board member. He concluded by asking: "What harm can it do?"

Mark Shepherd, representing the King County Bar Association, relayed that the KCBA had discussed this issue at length and felt that it was the right thing for the WSBA to do — to "move forward with inclusiveness." **Jim Macpherson**, of the Washington Defense Trial Lawyers, said: "The issue is representation. We must think of ways to get diverse voices here."

Former WSBA President **Wayne Blair** also spoke powerfully in favor of the proposal. "We need to make a change. It may be controversial, but the time has come." **Scott Smith**, of the Access to Justice Board, voiced his opinion that it was "an easy way to make a step in the right direction."

Committee for Diversity Co-chair **Bonnie Terada** told how, through numerous discussions, the committee struggled with the proposal. The committee initially thought it "smacked of tokenism," but later changed its position.

All governors spoke sincerely and thoughtfully, some recounting their own personal struggles over this issue. Governor **Vicky Vreeland** told how her first reaction was that it amounted to tokenism, and she wondered about representation for all minorities, not just racial minorities; she concluded that it should be a racial minority seat. She stated that the board needs the "perspective and sensitivity" a racial minority would bring.

Governor **Daryl Graves** said he was "pleased and proud" the board took the time and energy to consider the issue in such depth, concluding by stating: "I'm convinced this is the right thing to do." Governor **Jenny Durkan**, participating via phone from London, also voiced her strong support. Governor **Dick Manning** observed: "There's no right or wrong answer to this very, very difficult issue." He further stated that he didn't think the problem would be answered by a new position. "We need to reach out and spend time with people who have interest in leadership and help them get elected."

Governor **Walt Krueger** characterized this topic as "probably the most difficult issue the board has dealt with in the past three years." He said: "We are all in favor of increasing the diversity … but it would

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have so much more credibility, and I would feel so much better about it, if he or she were elected through the normal process." He was also concerned about the selection method. "Part of our responsibility is to deal with the details." Governor **Steve Henderson** agreed with Governor Krueger, believing that the board should instead "focus our efforts on how we identify and elect minority persons in the traditional way."

"I wasn't on the fence — I wasn't even near the fence," is how Governor **Stephen Osborne** characterized his initial position. He said he found many good reasons why the motion shouldn't be passed, feeling that it was tokenism, and that the system wasn't broken. However, after "listening to the collective wisdom of the governors," he changed his mind. "I don't know if it's right or if it's wrong, but we have to be a little daring ... it's an important enough issue that we ought to try it."

Governor **Lindsay Thompson** said: "I consider this to be a first step." Former Governor **Marijean Moschetto** applauded "the courage of the board in facing the issue head-on."

Thus, with a vote of 9-2-0, the Board of Governors adopted the proposal to add a minority seat to the board. The process of selecting the new governor has yet to be determined. A joint meeting of the Committee on Diversity and the officers of the Loren Miller Bar, Asian Bar and Hispanic Bar will be held to develop recommendations.

Committee to Define the Practice of Law

Characterizing the subject as being "as old as the Bar Association itself," Committee Chair **Steve Crossland** reviewed the history and work of the committee. With its overriding goal of determining how to best serve and protect the public, the committee has been working with dedication and diligence for the past two and a half years. The committee's work (a monumental undertaking) includes three parts: (1) a proposed rule (GR 22), which defines the practice of law; (2) a proposed rule to establish a Practice of Law Board; and (3) recommendation of criteria for possible licensing of nonlawyers in limited areas of practice.

To broaden its perspective, the committee held meetings with representatives from the Access to Justice Board, several former citizen members of the Disciplinary Board, representatives from the Washington Association of County Clerks, and a judge from the Superior Court Judges' Association. This expanded group agreed on the following premise: "All members of society should be able to obtain essential legal assistance from individuals who have the requisite skills and competencies and who are subject to a regulatory system that seeks to ensure that those whose important rights are at stake can reasonably rely on the quality, skill and ability of those who provide legal representation."

When the motion to adopt the work of the committee for forwarding to the Supreme Court got bogged down in "group editing," the board set a telephone meeting for October 6 to review the final committee product.

At the October 6 telephone meeting, after much debate and amending, the board voted unanimously to forward rules on the definition of the practice of law and a Practice of Law Board to the Supreme Court.

The rule on the definition had previously been adopted by the board; only a small change had been made in response to public comments. The proposed rule establishing a Practice of Law Board provides a mechanism for the following: providing advisory opinions, investigating complaints, making referrals to appropriate enforcement agencies, and making recommendations to the Supreme Court on possible amendments to GR 22 (the definition of the practice of law). Governor **Ken Davidson** expressed concerns that the proposed Practice of Law Board rule seemed vague about whether it created an enforcement action, or whether it was a regulatory system to allow nonlaywers to practice law for access purposes. WSBA General Counsel and Committee Liaison **Bob Welden** acknowledged the concerns as valid, but stated that defining the practice of law and determining how to implement such a definition is a step-by-step process, and that there would be other opportunities for input and modification.

Steve Crossland characterized both rules as "groundbreaking" and noted that they have the support of many diverse groups. Access to Justice Board Member **Jim Bamberger** praised the committee for their work. The board thanked Steve Crossland for his years of work on this landmark action.

Recommended RPC 8.4(g) and (h) – Prohibiting Discrimination on the Basis of Sexual Orientation

The WSBA-recommended modification to RPC 8.4 will be on the Supreme Court en banc agenda in October. A resolution was passed that the president and president-elect write to the Court, emphasizing that the WSBA feels strongly about the need to adopt the proposed rule as written in order to guarantee equal treatment, and that the King County Bar Association's report *In Pursuit of Equality: The Final Report of the KCBA Task Force* on Lesbian and Gay Issues in the Legal Profession accompany the letter.

Code of Civility

Professionalism Committee Chair **Stella Rabaut** and incoming Chair **Harry McCarthy** presented a proposed Code of Civility and Creed of Professionalism. The draft Code of Civility will be published (see page 45) for member comment and input, and will also be presented at meetings around the state.

Sponsored Insurance Program

Seabury and Smith made a presentation to the board, requesting that the WSBA renew its sponsored insurance program. After discussion, the board voted in favor of renewing its contract for four years.

Appointment of New *Bar News* Editor

The board unanimously confirmed the appointment of Seattle attorney **Mark Panitch**, as nominated by the Editorial Advisory Board, as new editor of *Bar News*. Governor **Lindsay Thompson** spoke on the candidate's behalf, noting that the WSBA is fortunate to have a Pulitzer Prize winner as *Bar News* editor.

Proposed Creed of Professionalism

by Harry McCarthy • *Chair, WSBA Professionalism Committee*

Over the past year, the WSBA Professionalism Committee drafted a Creed of Professionalism. This draft creed was presented to the Board of Governors at its September meeting in Spokane. While not before the board for final approval, the board appeared favorably disposed toward the concept and concurred that a draft creed be disseminated widely among the membership for comment before any formal action is taken.

The *Creed of Professionalism* set forth in this article evolved from a more comprehensive Code of Civility which the committee considered. After much discussion, it was agreed that a simpler format setting forth basic principles of civility and professionalism was preferred. It is the committee's hope that this creed will gain wide acceptance by both the more recent admittees to the profession, as well as those more experienced members of the Bar who would benefit from the promulgation of these fundamental principles of professional courtesy and civility.

Some believe that such creeds as the one being proposed have had little effect upon those lawyers who practice law with a "scorched earth" philosophy. While this may be true in some cases, it should be noted that in recent years the noticeable increase in incivility among practicing lawyers has commanded the attention of the bench and of commentators as one of the two or three major areas of concern negatively affecting the profession. This increased incivility in the practice of law has also been a contributing factor in the progressive lower esteem in which the public has held the legal profession in recent years.

The increase in uncivil and unprofessional conduct among lawyers is a serious issue that we as lawyers should all address in an effort to eliminate uncivil conduct which bodes ill for the future practice of law and for the administration of justice.

Civility throughout the legal profession must flourish in order for the system to function properly. Civil conduct in the law is the responsibility of every lawyer and judge. It is fundamental that a fair and efficient justice system be inspired by an underlying morality and guided by a code of civil behavior among all practitioners.

Notwithstanding the pressure points of our adversary system, civility is neither a relic of the past nor a sign of less-than-zealous advocacy. Indeed, an effective lawyer may vigorously advocate a cause, yet simultaneously adhere to the highest principles of ethics and civility in the practice of law.

Civility is a virtue and the hallmark of the very best traditions and practices of the legal profession. Civil behavior in the professional life of a lawyer or a judge is not merely a matter of appropriate etiquette, but has a more profound application. Civility tends to build mutual trust and respect among lawyers, leading to the creation of understandings and agreements and the resolution of disputes.

Conversely, incivility has within itself the seeds of great harm. Delayed and sometimes denied justice may result. Uncivil behavior between counsel breeds suspicion and cynicism, and tends to undermine the administration of justice. On an even more practical level, uncivil conduct often compromises the ability to persuade, forfeits the good will of the court, and leads to escalating litigation costs and the waste of scarce judicial resources.

The goal of this proposed creed is to encourage and espouse the cause of professionalism and civility among all lawyers and judges. The points which follow are clearly aspirational in nature and would not be used for any litigation purpose. Rather, it is hoped that these principles serve to remind us of the importance and benefits of civil practice in the profession of law. By encouraging the assertion and practice of these principles, the profession of law and the public interest will be well served.

We are printing this proposed creed to solicit your thoughts and suggestions concerning the idea of having a WSBA Creed of Professionalism. Is this a worthwhile project, or are we on the wrong track? Let us know what you think as we deal with the key issues of professionalism. Please e-mail your comments to Harry McCarthy at McCarAssoc@aol.com or fax them to 206-441-3624. We look forward to hearing from you.

Draft Creed of Professionalism

I do solemnly declare that as an attorney admitted to practice in the state of Washington, I commit to the following principles of professional conduct:

1) In my dealings with other lawyers, litigants, witnesses and members of the bench, I commit myself to civil and courteous conduct, guided by a fundamental sense of integrity and fair play.

2) My word is my bond in my dealings with the court, with fellow counsel and with others.

3) I will endeavor to resolve differences through cooperation and negotiation, expeditiously and without needless expense. I will give due consideration to alternative dispute resolution.

4) I will be punctual in my appointments, communications and in honoring scheduled appearances.

5) I will never design the timing, manner of serving papers, or scheduling of hearings for the purpose of causing disadvantage to my opponent.

6) I will always engage in transactions and in litigation in good faith, consistent with ethical principles and the Rules of Professional Conduct. I will use the litigation process only for legitimate purposes, and never as a means of harassment or for the purpose of unnecessarily prolonging litigation or increasing litigation costs.

7) I will conduct myself professionally during depositions, negotiations and at trial, and refrain from acting disrespectfully toward others.

8) I commit myself to candor and honesty in all of my dealings with the court, opposing counsel and others involved in the litigation process. I will never knowingly mislead others.

9) As an officer of the court and as an advocate, I will always strive to uphold the honor and dignity of the court and of the profession. I will always do my utmost to promote a respectful attitude toward the court and avoid disorder and disruption in the courtroom.

10) I commit to the avoidance of words and conduct which convey disrespect for another person because of the person's gender, sexual orientation, race, disability, age, religion, nationality or marital status.

Starving at the Banquet of Justice

by Barrie Althoff • *WSBA Chief Disciplinary Counsel*

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

Through our federal and state constitutions and the efforts of hundreds of thousands of dedicated lawyers, we have created in the United States one of the most carefully wrought justice systems in the world. We have checks and balances on competing governmental interests, and we have a bill of rights that seeks to restrain unwarranted government intrusions in our lives, to assure due process, and to guarantee fundamental rights to individual citizens. We have multiple levels of courts and appeals, and we have over a million lawyers, each of whom has sworn to uphold constitutions and to help people know justice.

With all of our riches, with all of our treasured constitutional rights and liberties, with all our wealth of resources, we have a veritable banquet of justice. Why is it, then, that so many of our citizens struggle to find justice and cannot afford to access or participate in that system? Why is it that so very many are starving at the banquet of justice? What went wrong? What can we do about it?

The Profession's Proclamations

The American Bar Association's Canons of Professional Ethics were adopted by the ABA in Seattle in 1908, and by Washington in 1917. Canon 12 states that in fixing the amount of a lawyer's fees, the client's "poverty may require a less charge, or even none at all" and that "[i]n fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade."

The Canons were replaced by the ABA in 1969, and by Washington in 1972, by the ABA's Code of Professional Responsibility. The Code's very first Ethical Consideration, EC1-1, stated that "[a] basic tenet of the professional responsibility of lawyers is that *every person in our society should have ready access to the independent professional services of a lawyer* of integrity and competence" (emphasis added).

The Code was in turn replaced by the ABA in 1983, and by Washington in 1985, by the ABA's Rules of Professional Conduct. Washington's RPC 6.1 provides that "a lawyer should render public interest legal service. A lawyer may discharge this responsibility by professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means."

Every lawyer admitted to the bar in Washington takes an oath of admission first required by the Washington Legislature in 1909. Thereafter, the ABA recommended that other jurisdictions adopt Washington's form of oath, and many did so. The 1909 form, subsequently adopted with minor changes by the Washington Supreme Court, is now set out as Admission to Practice Rule 5(d). The 1909 oath stated: "I will never reject from any consideration of personal matters the cause of the defenseless or oppressed. ..." The current oath provides: "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed. ..."

The Quandary and Our Heritage

In 1909, Washington had about 525 lawyers. Today, Washington has over 26,000 lawyers, and there are more than a million lawyers in the United States. Yet, despite these vast numbers, despite the fact that substantially every lawyer in the United States has sworn never to reject the cause of the defenseless or the oppressed, we still have thousands and thousands of defenseless and oppressed, as well as even greater numbers of ordinary citizens, who are starving at the banquet of justice. Why?

Nearly 2,800 years ago, the Greek poet Hesiod observed that justice is the best thing human beings have. All of us say we believe in justice and no one admits to believing we should instead promote injustice. But if we truly believe that justice is the best thing we have as a society, why do we have so much injustice? Why do so many of our citizens not have access to our justice system? And most of all, why are we lawyers, who proclaim to be committed to justice, not doing more to make justice real?

This is not a new or modern quandary. Over 2,400 years ago, the Greek historian Thuycydides quoted the Athenian statesman and soldier Pericles as saying: "in settling private disputes, everyone is equal before the law" and "we obey the laws ... especially those which are for the protection of the oppressed." *History of the Peloponnesian War*, Bk. 2, Ch. 4, p, 117, trans. Rex Warner (Penguin Books, 1954). But Thuycydides also quotes Pericles as complaining that society is apathetic toward the public good, and that everyone thinks the responsibility for the future belongs to someone else, and so, "while everyone has the same idea privately, no one notices that from a general point of view things are going downhill." *Ibid*, Bk.1, Ch. 11, p. 93. How is it that justice is going downhill at the same time that we obey all the laws, especially those for the protection of the oppressed? Are the laws to protect the oppressed inadequate, or is it rather that our commitment to justice is too shallow? Are we willing to commit to justice only as long as it does not cost us too much or is not too inconvenient?

Historically, we are told, lawyers appear to have been most committed to serving the public and to providing access to justice at those times when the "bench and bar were dominated by members of the upper classes with independent means; in other words, periods during which lawyers could afford to cheerfully provide free service." Hugh Spitzer, "Why Lawyers Have Often Worn Strange Clothes, Claimed to Work for Free – and Been Hated," *Washington State Bar News*, September 2000, p. 20 at 26. That author observes that our society, like others before it, has had "the same swings between an elite, service-oriented profession and a broader, upwardly mobile bar dependent on fees for its livelihood" (p. 28).

Are we part of the "elite, service-oriented profession," or of "the broader, upwardly mobile bar dependent on fees for its livelihood"? The difference is not merely a matter of the source or amount of our income, but rather of our image of ourselves and of our profession. All of us would say we are service oriented in our legal practices in that we want to render the best service we can to our clients. But in the context of helping our society know justice, "service oriented" must mean something more. It means a profound personal commitment by lawyers to our role as not just service providers, but as *servants*, as people who consistently put our personal interests aside to serve those of another person. Servants serve all the time, not just when it is convenient for them, not just when they think they can afford to serve, not just when someone asks them to do so, and certainly not dependent on the compensation they receive. Our market-based society, however, idealizes individualism and personal achievement, and does not value servants.

At heart, few of us want to be servants. Instead, we want to succeed financially, professionally and economically. We want to progress to successively higher-paying, higher-ranked and higher-perceived positions. We want our spouses, children, neighbors and otherwise long-forgotten high-school classmates to look at us with admiration and, even better, with envy, and say that "we have made it." By "making it" we and they do not mean we have become servants, but rather that we have become masters.

If we are to serve justice, however, we cannot be masters. We must be servants. A servant has a radically different perspective on the world than does the master. Are we willing to make the radical changes in our lives and lifestyles that this entails? Until we are, we will remain self-oriented rather than service-oriented to justice. Until then, we will remain masters expecting the justice system to serve us with a large income, with intellectual stimulation, with social prestige, with power, and with all the trappings of commercial success. Are we as lawyers trying to serve both ourselves and justice? When we discover we cannot serve both, to which do we give our allegiance?

Are We Living Our Oaths?

Who among us today belongs to that "elite, service-oriented profession" which has historically shown a personal commitment to justice and been the pride of the bar? Is it not those who at great personal sacrifice live their oaths to never reject the cause of the oppressed and the defenseless by directly serving them or by supporting those who can serve them? Unlike in the past, these elite lawyers are rarely independently wealthy. Rather, they have consciously chosen to live on less. They are not dependent on fees for their livelihood, not because they do not need the money to support themselves and their families, but rather because they have committed to accepting the lesser compensation of public practice, or because they remain in private practice but willingly reduce their income by rendering their services to their clients regardless of their clients' ability to pay. These are the elite members of our profession.

Who among us, then, are members of that "broader, upwardly mobile bar dependent on fees for its livelihood," which historically has failed to show commitment for justice? Does it include law partners, shareholders and principals whom the public considers successful because they represent well-known banks, businesses or individuals? Do these lawyers not only talk about justice, but commit their firms' resources to it? When they receive a large contingency fee award, do they immediately donate a large portion of it to secure access to justice for those whom they cannot directly serve? Does it include law firm associates who, with no experience in practicing law, immediately after their law school graduation make more than our Supreme Court Justices and more than four times what public-service lawyers make? Does it include in-house corporate counsel who devote all their legal energies to their corporate clients?

Are these lawyers, each of whom has also sworn never to reject the cause of the oppressed and the defenseless, turning away paying clients or work assignments to serve the oppressed and the defenseless? Are these lawyers too tired at the end of their long work days to represent the poor? Are these lawyers asking that their income be reduced in exchange for reduced work hours to be spent serving the poor? Are these lawyers making generous donations to fund legal services for the poor? If they are not, is it any wonder that many people are starving at the banquet of justice while we lawyers are feasting?

Measuring Commitment to Justice

How committed to serving justice are we really? Two thousand years ago a rich man's commitment was probed by a teacher who told him that he first needed to keep all of the rules, and he responded that he was already doing so. The teacher then told him to sell all that he had, give the money to the poor, and follow the teacher. "When the man heard this, gloom spread over his face, and he went away sad, because he was very rich." (Mark 10:22).

We lawyers have a lot in common with the rich man. We too are idealistic and see ourselves as committed to doing what is right. We too are usually law-abiding and live by the rules. We too are, by and large, very rich compared to many others in society. And when we learn the price of making justice a reality in our society, gloom likewise spreads over our faces, and we back away from our commitment to justice, for we too, like the rich man, are unwilling to give up our riches for justice. Do we believe in justice only so long as it does not cost us too much or inconvenience us too greatly? Are we servants of justice or of ourselves? Is our core value justice for others or the good life for ourselves?

Let's Get Real!

Most of us are not anchorites. Likely few of us can give a total commitment to making justice a reality. In the reality of our everyday lives, we necessarily make compromises because we have obligations not only to justice for others, but also to feed, house, clothe and care for our families; to reach out to our friends and neighbors; and to care for ourselves so that we retain the strength and will to do all that we need to do. The spouse may be rare, and the child rarer, who can understand, let alone support and encourage, a lawyer with a burning passion for justice and who would joyfully sacrifice the comforts of material wealth for the cause of the oppressed and defenseless of our society. But until we talk to our spouses and children about what justice really means to us, we will never know whether they share that passion, and as a result, we will serve justice less. Do we have the courage to ask? Tonight? Or do we at heart fear more the realization that it is not them, but ourselves, that are half-hearted in our commitment to justice? Will we, like the rich man, walk away from a commitment to justice because at heart we want riches for ourselves more than we want justice for others?

How do we allocate our resources among our various commitments? How do we do justice not only to our families and other commitments, but also to the oppressed and defenseless of our society? If we regularly directly reject the cause of the defenseless or oppressed, we have made the wrong allocation of our resources and are fooling ourselves if we believe we are committed to justice. But most of us are not daily confronted with the direct choice of rejecting the defenseless or oppressed. Instead, what may be worse, we either ignore them or are totally oblivious to them.

If our days are consumed worrying about whether a client's multimillion-dollar transaction complies with federal securities or tax laws, whether a client's proposed development of a warehouse or shopping center site will comply with environmental regulations, whether we will turn over in discovery documents which our hearts and the spirit of *Fisons* tells us we must, but which the client does not want us to, or whether our families never hear us express anguish over the cause of the defenseless and the oppressed and their lack of access to justice in our society, then we are very unlikely to be thinking, let alone doing anything, about the cause of the defenseless or the oppressed.

If, at the end of that day, however, we regularly serve at a legal clinic, or we regularly write a generous personal check to help pay for the time of other lawyers skilled in handling the problems of the poor and defenseless, then we are living our oath to never reject the cause of the oppressed. Or if we have consciously chosen a path of public service such as working with a public defender, the Northwest Justice Project, or Columbia Legal Services, a few of many possible examples, we are living our oaths at great financial sacrifice to ourselves and to our families. If we are in private practice, and we regularly give freely of our time and talents without regard to our clients' ability to pay for our services, then we, too, are living our oaths. But if we are not so giving, and if we never turn away paying clients in favor of working for free for the defenseless and the oppressed, then we are in fact rejecting our oaths and committing ourselves not to justice, but to ourselves.

As our practices become more and more specialized, fewer and fewer of us feel competent to render services directly to the poor. We become experts in areas of the law that are irrelevant to them. If we try to render services directly to them without special training, we risk malpractice, discipline, and more importantly, the recognition that incompetent service is not service. Further, some of us, particularly government and nonprofit lawyers and judges, may not be permitted to engage in any outside legal practice. But if we cannot devote the time needed to become competent in areas relevant to the poor, or we cannot practice outside our employment or positions, we can still fully live our oaths by financially supporting — not grudgingly, not stingily, but generously — those who can directly serve the poor, and working to secure public funding for legal services for the poor.

A Challenge

Even with all of the volunteer work done by tens of thousands of lawyers across the nation, and even with the financial assistance of Legal Services Corporation, the only federal agency directly involved in nationwide funding of the legal needs of the poor, it is estimated that less than 20 percent of those legal needs are now being met. To put the nation's commitment to funding those needs in perspective, Legal Services Corporation's entire $305 million funding for fiscal year 2000 is equal to less than a one-half of one percent annual return on Bill Gates' reputed $63 billion net worth; or viewed alternatively, if that net worth were liquidated, without regard to investment income or taxes, the proceeds would fund Legal Services Corporation at its current rate for more than 205 years. Do we as a society have a commitment to justice, or to ourselves?

What can we lawyers do beyond proclaiming a belief in justice to show that our commitment to justice is real? We can, of course, literally never reject the cause of the oppressed or defenseless. Or more practically, we can pay to solve the problem. If each of us contributed merely one dollar every day of the year (obviously many of us could and do contribute far more) to meet the legal needs of the poor, in one year we would have contributed more than the entire annual funding of Legal Services Corporation. How committed to justice are we? Do we have the courage to do this, or will we say it is unfair that we lawyers should be expected to solve the problem? Do we have the courage to ask our spouses to support this? Do we have the courage to ask our clients to match our contributions? Do we really care about justice?

Conclusion

We lawyers have long publicly proclaimed a commitment to justice and to serving the oppressed and the defenseless. Yet far too many of them remain starving at the banquet of justice. What will we lawyers do? Will we leave to someone else the task of serving the poor and pretend not to notice that as a result justice is going downhill? Will we lawyers feast, while the oppressed and the defenseless starve, or at best, eat crumbs at the banquet of justice? Or, will we make room for them at that table and invite them to feast with us? Do we have the courage to let justice begin with *us*?

Disciplinary Notices

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

For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name and your address.

Disbarred

Richard Alan Jackson (WSBA No. 5675, admitted 1974), of Renton, has been disbarred by order of the Supreme Court effective June 1, 2000, following a default hearing. The discipline is based upon his abandoning his practice without notice to his clients and converting client funds from his trust account for his personal use. Prior to November 1997, Mr. Jackson was an active sole practitioner in Renton, Washington. In late November 1997, he abandoned his practice without notice to his clients and removed all but $2.37 from his trust account. Mr. Jackson has not repaid or accounted for any of the clients' monies removed from his trust account.

Matter 1: At the time he abandoned his practice, Mr. Jackson represented the husband in a dissolution matter. The client gave Mr. Jackson a $6,000 cashier's check to be delivered to opposing counsel under the terms of the parties' settlement. Mr. Jackson originally told his client that the delay in delivering the funds to opposing counsel was due to a banking error. When his legal assistant asked him about the client's funds, Mr. Jackson told her that he had taken the money to pay his own back child support.

Matter 2: Mr. Jackson represented a client in a house purchase transaction. The client's father gave Mr. Jackson $3,000 as earnest money for the transaction. When Mr. Jackson abandoned his practice, the transaction was still pending and the money was not in the trust account.

Matter 3: Mr. Jackson represented a client in a traffic offense. In November 1997, the client's account had a credit balance of $230. In November 1997, Mr. Jackson appeared in court for the client. Mr. Jackson did not bill the client for the November services and removed the client's money from the trust account.

Matter 4: Mr. Jackson represented a couple in a child residential placement matter. The client's case was set for trial in January 1998. Mr. Jackson did not notify the clients prior to abandoning his practice and did not make arrangements for another lawyer to represent them at trial. He removed the client's unearned $520.30 advance fee deposit from the trust account.

Matter 5: Mr. Jackson represented a client in a child residential placement matter. The client paid a $1,500 advance fee deposit. Mr. Jackson earned approximately $300, but removed the entire advance fee from the trust account.

Matter 6: Mr. Jackson assisted a client in clearing title to real property. The client paid a $1,500 advance fee deposit to eliminate two liens filed against the property. Mr. Jackson did eliminate one of the liens, but did little or no work on the second. He removed the entire advance fee from his trust account.

Matter 7: Mr. Jackson represented the wife in a dissolution action. The client received a $9,212.32 cashier's check as part of the settlement. Mr. Jackson suggested that the client allow him to hold her funds in his trust account to protect the funds from creditors. The client endorsed the check to Mr. Jackson and he deposited the funds into his trust account. Mr. Jackson disbursed approximately $2,750 to the client and kept $798.67 for his fee. At the time he abandoned his practice, Mr. Jackson removed the remaining funds from his trust account.

Matter 8: Mr. Jackson represented the executor of an estate. He failed to appear at a December 3, 1997 hearing. As a result, the client was removed as executor.

Mr. Jackson's conduct violated RCW 9A.56.030, theft in the first degree; RPC 8.4(c), prohibiting engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; RPC 8.4(d), prohibiting conduct engaging in conduct that is prejudicial to the administration of justice; and RPC 1.15(d), requiring lawyers to take steps to protect a client's interests when withdrawing from representation.

Christine Gray represented the Bar Association. Mr. Jackson represented himself. The hearing officer was Geoffrey G. Revelle.

Reprimand

Steven Zhu (WSBA No. 23381, admitted 1993), of Seattle, has received two reprimands, based on a stipulation approved by the Disciplinary Board on January 12, 2000. The discipline is based upon his failure to competently represent one client and conduct prejudicial to the administration of justice in another matter.

Matter 1: Mr. Zhu represented a Chinese citizen in an immigration matter. The client was in the United States under a student classification and wanted to obtain residency status, to look for full-time employment. Mr. Zhu advised his client that working full-time would not jeopardize his student status. Based on this advice, the client quit school and accepted a full-time job. Immigration law does not permit students to work full-time.

Mr. Zhu filed a petition with the Immigration and Naturalization Service (INS) for the client to be granted classification as a temporary worker in a specialty occupation. The INS notified Mr. Zhu that the petition was incomplete and that the required additional documentation must pre-date the petition. Although the INS suggested that Mr. Zhu file a new petition, he submitted the additional documentation without filing a new petition. The INS denied the petition.

Mr. Zhu's conduct violated RPC 1.1, requiring a lawyer to possess the legal knowledge, skill, thoroughness and preparation necessary to competently represent a client.

Matter 2: Mr. Zhu assisted a Chinese citizen in his proceeding to obtain permanent resident status in Canada. The client also retained a Canadian lawyer. Mr. Zhu prepared an employment certificate to be signed by the client's former employer in China. Mr. Zhu signed the employment certificate himself, based on the

client's representation that the former employer had authorized his name to be signed on the certificate. Mr. Zhu did not indicate on the certificate that he had signed the employer's name. Although Mr. Zhu asked the client to request that the employer verify the signature directly with Mr. Zhu, this did not happen. Mr. Zhu submitted the certificate to the Canadian lawyer without telling him that it was not the employer's signature.

Mr. Zhu's conduct violated RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice.

Randy Beitel represented the Bar Association. Kurt Bulmer represented Mr. Zhu.

Censured

Douglas O. Whitlock (WSBA No. 5432, admitted 1973), of Vancouver, has been ordered censured pursuant to a stipulation approved by the Disciplinary Board on May 15, 2000. This discipline is based on Mr. Whitlock's failure to properly identify and protect client funds in his firm's trust account, and failure to diligently represent and communicate with a client.

Mr. Whitlock represented a client in a personal injury claim. The client signed a contingent fee agreement directing Mr. Whitlock to pay any medical bills from her share of any settlement. In early 1991, the case settled and the insurance company sent a $20,000 check to Mr. Whitlock, which he deposited into his firm's pooled IOLTA account. Mr. Whitlock disbursed $7,500 to his client; paid a portion of his fee; and paid some, but not all, of the outstanding medical bills. Mr. Whitlock paid two of these outstanding medical bills in 1994 and 1995. One medical bill was not paid. In November 1994, the client requested a full accounting of the settlement funds. Mr. Whitlock did not respond to this request for several weeks and then could not provide a full accounting. Eventually, the client determined that after the initial disbursals, $1,502.33 of the settlement funds remained in the firm's IOLTA account for over two years.

The Bar Association conducted an audit of the firm's IOLTA account. The audit revealed that the firm had failed to maintain complete records of client funds, failed to deposit and/or maintain all client funds in an interest-bearing trust account, used funds of one client to advance costs and fees on behalf of another client, and failed to promptly remove earned fees and costs from the trust account. As a result of this audit the firm retained a new bookkeeping firm and sent the client and additional $1,502.33.

Mr. Whitlock's conduct violated RPC 1.14, requiring lawyers to preserve the identity of and maintain complete records of client funds in the lawyers possession; RPC 5.3, requiring lawyers to supervise nonlawyer assistants; RPC 1.4(a), requiring lawyers to keep clients reasonably informed of the status of their matters; and RPC 1.3, requiring lawyers to diligently represent their clients.

Kevin Bank represented the Bar Association. Mr. Whitlock represented himself.

NON-DISCIPLINARY NOTICE

Interim Suspension

Jennings P. Felix (WSBA No. 136, admitted 1948), of Seattle, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered May 23, 2000.

Washington State Bar News Extent and Nature of Circulation	Average No. Copies Each Issue During Preceding 12 Months	Actual No. Copies of Single Issue Published Nearest to Filing Date
Total Number of Copies (net press run)	23,000	23,050
Paid/Requested	11,248	11,426
Paid In-County Subscription	9,247	11,114
Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Non-USPS Paid Distribution	0	0
Other Classes Mailed Through the USPS	111	138
Total Paid and/or Requested Circulation	20,606	22,678
Free Distribution by Mail	65	70
Free Distribution Outside the Mail	30	30
Total Free Distribution	95	100
Total Distribution	20,701	20,778
Copies not Distributed	295	500
Total	20,996	23,538
Percent Paid and/or Requested Circulation	100%	100

Lawyers' Fund for Client Protection

Annual Report

The Lawyers' Fund for Client Protection has filed its annual report with the Supreme Court. This year, as part of the WSBA consumer information program, the Lawyers' Fund for Client Protection Committee drafted a pamphlet describing the purposes of the fund and how to apply to it.

In addition, the committee reviewed 85 applications to the fund concerning 31 lawyers. Forty-one (41) applications were approved. Of the denials, 35 were deemed fee disputes, malpractice, or showed no evidence of a dishonest taking of funds; four had received full restitution; three were denied for other reasons; and two were deferred. The following applications were approved:

Dennis M. Brouner
(WSBA No. 8859, Seattle; disbarred)
Brouner maintained a bankruptcy practice that was co-owned by a suspended Arizona lawyer. Brouner placed his law firm in bankruptcy and was eventually prohibited by the bankruptcy court from filing bankruptcy proceedings on behalf of others. Last year, the committee approved 15 applications concerning Brouner (ranging between $149 and $6,000). Like many of the previous applications, these two involved failure to return unearned fees. The committee approved payment of $894 and $775 to the applicants.

Charles W. Burns, Jr.
(WSBA No. 12957, Colville; disbarred)
Of nine applications, six involved unearned fees in amounts ranging from $393 to $750; two concerned $2,500 and $1,375 Burns was to hold in trust but failed to pay to the client; and one involved a pickup truck Burns was to hold as security for the owner's mother's legal fees. Burns sold the truck for $3,200 despite the fact that the mother had paid all earned fees.

Irving Leroy Dane
(WSBA No. 6587, Vancouver; disbarred)
Dane pled guilty to one count of first-degree theft of client funds. Three applications were approved. The first was for $30,000 from insurance settlement funds Dane was to hold in trust but never paid to the client. The second application was for $12,187.50 in trust funds paid by the mother of a former client in a criminal case as advance fees and costs on behalf of her son. Dane never accounted for his fees or returned any unearned fees. In Dane's criminal conviction and sentencing, the judge ordered restitution to the mother of $12,187.50 in unearned fees. The third application was for $10,494 from settlement funds in a personal injury case Dane was to hold. Dane misappropriated the client's funds to make a $14,000 house payment.

Charles D. Fornero
(WSBA No. 20971, Seattle; disbarred)
In 1998, the committee approved two payments regarding Fornero for $930 and $715. In this year's case, $3,988 was approved for payment representing unearned legal fees and funds misappropriated in a real estate transaction.

Grant L. Harken
(WSBA No. 11842, Burien; disbarred)
Harken misappropriated $2,380.11 from settlement funds in a personal injury case. Harken had also misappropriated $11,584 owed to the client's employer on a surrogated claim, but those funds were repaid when the misappropriation was discovered.

James A. Heard
(WSBA No. 12272, Aberdeen; suspended)
The committee previously approved two applications for $2,000 and $1,500 for failure to return unearned fees. Two additional applications were approved for payment this year. The first was for $5,000 in a matter in which the client hired Heard to prepare a report on allegations of corruption in the county prosecutor's and sheriff's offices. Heard told his client that he had tried to give the report to someone at the U.S. Drug Enforcement Agency, but had been refused. Heard never accounted for or refunded any of the fees. The second application was for $150 paid for representation on a misdemeanor charge in municipal court. Heard filed a notice of appearance but failed to appear, and the client never heard from Heard again.

William R. Hebeler
(WSBA No. 14373, Lynnwood; deceased)
There were two applications. In the first, the client paid Hebeler $500 to prepare an application for citizenship. Hebeler failed to prepare the application or refund the client's fee. In the second application, clients hired Hebeler to obtain nonresident visas or "green cards," and they paid him $6,500. Hebeler moved out of state without filing the applications. The clients were required to leave the United States and return to Korea.

Richard A. Jackson
(WSBA No. 5675, Renton; disbarred)
Jackson abandoned his practice in November 1997, after removing nearly all client funds from his trust account. On February 10, 2000, he pleaded guilty to two counts of first-degree theft. The committee and trustees approved seven applications concerning Jackson.

- The client gave Jackson a cashier's check for $6,000 to be transferred to the client's former wife's lawyer. Jackson misappropriated the funds, telling his legal assistant that he used the funds to pay his own back child support.
- The client paid Jackson an advance fee deposit of $750 to clear title to her prop-

erty. Jackson abandoned her case but made no refund of unearned fees.

- The purchaser gave Jackson $3,000 as earnest money on the sale of his clients' home. Jackson abandoned the matter and misappropriated the $3,000.
- Jackson wrote wills for the client and her sister. The sister died in August 1997, and Jackson was appointed personal representative. He then withdrew $9,536.10, all of the sister's assets, from her bank account. Jackson misappropriated these funds to his own use.
- Clients hired Jackson for representation in a matter involving "the future of our six-year-old granddaughter." They paid an advance fee deposit of $1,500, against which Jackson billed for his services. The last billing statement to the clients, dated October 23, 1997, showed a credit balance of $520.30. When Jackson abandoned the clients' case, he did not refund this balance or account for the funds.
- As part of the property settlement in a marriage dissolution, a cashier's check was issued payable to the client and Jackson in the amount of $9,212.32. The client endorsed the check and gave it to Jackson to deposit to his trust account. Jackson failed to deliver or account for $4,336.65 of those funds. The client wrote to the Fund Committee: "I want to take this time to thank you and your staff for researching my case with Richard A. Jackson who was disbarred earlier this month. I really appreciate all of your help in this matter."
- The client paid Jackson $1,500 as an advance fee deposit. The hearing officer found that Jackson "earned approximately $300" and that "approximately $1,200 ... remained unearned." He ordered restitution in the amount of $1,200. Payment in that amount was approved from the fund.

Zachary A. Kinneman
(WSBA No. 19443, Seattle; suspended, stipulated to disbarment)
Two clients were condominium residents who hired Kinneman to represent them in a claim against the condominium management company. They each paid Kinneman $500. Kinneman abandoned their case without performing any legal services, never returned the fees the clients paid him, or rendered any accounting for them. He stipulated to pay restitution of $500 to each client.

Michael B. Markham
(WSBA No. 11388, Seattle; suspended)
Markham pled guilty to the federal felony offense of attempted tax evasion on May 9, 1997. Three applications were approved. In the first, the client overpaid a creditor's bill. They refunded the $613 overpayment to Markham, who deposited it to his personal account and never refunded the $613 to the client. In the second application, Markham was to pay the client's $1,801 medical bill from settlement proceeds but did not do so. In the third application, Markham misappropriated $1,346.84 from Labor and Industry (L&I) proceeds owing to the client.

Melinda Monet
(WSBA No. 25676, Seattle; interim suspension pending discipline)
Last year, the committee approved 28 applications concerning Monet (ranging between $200 and $900). She abandoned a large number of clients' cases without returning or accounting for advance fees and costs paid to her. In one of the current cases, the client paid advance fees and costs to Monet. Monet filed a bankruptcy petition, but her check for the filing fee was returned NSF, therefore the client had to repay the filing fee of $175. In the second application, the client gave Monet a check for the $175 filing fee made payable to the U.S. Bankruptcy Court. Monet changed the payee to herself and misappropriated the funds. In the third application, the client paid Monet $380 to file a marriage dissolution petition that was never filed, and the fees and costs were never returned.

Brad A. Plumb
(WSBA No. 20337, Spokane; disbarred)
The client paid Plumb $2,000 in advance fees and costs for a child support modification proceeding. Plumb abandoned the case without filing any pleadings, and without returning or accounting for the client's fees and costs.

Kelly M. Seidlitz
(WSBA No. 17470, Tacoma; disbarred)
There were three applications. In the first, Seidlitz received a settlement payment of $20,000, which he deposited to his trust account with the client's forged endorsement. He disbursed funds to the client, but withheld $1,200 to pay a medical bill already paid by the client. The client made repeated requests for the $1,200 from Seidlitz, whose only response was to send her a check for $807.50, with no explanation. Seidlitz never accounted for the $392.50 balance. In the second application, Seidlitz settled the client's claims for $8,500, and sent the client $3,700. He enclosed a disbursal statement showing that he was withholding $2,476 for payment to the client's treating physician. Seidlitz never made that payment to the doctor or accounted for the withheld funds. In the third application, the client paid Seidlitz $1,000 in a marriage dissolution. Seidlitz did not advise his client of or appear for a hearing on temporary child support. When custody was awarded to the client's wife, the client learned of it from his wife. The client fired Seidlitz and demanded a return of his fees. Seidlitz failed to withdraw, did no further work on the case, made no refund, and provided no accounting for the funds. Payment of $1,000 to the client was approved from the fund.

Jerold R. Weidenkopf
(WSBA No. 12438, Tacoma; disbarred)
The client employed Weidenkopf in connection with a modification of the parenting plan brought by her former husband, paying Weidenkopf $450. Weidenkopf failed to appear for the hearing and never refunded the client's fees.

For a copy of the 1999 Annual Report of the Lawyers' Fund for Client Protection or the Lawyers' Fund for Client Protection pamphlet, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail your request with your mailing address to license@wsba.org.

Finally, as noted before, the victims of dishonest lawyers who receive some compensation from the fund on occasion send thank you notes. A recent note reads: "Thank you so much for working on this for me. It's nice to have someone on my side for once. Thank you."

The committee chair is Seattle attorney Barbara J. Selberg. WSBA General Counsel Robert Welden is staff liaison to the committee.

WSBA 2000 Awards Presentation at Celebration 2000

Each year, the Washington State Bar Association recognizes a few individuals who have made exceptional contributions to the people of Washington and to the legal profession. We acknowledge the outstanding accomplishments of the following persons, who were honored at the Awards Luncheon held during Celebration 2000 in Spokane.

Karen Dorn Steele — Excellence in Legal Journalism Award
Superior Court Judges' Association Equality and Fairness Committee — Affirmative Action Award *(accepted by The Honorable James Murphy)*
Barbara A. Vining — Angelo Petruss Award for Lawyers in Public Service
Rosemarie Warren LeMoine — Pro Bono Award
Peter Greenfield —Professionalism Award
Chief Justice Richard P. Guy — Outstanding Judge Award
Garth L. Dano — Courageous Award
Russell J. Speidel — President's Award
Caitilin Newman Velazquez — President's Award
Louis Rukavina III — Award of Merit
Leonard W. Schroeter — Lifetime Service Award
Bethel Webb — Special President's Award


Karen Dorn Steele


Honorable James Murphy


Barbara A. Vining


Rosemarie Warren LeMoine


Peter Greenfield


Chief Justice Richard P. Guy


Garth L. Dano


Russell J. Speidel


Louis Rukavina III (left) with John Powers

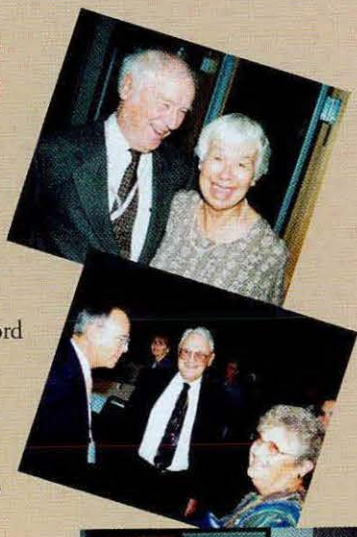

Leonard W. Schroeter


Bethel Webb

Honoring the WSBA's 50-Year Members

We honor the 73 individuals who were admitted to the Washington State Bar Association in 1950 and are still members of the Bar. These 50-year members represent more than 3,650 years of service to the people of our state.

Matthew L. Alexander
Charles Frederick Barker
Joseph Anthony Barreca
Audrey Greenma Benezra
Edward C. Biele
Paul Mitchell Boyle
Phillip Thompson Bork
Howard B. Breskin
F. Lee Campbell
Warren Chan
Charles W. Cone
Charles Lee Coulter
John Marshall Cunningham
Cyrus A. Dimmick
Gil Duckworth
Glen E. Duncan
James E. Duree
Richard J. Ennis
William H. Gates
Dale M. Green
Wallace Burton Hager
Harold "Jerry" Bruce Hanna
Robert Arthur Hensel
James Brunton Hovis
Daniel J. Hurson
David C. Hutchison
Ernest Miller Ingram
Delbert Wallace Johnson
James Truman Johnson
John H. Kirkwood
Walt O. Knowles
C. Calvert Knudsen
Albert Leon Levinski
Howard John Martin
Malcolm Stewart McLeod
Walter Thomas McGovern
Donald L. McMannis
James D. McMannis
Thomas C. McCarthy
Seth Warner Morrison
Paul John Nolan
Philip McCord Noon
Michael J. O'Brien
Robert Irving Odom
Barbara Ohnick
Lewis H. Orland
Richard K. Pelz
George F. Potter
Wayne LaVerne Prim
Stephen M. Reilly
Julian C. Rice
John J. Ripple
James R. Rosamond
William Eric Rohrs
Samuel Charles Rutherford
Fred Schlick
Gerard M. Shellan
Dale Ellsworth Sherrow
Richard Carlyle Smith
Robert Norwood Snyder
Paul M. Stocker
H. Frank Stubbs
Duane Tewell
James A. Vander Stoep
John H. Thomas
Frederick Theodore Thomsen
Francis Joseph Walker
Walter Walkinshaw
Walter E. Weeks
John S. Williamson
Richard Otis White
William J. Wong
Trena Belsito Worthington



Opportunities for Service

Washington Defender Association Board of Directors

Application deadline: November 15, 2000

The Board of Governors of the WSBA is accepting letters of interest from members interested in serving a three-year term on the Board of Directors of the Washington Defender Association. The three-year term will commence on January 1, 2001. The incumbent is eligible for reappointment and must also submit a letter of interest.

The board generally meets 10 or 11 times per year. In addition, individual members, particularly the president, assist in meetings with government officials and in advising management of the Washington Defender Association on a wide range of issues. The board has hiring and firing authority over the director, and approves annual budgets, contracts with King County, and bargaining agreements with the union. It also has a mediation and review role in disputes with union members.

Please submit a letter of interest and résumé to the Office of the Executive Director, WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330 or e-mail oed@wsba.org.

Legal Foundation of Washington Board of Trustees – Two Positions Available

Application deadline: November 15, 2000

The Board of Governors of the WSBA is accepting letters of interest from members interested in serving a two-year term on the Legal Foundation of Washington Board of Trustees (two positions). The two-year term will commence on January 1, 2001. One of the two incumbents is eligible for reappointment and must also submit a letter of interest.

The Legal Foundation of Washington is a private, not-for-profit organization that promotes equal justice for those who are poor and vulnerable, through the administration of IOLTA and other funds. Trustees should have a demonstrated commitment to and knowledge about the need for legal services and how these services are provided in Washington.

Please submit a letter of interest and résumé to the Office of the Executive Director, WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330 or e-mail oed@wsba.org.

Northwest Justice Project Board of Directors – Two Positions Available

Application deadline: November 15, 2000

The Board of Governors of the WSBA is accepting letters of interest from members interested in serving a three-year term on the Northwest Justice Project Board of Directors (two positions). The three-year term will commence on January 1, 2001. One of the two incumbents is eligible for reappointment and must also submit a letter of interest.

The Northwest Justice Project is a not-for-profit organization which seeks funding through the federal Legal Services Corporation to provide civil legal services to low-income people. Board members should have an interest in and knowledge of the delivery of high-quality civil legal services to the poor.

Please submit a letter of interest and résumé to the Office of the Executive Director, WSBA, 2101 Fourth Avenue, Fourth Fl., Seattle, WA 98121-2330 or e-mail oed@wsba.org.

Limited Practice Board – Two Positions

Application deadline: November 15, 2000

The Board of Governors of the WSBA will be nominating two members who are appointed by the Supreme Court to serve a four-year term on the Limited Practice Board commencing on January 1, 2001. Incumbents are eligible for reappointment and must also submit a letter of interest. The board oversees administration of and compliance with the Limited Practice Office Rule (APR 12) and meets every other month.

Please submit a letter of interest and résumé to the Office of the Executive Director, WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330 or e-mail oed@wsba.org.

Office of Public Defense Advisory Committee

Application deadline: November 15, 2000

The Board of Governors of the WSBA is accepting letters of interest from members interested in serving a three-year term on the Office of Public Defense Advisory Committee. The three-year term will commence on January 1, 2001. The incumbent is eligible for reappointment and must also submit a letter of interest.

The Office of Public Defense Advisory Committee meets quarterly to set policies for appellate indigent defense funding, approve legislative and rule requests, review budgetary matters, oversee new programs, and consider appeals of billing decisions. During the term of appointment, no appointee may: (a) provide indigent defense services except on a pro bono basis; (b) serve as an appellate judge or an appellate court employee; or (c) serve as a prosecutor or prosecutor employee. Committee members receive no compensation for their services as members of the committee, but may be reimbursed for travel and other expenses in accordance with rules adopted by Office of Financial Management.

Please submit a letter of interest and résumé to the Office of the Executive Director, WSBA, 2101 Fourth Avenue, Fourth Fl., Seattle, WA 98121-2330 or e-mail oed@wsba.org.

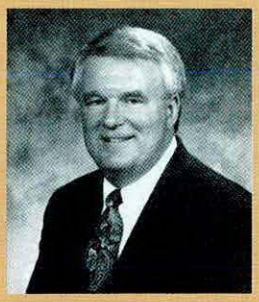
Bench-Bar-Press Committee of Washington

Application Deadline: November 20, 2000

The Board of Governors of the WSBA is accepting letters of interest from members interested in serving a three-year term on the Bench-Bar-Press Committee of Washington (two positions). The three-year term will commence on February 1, 2001. Both incumbents are eligible for reappointment.

The Bench-Bar-Press Committee was formed in 1963 to foster better understanding and working relationships between judges, lawyers and journalists. Its mission is to seek to accommodate, as much as possible, the tensions between the constitutional values of free press and fair trial through educational events and relationship building. The committee is chaired by the Chief Justice of the Washington State Supreme Court and includes representatives from the legal profession, judiciary, law enforcement and news media. The committee meets as a whole once or twice each year. Subcommittees of volunteers are organized on an ad hoc basis to plan and execute events.

Please submit a letter of interest and résumé to the Office of the Executive Director, WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330 or e-mail oed@wsba.org.



Port Angeles native S. **Brooke Taylor** brings with him extensive service to the legal profession as well as the North Olympic Peninsula community. In his 32-year career as an attorney, he has served as president of the Clallam County Bar Association, director of the Clallam-Jefferson Public Defender Board, member of the City and County Jail Commission, and coordinator and instructor of the Port Angeles Peoples Law School. Taylor currently serves as Clallam County Superior Court Commissioner and is also in private practice as a partner in the law firm of Platt Irwin Taylor. His practice emphasizes plaintiffs' personal injury, civil litigation, estate planning and probate. In 1999, Taylor was named Clallam County "Citizen of the Year."

Has Your Address Changed?

2001 licensing forms will be sent to all WSBA members in mid-December. To ensure timely receipt of your forms, please make sure we have your current address. If your address has changed and you have not yet notified us, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA; e-mail questions@wsba.org; or send a letter to Membership Records, WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330.

WestCoast Hotels Contribute to LAW Fund

WestCoast Hotels, the WSBA and Legal Aid for Washington (LAW) Fund have created a partnership to raise funds for low-income legal services. Through the end of 2001, WestCoast Hotels will make donations to LAW Fund, based on the number of nights that anyone associated with the WSBA stays at any of the 47 Washington WestCoast Hotels. By simply asking for the WSBA rate, guests will receive a reduced room rate, and LAW Fund will receive five dollars for each night's stay. For reservations, contact WestCoast Hotels at 800-325-4000.

Justice Douglas Play – A New Way to Earn CLE Ethics Credits and a Rare Theatrical Opportunity

The WSBA CLE Department is offering a rare opportunity that combines education with entertainment. WSBA-CLE will offer *The Art of the Law*, a workshop on professionalism, on November 30, 2000. This all-day interactive program will be followed by a play about former U.S. Supreme Court Justice William O. Douglas.

Graham Thatcher's engaging solo theatrical performance uses anecdotes, humor and painful remembrances to explore some of the most explosive issues faced by Washington's most famous Supreme Court Justice. The cases and controversies discussed in the performance remain hot issues today.

A distinguished panel of judges and attorneys will use the play as the basis for a one-hour CLE program/discussion on legal and judicial ethics following the performance.

For more information call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

MCLE Changes

The Supreme Court has approved changes to APR Rule 11, which will streamline Mandatory Continuing Legal Education (MCLE) program CLE reporting. The changes outlined below will be effective January 1, 2001. The main changes are that the WSBA will track your credits, and sponsors of CLE activities will report attendance directly to the WSBA.

MCLE Requirements

The MCLE credit requirements will remain the same:

- 45 total credits for the three-year reporting period: 39 general and six (6) ethics.
- A maximum of 15 credits can be from audio/video programs.

Changes in Reporting

- Each sponsor will report your attendance at approved CLE courses to WSBA. It will be your responsibility to sign the attendance roster at every approved CLE activity.
- You will be able to view your CLE attendance record online. To ensure privacy, you will have a confidential password.
- You will receive a report of your attendance records twice a year.
- You will be able to apply online for approval of CLE activities.
- You will be able to view approved CLE courses online, searching by date, title, sponsor or location.
- You will receive a report and affidavit at the end of your reporting period to verify the courses you attended. The signed affidavit must be returned to the WSBA.

Changes in Rules and Regulations

- Pro bono credits – limited approval under specific parameters.
- In-house seminars – relaxed parameters for approval.
- Tracking system for reporting attendance.
- Substance-abuse training – will be approved for ethics credits.
- Mealtime presentations – may now be accredited if a presentation is given during the meal.
- Judging law school competitions – no credit available.

Phasing in the New System

- Group 1 (reports for 1999, 2000 and 2001 by January 31, 2002) – you must submit attendance for 1999 and 2000. Attendance for 2001 will be reported by the CLE sponsors.
- Group 2 (reports for years 2000, 2001 and 2002 by January 31, 2003) – you must submit attendance for 2000. Attendance for 2001 and 2002 will be reported by the CLE sponsors.
- Group 3 (reports for years 2001, 2002, and 2003 by January 31, 2004) – all attendance will be reported by the CLE sponsor.

The full text of the APR 11 regulations may be viewed online at http://www.courts.wa.gov/rules/state/apr/regs.txt.

Chemnick, Moen & Greenstreet

welcomes

Patricia A. Mandella,
RN, CCRN, CLNC
to our staff.

Pat brings to our firm over 27 years' experience in pediatric, emergency and critical care nursing, and seven years' flight nursing experience. Chemnick, Moen & Greenstreet welcomes referrals and associations in complex medical negligence claims.

450 Market Place Two
2001 Western Avenue
Seattle, Washington 98121
Telephone: 206-443-8600
Fax: 206-443-6904
E-mail: cmg@cmglaw.com

Forsberg Umlauf, PS

A Litigation Defense Firm

is please to announce that

Deborah Balint
formerly of Murray, Dunham & Murray

Brent Caldwell
formerly of Smith & Co., PS

Ray Cox
formerly of Johnson, Christie, Andrew & Skinner, PS

Joann Pheasant
formerly of the Attorney General's Office

Robert Richards
formerly of Malarchick & Associates

have joined the firm as associates.

James Macpherson
past president of the Washington Defense Trial Lawyers is associated as of counsel.

Forsberg Umlauf, PS
900 Fourth Avenue, Suite 1700
Seattle, Washington 98164-1039
Telephone: 206-689-8500 • Fax: 206-689-8501
E-mail: Firm@forsberg-umlauf.com

WSBA Interprofessional Committee Sponsors CLE

A CLE titled *Real People, Real Trouble — Ethical Tools to Avoid Malpractice* will be sponsored by the WSBA Interprofessional Committee on Friday, December 15, 2000. The program will be held at the WSBA conference center from 8:00 a.m to noon. For more information, contact Lisa KauzLoric at 206-733-5944 or lisak@wsba.org.

Legal Community Contributes to Food Lifeline

The Puget Sound legal, brokerage and accounting communities participated in Food Lifeline's Food Frenzy this summer. As a result, over $140,000 and several thousand pounds of food were collected. The money will enable Food Lifeline to collect and repackage excess food products from manufacturers, wholesalers, distributors, restaurants and hotels, and redistribute the food in the form of over 840,000 meals.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in October 2000 is 6.318 percent. The maximum allowable interest rate for November 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 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date appears at www.wsba.org/barnews.

Robert D. Johns
Michael P. Monroe
and
Darrell S. Mitsunaga
are pleased to announce
the formation of our new firm

Johns Monroe Mitsunaga PLLC

Joining us as an associate is
Hilary S. Franz

The members of our firm will continue their emphasis in land use, real estate, municipal, construction and related litigation matters.

1500 114th Avenue SE
Cypress Building, Suite 102
Bellevue, Washington 98004
Telephone: 425-451-2812
Fax: 425-451-2818

KARR TUTTLE CAMPBELL

is pleased to welcome

George S. Treperinas

as a shareholder
in the Business Department's
Corporate Finance Practice Group.

Mr. Treperinas has a
rich background in a broad range of
transactional experience as well as litigation
experience in business law.

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REINISCH, WEIER & MACKENZIE, PC

is pleased to announce that

Sherry L. Davies
has joined the firm as
an associate in its Seattle office,
practicing with Michael H. Weier and
Kelly Montgomery in the
representation of employers in workers'
compensation litigation.

520 Pike Street, Suite 2210
Seattle, Washington 98101
Phone: 206-622-7940
Fax: 206-622-5902
E-mail: firm@reinischweierlaw.com

Peery, Hiscock, Pierson, Kingman & Peabody, PS

takes pride in announcing that it has become

KINGMAN, PEABODY, PIERSON & FITZHARRIS, PS

We are also pleased to announce that David J. Corey has joined our firm as an associate.

The firm will continue to practice in the areas of dispute resolution, complex insurance, commercial and construction litigation, employment matters, real estate, and environmental and land use.

David J. Corey
James E. Horne
Max N. Peabody
William E. Fitzharris
Randall C. Johnson, Jr.
Richard W. Pierson
John C. Gibson
Dale L. Kingman
Michael E. Ricketts

Of Counsel
Charles E. Peery
David F. Hiscock

KINGMAN, PEABODY, PIERSON & FITZHARRIS, PS
505 Madison Street, Suite 300,
Seattle, Washington 98104
Telephone: 206-622-1264 • Fax: 206-292-2961
www.kpf-law.com • E-mail: kpf-law.com

Calendar

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

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

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

ADR

How Not to Be Mediated Upon™
November 9 – Seattle. 7.75 CLE credits, including 1 ethics. By Conflict Resolution Institute; 253-597-8100.

You Think You Are a Mediator, Huh?™
November 10-11 – Seattle. 15.5 CLE credits, including 2 ethics. By Conflict Resolution Institute; 253-597-8100.

Training to Be a Professional Mediator
November 16-17 – Seattle. 15 CLE credits. By Alhadeff Mediation Services; 206-281-9950.

ANTITRUST

Annual Antitrust, Consumer Protection & Unfair Business Practices Conference
November 17 – Seattle. 6.25 CLE credits pending. By WSBA-CLE and Antitrust, Consumer Protection and Unfair Business Practices Section; 800-945-WSBA or 206-443-WSBA.

BUSINESS

Mergers & Acquisitions (morning) Purchase & Sale of Business (afternoon)
November 9 – Seattle. 3 CLE credits estimated each session. By WSBA-CLE and Creditor-Debtor Section; 800-945-WSBA or 206-443-WSBA.

COMPUTER SKILLS

Computer Camp for Counselors™
December 13 – Seattle (basic – morning; intermediate – afternoon); December 14 – Seattle (advanced – morning). 4 CLE credits each session. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CREDITOR/DEBTOR

How to Create, Perfect, Foreclose and Defend Liens
December 6 – Spokane; December 7 – Seattle. 6.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

Employment Law Conference
November 9-10 – Chicago; November 16-17 – San Francisco. CLE credits TBD. By National Employment Law Institute; 303-861-5600.

Covenants Not to Compete (morning)/Key Employee Retention (afternoon)
December 14 – Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

Northwest Family Business Forum: A Resource Workshop with Gerald Le Van
December 6 – Seattle. 5.75 CLE credits pending. By WSBA-CLE and Estate Planning Council of Seattle; 800-945-WSBA or 206-443-WSBA.

ETHICS

Ethical Dilemmas for the Practicing Attorney
November 1 – Yakima; November 8 – Spokane. 4 CLE ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics Tele-CLE Series
November 9 (Family Law); November 16 (Ballad of Nightmare Client); November 29 (Litigators). 1.5 CLE ethics credits each. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Avoiding Conflicts of Interest
November 17 – Portland. 3 CLE ethics credits pending. By Oregon State Bar; 503-684-7413.

Professionalism in the Profession
November 17 – Portland. 3 CLE ethics credits pending. By Oregon State Bar; 503-684-7413.

The Art of Law: A Workshop on Professionalism
November 30 – Seattle. 7 CLE credits, including 5 ethics estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

One Man Play: *Impeach Justice Douglas!*
November 30 – Seattle. 1 CLE ethics credit estimated for presentation following play. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics
December 1 – Spokane. CLE credits TBA. By Spokane County Bar Association; 509-477-2665.

Ethics Tele-CLE Series
December 6 (Real Estate); December 13 (Estate Planners); December 13 (Litigators). 1.5 CLE credits each. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Real People – Real Trouble: Ethical Tools to Avoid Malpractice
December 15 – Seattle. 3.5 CLE credits pending. By WSBA Interprofessional Committee; 206-733-5944.

FAMILY LAW

Family Law Tax Issues
November 2 – Seattle; November 3 – Portland. 6.75 CLE credits, including .5 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

An Overview of Cultural Issues for Families in the Legal System
November 3 – Kent. 2.75 CLE credits pending. By Unified Family Court Training Oversight Committee; 206-205-2674.

Family Law Seminar *(featuring Justice Philip Talmadge, Judge Charles French, Commissioner Arden Bedle, Attorney Ron Steingold)*
November 17 – Everett. 5 CLE credits, including 3 ethics pending. By Snohomish County Bar Association; 425-388-3056.

GENERAL

Relative Caregivers
November 3 – Seattle. 7.5 CLE credits. By UW-CLE; 206-543-0059.

High-Growth Company Exit Strategies
November 9 – Seattle. 7 CLE credits. By UW-CLE; 206-543-0059.

District Court Update
November 10 – Spokane. CLE credits TBA. By Spokane County Bar Association; 509-477-2665.

Fundamentals of Collecting Money Judgments
November 10 – Portland. CLE credits TBA. By Oregon State Bar; 503-684-7413.

Capacity and Undue Influence
November 17 – Seattle. 3.5 CLE credits. By UW-CLE; 206-543-0059.

Public Records
November 17 – Spokane. CLE credits TBA. By Spokane County Bar Association; 509-477-2665.

Commerce in the Digital Age
November 17 – Portland. 7 CLE credits, including 1 ethics pending. By Oregon State Bar; 503-684-7413.

Methamphetamines
November 21 – Kent. 1.25 CLE credits pending. By Unified Family Court Training Oversight Committee; 206-205-2674.

Government Takings
November 27-28 – Seattle. 13.5 CLE credits pending. By Law Seminars International; 206-621-1938.

Corporate Counsel
November 30 – Portland. CLE credits TBA. By Oregon State Bar; 503-684-7413.

Government Law
November 30 – Portland. CLE credits TBA. By Oregon State Bar; 503-684-7413.

WSBA Emeritus Training Program
December 1 – Spokane. CLE credits TBA. By WSBA Emeritus Program and Spokane County Bar Association Volunteer Lawyers Program; 206-727-8262. No cost.

The Best of CLE 2000
December 8 – Seattle. 3.25 CLE credits, including up to 1.5 ethics pending (half day); 6.5 CLE credits, including up to 3 ethics pending (full day). By WSBA-CLE and General Practice Section; 800-945-WSBA or 206-443-WSBA.

Video Roundup
December 19-21 – Spokane; December 26-29 – Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Annual Potpourri CLE
December 8 – Spokane. CLE credits TBA. By Spokane County Bar Association; 509-477-2665.

INTERNATIONAL LAW

Business Across the Borders
December 8 – Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LITIGATION

Digital Discovery (morning)
Use & Abuse of Depositions (afternoon)
November 16 – Seattle. 3 CLE credits pending each session. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ultimate Cross-Examination – How to Dominate a Courtroom *(with Larry Pozner and Roger Dodd)*
December 15 – Seattle. 6.75 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

REAL ESTATE

7th Annual Fall Real Estate Conference
November 17 – Seattle. 6.5 CLE credits, including 1.5 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

TAX LAW

Financial Statements (morning)
Tax Traps (afternoon)
November 8 – Seattle; November 16 – Spokane. 3 CLE credits estimated each session. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Real Estate Exchanges Made Easy Under Section 1031 R.C. *(with Jeremiah M. Long)*
December 1 – Seattle (live); December 8 – Spokane, Boise, Billings (video replay sites). 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

WATER LAW

Water Law
December 14-15 – Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Professionals

RECEIVER / SPECIAL MASTER

Michael S. Gillie,
founder and longtime Executive Director of Washington Arbitration & Mediation Service, is an experienced Receiver and Special Master for business cases. Legal references, case descriptions, and draft language for court orders are available upon request.

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Classifieds

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William S. Hein Company: More than 70 years later, still your number-one source for buying/selling law books. 50 to 70 percent savings on major sets, international law, rare/antiquarian law. Appraisal services available. Call 800-496-4346; fax 716-883-5595; http://www.wshein.com/used-books.

Desk for sale: massive (over six feet), beautiful solid wood desk and matching credenza. Iconoclast Clay Nixon, original owner. Best offer. Kent Thorsted, 425-637-3020.

SPACE AVAILABLE

Small Seattle waterfront office building available February 2001. Up to six offices, conference room, reception desk and kitchen (construction in progress). Great location (north of the Seattle Aquarium) with unimpeded views of the water and Olympics. Rent one or up to all six offices. Call Eric at 206-583-0155 for more information.

One or two offices overlooking Pioneer Square pergola and trees. Conference room with sound and mountain view. Space for receptionist. Two blocks to courthouse. 206-628-0039.

Sweeping, unobstructed view of Olympics and Elliott Bay (Wells Fargo 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 Barbara at 206-624-9400.

Downtown Seattle office sharing: $175 per month. Also, full-time offices available on 32nd floor, 1001 Fourth Avenue Plaza. Close to courts. Furnished/unfurnished suites, short-term/long-term lease. Receptionist, legal word processing, telephone answering, fax, law library, legal messenger and other services. 206-624-9188.

University – Laurelhurst: Executive office plus clerical space available. Share receptionist, conference rooms, library and services with senior level attorneys, CPA and consultants. Optional networking and marketing opportunities. Possible overflow work. Great location, attractive, pleasant environment. Please call Carol at 206-523-6470.

For sublease: Partner-sized office, reception services provided; Class-A building, downtown Seattle, 22nd floor; stunning western views. Available December 1. Contact Al Bentley or Emily Coward at 206-343-9391 or by e-mail at emilycoward@hotmail.com.

Hi-rise sublease: Medium-sized law firm with 2,000-2,600 sf. to sublease in BOA Tower. Additional services available including reception,

mail delivery, fax, conference rooms, law library, fully equipped kitchen. Flexible terms; two to five years. Available in 30 days. For more information, please call Patricia LaFontaine at 206-623-4990.

POSITIONS AVAILABLE

Employment litigation attorney: Pierce County Prosecutor's Office, Civil Division seeks attorney with at least three years' employment litigation experience to represent Pierce County, a public employer. Responsibilities include ability to independently handle all phases of employment litigation. Trial experience preferred. Competitive salary and benefits package. Send résumé, explanation of relevant experience, writing sample, and salary requirements by November 10, 2000, to: Keith Black, Chief Civil Deputy, 955 Tacoma Ave. S., Ste. 301, Tacoma, WA 98402-2160.

Lynnwood office seeks attorney with experience in some or all of these areas: litigation, real estate, estate planning, business law. We prefer an established attorney with client following. Mail to James at 5108 196th St. SW, Ste. 300, Lynnwood, WA 98036; or e-mail JamesRobert @JamesRobertDeal.com.

Solo Practitioner, divorce and criminal practice, has opening for associate/independent contractor to handle overflow. Experience or genuine interest in these areas essential. A recent Bar admittee should expect to do some nonpaid on-the-job learning. Send résumé and cover letter to: Robert E. Stark, 600 1st Ave., Ste. 305, Seattle, WA 98104.

Bellingham firm with active insurance trial practice seeks associate. Experience preferred, but not required. Must be currently admitted to the WSBA. Great quality of life and competitive salary. Send résumé to: Jeff Brown, Roy and Simmons PS, 114 W. Magnolia, Ste. 201, Bellingham, WA 98225.

Litigation attorney: Lasher, Holzapfel, Sperry and Ebberson, a 23-attorney, AV-rated law firm, is seeking an associate with a minimum of three years' commercial litigation experience to support busy litigation department. Plenty of interesting work for a motivated individual who desires to build a practice. Areas of law include business, employment, construction, bankruptcy, personal injury and family law. Candidates should possess excellent interpersonal, writing and research skills. Current WSBA membership and basic computer literacy are strongly preferred. Competitive salary and benefits. Friendly, supportive workplace. Send résumé with writing sample to: Personnel, 601 Union St., Ste. 2600, Seattle, WA 98101.

Estate planning attorney: Landerholm, Memovich, Lansverk and Whitesides PS, an 18-attorney firm in Vancouver, WA, seeks an experienced attorney for an associate position in the firm's busy and fast-growing estate planning and post-death administration practice. Applicants must have a minimum of two years' experience in the areas of will and trust drafting; probate and trust administration; and charitable planning, with emphasis on estate tax planning, business succession matters and tax research. Experience in estate or trust litigation, property status agreements, and guardianships is preferred but not required. Must have the ability to manage rapid practice growth in a thriving department, 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 and Whitesides PS, PO Box 1086, Vancouver, WA 98666-1086.

Reply to WSBA *Bar News* Box Numbers at:
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Small Seattle firm with an expanding litigation practice is seeking an attorney with at least three years' experience in litigation for associate position. Excellent writing skills a must. All responses are confidential. Submit résumé to: Managing Partner, Northcraft and Woods PC, 720 Olive Way, Ste. 1905, Seattle, WA 98101.

Litigation attorneys: LeGros Buchanan and Paul seeks two litigation associates to join its downtown Seattle office. Applicants must have at least two years' civil litigation and/or employment litigation experience. Strong research, writing and litigation skills required. Excellent salary and benefits package for your expertise. Send résumé and writing sample to: Eric R. McVittie, Recruiting Director, LeGros Buchanan and Paul, 701 5th Ave., Ste. 2500, Seattle, WA 98104-7051, or e-mail plafontaine@legros.com. Visit our website at http://www.legros.com.

Minzel and Associates, Inc. is a temporary and permanent placement agency for lawyers and paralegals. We are looking for quality lawyers and paralegals who are willing to work on a contract and/or permanent basis for law firms, corporations, solo practitioners and government agencies. If you are interested, please call 206-328-5100 or e-mail mail@Minzel.com for an interview.

Blakely Sokoloff Taylor and Zafman LLP, a Silicon Valley-based intellectual property law firm, is seeking patent attorneys for their rapidly expanding suburban offices in Lake Oswego, Oregon, and Kirkland, Washington. Opportunity to earn Bay Area salaries starting at $125,000 for first-year associates and work with top-tier local and Bay Area high-technology clients while enjoying the benefits of living in the Pacific

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Deadline: Text and payment must be received (not postmarked) by the 1st day of each month for the issue following, e.g., December 1 for the January 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 allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., "5-10 years").

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

Northwest. Seeking candidates with backgrounds in electrical, computer and communications technologies, and at least one year's experience in the preparation and prosecution of patent applications, client counseling, opinion work and related matters. Candidates must be registered to practice before the USPTO or be eligible to take the next USPTO exam, and must be admitted to a state bar. Please forward your résumés in confidence to: Chun Ng, Blakely Sokoloff Taylor and Zafman LLP, 3230 Carillon Point, Building 3000, Kirkland, WA 98033-7354.

Marger Johnson and McCollom PC: This full-service IP firm with offices in Portland and Bend, OR, and Palo Alto, CA, has immediate openings for two lawyers qualified to prepare and prosecute patent applications in electronics or software arts. Of our 13 attorneys, there are 10 lawyers with degrees and experience in electrical engineering and computer science. The successful candidates will be exposed to the full scope of our practice. Learn more about our firm at http://www.techlaw.com. Please send your résumé in confidence to: Kristin Gustaff, Director of Recruiting, Marger Johnson and McCollom PC, 1030 SW Morrison St., Portland, OR 97205.

The Boeing Company: Current opening for an experienced commercial transactions attorney at Boeing Commercial Airplanes in Renton, WA. Specific duties include: negotiating, drafting and administering major product and service supply contracts; providing management and business teams with contract interpretation and guidance; and advising management in the course of negotiating and settling claims between the company and its suppliers. The position will expand to support new commercial business ventures. Should have at least three years' experience handling commercial transactions. Please reference job code 004579 in your résumé and forward to marilyn.r.glenn@boeing.com. Mail résumés to: The Boeing Company, Attn: Marilyn Glenn, PO Box 3707 MC 6H-PR, Seattle, WA 98124-2207. It is the policy of The Boeing Company to attract and retain the best qualified people available without regard to race, color, religion, national origin, gender, sexual orientation, age, disability, or status as a disabled or Vietnam era veteran.

Will and trust attorney: Seeking an attorney with extensive experience in will and trust writing as a partner to work with the founder in the creation of an online legal self-assistance business. This person's main responsibility is for the creation and maintenance of legal content for the website. Position is part-time; partnership terms are negotiable; financial investment in the business is not a requirement. Call 206-860-6133; e-mail Michael_Kenny@hotmail.com.

The Building Industry Association of Washington seeks motivated attorney for its in-house associate legal counsel attorney position. BIAW is the largest trade association in the state and is located in Olympia. BIAW's associate legal counsel would serve with two other in-house attorneys in land use, litigation and lobbying. Free-market philosophy preferred to match the interests of our members, who are small businesses. Some land use and/or litigation experience a plus, although all inquiries will be seriously considered. BIAW offers a superb in-house quality of life, much better than most law firms. Please send résumé to: BIAW, Attn: Greg Overstreet, PO Box 1909, Olympia, WA 98507.

The Army Reserve needs a "few good lawyers" to be judge advocate general officers. Continue the 225-year tradition of professional legal services to commanders and soldiers. 20 paid part-time positions are now available in reserve judge advocate units in Seattle, Vancouver, Spokane and Tacoma. One weekend a month and two weeks during the year provide a rewarding career, supplemental income, generous benefits, a defined benefit retirement plan, personal and professional development, and interesting overseas assignments. Prior active duty is preferred but not required. Visit our website at http://www.jagcnet.army.mil/recruit.nsf, and then call 206-281-3070 for more information.

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Travelers Insurance seeks attorney for its Seattle staff counsel organization. Must be WSBA member. Dual Oregon/Washington admittee a plus, but not required. Subrogation experience also a plus; also not required. Minimum two years' insurance defense experience. Seeking creative, aggressive, motivated attorney with trial experience and a strong desire to try cases. We offer an attractive salary and benefits package and emphasize incentive-based compensation. Equal opportunity employer. Fax résumés in confidence to: 206-326-4220.

Associate position available: Medium-sized Spokane law firm looking for a litigation associate with at least two years' experience. Employment/general civil litigation law experience a plus. Benefits and salary DOE. Writing sample required. Please submit sample and résumé to: Phillabaum, Ledlin, Matthews and Gaffney-Brown, Attn: Shannon, 421 W. Riverside, Ste. 900, Spokane, WA 99201.

Wenatchee AV-firm needs to add two good lawyers: litigator and transaction person. Two years' or more experience. Spanish language skills preferred. Branch offices in Chelan, Omak and Moses Lake provide growth potential. Compensation negotiable. Call Dale Foreman at 509-622-9602.

CGU|North Pacific seeks an attorney with at least three years' litigation experience for its Bothell office. Insurance defense experience preferred. Please send résumé to: Steven L. Abel, 3330 Monte Villa Pkwy., Ste. 200, Bothell, WA 98021-8972. Equal opportunity employer. Committed to diversity. Drug-free workplace.

Assistant City Attorney II, $4,418-5,371/mo DOE and benefits. Assists city attorney. Primary focus is water rights and environmental law issues. Must be a member of the WSBA and have a minimum of three years' experience in environmental law and/or water rights. Experience in the practice of municipal or public law preferred. Academic emphasis in environmental law, administrative, municipal and/or public law desirable; criminal law/procedure preferred. Applications available from: Human Resources, 210 Lottie St., Bellingham, WA 98225; 360-676-6855, ext. 599. For earliest consideration apply by 5:00 p.m., 11/10/2000. Visit http://www.cob.org. EOE.

Environmental attorney, Portland, OR: Are you a motivated team player interested in working in a dynamic environment where you can be part of a team committed to excellence? Does the challenge of attaining strategic goals excite you? If so, you may be the environmental attorney the Port of Portland is looking for. The successful candidate will work as a team member with senior managers to develop and implement strategies for meeting environmental goals associated with state and federal cleanup projects. This is an opportunity to use your solid grounding in environmental law to help the Port of Portland manage its commitment to environmental stewardship as it conducts its business. About the business and legal team: The Port of Portland is a regional government operating airports, marine terminals, and industrial parks in the greater Portland metropolitan area to fulfill its mission of providing competitive cargo and passenger access to world markets while enhancing the region's quality of life. The Port's in-house legal team currently consists of six lawyers, including one who practices exclusively in the area of environmental law. This new position will add a seventh lawyer, also in the environmental law area, to assist the Port in responding to a wide variety of environmental permitting, compliance and remediation issues. If interested and qualified, please submit a cover letter explaining how your background and experience qualify you for

this position, a current résumé, and a completed Port of Portland application form to: 121 NW Everett, 7th Fl., Portland, OR, 97209. You may request an application and receive additional information by visiting our website at http://www.portofportlandor.com, or by calling 503-944-7400. Pre-employment drug screening is required. Position will remain open until filled.

Eastern Washington, Spokane: Attorney with strong writing, research and analytical skills needed for research/writing on appeal and civil litigation cases both inside and outside Washington state. Sole-owned practice with wide range of litigation issues. Position focuses on motions, trial prep and appeals in discrimination, personal injury, employment and contract. Salary DOE, benefits, parking. E-mail résumé to Mary@Mschultz.com; or mail to Mary Schultz, 818 W. Riverside, Ste. 660, Spokane, WA 99201.

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Litigation associate: Yarmuth Wilsdon Calfo, a nine-attorney firm in downtown Seattle (AV-rated) is seeking a full-time litigation associate with a minimum of two years' experience. The firm's practice is high-level commercial and white-collar criminal litigation, largely in federal court. We enjoy what we do, value a respectful work environment, and seek energetic, well-rounded attorney to share our practice. Please send résumé to: Scott Wilsdon, Yarmuth Wilsdon Calfo PLLC, 1201 3rd Ave., Ste. 3080, Seattle, WA 98101.

ERISA/employee benefits attorney: Song Oswald and Mondress PLLC continues to expand, and seeks another ERISA/employee benefits attorney for partnership-track position in a growing and challenging practice involving tax and fiduciary counseling. ERISA expertise is desirable, but not essential. We enjoy the breadth of a large-firm practice in a small-firm environment. All inquiries will be kept confidential. Please submit cover letter, résumé and transcript to: Hiring Committee, Song Oswald and Mondress PLLC, 720 3rd Ave., Ste. 1500, Seattle, WA 98104.

Family law attorney: McKinley and Irvin PS seeks an attorney with a minimum of three years' experience in family law. Applicant must be dedicated to superior client service, and have excellent written and oral communication skills. We offer an excellent salary and benefits package, an opportunity for professional growth, a work/life balance, and a fun office environment. Send résumé, transcript, writing sample and references to: M&I, 1230 S. 336th St., Ste. D., Federal Way, WA 98003. All inquiries confidential. View our website at http://www.mckinleyirvin.com.

WILL SEARCH

Will sought for John James Richardson: Probably Seattle, Lynnwood or Everett. Please contact Patrice Holberg, 111 NW 67th, Seattle, WA 98117; phone 206-784-9245; e-mail rho381@aol.com.

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Contract attorney at your service! I perform legal research and writing for Washington lawyers, and organize trial documents, using computer research and UW Law library. Elizabeth Dash Bottman, 206-526-5777; e-mail bjelizabeth@uswest.net.

California litigation/collection: California attorney ready to assist you in your California needs: domesticating judgments, jurisdictional challenges, collections, depositions, litigation. Rick Schroeder, 818-879-1943.

Experienced appellate attorney. Twenty years' state and federal experience, civil and criminal. Former deputy prosecutor. Superb writer. Robert A. Weppner. Phone 206-728-9332; e-mail raw_law@earthlink.net.

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Career change: Berkshire Associates is looking to help attorneys develop a career in the financial services industry. Our associates are trained to work in the areas of insurance analysis, estate planning, retirement programs and investments. Please call for a confidential briefing. Berkshire Associates, 11130 NE 33rd Pl., Ste. 150, Bellevue, WA 98004. John Peterson, CLU; 425-739-1361.

Russian attorney at law: Yevgueniy Knijnikov, foreign law consultant. WSBA No. 28157. Available for consultations, referrals, and associations in all Russian law-related negotiations and litigations. Sandona and Ordinartsev PLLC; 206-575-9081 or 888-298-0555.

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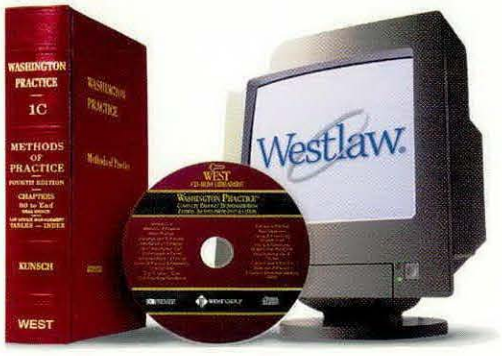

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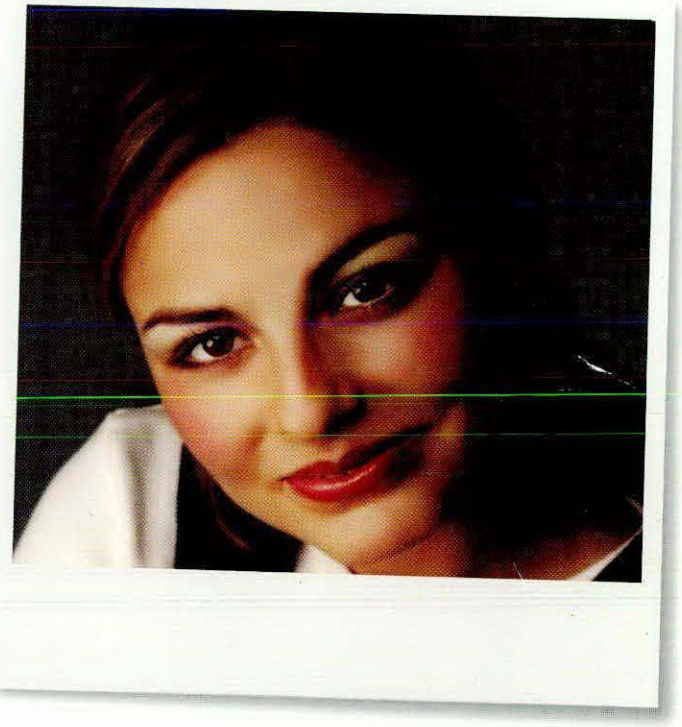

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