

Washington State

BarNews

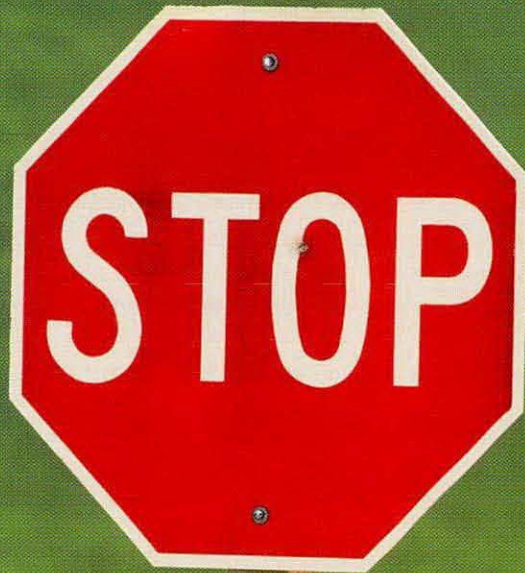
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Why Lawyers Have Often Worn Strange Clothes, Claimed to Work for Free – and Been Hated

page 20



WSBA Annual Report
page 52



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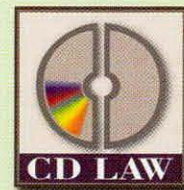
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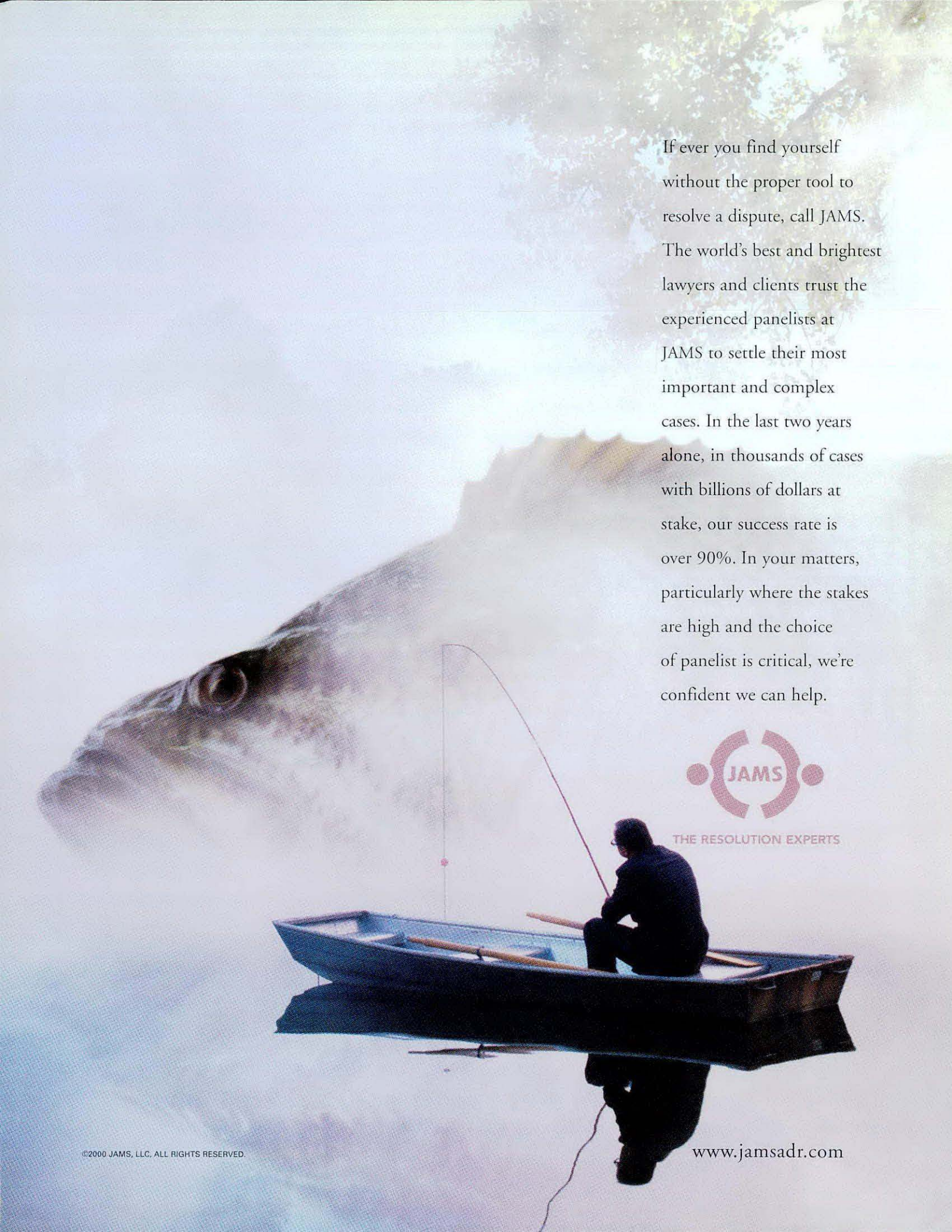
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Note: Usury rate information is on page 59.

Correction: In the July 2000 issue of *Bar News*, the article titled "Review of the 1999 Parenting Act Study" was attributed to Diane Lye, Ph.D. and Mary Wechsler. In fact, Diane Lye was responsible for the research upon which the article was based. Ms. Wechsler wrote the article. We apologize for this error.



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The mission of the Washington State Bar Association is to promote justice and serve its members and the public.



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., September 10 for consideration of publication in the November issue. Article submissions should run approximately 1,500 to 4,000 words. Graphics and illustrations are welcome.

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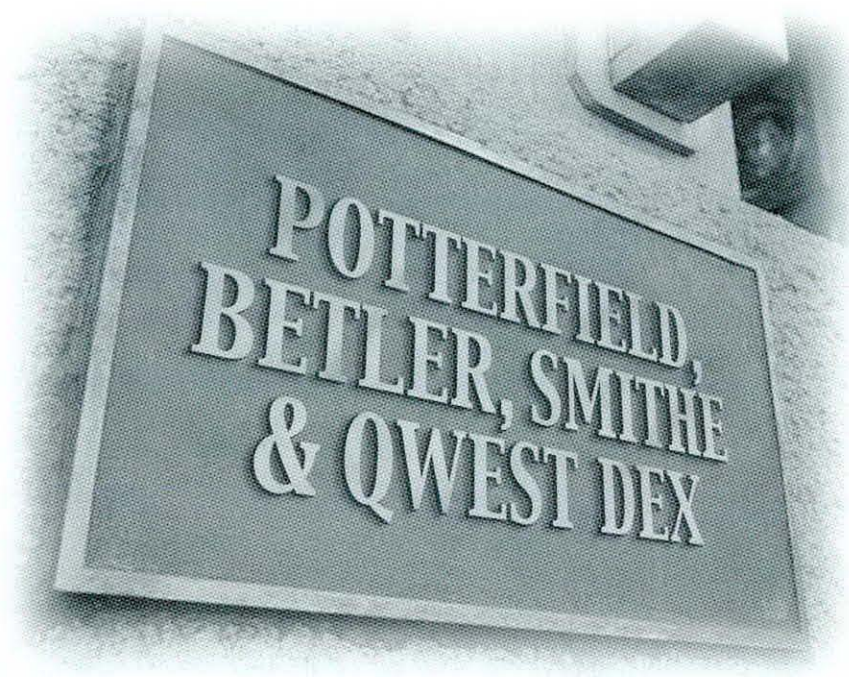
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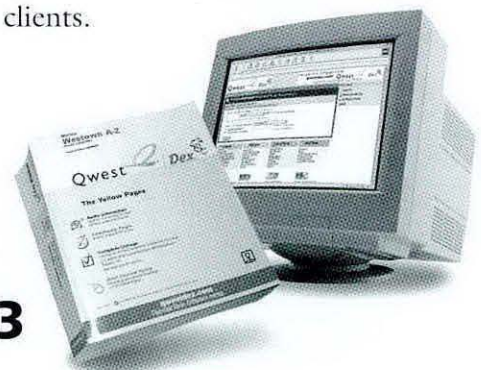
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Letters

Hockey or Civil Litigation?

Editor:

As a member of the Washington Bar, and as an avid hockey fan, I cannot allow comments from WSBA President Richard C. Eymann [June, President's Corner, page 19] to go unchecked. It does the sport of hockey a great disservice to compare it to the legal profession generally, or to civil litigation specifically. I would submit that fouls on the ice are more appropriately dealt with than fouls off the ice. In fact, sometimes I would prefer the rough justice and the quiet dignity of the rink to the cutthroat and underhanded tactics often displayed by members of the profession. Hockey has a beauty and a symmetry that will never be found in litigation.

This is not to suggest that hockey cannot occasionally turn ugly, because clearly it can. Hockey players have, above all else, a love for the game, and seek not to bring the game into disrepute. Hockey players recognize their role within a system and work to achieve the goal of winning. Hockey is one of the few sports in North America where the combatants shake hands after a long and grueling series, often with blood on their faces or on their jerseys, and then congratulate each other on a game well-played. If I could be treated with the same respect off the ice as I am on the ice, I would be a happier litigator. Many litigators can learn a lot from a hockey game.

I urge the average fan and the average lawyer to look beyond the hype that is unfortunately too often used to either sell or condemn the game. Civility is there in both hockey and in the profession. We need to foster and encourage it. We can let the foul play blind us from what can be both a beautiful and majestic endeavor, but don't fall into that neutral zone trap.

*David R. Thompson
Abbotsford, B.C.*

Free CLE CDs Save Attorneys Money

Editor:

The Washington Digital Law Library's free CLE project began with two goals. The first goal was to provide Washington lawyers with sufficient free CLE programs to allow them to "max out" their 15-credit A/V allowance. The second goal was to

demonstrate how huge amounts of CLE credit could be delivered at minimal cost. The library's goals have been accomplished. In the past year we sent out approximately 2,000 free CLE CDs, each providing 16 hours of approved credit, including more than six ethics credits. Thus, the total CLE credit delivered was approximately 32,000 hours. Since the going rate for CLE credit is about \$25 per hour, total potential savings to Washington lawyers may have been as much as \$800,000. Since additional CLE got delivered via the www.freecle.com website

and via cable TV, it may be that as much as \$1 million worth of free CLE was delivered. As existing CDs continue to circulate for the next few years, this figure may go even higher.

So how much did it cost to produce this much free CLE credit? By using public library facilities to stage events, distributing written material on disks rather than paper, using cheap computers for recording and editing sound, and making do with "no frills" shipping packages, costs for the project total about \$4,000. The biggest cost was getting CDs produced at



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"The lawyers who make the big money are not necessarily better lawyers," Ward says. "They have simply learned how to market their services."

A successful sole practitioner who once struggled to attract clients, Ward credits his turnaround to a referral

marketing system he developed six years ago.

"I went from dead broke and drowning in debt to earning \$300,000 a year, practically overnight."

Ward says that while most lawyers depend on referrals, not one in 100 has a referral system. "Without a system, referrals are unpredictable. You may get new business this month, you may not," he says.

A referral system, however, can bring in a steady stream of new clients, month after month, year after year, he says.

"It feels great to come to the office every day knowing the

phone will ring and new business will be on the line."

Ward, who has taught his referral system to over 2,500 lawyers worldwide, has written a new report, "How To Get More Clients In A Month Than You Now Get All Year!" The report shows how any lawyer can use this system to get more clients and increase their income.

Washington lawyers can get a **FREE** copy of this report by calling 1-800-562-4627 (a 24-hour free recorded message), or by visiting Ward's web site at <http://www.davidward.com>

80 cents each, and next was the 55-cent stamp required for each mailing.

Given the foregoing figures, the cost-benefit ratio for free CLE is remarkable: each dollar expended results in savings in the range of \$200-\$250 to WSBA members.

The foregoing results were about what was expected. But the project yielded some surprises. We thought that the primary users of free CLE would be small firms and solo practitioners, especially in rural areas. Wrong! Downtown Seattle mega-firms requested CDs by the bushel. Per-

haps the attraction was in the CD format or because the CD is a one-stop source for all six ethics credits. This is a mystery.

We also expected that, at some point, free CLE would run into resistance from WSBA management, since the WSBA is a very large provider of not-for-free CLE. In past years, free CLE activities were not encouraged. Surprise again! Under Executive Director Janice Michels, it appears that this attitude is completely gone. WSBA staff members on all levels have been extremely supportive. Of course, there is still some work to do at the Board

of Governors level: 1) Get going with WSBA-produced free CLE, and 2) get rid of the accursed 15-hour limit on A/V credit!

And a third surprise — approximately 90 percent of requests for copies of the library's free CLE CD now arrive via e-mail, as opposed to snail mail. As Internet access approaches ubiquity, it would seem that the days of the CD are numbered. Why use the postal service when everyone can get instant delivery over the Net? Here are two items from the Frequently Asked Questions page.

Q. May I pass along the CD to friends after I am done with it?

A. You may! Despite rumors to the contrary, there is no one-lawyer-one-CD rule. Some commercial vendors prohibit multiple use of their copyrighted materials. However, multiple use of the free CLE CD is highly encouraged.

Q. When I put the CD in my car CD player, all I get is popping and hissing noises. Did I get a bad CD?

A. Please read the label. The CD only works in a computer, and despite an angry letter from Palo Alto, only with Bill and Steve's favorite operating system.

Q. The CD is a year old. Can I still get credit for listening to it?

A. Yes! A/V CLE materials are good for five years from the date they are recorded, so most programs on the CD have several years to go. Skills training programs, such as the Tom Chambers Trial Practice CLE on the website, are good even longer.

Edward Hiskes
Director


Washington Digital Law Library

Rethink BOG Selection Process

Editor:

I'd like to make a suggestion regarding the proposal to add new positions for representatives from various groups to the WSBA Board of Governors.

Maybe the whole system of how we select representatives needs to be rethought. Rather than electing members by congressional district, or because they represent some organization, why don't we elect them all at large (i.e., if there are 10 seats on the board, I can vote for one candidate)? So rather than vote for someone



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from my congressional district, maybe I'd rather vote for a candidate who is also a solo practitioner, or someone who has some other affiliation I care about (minority, trial lawyer, etc.).

Not only would a system like this solve the problem currently facing the board, but we might all feel better about the person we elect really being representative.

*Scott Bader
Everett*

Displeasure with Skagit Valley Herald Billing Policy

Editor:

I believe at one time or another, most of us have been in a situation where we were the out-of-town attorney and the decision came down so strongly for the local attorney that we thought we'd been "home-towned."

I would like to bring to the attention of the Bar the fact that publication of Notice to Creditors in Skagit County probate just cost my client \$267.38. My assistant called the *Skagit Valley Herald* about the exorbitant amount of the billing, and she was calmly told that Skagit County attorneys were only charged 50 percent of the usual amount, but as out-of-town attorneys we were required to pay the full amount. It would appear that we are being "home counted."

This seems to be rank discrimination to me, and I want everyone in the Bar to be prepared to let the *Skagit Valley Herald* know that if they do not change their policy, perhaps we had better start talking about how the organized Bar should treat Skagit County newspapers and/or Skagit County attorneys who are practicing in our territory.

*William F. West
Bothell*

RPC 1.8(k) Viewed as Intrusive

Editor:

Is nothing sacred? The RPCs have just marched into our bedrooms. With its approval of the RPC amendment 1.8(k), the no-sex-with-your-client rule, the State Supreme Court has allowed unwarranted intrusion into the private relationships of Washington's lawyers.

Amendment 1.8(k) strips lawyers of basic First Amendment freedom of asso-

ciation protections. The First Amendment states: "Congress shall make no law... abridging the freedom of speech..." which includes the right to freedom of association. See *Griswold v. Conn.*, 381 U.S. 479 (1965). What part of no law is not understood here?

Some may argue that RPC 1.8(k) is not a statute and should, therefore, be exempt from First Amendment scrutiny, but this is form over substance. Disciplinary sanctions under RPC — reprimand, censure, suspension, disbarment — carry the force and stigma of many statutory

penalties, such as loss of income and damage to reputation.

Further, where is the problem? According to John Strait, the legal ethics professor at Seattle University (cited in the *Wenatchee World* 6/9/00), of the 2,000 to 3,000 complaints received by the Washington State Bar Association each year, only 20 involve clients who have had affairs with their lawyers. That is only one percent of the total complaints and involves only .09 percent of the 21,500 active WSBA members. And that is assuming that all 20 of these cases have suffi-

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cient merit to warrant disciplinary action.

The problem is not the lawyers. The problem is the bedroom police. As Justice Richard Sanders, the Court's lone dissenter, warned, "It's a massive intrusion of the state into the private lives of lawyers. It presents an opportunity for blackmail."

Although the vast majority of Washington lawyers engage in strictly business relationships with their clients, this unconstitutional rule applies to every lawyer. Under RPC 1.8(k), no lawyer may engage in sexual relations with a client, no matter how committed the relationship may be and no matter how harmless and consensual that conduct may be, unless the relationship existed prior to the representation. The rule sets up an irrebuttable presumption that a sexual relationship with a client is per se injurious to the client and cannot be proven otherwise. Irrebuttable presumptions are suspect and disfavored in the law, *Jimenez v. Weinberger*, 417 U.S. 628 (1974), and amendment 1.8(k) is no exception.

It is hypocritical to read the self-congratulatory praises of our profession in *Bar News*, and then observe the distrust and overreaching posited by this rule. With rules like amendment 1.8(k), the "scarlet letter" mentality is indeed alive and well.

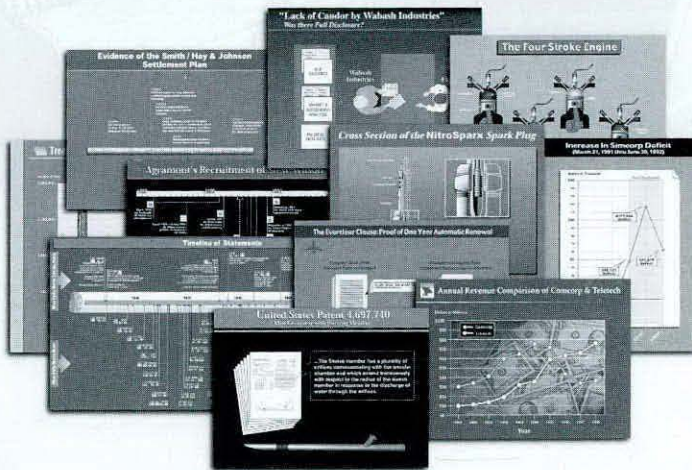
*Patricia Michl
Sumner*

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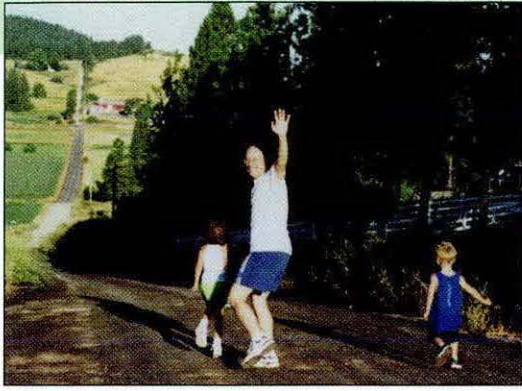
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A Harvest to Remember, and Farewell

by Richard C. Eymann
WSBA President

As I leave my driveway headed for work in the morning, I cannot help but notice that my garden, usually filled with corn, tomatoes and many other vegetables that annually interest my palate, is nothing but brown dirt and a few weeds. Family and friends are somewhat amazed that for the first time in over 20 years, yours truly does not have his amazing vegetable garden. As you know, there was not time this year.

However, I planted a different type of garden, and at times it took more effort, fertilizer and watering than my traditional vegetable garden. The most notable project growing in my "WSBA garden" is Celebration 2000, which I view as a mammoth sunflower. And after it blooms in mid-September, I believe there will be hundreds of seeds remaining to carry on a new camaraderie, sharing and understanding among the lawyers and judges in this state. Also firmly planted this year was a proposal to add a minority position to the Board of Governors. Following numerous town meetings, debate and due consideration, this proposal will be addressed at the last Board of Governors' meeting over which I preside, September 13th in Spokane. It has been my contention all along that the fruit from this proposal will have a long-term and substantial positive impact on the WSBA, as well as enhance the goal of respectable diversity at all levels of the Bar Association.

Of course, there were some other things we planted or were growing in this garden when I took office — some annual, some perennial:

- The long-range plan planted last year by my predecessor, Wayne Blair, grew and matured throughout this year under the extraordinary care and maintenance of Wayne and Governor Walt Krueger. We approved strategic goals, and with the themes of "raising the bar" and "shaping the future," the Long-Range Operational Plan was adopted and is being implemented with focused goals and strategies.

- Public legal education continued with its formidable tasks, but under the leadership of Judge Marlin Appelwick and former State Superintendent of Public Instruction Judith

Billings, and with the support of the Washington State Bar Association, this vision is drawing closer to its goals.

- Dealing with the the definition of the practice of law and the unauthorized practice of law has been like trying to manage the growth of wild Himalayan blackberries. After 66 years of trying to define the "practice of law," we finally *did* define it, and forwarded the definition to the Supreme

Court for approval. Steve Crossland of Wenatchee and his task force members deserve substantial credit for this achievement. But like those sticky brambles that pop up while one enjoys the sweet blackberries, we are dealing with the thorny issue of how to enforce the unauthorized practice of law and other implications of our definition.

- A death penalty moratorium proposal led to one of the most interesting, solemn and timely debates in the past year. The board considered action that was to call for a study of the troubling elements in Washington's death penalty system, which took the form of a unanimous resolution forwarded to Governor Locke.

- We tended to the discipline system and succeeded in implementing a diversion system, cleared all cases, and launched a revision of the Rules for Lawyer Discipline to make them more comprehensible.

- After the slow growth of rule revisions and implementation planning, we harvested a completely new MCLE credit and reporting system, which will make it easier and more convenient to accrue and track CLE credits.

These are a few examples of this year's harvest. On a more philosophical landscape, I want to direct a few comments to my 25,000 lawyer and judge peers. Much like a sign I have in my garden that says, "We do not inherit the earth from our parents — we borrow it from our children," we attorneys and judges are the guardians of the law. In every instance of great social change, it is the lawyers who have been at the forefront and our courts and judges that have been the catalyst for much of this change. Society has often been encouraged to decision by lawyers determined to bring reluctant citizens to the mainstream; to advance

In every instance of great social change, it is the lawyers who have been at the forefront and our courts and judges that have been the catalyst for much of this change.

social change; and to promulgate, protect and defend the rights of all Americans. Lawyers created this American ideal in the 18th century, and in many ways have been responsible for political stability; economic strength; and fighting social diseases such as discrimination, child abuse, domestic violence and products that maim and kill. Lawyers must continue to be the vanguards of the next century, as well. Our work is not done; it is just beginning. If we lawyers were as unnecessary as some believe, there would be no need for legal services, pro bono work, wills, contracts, judges, courts or jails.

It is with a deep sense of gratitude that I write my last president's message to the Bar Association — gratitude for the great assistance and countless hours given by the hundreds of dedicated people who work for and serve our Bar Association, and the many local and specialty bars. In traveling throughout the state and speaking to county bars and other groups, I have even more respect for what our members do to improve society as a whole, often at the expense of their families, law firm incomes and even personal health. Of course, some still find time to have a lot of fun. In that regard, the Yakima Bar Association and how they elect new officers wins my award for comedy, laughter, slander (roasting) and just plain fun. For seriousness and compelling messages, the Anti-Defamation League annual dinner left me in awe, with long-term thoughts and concerns about hate crime

and discrimination issues in America.

Special thanks and appreciation must go to Jan Michels — great things often come in small packages, and she is a true example. Jan is a brilliant and focused executive director, and working with her has been a wonderful experience. I will also miss the entire Bar staff. Their contributions to your profession are often overlooked and underestimated. More familiar to you are the sections and committees, and they too exhibit a dedication and attention to specific areas of law and our profession that is immeasurable in value. The Celebration 2000 organizing committee has been incredible, as you will soon see. I cannot forget to applaud our Young Lawyers Division, which redefines creativity and dedication to providing community legal education and youth programs. Likewise, our Access to Justice Board and the work of Joan Fairbanks, its manager, is unmatched nationwide. Washington's effort to provide legal services to the poor is indeed a nationally recognized model — earning the American Bar Association's Harrison Tweed Award, among others.

The Washington State Bar Association is a great organization, dependent not exclusively on its leadership, but on its dynamic and energetic members — dependent upon you. Your Board of Governors members are the best, and I admire and highly respect each one of them. There are no cliques or coalitions — definitely independent and insightful minds, none

per se predictable, always open to changing their minds. Their commitments of time to representing you and the best interests of our 25,000 members cannot be justly recognized in these few words, but I assure you, you could not have had a better team for the past year. Departing board members Walt Krueger, Dick Manning and John Powers will all be missed (an incredible understatement) and new members Ken Davidson, Bill Hyslop and Lucy Isaki have some big shoes to fill. Fortunately, these new board members are all talented individuals, and the wisdom of their districts in selecting them will come to fruition. In the next two years, you will be blessed with great leadership. Jan Eric Peterson and Dale Carlisle will be outstanding presidents.

I am lucky to have held this position, to have created some awareness and critical thinking, to have been applauded and criticized as well. I've been told I'm a controversial president, but I would say I've been "provocative and inspiring." By waking up members and engendering letters to the editor, e-mails and telephone calls, not only have I learned, but others have as well. For without these diverse and thoughtful contributions, we, as governors and leaders, are inadequately informed to carry out the immense responsibilities thrust upon us by the issues facing our profession in today's fast-changing legal world.

I will be happy for some rest and relaxation with more attention to my family and law practice and that vegetable garden. It seems like only yesterday I wrote my first president's column — about running up a steep hill of challenges ahead. Now, as you can see, I head the other way with Houston and Taylor by my side, hopefully to a more fatherly side of life. I am grateful and feel lucky to have a wonderful wife and two children, and thankful we live in this great state and in this great country — where, thanks in part to lawyers, all of this has been made possible. But I will miss being your president, meeting the hundreds of you at local bar association meetings, town meetings, speaking engagements and at Celebration 2000. I come away knowing that you are thoughtful, interesting, outspoken, and I'll say it again, the heart of an honorable profession intensely committed to preserving justice. ☞

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Professionalism: Getting to the Heart of the Matter

by Stella Rabaut

It was the best of times. I was hiking with friends in the exquisite Arches of Utah on our way to the Telluride Film Festival. We would be rubbing elbows with David Lynch and Richard Farnsworth as they introduced their new movie, *The Straight Story*, a movie that gets to the heart of the matter. After attending the screening, I listened to my voice-mail at work. The call from Richard Eymann was an invitation to chair the WSBA Professionalism Committee for the upcoming year.

I grew up in a family of lawyers — my father and grandfather before me, the two children I helped raise after me. So my interest in this profession runs deep. I had chaired other bar committees in Texas, but their titles were less elusive — Public Affairs, Citizens' Legal Education. There was no mistaking what those meant. But a professionalism committee seemed more challenging. I thought briefly about the invitation and accepted the position of chair.

While still reflecting on what professionalism is, I have always had clarity about what it is not — excessive incivility, dishonesty, untrustworthiness. Having read *The Professor and the Madman*, I was increasingly curious about word origins, so I headed for the *Oxford English Dictionary*. Central in the definition of professionalism are “quality, character and method or conduct; the stamp of a particular profession.” I asked myself: “What is the stamp of our profession?”

Over these last months, while acting as chair, I have struggled with and worked alongside professionals. All of this took place in the context of a Bar organization that was supportive of our efforts. Certainly, there are pleasing reflections, and yet there are others, too.

I cannot deny the frustration and sense of non-achievement involved in chairing this committee. Leadership with no easy answers, one of the main challenges I faced, was the theme of a workshop presented by Ron Hoefitz of the Harvard Kennedy School that I recently attended. He encouraged me to assess the challenges of our profession. It became increasingly apparent that quick-fix solutions do not get to the heart of the challenges.

I can decide not to laugh at lawyer jokes, and yet many

do have an element of truth about the dark side of lawyering. I can support the work of other committee members to draft an aspirational civility code, and yet it is unlikely to impact those behaving brutally. I can encourage the making of a video that shows the “good work” of lawyers — a kind of public relations effort — but I do not think my skeptical business colleagues will be swayed.

These ideas, while certainly with merit, do not begin to get to the heart of the problem.

You and I are going through a time of adaptive challenges in our profession for which there are no easy answers. According to Ron Hoefitz, adaptive work is required when the hardened attitudes which

are the consequence of deeply held beliefs are challenged, when the values that made us successful become less relevant, and when legitimate yet competing perspectives emerge.

The key is to discern what is expendable to our profession and what is essential. I am reminded of the wisdom of Saint-Exupery's *Little Prince*. “It is only with the heart that one can see rightly. What is essential is invisible to the eye.” Adaptive work is more challenging than what has been labeled “technical or routine work.” Technical challenges can be resolved by finding the right tool, such as discouragement of lawyer jokes, a civility code, or an inspiring public relations video. Adaptive work requires a probing of deeply held attitudes as a condition for a change of heart. The legal profession's adaptive challenge is to return to the core of justice and fairness in human affairs; to reestablish this as the underlying fundamental value.

At a time when legal information is available to all through the Internet, increasingly the demand is for creativity in problem solving, rather than citing the precedent. Major shifts are occurring in what clients need, want and demand. We must grieve the losses. We are no longer the sole resource for legal information. Clients are less willing to turn over control; rather, they seek consultation. In many ways our special role is being challenged.

Attitudes toward the legal profession are antagonistic and distrustful. Some of my colleagues insist this is simply because the public does not understand what lawyers really

The legal profession's adaptive challenge is to return to the core of justice and fairness in human affairs; to reestablish this as the underlying fundamental value.

do. My colleagues encourage a public relations blitz about the legal profession that will restore the public trust. The only way to restore the public trust is to be trustworthy and to be experienced as trustworthy, since many of the public perceive lawyers as preoccupied with the profit-related aspects of the legal practice.

If there is a major flaw undermining law as a learned profession, it is a flaw of heart and spirit. This is not a matter of intellectual prowess or technological ability. While I believe professionalism encompasses technical competence along with emotional intelligence, the adaptive challenge lies in the third element of professionalism, namely personal and professional integrity. The heart of the lawyer is the heart of the matter.

New concepts are being touted that stretch our comfort zone. Multi-disciplinary practice will not go away; unbundled legal services are being sought by clients. Alternative law has become as sought after as alternative medicine. The question becomes what is essential and what is expendable to the practice of law. Where and how are we tending to the spirit of the lawyer? Can an emphasis on professionalism work toward recovering some

of the initial primary motivating virtues like compassion, healing and justice, which are at the heart of our legal profession? We must find ways to provide the context to stimulate and challenge a revisioning of our profession.

As my year as chair unfolded, I was reminded of Parker Palmer's book *Let Your Life Speak*. He encourages an inward journey to explore our personal call to the profession. He also describes a model for social change. It begins with people who have experienced a disconnect between their inner and outer lives stepping forward (divided no longer) and talking about their experience. Next, communities with similar values form (communities of congruence) to talk about various options. What follows is "going public," taking action, and talking about the new (or reclaimed) values and perceptions. Finally, the rewards are different, based on new values.

Within our legal profession, I have noticed change occurring. Yale law students participated in a weekend retreat emphasizing the importance of mindfulness and reflection as they enter the legal profession. This was presented as a counter-balance to the emphasis that is

placed on intellectual agility and ability to analyze, often to the detriment of ideals or underlying values such as the pursuit of fairness and building a more just society.

An organization called the International Alliance of Holistic Lawyers continues to grow in number. Together its members explore the practice of law as a calling, finding joy in the practice of law, and viewing law as a healing profession. A project has been initiated by the Fetzer Institute titled *Healing and the Law*, designed to explore what it means to be a lawyer/healer and to foster deeper understanding and promotion of that role.

It is a time of opportunity, challenge and change. As lawyers we must learn to make shifts, and we must honor our deepest values. This takes reflection and discernment. As principled people, we know how to live life based on moral values and good conscience. Our call is to bring this to our professional practice. I believe the most effective public relations campaign would be: By their works shall you know them.

Clearly, I spent the year chairing the Professionalism Committee surrounded by colleagues who were "called" to the legal profession. They took their commitment to fairness and justice seriously. They wanted to improve upon how we relate to each another and how we deliver services to our clients; they showed up on sunny Friday afternoons to talk about it. Some drove over the mountains; others took ferries into the city. All came with a curiosity and willingness to share different viewpoints about where this profession is and where it *can* be. I believe that is how clarity and direction for our profession will come — in conversation with one another and with those outside our profession.

I had a strange sense of sadness and relief when I was jolted into realizing it was time to pass along the responsibilities of chair. I actually was feeling attachment — not to the Professionalism Committee, but to the professionals who joined me on this year's journey.

There is reason to take heart. ♞

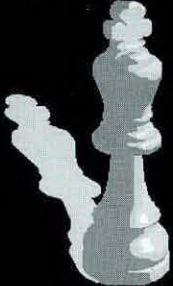
Stella Rabaut has practiced law for over 20 years, both as in-house counsel and in private practice. Currently, she is adjunct faculty at the Leadership Institute of Seattle. Her particular interest is in ways of safeguarding the human spirit in the context of the legal profession. She can be reached at stellamr@aol.com.

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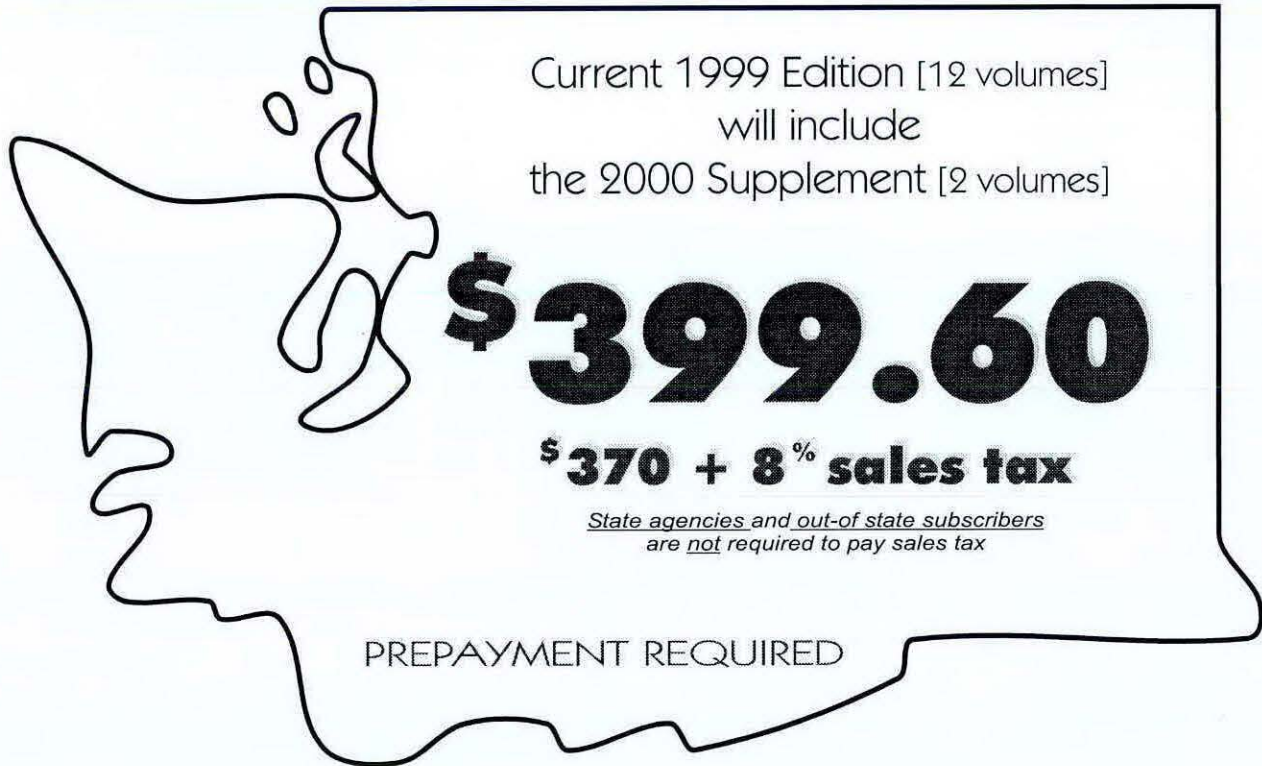


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Why Lawyers Have Often Worn Strange Clothes, Claimed to Work for Free — and Been Hated

by Hugh Spitzer

This essay was prepared for the Access to Justice Committee's panel discussion at Celebration 2000 in Spokane, September 15, 2000.

Lawyers and judges have almost always dressed differently from everybody else — usually in clothes outdated by a couple of centuries. In sixth century Constantinople, lawyers were known either as *advocati* or *togati*.¹ The latter term came from the fact that they wore togas, which everyone else in the Greco-Roman world had abandoned two centuries earlier.

Today, our judges are dressed in robes that date to the same late Roman period — these are the garments that priests, the Emperor and most of the nonlawyer elites were wearing. Go north of our border, and you'll find both judges *and* lawyers wearing robes, plus those little white dickeys at their necks. In some English courts, the costume is still topped off by wigs dating to the 17th century, and in parts of Europe the judges don black pill-box hats.

"I'm on my way to Nordstrom," an associate recently announced in the elevator. "I need to buy a shirt for court this afternoon. I've got the tie, but no shirt!" In today's world, many people come to work in Dockers and polo shirts, but not lawyers who appear before those black-robed judges.

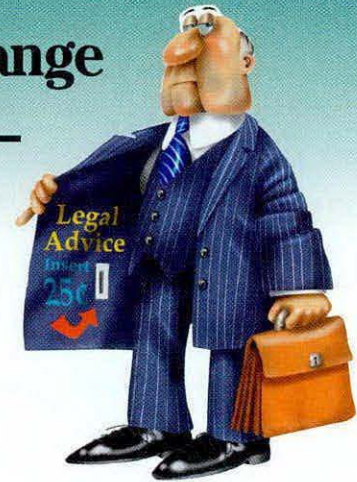
Why have lawyers and judges always adorned themselves in ancient regalia? Obviously, they must symbolically transform themselves from private individuals into "law speakers" for the community.² They become tools of a longstanding legal system, and special clothes offer clues to others (and reminders to themselves) that they have special responsibilities, both to their clients and to the community at

large. The "retro" clothes that lawyers and judges wear also remind everyone that law is *old*, that it isn't meant to change rapidly, and that it offers stability and predictability in a changing world.

Throughout history, judges and lawyers have always been expected to work for something other than themselves — for their clients and for the community at large. Judges take oaths to uphold the law regardless of their personal views. In very early Rome, the penalty for a judge who "made a case his own" or took bribes was death.³ Lawyers in our legal culture are treated as "officers of the court,"⁴ as they have been since the Middle Ages.⁵ Like other persons in the three "learned professions,"⁶ they serve others. (The clergy serve God and others' souls; doctors their patients; and lawyers their clients.)

It is important to recognize that what the clergy, doctors and lawyers work *with* is categorically different from other types of human endeavor. A farmer works the land he or someone else owns, yielding his products for sale. A potter buys clay, puts it on her wheel, and produces an object for purchase. But the work of a priest (a robe wearer) is incapable of ownership. A physician (wearing the symbolic white coat or stethoscope) operates on *someone else's* body. And the lawyer works with *law*, which is nonmaterial, intangible and entirely incapable of being owned by anyone.

A historical look reveals that lawyers' and judges' sense of responsibility to provide access to justice has had its ups and downs. There certainly was no golden age when attorneys, in particular, maintained a single-minded focus on their role as quasi-public servants. This short article reviews those ups and downs, and suggests that improving our performance in providing access to the legal system is not only the right thing to do, but is also in the interest of law professionals.



Why People Have Always Hated Legal Monopolies

A distinguishing characteristic of the professions is that they are meant to serve others in areas of endeavor that are difficult for most people to do themselves.

That's the idea, and it's also part of the problem. People resent their reliance on professionals. A clerical monopoly on access to God was a major cause of the Reformation. Folks today are flocking to the Internet to get medical information first hand so that they are not entirely dependent on doctors.

And lawyers? Surprise! For some reason the special clothing, the status as "officers of the court," and the professional focus on the clients' interests haven't always produced the desired awe and respect.

Quite the contrary. In large part *because* law belongs to everyone in the community, citizens have always resented the fact that access to *their* law was controlled by specialized gatekeepers. The history of Western law is replete with attempts to improve direct access to law by non-specialists, or (often unsuccessful) attempts to eliminate the gatekeepers altogether.

The first written code in ancient Rome, the *Twelve Tables*, was chiseled into stone and placed in the Forum in 451-450 B.C. That code was in response to the public's frustration with a patrician priest/lawyer monopoly on the content of the law.⁷ It took the threat of a mass walkout from Rome to complete implementation of the *Twelve Tables*.⁸ But the rules of procedure remained the exclusive (and secret) domain

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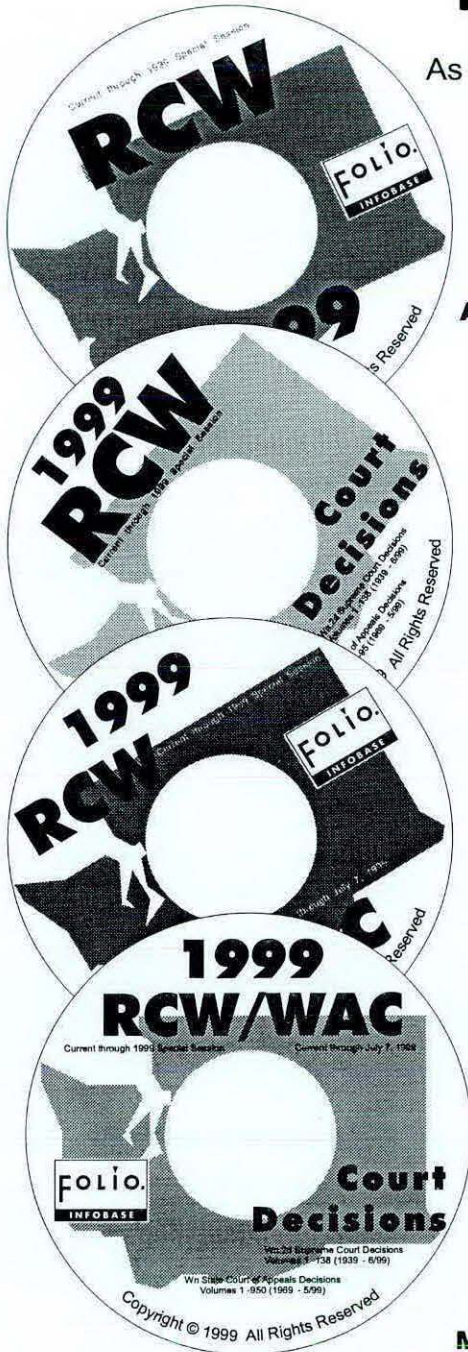
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of patrician lawyers for the next 250 years, when a magistrate named Appius Claudius Caecus finally allowed them to slip out for publication.⁹ Interestingly, what are regarded as the two greatest achievements of Roman Law — its secularization and its availability in a written, comprehensive format — resulted directly from popular demand for access to that law.

From time to time people have attempted to avoid lawyers altogether.¹⁰ The ancient Greeks tried to block the development of the profession by outlawing payments to legal advocates.¹¹ But this ban turned out to be a “dead letter” because

competent lawyers were hard to find absent payment.¹² Attorneys were discouraged in Norman England, and it took several hundred years after the Conquest for the institution to fully develop.¹³ Years later, the Quakers who left Britain for Pennsylvania brought with them a popular distrust of the legal profession. George Fox wrote of a “blackness” that enveloped lawyers.¹⁴ Puritan Massachusetts attempted to highly regulate and block the practice of law, putting all of its laws into one little pocketbook available equally to all.¹⁵ Massachusetts and New York unsuccessfully tried to ban the use of law-

yers.¹⁶ In 19th century America, the attorney was popularly stereotyped as the “villainous forecloser of mortgages and pursuer of maidens,”¹⁷ and “that popular suspicion was a leading cause in dissuading people of small or moderate means from bringing to lawyers much preventive and adjustment work on which, in their own interests, they should have had counsel.”¹⁸

But it turned out to be difficult for any sort of complex society and economy to function without complex laws, and this led to unavoidable specialization, i.e., to the use of lawyers. European and American attempts to ban the legal profession were unworkable. Repeatedly, people turned to the next best thing: tight controls on lawyers’ income to prevent the gatekeepers from getting rich off a gate that was common property.

Controlling the Cost of Legal Services

There is an ancient lineage to price controls on legal services. As noted above, the Greeks tried to ban fees altogether. In Rome, the *Lex Cincia* in 204 B.C. prohibited the acceptance of money or gifts for legal representation. This worked — to a point. Most lawyers were upper-class gentlemen of independent means who engaged in legal advocacy to gain status through public service; they didn’t need the money.¹⁹ Furthermore, in the Roman system a “patron defended his client... without fee or reward, for it was part of the general system of protection.”²⁰

Because lawyers could not charge for their services, they gradually came to receive honoraria instead. Other service workers would be paid for contracting out their time. Not a lawyer — he voluntarily undertook a mandate (not a contract) to work for his client, and the client was expected voluntarily to give the attorney a present constituting the honorarium. A legal scholar named Quintilian wrote:

Even a lawyer whose poverty obliges him to receive fees will not take them as a debt due ... but [will] receive them as an acknowledgment ... for in truth the services of counsel ought not to be sold, nor, on the other hand, go unrewarded.²¹

Nevertheless, a few Roman advocates

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were amply rewarded, becoming wealthy from the hefty honoraria they accepted. Things seemed to be getting out of hand, so the Emperor Claudius put a cap of 10,000 Sesterces on honoraria. (Today we can think of this as the equivalent of \$10,000.) That cap lasted a long time. Charlemagne issued an edict to the effect that if lawyers (clamatores, or clamorers), were discovered to be influenced by undue eagerness for money in the causes they undertook, they were to be banished from the society of honorable persons, and to be disbarred.²²

In the late Middle Ages, a French statue

of St. Yves, the patron saint of lawyers, shows him carrying a bag marked "10,000," i.e., the maximum fee originally imposed by the Emperor Claudius.²³

The aversion to fees — or at least high fees — continued in the Anglo-American legal experience. For centuries, English lawyers had no legal claim for payment, and to demand fees would damage one's reputation.²⁴ A Virginia law passed in 1657-58 prohibited the charging of fees, but the statute was unsuccessful and was repealed 36 years later.²⁵ So statutes (and later, bar associations) set maximums on fees for lawyer services. This practice

continued until 1975, when the United States Supreme Court ruled that fee caps, seen by many lawyers as a form of consumer protection, were in practice an unlawful mechanism for price-fixing by the legal profession.²⁶

For at least 2,500 years in our legal tradition, there appears to have been an ongoing tension between 1) lawyering as a public duty, bringing access to justice to the citizenry and status to the practitioner versus 2) lawyering as a business venture. Law is everyone's birthright, yet specialists seem necessary to navigate through its complexity. Bench and bar leaders constantly emphasized the public duty aspect. The public and political leaders often tried to improve access by controlling fees, or by minimizing the role of attorneys altogether. But like the tide that King Canute could not roll back, the lawyers would always return. Competing demands for their special knowledge led inexorably to higher fees for the best representation. Modern communist states were just as unsuccessful in producing equal, low-cost access to legal services. In 1982, I chatted with a young curator at a Prague museum who mentioned that her father had a successful law practice. I asked how this was possible, given that law offices were supervised by the state and fees were strictly regulated. She answered: "He receives a lot of high-quality scotch."

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In a 1933 opinion upholding Washington's business and occupation (B&O) tax despite an exclusion for lawyers and other professionals, Justice Warren Tolman wrote:²⁷

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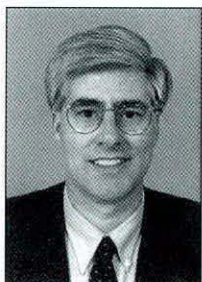
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seemingly large fees may be paid, but to others unable to pay adequately, or at all, the professional service is usually cheerfully rendered.

This statement could as easily have been written by a first century Roman legal scholar as by a 20th century American judge. That is because the concept of the lawyer as servant, providing access through an ordered system of norms belonging to all, has been demanded by the public, and much of the time, heartily endorsed by lawyers themselves. But why not all of the time?

The tension between law as a service profession versus law as a business goes back as far as recorded history. The interesting thing is that whether we like it or not, the periods of the strongest "service" emphasis have corresponded with periods during which 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. Until the first century B.C., almost all Roman advocates were moneyed gentlemen who appeared in court to support family dependents and/or to gain

fame to assist later bids for public office.²⁸ As the society and economy became increasing complex and the demand for lawyers grew, law provided new opportunities for wealth. Men of middling social status, such as Cicero, used the profession as a stepping stone to higher class standing and financial independence.²⁹ The combination of a fluid class structure and the greater need for lawyers of all kinds caused a breakdown in the old system of noblesse oblige lawyering. This is evidenced by the repeated attempts by emperors such as Augustus and Claudius to control the practice of law and the fees charged.³⁰

We can observe the same sort of thing in English legal history. In the 1500s, the Inns of Court, "like Oxford and Cambridge, were fashionable finishing schools for the sons of the nobility and gentry."³¹ The work of these well-to-do lawyers no doubt reinforced the political and economic establishment. But there was also a strong noblesse oblige about their endeavors. They often did not accept fees for their services; their interests, like the early Roman lawyers, "stretched from jurisprudence to participation in government."³² Although the practice of law never achieved social exclusiveness, the large numbers of gentry "added lustre to...the image of those who practised law for a living."³³

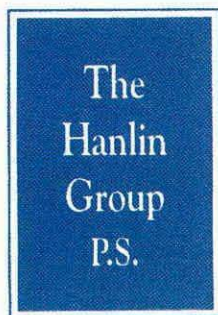
But the combination of social, political and business opportunity attracted a broader range of young men to the law. In the late 16th and early 17th centuries, as in late Republican Rome, law was a place where young, ambitious people could move up in public affairs, status and wealth.³⁴ England's economic expansion led to a rapid increase of lawyers, including many who were not particularly well trained and who were more interested in money than public service.³⁵ During the revolutionary 1600s, lawyers wound up on both sides of the struggles between King and Parliament, and between High Church and Puritans. In doing so, they represented litigants who took advantage of a tumultuous political situation and a labyrinthine legal system "for many kinds of double-dealing and underhand gain."³⁶ Some lawyers were viewed as toadies for the King and the wealthy, others as catalysts for the increasing commercialization of society, and still others as dangerous

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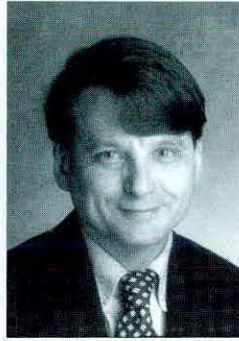
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Born in Spokane, Barrie has devoted his 26-year professional life to serving the public. In private law practice for 13 years, he helped preserve Seattle's historic Arctic and Alaska Buildings and bring the first Costco stores to Seattle and Spokane. He then spent seven years prosecuting cases with the U.S. Securities & Exchange Commission. Since late 1994 he has served as the State Bar's Chief Disciplinary Counsel, where under his direction a large backlog of disciplinary investigations has been eliminated and the consistency, quality and timeliness of investigations and prosecutions improved.

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revolutionaries.³⁷ But whatever the role, the dislike of the legal profession "knew neither sectarian nor class boundaries."³⁸ One wag in 1659 invoked her readers to:

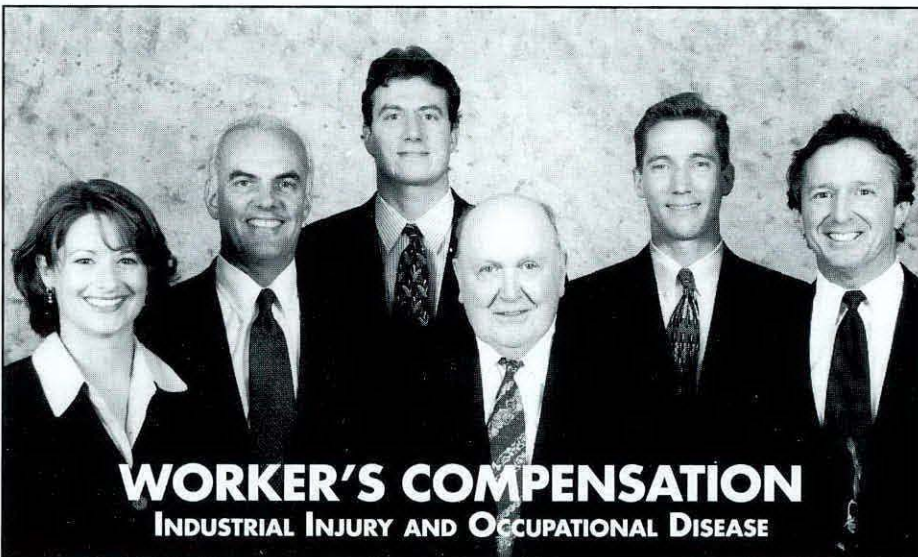
Behold the learned lawyers! Void o'th fears,
Of fifty one, and the two succeeding years,
Have lined their Crowns, and made them
pistol proof,
And Magna Charta clad in Coat of Buff,
And with a bolder confidence can take,
A larger fee, for Reformation sake.³⁹

Once again, the expansion of the bar to include social and economic climbers led to less emphasis on public service and greater dislike for lawyers. This is not to say that there had not earlier been resentment of the upper-class legal profession. Indeed, the 17th century evidenced a great deal of hostility toward all three "learned professions."⁴⁰ But that period saw an overall increase in revulsion toward both law and its practitioners.

America witnessed some of the same swings between an elite, service-oriented profession and a broader, upwardly mobile bar dependent on fees for its livelihood. The American legal historian James Willard Hurst summarized the resulting dilemma as follows:⁴¹

The historic concept of a profession includes the ideas of organization, learning, and public service, to which making a living is incidental. This concept translates the abstractions of morals into far more tangible terms than frail human nature is usually asked to meet.... We should not be surprised, therefore, to discover that — failing to rationalize even the plain economics of its operations — the bar achieved a somewhat less than satisfactory working relation between its charter as profession and as business.

When I began work on this essay, I thought I might find that at some point in history there existed a golden age when all lawyers were high-minded, did not care much about money, and were beloved by the populace. But it turns out that lawyers have never been loved. And there always was and always will be a tension between the lawyer as servant (yet viewed suspiciously as a member of the establishment) and the lawyer as business person



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(yet disliked for making money from the law that belongs to all).

What do we learn from all this? If you want to be a lawyer (or a judge for that matter), be prepared to make less money than you might make in pure business endeavors. A few lawyers earn extraordinarily high incomes, but as the saying goes, it's hard to get rich working for hourly wages. I tell my students that if they do want to get rich, they should not have bothered to enter law school, but should have gone directly to a dot.com company. People who choose to serve as lawyers must be prepared to suppress their greed and to work to ensure that law continues to be accessible to all. It is difficult to say whether access to justice is currently improving or not. The increase in ego-centric behavior and disinterest in community institutions is reflected in lawyers who put their noses to the grindstone and assume that someone else will bother to serve poor and lower middle-income people. Except in limited areas involving the potential loss of rights or property by government action, attempts to mandate access to justice have not been particularly successful.

Improving access to justice takes personal commitment as well as collective action. If it helps, let me suggest that lawyers have a self-interest in making those commitments.

In particular, those who earn a big income practicing law had better spend some time and resources giving back to the community and providing access to justice to those who cannot ordinarily afford their services. Otherwise, they're likely to be faced with the same anti-legal establishment revolution that Rome saw in 451 B.C. and with the fee limits that recurred throughout the next 2,500 years.

Finally, because judges and lawyers, especially in court, are tools of the community's legal order rather than individuals, they will have to content themselves with wearing robes (plus dickeys in Canada), ties and suits in court, while everyone else is allowed to be casual. ☞

Hugh Spitzer is an affiliate professor at the University of Washington School of Law, and practices with Foster Pepper & Shefelman PLLC in Seattle. He serves on the Jurisprudence of Access to Justice Committee of the Access to Justice Board.

NOTES

- 1 Wolfgang Kunkel, *An Introduction to Roman Legal and Constitutional History*, 144 (2nd ed. 1973, J.M. Kelly, trans.).
- 2 The pre-Norman Anglo-Saxons chose law-speakers or doomsmen to declare the law and to officiate at community legal proceedings. W.J. Windeyer, *Lectures on Legal History*, 11-12 (2nd ed., 1957).
- 3 Table IX.3, in Johnson, *Ancient Roman Statutes* 12 (1961); see also, J.A. Crook, *Law and Life of Roman*, 270 (1967).
- 4 "Historically, a lawyer is an officer of the court and is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients." Lindstrom v. Ladenburg, 136 Wn.2d 591, 609, 963 P.2d 869 (1998), quoting Hickman v. Taylor, 329 U.S. 495, 510 (1947).
- 5 J. H. Baker, *An Introduction to English Legal History*, 179 (3rd ed. 1990).
- 6 Wilfred Prest, "The English Bar, 1550-1700," in Prest, ed., *Lawyers in Early Modern Europe and America*, 69-73 (1981).
- 7 H. F. Jolowicz and Barry Nicholas, *Historical Introduction to the Study of Roman Law*, 12-14 (3rd ed., 1972).
- 8 *Id.*
- 9 *Id.* at 91.
- 10 A humorous but revealing compilation of popular attitudes toward law, lawyers and judges can be found at Andrew Roth & Jonathan Roth, *Devil's Advocates: The Unnatural History of Lawyers* (1989).
- 11 Robert J. Bonner, *Lawyers and Litigants in Ancient Athens*, 206-209 (1927).
- 12 *Id.*
- 13 Roscoe Pound, *The Lawyer from Antiquity to Modern Times*, 85-87 (1953); Paul Brand, *The Origins of the English Legal Profession* 10-13 (1992).
- 14 Stephen Botein, "The Legal Profession in Colonial North America," in Prest, *supra*, at 132.
- 15 *Id.* at 131.
- 16 Pound, *supra*, at 141-42.
- 17 James William Hurst, *The Growth of American Law*, 251 (1950).
- 18 *Id.*
- 19 Pound, *supra*, at 52-53. Bruce Frier, *The Rise of the Roman Jurists: Studies in Cicero's Pro Caecina* 257 (1985).
- 20 William Forsyth, *Hortensius, An Historical Essay on the Office and Duties of an Advocate*, 362 (3rd ed. 1879).
- 21 Quoted in Forsyth, *supra*, at 370-71.
- 22 Quoted in Forsyth, *supra*, at 373.
- 23 Pound, *supra*, at 53-54.
- 24 Forsyth, *supra*, at 371.
- 25 Pound, *supra*, at 138.
- 26 Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975).
- 27 State ex rel. Stiner v. Yelle, 174 Wash. 402, 411, 25 P.2d 91 (1933).
- 28 Forsyth, *supra*, at 362-64; see, generally, John A. Crook, *Law and Life of Rome*, 87-92 (1967). Although Roman "patrons" were duty-bound to defend the interests of their adherents, including protecting their legal rights, Frier, *supra* at 273-77, points out that the great majority of Roman citizens probably had little or no access to anything besides courts of limited jurisdiction. The legal processes equivalent to our superior courts were primarily the realm of the middle and upper classes.
- 29 Crook, *supra*, at 90.
- 30 See footnotes 23-24, *supra*, and accompanying text.
- 31 C.W. Brooks, "The Common Lawyers in England, c. 1558-1642," in Prest, *supra*, at 54.
- 32 *Id.*
- 33 *Id.* at 55.
- 34 Wilfred Prest, "The English Bar, 1550-1700," in Prest, *supra*, at 70.
- 35 *Id.* at 72.
- 36 *Id.* at 74.
- 37 *Id.* at 73-77.
- 38 *Id.* at 73.
- 39 Quoted in *id.* at 76.
- 40 *Id.* at 73.
- 41 Hurst, *supra*, at 305-06.

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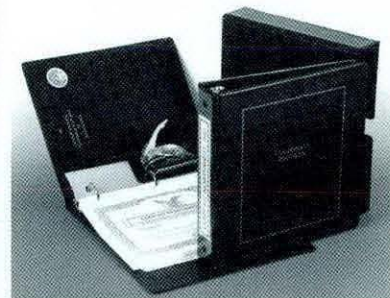
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Grandparent Visitation Rulings Leave Unanswered Questions

by Justice Philip Talmadge • Washington Supreme Court

Consider the following two factual scenarios.

Case 1: A child's grandparents have had a significant role in the child's upbringing during the child's first 10 years. The child's father (the grandparents' son) dies. The child's mother decides she no longer wants any contact between the child and her late husband's parents. Does the child have any right of visitation with the grandparents?

Case 2: A man moves in with a woman who has a newborn. During the child's first seven years of life, the man does not adopt the child; nonetheless he effectively serves as the child's father because he is intimately involved in rearing the child. The man and woman have a falling out. The woman says the man may have no further contact with her child. Does this child have any right of visitation with the man?

I believe most of us would answer these questions by saying the child has some right of ongoing contact with these loved ones. The recent decision of the United States Supreme Court in *Troxel v. Granville*, affirming a decision of the Washington Supreme Court, appears to invalidate a Washington State law that would have allowed the children in Case 1 and Case 2 to have visitation with the grandparents or the father figure. The U.S. Supreme Court did not endorse the reasoning of the Washington Supreme Court. But neither the U.S. Supreme Court nor the Washington Supreme Court offers clear guidance to legislators as to whether they may adopt a statute allowing visitation rights to these children who have developed close relationships with adults other than their biological parents, even when such ongoing contact is arguably in the best interests of the child.

Troubling Decisions

I authored the dissenting opinion of the Washington Supreme Court on this issue. I have now carefully read the U.S. Supreme Court decision, with six separate opinions of the justices, and I must confess I am both confused and troubled by the decisions of both courts.

Given the complex and changing nature of the American family, there are circumstances where third parties with a close connection to a child, such as grandparents, aunts, uncles or stepparents who have effectively raised the child, should have ongoing contact with that child if it is in the child's best interest. While I would always hope the families involved would be able to resolve these types of conflicts on their own, there will be circumstances where conflicts arise requiring judicial involvement to resolve the dispute. Our court system in family law cases makes these sensitive decisions every day with respect to parenting plans, child support and other domestic decisions. In certain circumstances, I can envision nothing more heartless and cruel than depriving a child of the close contact with someone with whom they have developed a close bond. Both the decision of the U.S. Supreme Court and the Washington Supreme Court appear to elevate biology above all else. This cannot be right.

The second concern I perceive from the courts' decisions is the willingness of both courts to effectively substitute their judgment for that of the Legislature. The Washington State Legislature, over a period of years, has attempted to develop a statutory policy on third-party visitation with children. While I do not agree with the breadth of that statute and would write it more precisely, the question is not whether judges like the public policy adopted by legislators, but whether the public policy is unconstitutional.

Is Washington's Statute Unconstitutional?

Neither the Washington Supreme Court nor the U.S. Supreme Court explicitly describe how, if at all, the Washington statute is unconstitutional. Both courts failed to recognize the longstanding legal tradition of *parens patriae*, a centuries-old doctrine in Anglo-American law. Essentially, under this doctrine which predated the adoption of our Constitution, the state could step in on behalf of a child, and take appropriate steps to protect that child from harm and to advance that child's best interests. Ignoring this well-settled principle, both the Washington and U.S. Supreme Courts assert that a state's interest is limited to determining only if a child is with a fit parent. All actions of a fit parent are presumed to be in the best interests of the child; therefore, no further action by the Legislature may be taken. This has never been the law, and it raises profound questions about a state's ability to adopt laws relating to the protection of children.

Courts Should Have Offered Guidance

Neither the decision of the Washington Supreme Court majority nor the U.S. Supreme Court offers any clues to legislators, concerning what steps, if any, they may take legislatively to allow contact between third parties and children, where such contact would plainly be in the best interest of the child. We are left with a circumstance where the highest courts of Washington and the United States have essentially said this law is unacceptable to them, not necessarily on constitutional grounds, but because they do not like its "breathtaking sweep." Both courts have effectively decided the person affected by the decision, the child, has no say in it. I agree with Justice John Paul Stevens' observation:

... we should recognize that there may be circumstances in which a child has a stronger interest at stake than mere protection from serious harm caused by the termination of visitation by a 'person' other than a parent. The almost infinite variety of family relationships that pervade our ever-changing society strongly counsel against the creation by this Court of a constitutional rule that treats a biological parent's liberty interest in the care and supervision of her child as an isolated right that may be exercised arbitrarily. It is indisputably the business of the States, rather than a federal court employing a national standard, to assess in the first instance the relative importance of the conflicting interests that give rise to disputes such as this. Far from guaranteeing that parents' interests will be trammled in the sweep of cases arising under the statute, the Washington law merely gives an individual — with whom a child may have an established relationship — the procedural right to ask the State to act as arbiter, through the entirely well-known best-interests standard, between the parent's protected interests and the child's. It seems clear to me that the Due Process Clause of the Fourteenth Amendment leaves room for States to consider the impact on a child of possibly arbitrary parental decisions that neither serve nor are motivated by the best interests of the child.

Unfortunately, the courts have done little to guide sincere legislators attempting to craft an appropriate public policy in this very difficult area. Given the nature of familial relationships in our society, it would not surprise me if the Legislature attempts to address this issue in the future. I hope they try to do so. Both the Washington Supreme Court and the U.S. Supreme Court should have done better in protecting the interests of children. ▢

Justice Philip Talmadge authored the Washington Supreme Court's dissent in the Troxel v. Granville case. Justice Talmadge was elected to the Washington Supreme Court in 1994, and served in the Washington State Senate from 1979 to 1995, where he chaired the Senate Judiciary Committee and the Senate Health and Human Services Committee.

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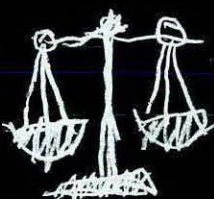
The Honorable JoAnne L. Tompkins
Former Washington State Court of Appeals Commissioner

The Honorable Terrence A. Carroll
Former King County Superior Court Judge

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Former King County Superior Court Judge

The Honorable Rosselle Pekelis
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Jack Rosenow
Formerly of Rosenow, Johnson & Graffe (not pictured)



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The Board's Work

by Judith Berrett

Following its annual retreat, the Board of Governors met in Port Angeles on August 4. The Board's discussion and action on the death penalty moratorium issue attracted the attention of members, interested groups and the media.

Celebration 2000

After months of planning, Celebration 2000 is nearly here. President **Richard Eymann** reported that hundreds of high school students will be present for the mock jury trial, which promises to be an outstanding learning experience.

New Position on the Board

After thoughtful consideration, the Committee for Diversity has recommended that a minority position be added to the Board of Governors. This issue will be voted upon by the Board at its September meeting in Spokane. Governor **Jim Deno** will draft a resolution for circulation before the meeting.

Amicus Brief Committee

The Amicus Brief Committee, represented by Chair **Bertha Fitzer**, requested that the Board review their position in an amicus in the *Bishop v. Jefferson Title* case, which involves interpretation of APR 12. The Board was asked whether they supported the approach taken in the brief, whether they agreed that an amicus brief was the best approach to deal with the question, and whether they thought it appropriate to propose a possible solution to the problem posed in the case. A motion to answer all questions in the affirmative was unanimously passed. Governor **Steve Osborne** commended the committee for their work and called committee members "unsung heroes."

The Coming Fiscal Year

The Board adopted the 2000-2001 Operational Plan as proposed by the Long-Range Strategic Planning Committee, and approved the 2000-2001 budget.

Death Penalty Moratorium

Stating that "nothing strains, dramatizes or heightens attention more than the death penalty," and characterizing those

who try death penalty cases as his heroes, President-elect **Jan Eric Peterson** helped bring to a close the Board's solemn and intense discussion of and action on this very important issue.

The issue was not the death penalty per se, but rather whether the Board of Governors should recommend to Governor Locke that he declare a moratorium on the death penalty pending review of process, procedures and safeguards. The WSBA Civil Rights Committee had recommended that the WSBA call on Governor Locke to declare a moratorium.

Pamela Loginsky and **Jim Kaufman**, representing the Washington Association of Prosecuting Attorneys, and **Todd Maybrow** and **Kristina Selset**, of the Washington Association of Criminal Defense Lawyers, presented the points of view of these two groups. Ms. Loginsky focused on the protections and safeguards already in place, and argued that a moratorium should require a strong showing of necessity. Mr. Maybrow emphasized problems with defense qualifications, compensation limits and hour caps, and unequal treatment from county to county. Spirited and serious discussion followed each presentation, as Board members grappled with this issue. Some governors questioned whether this was a proper topic for the Board to deal with. Jan Eric Peterson made the point that it is directly related to the Bar's mission: "to promote justice and serve [our] members and the public," as well as one of the Bar's purposes: "[to] promote an effective legal system, accessible to all." He observed that the death penalty has had a profound impact on the administration of justice.

Commented Governor **Lindsay Thompson**, "We have an obligation to constantly try to improve the system... You don't have to be for or against the death penalty to be in favor of improving it." Governor **Dick Manning** said that "at issue is whether there is due process in capital cases as they are prosecuted today."

Governor **Daryl Graves** suggested that the Board consider option two of the Civil Rights Committee's report – to recommend that Governor Locke require a comprehensive report on Washington's compliance with the four policies and procedures outlined in the ABA Policy of Feb-

ruary 3, 1997 (those four policies are: 1) competency of counsel, 2) preservation of the courts' independent judgment, 3) elimination of discrimination, and 4) prevention of the execution of mentally retarded persons and those under age 18 at the time of the offense).

A break was requested, during which Governor **Jenny Durkan** drafted a resolution. The resolution (text below) was passed unanimously.

Resolution to Study the Death Penalty Process

Unanimously adopted by the Washington State Bar Association Board of Governors on August 4, 2000

The WSBA recommends that Governor Locke require a comprehensive report be provided to him that addresses the concerns raised by the ABA Policy of February 3, 1997 regarding the imposition of the death penalty as those concerns may apply to the imposition of the death penalty in Washington state. The Report should also address for our state:

1. The adequacy of funding for defense counsel in capital cases;
2. The qualifications, if any, that should be required of defense counsel in capital cases;
3. Whether the reversal rate of capital cases from our state by the federal courts indicates any systemic problems regarding how the death penalty is being implemented in Washington state;
4. Whether or not there are consistent standards being used statewide in determining whether to seek the death penalty, and if not what standards, if any, are appropriate; and
5. Determining what impact implementation of the death penalty has on local county budgets statewide, and whether procedures and/or mechanisms need to be in place to mitigate against these impacts.

This report should be completed in time to propose appropriate remedial legislation, if any, in the 2001 legislative session.

The WSBA stands ready to assist the Governor in identifying appropriate individuals to help prepare the report. ✍

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Politics is More Important Than You Think

by Michele Radosevich

Politics today is pretty boring, right? It's hard to find time to stay informed, let alone get involved. The last thing a sane person should do is give money to these politicians, right? Wrong. These politicians make important decisions about the way we lawyers do business. And the most important decisions affecting the practice of law are made by the least visible elected officials — our state legislators. In the last session, Washington legislators amended Article 9 of the U.C.C., clarified the conditions under which the courts could amend parenting plans when one parent wants to relocate, created a county-option fee for mandatory arbitration, and allowed the use of electronic proxies for corporate decision-making.

All of the above are items that lawyers asked for. The Legislature also spent a fair amount of time on bills to reorganize the courts — despite the opposition of the majority of judges and lawyers. And it almost passed a sweeping privacy act that most bar groups had serious misgivings about.

The court reorganization proposals illustrate the impact that the Legislature can have on us — and why we have a problem. Last session, in the House of Representatives, there were legislators of both parties who felt that the court system had seriously broken down and radical reform was necessary. Their answer was a proposal to merge the superior and district courts into a single level trial court.

No matter what you think of this idea, it is a *big* change from the current system and should not be passed without lots of debate and careful planning. The debate took place largely in the House Judiciary Committee, where a number of members supported the idea. And the debate was frankly scary. It was scary because it seemed focused primarily on the frustration of the general public with courts and lawyers generally, and not with an analysis of workloads and costs.

Of the 12 members of the House Judiciary, a mere three were attorneys; only one of the co-chairs was an attorney. The nine lay members had varying degrees of familiarity with the courts. One was a state patrol officer; others had been litigants. While these are valid perspectives, they do not afford a very broad view

Last session, in the House of Representatives, there were legislators of both parties who felt that the court system had seriously broken down and radical reform was necessary.

of the court system. Listening to the debate, you couldn't help but wish that there were more lawyers up on that dais. Of course, besides the three attorney members of the committee, there are other lawyers in the 98-member House — three other practicing attorneys and two with law degrees. That's not a lot, given the impact the Legislature has on our lives.

The lack of lawyers does not necessarily mean that the Legislature makes bad decisions, but it does mean that we lawyers have to spend more time sharing our hands-on experiences with its members and help them see our point of view. The WSBA has two fine lobbyists, John Fattorini and Gail Stone, who speak for us in Olympia and coordinate our volunteer efforts. But John and Gail have a significant handicap.

They cannot use our dues dollars to help elect legislators who will listen and are sympathetic to our viewpoint. They cannot even give contributions to fellow lawyers. The use of bar dues for political campaigns is strictly prohibited.

We can give as individuals, of course, but normally we don't. Most of us worry that our voice is too small and that our checks cannot possibly make a difference. That's why some far-sighted lawyers created BARPAC a number of years ago, and why some of us are trying to raise BARPAC's visibility now. When you give to BARPAC, you allow it to make contributions to Republicans and Democrats who support our positions. You allow it to identify and give a helping hand to lawyers running for the Legislature. You allow our lobbyists to attend caucus and candidate fund-raising events, thus raising our visibility in Olympia. BARPAC solicitation letters were mailed to WSBA members recently. Your donation will support the work of our Board of Governors, sections and committees in the next session of the Legislature. ✍

Michele Radosevich is co-chair of BARPAC and practices law at Davis Wright Tremaine in Seattle. She is also vice-chair of the WSBA Legislative Committee and teaches legislation at Seattle University School of Law. She can be reached at 206-628-7768 or by e-mail: micheleradosevich@dwt.com.

Changing Venues

Honors and Awards

The Washington State Trial Lawyers Association (WSTLA) has named **Jack Connelly, Jr.** Washington Trial Lawyer of the Year for his work on behalf of injured crime victims. Connelly has spent his 18-year career with the Tacoma firm of Gordon Thomas Honeywell Malanca Peterson & Daheim. **Maria Diamond**, who practices with the Seattle firm of Levinson, Friedman, Vhugen, Duggan & Bland PS, has been elected WSTLA president. The Seattle firm of Bendich, Stobaugh and Strong received WSTLA's Public Justice Award for the work of lawyers **Judith Bendich**, **David Stobaugh** and **Stephen Strong**. The trio exposed a payroll scheme that denied contract workers standard job benefits enjoyed by other full-time employees. **John Budlong** received WSTLA's President's Award for his work on behalf of consumers billed by an insurance claims adjuster scheme. Seattle lawyer **Christopher Eagan** was presented with WSTLA's Professionalism Award for his work on behalf of injured workers.

The Spokane County Bar Association recently presented the following pro bono service awards: Attorney of the Year, **Peter Lineberger**; Attorney of the Year/Special Recognition, **Jan Drye**; Young Attorney of the Year, **Kathryn McKinley**; Family Law Advice Clinic Attorney of the Year, **Ellen F. Gephart**; Bankruptcy Attorney of the Year, **Mary Ellen Gaffney-Brown**; Social Security Administration Attorney of the Year, **Lynn Watts**; Marathon Hours Award, **John Zeimantz**.

The *National Law Journal* has named Seattle lawyer **Steve Berman** among the 100 most influential lawyers in America.

Richard C. Tallman, of Seattle, has been appointed to the 9th Circuit Court of Appeals. He succeeds Circuit Judge Betty Fletcher who took senior status. Judge Tallman will maintain his chambers in Seattle. Bankruptcy Judge **Samuel J. Steiner** has been reappointed to the U.S. Bankruptcy Court for the Western District of Washington.

The Asian American Bar Association Legal Resource Center in Seattle was awarded a grant from the American Bar Association (ABA) Immigration Pro Bono Development and Bar Activation Project.



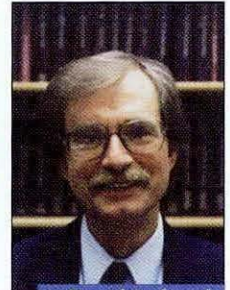
Jack Connelly, Jr.



Maria Diamond



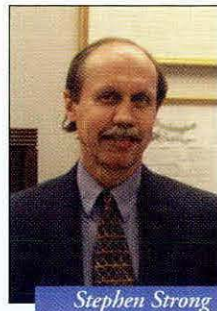
Judith Bendich



David Stobaugh

The grant was part of a nationwide effort by the ABA to increase private bar legal assistance to immigrants, refugees and newcomers.

Seattle lawyer **Robert C. Mussehl** has been elected chair-elect of the ABA Section of Dispute Resolution. Mr. Mussehl and his partner, Morris Rosenberg, have signed a pledge with the ABA to make



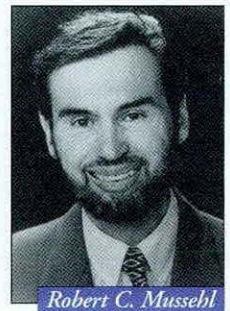
Stephen Strong



John Budlong



Christopher Eagan



Robert C. Mussehl

every reasonable effort to resolve conflicts and disputes through alternative dispute resolution practices such as mediation, negotiation and arbitration. **Irwin L. Treiger** has been elected to the ABA Board of Governors as a section representative. He is a partner in the Seattle firm of Dorsey & Whitney LLP, and focuses his practice on estate planning, federal income tax, and financial and real estate planning. He is a past-chair of the WSBA Taxation Law Section.

Rongwei Cai has been elected president of the Washington State China Chamber of Commerce. Mr. Cai is a lawyer with the Seattle firm of Riddell Williams PS.

The District and Municipal Court Judges Association recently elected the following officers: president, Judge **Michael P. Roewe**, Lewis County District Court; president-elect, Judge **Susan Owens**, Clallam County District Court; past-president, Judge **Janis Whitener-Moberg**, Grant County District Court; vice-presi-

dent, Judge **Christopher Culp**, Okanogan County District Court; secretary/treasurer, Judge **Dirk A. Marler**, Yakima County District Court; trustee, Commissioner **Virginia Rockwood**, Spokane County District Court; trustee, Judge **Holly A. Hollenbeck**, Benton County District Court; trustee, Judge **James Docter**, Bremerton Municipal Court.

Movers and Shakers

Lisa Groeneveld-Meijer and **Desiree Hosannah** have joined the Northwest Justice Project Coordinated Legal Education, Advice and Referral (CLEAR) system. Ms. Groeneveld-Meijer is a member of the Washington, Maine and New Hampshire state bar associations, and Ms. Hosannah is a member of the New York State Bar Association.

Carol K. Haugen has joined the Spokane firm of Paine, Hamblen, Coffin, Brooke & Miller LLP as of counsel. Prior to joining the firm, she was general counsel of Itronix Corporation. Ms. Haugen brings considerable experience in acquisitions and mergers, and in the high-tech industry. **William A. Buckholdt** has become an associate with the firm. His practice emphasizes taxation, estate planning and retirement/deferred compensation.

Graham & Dunn PC and Smith Smart PLLC have combined their practices, now known as Graham & Dunn PC. As a result, new shareholders are **Douglas J.**

Smart, David Hancock and Walter S. Tabler. Joyce S. Swensen, J. Dimmitt Smith and Paul J. Battaglia joined the firm as of counsel. Graham & Dunn PC recently added four new lawyers to their ranks. James H. Simon joined as shareholder and a member of the labor and employment team. His practice focuses on labor, employment and immigration law. Of Counsel Randall H. Moeller is a member of the intellectual property team, advising clients on advertising relations, domain name issues, and liability related to Internet commerce. New associate Michael A. Raskasky is on the banking and financial institutions team, bringing experience with business organizations, corporate transactions, banking and securities. Michael C. Williams is a new associate on the technology ventures and e-commerce team. His practice emphasizes technology licensing, new venture formation, corporate finance, intellectual property and Internet law.

Foster Pepper & Shefelman PLLC recently added Shelley McKinley to the business and intellectual property practice groups as an associate. She concentrates her practice on intellectual property due diligence, transfer and assignment counseling; venture capital financings, mergers, acquisitions, and public offerings of emerging and established companies.

Taro Kusunose has joined Betts, Patterson & Mines PS as an associate. His practice will focus on business transactions, corporate law and commercial litigation on behalf of Japanese businesses in the Pacific Northwest.

The Honorable Philip J. Thompson has joined the Spokane firm of Keefe, King & Bowman PS as of counsel. He engages in mediation, arbitration and client counseling. Judge Thompson formerly served as corporate counsel to Gonzaga University. Jennifer M. Larson has joined the firm as an associate.



Joseph C. Calmes

Joseph C. Calmes has been named shareholder in the Bellevue firm of Hanson Baker Ludlow Drumheller PS. He brings over 25 years' experience to the firm in the areas of construction and surety law, real property law, and commercial dispute avoidance and resolution.



Leslie R. Bottimore

Tony Hazapis has been named executive director of the King County Dispute Resolution Center, a nonprofit community-based organization providing free and low-cost conciliation and mediation services to King County residents. Prior to his appointment, he served as a board member, volunteer conciliator, and co-chair of the board's planning committee.



Eric S. (Rick) Carlson

Joann Francis, formerly a partner at Foster Pepper & Shefelman PLLC, has been named Northwest regional administrator for the U.S. Small Business Administration. She will oversee the agency's lending, business development and counseling programs in Washington, Oregon, Idaho and Alaska.

Leslie R. Bottimore has joined Lutz Law Offices PS as an associate. Her practice focuses on family law and estate planning.

A dozen business and litigation lawyers formerly of Reed McClure have joined the Seattle office of Miller Nash LLP. They are Cynthia Alderete-Medjo, Stuart Allen, Steven L. Burgon, Kent Caputo, Geoffrey Groshong, Vanessa Lee, C. Dean Little, Greg E. Montgomery, R. Thomas Olson, Mary S. Peterson, Guy Towle and Robert J. Walerius.

Eric S. (Rick) Carlson has joined Peterson Russell Cofano PLLC as a partner. Mr. Carlson's practice in the Bellevue firm will focus on corporate and commercial finance, startup business planning, venture capital, and securities and corporate law.

Barry G. Pea will succeed Scott G. Hallquist as senior vice-president, general counsel and secretary of Immunex Corporation. In his new role, Mr. Pea will be

an executive officer of Immunex. Mr. Hallquist will focus his efforts on the company's alliance management initiatives, including potential product and technology acquisitions.

Applied Discovery, Inc. recently added two litigation attorneys to the ranks. Virginia Llewellyn, formerly of Bullivant Houser Bailey, joined the company as manager for the newly formed client solutions group. David Wilner, a former partner in the Seattle office of Cozen and O'Connor, will manage the business development and sales group.

Ogden Murphy Wallace has added Carrie Montgomery and J. Todd Tracy to its business department. Ms. Montgomery recently completed a clerkship at the Washington State Court of Appeals Division II, and practices general business law. Mr. Tracy focuses his practice on representing creditors, debtors and trustees in bankruptcy cases. Prior to joining the firm, he practiced with Reed McClure.

In Memoriam

Seattle lawyer Harvey Poll died July 10 from diabetes. He was 61 years old. Mr. Poll lived with diabetes for 55 years and received a kidney transplant from his brother, Melvyn, nearly 23 years ago. A self-proclaimed "pioneer environmentalist," he spent part of the 1960s as president of Clean Air for Washington and was a founding board member of the Washington Environmental Council. Mr. Poll sat on the board of directors of the Puget Sound Air Pollution Control Agency for 13 years. He also served on the Seattle Parks Board for 12 years and was parks commissioner for two years.

Burton C. Waldo, a Seattle insurance-defense lawyer, died of pneumonia on June 20 at the age of 79. After graduating from the University of Washington School of Law, he joined Keller Rohrbach in 1950, and was managing partner in the 1970s and 1980s. Mr. Burton was an outdoorsman who enjoyed fishing. As a student, one of his summer jobs was clerking in Eddie Bauer's sport shop. He also helped Bauer test salmon bait in Lake Union. Mr. Burton was active in local politics, working on campaigns for Dan Evans, Joel Pritchard and U.S. Senator Slade Gorton. *LD*

Big Brother is Watching: Discipline for “Private” Conduct [Part 2]

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

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

This is the second half of an article originally presented at the American Bar Association's 26th National Conference on Professional Responsibility in June 2000. The first half, which appeared in the August 2000 issue of *Bar News*, examines the philosophical and cultural heritage underlying a possible distinction between private and public conduct and how the ABA Model Rules of Professional Conduct treat private and public conduct. The concluding installment looks at how Washington has sanctioned lawyers for arguably private conduct, draws some conclusions, and gives one possible answer to the question, “Should lawyers be subject to discipline for ‘private’ conduct?”

The Washington Experience

Not all jurisdictions follow the ABA Model RPCs in defining professional misconduct so narrowly and in rejecting the traditional concept of moral turpitude. Washington, for example, has chosen a more encompassing, but still restricted, view of what conduct of a lawyer is subject to discipline.

Washington's substantive rules of lawyer conduct are its Rules of Professional Conduct. Although largely modeled on the ABA Model Rules, Washington did not adopt the comments to the model RPCs. In addition, Washington retained a few parts of the ABA Model Code of Professional Responsibility, including much of its preamble and its concept of moral turpitude. Washington's disciplinary procedural rules are its Rules for Lawyer Discipline (RLDs).

Compared to Rule 9(A) of the ABA

Enforcement Rules discussed above, which set out only three grounds for lawyer discipline, Washington's RLD 1.1 sets out 16 grounds for lawyer discipline, only one of which, (RLD 1.1(i)), is violation of a provision of an RPC. For a discussion of those grounds, see Barrie Althoff, “Losing or Damaging the License to Practice Law,” *Washington State Bar News*, Oc-

Should lawyers be subject to discipline for “private” conduct?



tober 1999, p. 48. While most grounds for discipline directly relate to the practice of law, the Rule's very first ground for discipline (RLD 1.1(a)) retains the concept of moral turpitude and meets head on the issue of whether sanctionable conduct is limited solely to public conduct. RLD 1.1(a) provides that a lawyer may be subject to disciplinary sanction for:

The commission of any act involving moral turpitude, dishonesty, or corruption, or any unjustified act of assault or other act *which reflects disregard for the rule of law*, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding. [Emphasis added]

The Washington Supreme Court has wrestled a number of times, usually in cases involving violence, drunk driving or sex, with whether to discipline a lawyer for conduct not directly related to the practice of law.

First Comes Violence

In a case arising before the Washington Supreme Court adopted its current RLDs and RPCs, the court concluded that a lawyer striking a person in the face with a wine glass in a barroom brawl, for which the lawyer pled guilty to simple assault, was not guilty of an act of moral turpitude subject to disciplinary sanction. *In re Kuvana*, 97 Wn.2d 743, 649 P.2d 834 (1982). Unfortunately, the opinion's reasoning is largely conclusory rather than analytical. In reaching its conclusion, it quoted with approval (at 746) the Arizona Supreme Court's decision, *In re Johnson*, 106 Ariz. 73, 75, 471 P.2d 269 (1970):

Isolated, trivial incidents of this kind not involving a fixed pattern of misbehavior find ample redress in the criminal and civil laws. They have none of the elements of moral turpitude, arising more out of the infirmities of human nature. They are not the appropriate subject matter of a solemn reprimand by this Court.

After observing that the victim in *Kuvana* won a \$60,000 award in a civil lawsuit against the lawyer for “inadvertent but negligent use of a wine glass,” *Kuvana* concluded (at 746):

In the present case, the assault was an isolated incident, arising out of momentary thoughtlessness, rather than being prompted by malice. Redress has

been obtained through both the criminal and civil law. The incident is therefore not an appropriate cause for sanction under DRA 1.1(a).

The court did not ask what the victim or the public might think about its conclusion that a lawyer's violence, which left the victim with hearing loss, nerve damage and scarring, was not an appropriate cause for professional discipline.

It is uncertain that the court would reach the same decision today. The court

recently censured and suspended a judge for, among other things, publicly assaulting his wife. *In re Turco*, 137 Wn. 227 (1999). The underlying decision of the Washington Commission on Judicial Conduct (No. 97-2451-F-66) recites that after entering a church hall with his wife, the judge argued with her, said to her, "No one speaks to me like that and gets by with it," and then "intentionally shoved or pushed his wife, causing her to fall to the floor. After knocking her down, Respondent walked away making no effort

to assist or apologize." The court found that this action violated Canons 1 and 2(A) of the Judicial Conduct Code. The court rejected, however, the Commission's recommendation to remove the judge from the bench as unwarranted under the circumstances, observing that the people's choice in judicial elections (all Washington judges are subject to election) should not be lightly set aside. The Commission's underlying decision states that "[T]his assault took place in a public setting in the presence of two witnesses," and that the assault took place just seven days after the Commission had admonished the judge for "making injudicious comments in regards to domestic violence matters." Suppose the assault had taken place, as most domestic violence does, in the "privacy" of the home? Would the result have been different? Would that conduct have been deemed "private" and not subject to professional response, or would it simply not have been prosecuted?

Later in the same year as *Kuvara*, the court found another lawyer's assault to be an act of moral turpitude. *In re McGrath*, 98 Wn.2d 337, 655 P.2d. 232 (1982). An attorney carrying a concealed gun got into an argument in a restaurant, and after being struck while leaving the restaurant, shot and seriously wounded a person. He pled guilty to second-degree felony assault. The court stated (at 342-343):

To determine if moral turpitude is involved, the question to be answered is this:

Now, do the acts found against the appellant, and for which he was convicted...violate the commonly accepted standard of good morals, honesty, and justice? Suppose we measure his conduct in this regard, not by any puritanical standard, but by the standard of right conduct generally prevailing among our people, uninfluenced by the fact that the statute law also punishes such conduct as a crime. What, then, is the answer to the question whether or not such acts involve moral turpitude?

In re Hopkins, supra [54 Wn. 569, 103 P. 805 (1909)] at 572.

The definition of moral turpitude

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is necessarily general. In the setting of attorney discipline, its application depends upon the collective conscience and judgment of the members of this court. It is as meaningful as other phrases adopted by other courts...

Applying the *Hopkins* standard, we find that McGrath's conduct involved moral turpitude for several reasons. First, it was an unjustifiable act of violence against another human being. Such violence has never been condoned under any legal system, ancient or modern. Second, while McGrath was licensed to carry a weapon, his carrying of a loaded pistol on many occasions and in situations where he had consumed considerable alcohol is not in [342/343] keeping with the prevailing standard of right conduct... Furthermore, conviction of a crime with an intent element of "knowingly" is some evidence, although not conclusive, that moral turpitude was involved.

In determining the appropriate sanction, the court stated (at 344-345):

The most persuasive factor in our decision to disbar respondent is the maintenance of respect for the honor and [344/345] dignity of the legal profession. An Ethical Consideration in the Code of Professional Responsibility [CPR EC 1-5] states:

Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for the law. To lawyers, especially, respect for the law should be more than a platitude.

After the *Kuvara* and *McGrath* cases, the Washington Supreme Court amended its RLDs to specifically make "any unjustified act of assault" subject to discipline.

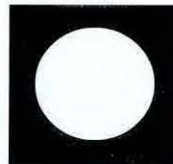
Next Comes Booze and Death

The Washington Supreme Court's most extensive consideration of the relationship between a lawyer's public and private conduct involved a lawyer convicted of vehicular homicide, whose drunk driving killed two passengers. Although the passengers killed were clients of the lawyer,

that fact was not material to the court's holding. Concluding that the lawyer committed an act of moral turpitude, the court suspended the lawyer from practice. *In re Curran*, 115 W.2d 747, 801 P.2d 962 (1990). The court stated (at 756-7):

... this case calls into question the very purposes of lawyer discipline and... involves serious misconduct not directly related to Mr. Curran's professional life. The modern trend focuses lawyer discipline fairly tightly upon conduct which directly interferes with the administration of justice or occasions doubt about a lawyer's competence or honesty. The American Bar [756/757] Association Model Rules of Professional Conduct (1983) do not forbid all acts involving "moral turpitude" as the prior ABA Model Code of Professional Responsibility had... This court's rules, however, do not fully embrace the modern trend. They forbid all acts involving "moral turpitude" and have recently been amended to include an "act which reflects disregard for the rule of law." RLD 1.1(a). On the other hand, this court has adopted the *ABA Standards for Imposing Lawyer Sanctions* (Approved Draft, 1986), which are keyed to the Model Rules, and embrace the modern trend by putting more emphasis on disciplining lawyers for violations of practice norms. Thus, the question of whether Curran's acts merit discipline and if so, what sort of discipline, are very difficult and close questions.

Curran found no grounds for discipline under Washington's RPC 8.4 (then identical to Model RPC 8.4), but instead looked to Washington's RLD 1.1(a), set out above. Due to constitutional concerns of vagueness over the broad language of RLD 1.1(a), *Curran* limited the phrase "act which reflects disregard for the rule of law" to violations of criminal law. It concluded that the lawyer's drunk driving resulting in the death of two passengers reflected such a disregard for the rule of law, and explained why acts of a lawyer (whether within or outside the practice of law) which reflect disregard for the rule of law merit lawyer discipline:



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Our system of government is based on the notion that democratically established law governs disputes between people and defines which conduct is so abhorrent that it merits criminal sanctions. The lawyer has a key role to play in seeing to it that general rules actually determine the results of particular disputes. The lawyer's presentation of facts enables judges to decide those disputes which cannot be settled. The lawyer also identifies those rules of law which apply to a situation. Most

rules of professional conduct apply to the lawyer's role in advising clients and representing them before courts.

If the legal system depended only upon legal processes involving lawyers to secure compliance with our laws, however, it would break down. The legal system relies more heavily, but less obviously, on voluntary compliance with [761/762] the law than it does on enforcement or even dispute resolution. The respect which our legal institutions command makes this possible.

Unfortunately, violations of the law by lawyers contribute to erosion of respect for legal institutions and the law. As we have stated on many occasions, the purposes of lawyer discipline are to "protect the public *and* to preserve confidence in the legal system." (Emphasis added.) *In re Rentel*, 107 Wn.2d 276, 282, 729 P.2d 615 (1986). The existence of a rule which may apply to conduct not involving an attorney in a professional role attests to the continuing vitality of the concern for preserving confidence in the legal system. See RLD 1.1(a).

On the other hand, not all legal violations by attorneys reflect a disregard for the rule of law. Some involve not disregard, but defiance on the basis of conscience. Others may involve accidental conduct.

Moreover, the purposes of bar discipline do not precisely duplicate the purposes of criminal law. ...

In determining which criminal conduct reflects disregard for the rule of law requiring bar discipline to supplement criminal sanctions, the bar association should consider two factors – the frequency of violation, and the seriousness of the injury caused. [Emphasis added.] Repeated violations of the law show the kind of disregard which sets such a poor example for the community at large that it may merit discipline under this rule. See, e.g., *In re Alkow*, 64 Cal. 2d 838, 415 P.2d 800, 51 Cal.Rptr. 912 (1966) (suspending an attorney who committed vehicular homicide who had a history of traffic offenses). Curran does not have a record of repeated law violations, so this does not justify imposing discipline in this case. [762/763]

Criminal conduct having particularly serious consequences merits bar discipline as well. Generally speaking, such conduct shows that the actor was willing to break the law even though his or her actions could cause injuries the law takes very seriously.

We realize that Curran did not intend to kill the people he attempted to drive home. He did, however, choose to drive. We think the willingness to take that much risk of causing death

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or serious injury through violation of criminal law reflects a disregard for the rule of law serious enough to warrant sanctions beyond those imposed by the criminal justice system.

The Kentucky Supreme Court suspended an attorney convicted of two counts of vehicular homicide and relied heavily on the fact that his actions would bring disrepute to the bar if left unpunished. *Kentucky Bar Ass'n v. Jones*, 759 S.W.2d 61, 63 (Ky. 1988). We agree that attorneys convicted of crimes involving violent death of their victims bring disrepute to the bar. [footnote omitted] More importantly, they bring the kind of disrepute which undermines the respect for legal institutions which undergirds voluntary compliance with the law in this country. Accordingly, we find that Curran's actions reflect disregard for the rule of law and merit discipline. [115 Wn.2d 747, 761-3]

The *Curran* court did not consider whether the misconduct in question constituted "moral turpitude," because disciplinary counsel did not charge that ground. The disciplinary counsel who handled the prosecution has since stated that this ground was not charged because there was then insufficient authority supporting such a charge, but that now, with the significantly decreased public acceptance over the years of drunk driving, such a charge might not now be out of the question.

Curran listed two factors, frequency of violation and seriousness of injury caused, for determining which criminal conduct warranted disciplinary action. These factors give a court considerable flexibility to ignore an isolated minor violation, but sanction for repeated minor violations. For example, a court might appropriately ignore for disciplinary purposes a lawyer's conviction for a single act of jaywalking, but equally appropriately sanction a lawyer's conviction for repeated jaywalking. The court might also apply an Aristotelian facts and circumstances analysis and further distinguish cases of a lawyer who repeatedly jaywalks in isolated deserted areas (no sanction) from one who, well known as a lawyer, does the same

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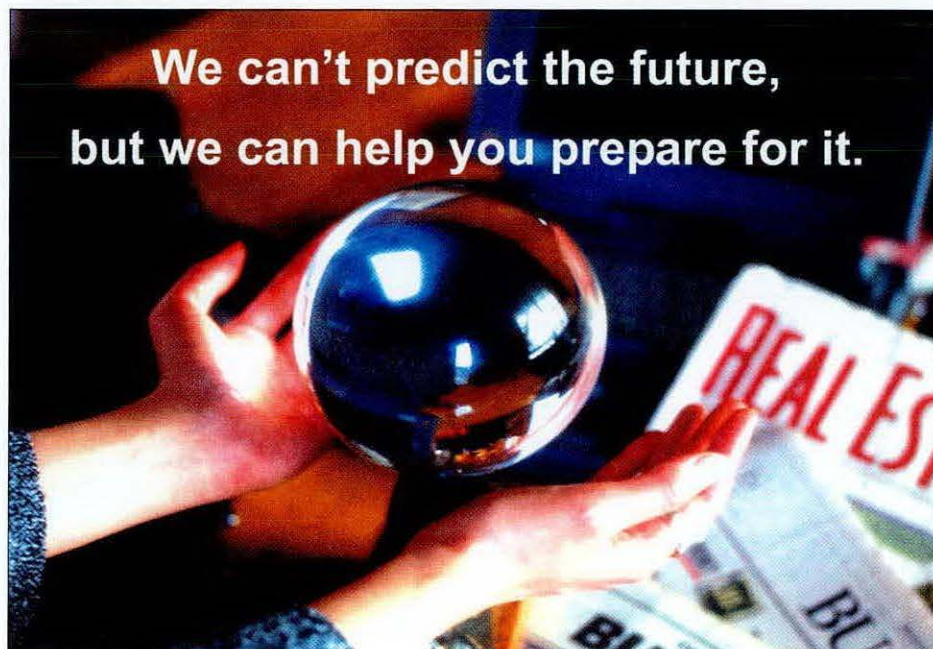
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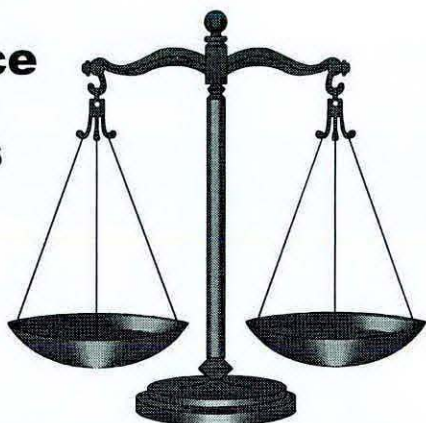
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And Now Comes the Sex

More recently, the Washington Supreme Court again explored the boundaries of public and private conduct when it found a lawyer committed an act of moral turpitude by having sexual relations with a brain-injured client. *In re Heard*, 136 Wn.2d 405, 963 P.2d 818 (1998). A 43-year-old lawyer represented a 23-year-old woman following a motorcycle accident in which she was severely injured. He successfully secured a guardian ad litem for her, in the petition for which he asserted that she was incompetent due to severe head injuries, was disabled, and was incapable of caring for herself or her affairs.

After noting that Washington's RPCs did not at the time expressly ban a lawyer from having a sexual relationship with a client, the court referenced its prior decision in *Haley v. Medical Disciplinary Board*, 117 Wn.2d 720, 818 P.2d 1062 (1991). In that case, the court suspended a 66-year-old surgeon from medical practice for having a sexual relationship with an under age-16 former patient. According to *Heard* (at 421), *Haley* held that the surgeon "used his professional status and position to sexually exploit a minor, given his psychological authority and power over the patient, and his behavior cast the medical profession in disrepute in the eyes of the public." Although a disciplinary rule for physicians specifically prohibited sexual contact with a patient, the rule was not violated because the physician-patient relationship had ended when the sexual relationship began. Thus, the *Heard* court concluded (at 422):

Haley indicates a professional may violate rules banning acts of moral turpitude even where specific rules forbidding sex with clients do not apply. As we stated in *Haley*: "[w]e believe that any reasonable physician would recognize that such conduct is an abuse of the trust inherent in the physician's role and an appropriate subject for professional discipline." *Id.* at 743. The same can be said of *Heard's* conduct here.

The court then went on (at 422-423) to detail Heard's conduct:

The facts in the present case are quite similar to those in *Haley*, and may be more egregious in several respects. Heard used his professional relationship with Menz to initiate the social relationship. ...As Menz's attorney, Heard had intimate knowledge of her vulnerabilities. Heard knew Menz had sustained a significant head injury for which she required multiple surgeries, and she was psychologically and physically impaired, undergoing a period of prolonged rehabilitation. Through access to her medical records, Heard knew Menz had an extensive history of alcohol and drug problems, and had been sexually abused. He further knew that as a result of her brain injury Menz continued to have memory, reading comprehension, auditory processing, attention, speech, problem solving and other cognitive deficits. He also knew her medical providers were concerned about her judgment, safety and ability to live independently. Despite this knowledge, Heard took Menz to two cocktail lounges and gave her alcoholic beverages at both. When Menz informed Heard she should not be drinking, he assured her that everything would be all right. Heard then took Menz to his apartment where they engaged in sexual relations. Heard sexually exploited a client with alcohol problems and who suffered the effects of serious head injuries. Heard's use of his professional position to exploit a vulnerable young [422/423] woman constituted moral turpitude within the meaning of RLD 1.1. [citation to Footnote 9]

In footnote 9, the court observed:

By our opinion, however, we do not announce a general rule regarding attorney-client sexual conduct. This issue may be addressed in the normal course of the judicial rulemaking or decision[-]making process. However, where an attorney so blatantly misuses his professional status to exploit a client's vulnerability, the [Disciplinary]

Board is entirely justified in finding the conduct to be an act of moral turpitude under RLD 1.1.

In another sex-with-vulnerable-client case, a married lawyer stipulated to discipline for, among other things, entering into a sexual relationship with a severely depressed client, marrying that client while he was still married to his wife, and making false statements and creating false documents attempting to conceal his bigamy. *In re Warner*, disciplinary notice

published in *Washington State Bar News*, February 2000, p. 53. The respondent lawyer, who was represented by an experienced former disciplinary counsel, stipulated that his conduct violated RPC 1.7(b) (conflicts), 8.4(b) (by bigamy) and 8.4(c) (dishonest conduct), and that it constituted an act of moral turpitude. The presumptive disbarment sanction was mitigated down to a two-year suspension, together with various ancillary sanctions, due to significant mitigating factors.

More recently, in *In re Halverson*, 140

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Wn.2d 475 (2000), the Washington Supreme Court held that a sexual relationship between an experienced family-law lawyer and his client did not, under the circumstances of the case, involve moral turpitude. Finding that the case before it did not involve any of the aggravating factors present in *Heard*, the Court, quoting from the *Heard* decision, observed that the lawyer here did not "blatantly misuse [] his professional status to exploit [his] client's vulnerability." Wn.2d at 140, 491. The Court also distinguished the case before it from two cases involving other professions which were both subject to statutory "bright-line" prohibitions on entering sexual relationships with persons served by the professional. In *Haley*, discussed above, a surgeon began a sexual relationship with an underage recent former patient, while in *Heinmiller v. Dept. of Health*, 127 Wn.2d 595 903 P.2d 433 (1995), a social worker began a sexual relationship with a client one day after concluding a counseling relationship. Even though the applicable "bright-line" statutes prohibited such relationships only during the period of the professional relationships, the conduct of each professional was held to be an act of moral turpitude. *Halverson* observed that in those cases there was a bright-line prohibition on sexual relationships with a client, even though the prohibition did not by its terms directly apply, whereas at the time of the events in *Halverson*, there was no bright-line rule in Washington prohibiting lawyer-client sexual relationships. (Seven weeks after the *Halverson* decision, the court adopted such a bright-line prohibition. RPC 1.8(k).) Although not finding moral turpitude in *Halverson*, the court did find that the lawyer's concurrent client/sexual relationship resulted in a conflict of interest in violation of RPC 1.7(b), and that the lawyer failed to exercise independent professional judgment in violation of RPC 2.1. The court suspended the lawyer from practice for one year, thus disciplining him for arguably "private" conduct having a nexus to the practice of law.

Heard, *Warner* and *Halverson* all involved sexual relationships between lawyers and clients, while *Haley* and *Heinmiller* involved sexual relationships

with immediately past patients. In today's generally permissive climate, no sanction would have resulted had such relationships been with persons who had never been clients or not otherwise somehow professionally related to the professional (as, for example, a judge, opposing client or counsel, or witness) since such relationships, even though perhaps adulterous, are generally no longer criminal nor widely viewed as constituting acts of moral turpitude. This is true even though such acts, where adulterous, may raise serious questions about a person's truthfulness and honesty. As a profession, we have in effect determined that such conduct is private conduct not subject to Big Brother's oversight. Unanswered is whether such a determination encourages such behavior and whether the role of the community as envisioned by Aristotle, as encouraging and enforcing the highest moral development of its members, is being satisfied by our determination.

After Sex Comes the Money

The court suspended a lawyer from practice for committing welfare fraud that began while in law school and continued after his admission to the bar. *In re Plumb*, 126 Wn.2d 334, 892 P.2d 739 (1995). After being re-admitted on completion of his suspension, the lawyer was subsequently disbarred in March 2000, for other fraudulent conduct mostly unrelated to his practice of law. Holding that welfare fraud is a crime of dishonesty reflecting adversely on the lawyer's fitness to practice law, the court found that the lawyer's failure to disclose his employment status while receiving welfare benefits showed a disregard for his legal obligations under the welfare program and a repeated failure to pay attention to important details, and that competent lawyering requires the opposite characteristics. The court determined that a compelling nexus existed between the lawyer's crime of dishonesty and unfitness to practice. The sanction in the case likely would have been the presumptive sanction under the ABA Standards of disbarment, except for the fact that disciplinary counsel apparently felt compelled to seek a lower sanction in light of several prior stipulated disciplinary suspensions by

other lawyers, one involving a lawyer's failure to disclose the existence of an asset while declaring bankruptcy (two-year suspension), and the other involving a government attorney's fraud in charging extensive personal telephone calls to the government (one-year suspension).

Last year, the Washington Supreme Court again disciplined a lawyer for "private" conduct, in this case disbaring a lawyer for defrauding a magazine publisher and consumers of \$825,000 through telemarketing magazine subscription renewals and repeated misrepresentations. *In re Huddleston*, 137 Wn.2d 560, 974 P.2d 325 (1999). Rejecting the lawyer's claim that the presumptive disbarment sanction should be mitigated since the conduct was "completely outside the practice of law," the court observed (at 577-579):

It is clear that Washington attorneys can be sanctioned for misconduct occurring outside the practice of law. Attorneys in Washington are subject to the Rules of Professional Conduct at all times, regardless of whether they are acting as an attorney at the time of the alleged misconduct. The Rules of Lawyer Discipline specifically provide that a lawyer may be subjected to discipline for [577/578]:

The commission of any act involving moral turpitude, dishonesty, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, *whether the same be committed in the course of his or her conduct as a lawyer, or otherwise. . . .*

RLD 1.1(a) (emphasis added [by the court]). In the past, we have not hesitated to impose appropriate sanctions upon attorneys engaging in misconduct outside the practice of law, provided that such conduct reflected adversely upon that attorney's ability to practice law. *Curran*, 115 Wn.2d 747 (1990) (vehicular homicide); *Plumb*, 126 Wn.2d 334 (1995) (theft).

After reviewing the Rules of Professional Conduct, we conclude that the fact that the attorney misconduct occurs outside the practice of law is not a relevant mitigating factor. Attorney misconduct occurring outside the practice of law is, realistically, only subject

to discipline under RPC 8.4 [footnote omitted]. Under the language of RPC 8.4, however, only the following conduct potentially occurring outside the practice of law can be subject to discipline: criminal acts that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; conduct involving dishonesty, fraud, deceit or misrepresentation; conduct prejudicial to the administration of justice; and conduct or statements implying an ability to improperly influence government agencies or officials. RPC 8.4(b), (c), (d), (e). This kind of misconduct is serious and reflects adversely on an attorney's fitness to practice law, even if the misconduct occurs outside the practice of law. By including such conduct within the Rules of Professional Conduct, alongside rules governing misconduct related to the practice of law, we have demonstrated our concern for certain types of misconduct that may occur outside the practice of law. Nothing in the Rules of Professional Conduct nor the ABA Standards indicates an intent to treat such conduct less [578/579] seriously because it occurred outside the practice of law. ... We are therefore unconvinced that lesser sanctions are appropriate when the alleged misconduct occurs outside the practice of law. [Footnote omitted]

Then Comes the Finger

In a recent Washington judicial discipline case, a judge in effect sought sanctuary by claiming his misconduct was "private" conduct even though the conduct took place in open session in a courtroom. *In re Raines* (Washington Judicial Conduct Commission, No. 98-2810-F-72). While presiding during a busy municipal court session, the judge was handed a note by a court employee requesting a short recess on behalf of an attorney. The judge allowed the recess without leaving the bench. Later, the employee, at the judge's direction, returned to the attorney the note on which the judge had written the words "No!" and "For the next time," and had drawn a person "giving the finger." Although the Commission found a violation of various judicial conduct canons,

it did not impose discipline. An unpublished Commission concurring opinion noted that the judge "insisted that his behavior was 'private.' His conduct occurred on the bench while court was in open session. ... Mingling a private activity with judicial functions, whether the act transpired inside or outside of the courtroom, is not private, especially when misconduct is involved."

And Last Come the Old-Timers

Washington lawyers have not limited their "private" misconduct merely to violence, money and sex. Other reported Washington cases, however, are older, predating Washington's adoption of the RPCs. They include:¹

- the strange case of Mr. Kosher, whom the court found "actively participated in: 1) the establishment of houses of prostitution, 2) the securing of women essential to their operation, 3) the direction of some 'customers' to the brothels, and 4) the collection and apparent sharing in an overhead fee (which could be referred to as a protection or organization fee). There can be no doubt that the aforementioned activities of Mr. Kosher involved moral turpitude." *In re Kosher*, 61 Wn.2d 206, 209, 377 P.2d 988 (1963);
- filing false tax returns. *In re Greiner*, 61 Wn.2d 306, 378 P.2d 456 (1963); *In re Witteman*, 95 Wn.2d 936, 631 P.2d 961 (1981); and *In re Brown*, 97 Wn.2d 273, 644 P.2d 669 (1982);
- conspiring to deprive persons of civil rights (Watergate plumbers). *In re Krogh*, 85 Wn.2d 462, 536 P.2d 578 (1975);
- sending false recommendation letters and transcripts to prospective employers. *In re Lavery*, 90 Wn.2d 463, 587 P.2d 157 (1978);
- growing large amount of marijuana (no criminal conviction because evidence suppressed). *In re Fortun*, 97 Wn.2d 240, 643 P.2d 447 (1982);
- misdemeanor shoplifting as involving moral turpitude. *In re Saulnier*, 97 Wn.2d 676, 648 P.2d 433 (1982);
- passing not-sufficient-funds checks and forged checks. *In re Barnard*, 59 Wn.2d 912, 367 P.2d 26 (1961); and
- obtaining chips at Nevada gambling casinos with cashier checks on which the lawyer intended to stop payment. *In re*

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Miller, 99 Wn.2d 695, 663 P.2d 1342 (1983).

Conclusion

Should a lawyer be subject to discipline for "private" conduct? It depends. While there can never be a fixed answer, since what is public and what is private inevitably overlap and change as society changes and as society's needs, apprehensions and priorities change, there also is a continuing need for personal and professional accountability.

Ancient writers long ago laid the groundwork for analyzing ethical behavior, a groundwork that was founded on a unified concept of human conduct, with man and woman being responsible and accountable for all their acts, not just those that directly affected others in society, and certainly not just those related to their particular livelihood. Over the years we have sought to narrow that accountability for our conduct by developing concepts of "public" versus "private" conduct, by developing a concept of sanctuary, of some place where we are free of intrusions from others. As we fear government, as we fear the loss of personal autonomy and of privacy, we naturally seek to erect barricades behind which we can be ourselves without regard to intrusions by others.

In earlier legal ethics codes, the concept of moral turpitude was used as one measure of the conduct, beyond the directly professional, for which we lawyers were to be held accountable. The ABA Model Rules of Professional Conduct abandoned the concept, however, choosing an avowedly bifurcated view of lawyer conduct, holding, as it were, a lawyer's feet to the fire only for "public" conduct and a very narrow range of private conduct evidencing certain failures of character traits which were deemed to be directly related to the practice of law. No longer were the concepts of ethical lawyer and moral person synonymous, if they ever were, or even compatible, for under the new approach a lawyer might well be an "ethical lawyer" but viewed by the public as immoral.

Admittedly, the concept of "moral turpitude" is not easy to apply. To some, it

appears too vague and uncertain, too susceptible to passing whims of those in control, or to political expediency. When the term "moral turpitude" is uttered, it seems to be spit out, to hang in the air and linger, seemingly infecting all that it touches, drawing up visions of a sanctimonious and narrow-minded person self-righteously berating a pathetic down-at-the-heels loser for the most beastly, repellent, anti-social and deviant behavior. And yet, the concept can remain wonderfully flexible and responsive to the changing needs of soci-

Lawyers regulate themselves more comprehensively than most other professions, and are far more accountable for their actions than is the general unregulated public.

ety to identify certain conduct which, even though not clearly delineated in advance, all members of society should understand will simply not be tolerated by a member of a privileged profession. It is a term fraught with meaning, even though that meaning may not always be amenable to precise advance statement. It is a multi-leveled term that conveys layers of meaning, that seeks to preserve certain core social values. The inability to precisely define it gives it flexibility to live in particular fact situations previously unanticipated. While vague, it conveys meaning as surely as King Lear's (Shakespeare, *King Lear*, Act II, Scene iv, lines 282-284) impassioned howl of rage, suffering, pain and frustration:

I will do such things,
What they are, yet I know not, but they
shall be
The terrors of the earth.

And, despite the apprehension felt by some in using the term "moral turpitude," most bars and courts regularly welcome moral turpitude's first cousin, the concept of "good moral character." Washington's Admission to Practice Rules 3(a) and 5(a), for example, require applicants for admission to the bar to be of "good moral character." If an applicant to the bar is required

to be of good moral character to become a lawyer, is it so illogical to conclude that conduct which evidences a lack of good moral character should subject a lawyer to discipline?

Should a lawyer be subject to discipline for "private" conduct? Lawyers today often bemoan a lack of meaning in their professional lives, complaining that what they do as professionals is not fulfilling or does not meet their personal needs for creativity and completeness. Some lawyers see no inconsistency in themselves engaging in personally abusive behavior to opposing counsel, parties and witnesses, and even their own partners and staff, justifying it under the rubric of zealous advocacy, while bemoaning the decline of the legal profession. Others may lead sterling public-professional lives yet personally abuse their families, leaving them to lead lives of quiet

desperation. But, if lawyers want to feel whole and complete, they need to *be* whole and complete. They cannot be so if they insist on dividing themselves into parts, one increasingly small portion of which is accountable to others, the other portion of which is claimed to be off bounds to others. Aristotle, Plato, and other ancient writers understood that our very essence is social and that by separating ourselves from society we destroy what is at the core of our being.

Should a lawyer be subject to discipline for "private" conduct? Lawyers regulate themselves more comprehensively than most other professions, and are far more accountable for their actions than is the general unregulated public. As fiduciaries and officers of the court, this is both expected and demanded of them. Lawyers, believing in a rule of law, also in fact overwhelmingly meet their ethical and legal obligations. Only rarely, for example, do they violate such bedrock ethical principles as their duty to maintain confidences and secrets, recognizing that confidentiality is as fundamental to a lawyer's ability to serve the public as it is to a pastor's ability to minister to a penitent. Law is a noble profession because for generations lawyers have courageously lived their professional beliefs in a rule of law even when doing so was not popular with

Disciplinary Notices

the general public. Because so much is expected and demanded of lawyers, they are judged by the public not only on what they do as lawyers, but also on the principles and standards they proclaim. To a large extent, the role of a lawyer is to hold people accountable to one another for their conduct, and thus it is wholly appropriate that the public demands that lawyers themselves be accountable to it.

If we lawyers, however, seek professional sanctuary from public accountability in the concept of "private" conduct, we should remember that by doing so our world then shrinks down to the small compass of that sanctuary. We then lose meaning in the larger world and essentially become irrelevant to it. As a legal profession, we need to ask whether that is not the course we are now following by our self-protective narrow definitions of ethical accountability and responsibility. Are we seeking ethical sanctuary from the public and from our own consciences by limiting our ethical duties just as Demosthenes sought sanctuary in the temple of Poseiden from the pursuing army? We should remember that, fearing the public outside the sanctuary, and fearing that the sanctuary would not be honored, Demosthenes ultimately chose to kill himself.

Are we as a profession committing ethical suicide by our attempts to limit our professional responsibility to only an ever-shrinking world of self-designated "public" conduct? If we want to regain the public's and our own self respect, if we want to feel whole as persons, we need to embrace full accountability for our entire lives, not just of disjointed segments. If we do not, we as a profession, fearing and fleeing accountability, will sadly be able to apply to ourselves and to our profession T. S. Eliot's lines from *The Love Song of J. Alfred Prufrock*:

I have seen the moment of my greatness flicker,
And I have seen the eternal Footman hold my coat, and snicker,
And in short, I was afraid. ♪

NOTE

I thank my colleague Randy Beitel for gathering these reported cases.

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

Kelly Seidlitz (WSBA No. 17470, admitted 1987), of Tacoma, has been disbarred by order of the Supreme Court effective June 1, 2000, following a hearing. The discipline is based upon his failure to preserve client funds, committing criminal acts that reflect adversely on his fitness as a lawyer, and failure to diligently represent and communicate with several clients.

Matter 1: Mr. Seidlitz represented a mother and her two minor children regarding injuries from an automobile collision. In June 1994, with the mother's permission, Mr. Seidlitz settled the children's claims. Court rules require that minors' settlement funds are deposited into the court registry, and that a petition be filed for court approval of the settlement. Mr. Seidlitz left the checks in his client file and did not deposit them in the court registry. In November 1994, a doctor who had treated the children learned of the settlement payments and contacted Mr. Seidlitz. The insurance company canceled the first checks and issued new checks that included the doctor as a payee. On January 12, 1995, the doctor endorsed the checks and returned them to Mr. Seidlitz. On January 27, 1995, Mr. Seidlitz filed the required petition asking the court to approve the minors' settlement. He obtained a final order on March 22, 1995 and disbursed the checks on April 11, 1995. The mother contacted Mr. Seidlitz for information regarding the case from June 1994 through February 1995, but he did not return her calls. In October 1994, the client promptly answered interrogatories and returned them to Mr. Seidlitz. He did not serve them on the insurance company until January 1995.

Matter 2: In February 1995, Mr. Seidlitz agreed to represent the husband in an un-

contested dissolution action. He filed the petition for dissolution and the wife accepted service and joined in the petition. The client met Mr. Seidlitz for the first time on July 3, 1995, in court, for the presentation of the final pleadings. The commissioner refused to sign the pleadings because the wife's signature did not appear on the child support order and worksheet. The commissioner took the required testimonial proof and indicated to Mr. Seidlitz that he would sign the pleadings without further appearance by either party when the wife signed the child support order and worksheet. On July 3, 1995, the client moved out of state, leaving a new address and telephone number with Mr. Seidlitz. The wife signed these pleadings the next week. Mr. Seidlitz did not contact the client after his move. Mr. Seidlitz rescheduled the presentation of final documents for July 31, 1995. The wife appeared in court, but Mr. Seidlitz did not. On December 18, 1995, Mr. Seidlitz's client drove from Texas to Mr. Seidlitz's office, which was closed during normal business hours. The client retained new counsel who redrafted the dissolution pleadings and entered them with the court on December 28, 1995.

Matter 3: In August 1994, a daughter met with a Spanish-speaking, nonlawyer legal assistant (assistant) who worked with Mr. Seidlitz. The daughter contacted Mr. Seidlitz's firm because she was told that the office understood Spanish. The daughter asked that Mr. Seidlitz assist her parents, Mexican citizens, in becoming residents of the United States. The assistant did not tell the parents that the fee was non-refundable. The parents paid Mr. Seidlitz \$500 for each parent's representation. The father did not sign a written fee agreement. Although the mother signed a written fee agreement, it was in English, and she did not read or speak English. Mr. Seidlitz's office accompanied the father to get two passport photos, but took no other actions on either case. In October 1994, the assistant requested that the parents make an additional payment, which they refused to make until some work was performed. On February 3, 1996, Mr. Seidlitz told the parents that the assistant had been terminated, he could not locate any of their paperwork, and he had no record of any payments. He

refused to refund their \$1,000 payment. Mr. Seidlitz never located the parents' original immigration documents.

Matter 4: Mr. Seidlitz represented the wife in a dissolution. The parties settled the case on September 12, 1996, and the court entered the decree that day. The decree provided that the client would receive an annuity payment beginning October 1, 1998. On September 16, 1996, opposing counsel sent Mr. Seidlitz a supplement to the decree to allow the payments to begin. Mr. Seidlitz did not obtain his client's signature on the pleading. The decree also provided that the husband would deliver the wife's personal property to his lawyer, and that if the wife had not picked up the property within seven days after notice, she would forfeit the items. Mr. Seidlitz received opposing counsel letter notifying him of the property delivery on September 20, 1996, but Mr. Seidlitz did not notify his client. On October 7, 1996, opposing counsel notified Mr. Seidlitz's office that the property had been returned to the husband and that it belonged to the husband. About October 12, 1996, Mr. Seidlitz's office staff told his client that Mr. Seidlitz had been notified about the property but had failed to notify her, and that the property items had been returned to the husband. Mr. Seidlitz did not explain to the client that his failure to protect her property may have created a conflict of interest between the client and himself.

Matter 5: On April 25, 1997, Mr. Seidlitz agreed to represent the husband in a dissolution action. A motion for temporary orders was scheduled for April 28, 1997. Mr. Seidlitz filed a notice of appearance the next day, and opposing counsel agreed to continue the hearing. From April to mid-June, the client called to determine the status of the temporary orders. Opposing counsel rescheduled the hearing for June 2, 1997. Mr. Seidlitz received notice, but did not notify his client, file paperwork or attend the hearing. At the hearing, the court granted the wife temporary primary residential care of their daughter. On June 3, 1997, opposing counsel sent Mr. Seidlitz a copy of the temporary order. Mr. Seidlitz did not send a copy to his client. In mid-June, the client learned of the order from his wife and re-

quested that Mr. Seidlitz withdraw from the case and refund the client's \$1,000 retainer. Mr. Seidlitz did not withdraw from the case or refund the client's money. Mr. Seidlitz did not communicate with the client after this and took no further action on the case, except to file a response to the petition after receiving a motion for default. The client settled the case on his own in March 1998. The client had to demonstrate that Mr. Seidlitz refused to withdraw from the case before the court would allow the agreed settlement to be entered.

Matter 6: On June 11, 1996, Mr. Seidlitz settled a personal injury case for a client. On June 17, 1996, the insurance company lawyer mailed Mr. Seidlitz three checks or warrants totaling \$25,000 and a release. One of the checks was payable to the client, Mr. Seidlitz and a doctor who had treated the client. The doctor's bill equaled approximately the amount of the check, and he had filed a lien against the settlement. Mr. Seidlitz deposited the check into his bank account without the doctor's permission or endorsement, and did not pay the doctor's bill. In late August 1996, the doctor learned of the settlement and hired a lawyer to contact Mr. Seidlitz. On September 4, 1996, Mr. Seidlitz issued a check to the doctor for a portion of the amount of the bill, but did not pay the remaining portion of the bill. On October 16, 1997, the bank paid the doctor the remaining portion of the bill because it accepted the check for deposit without the doctor's endorsement.

Matter 7: Mr. Seidlitz represented three clients who were injured in an April 1996 automobile accident. In July 1996, Mr. Seidlitz settled the claims. One claim was settled for \$7,261, even though the client did not consent to settle for less than \$7,500. In late November 1996, Mr. Seidlitz sent the clients their settlement statements, which listed holdbacks for bills that the clients did not owe and that Mr. Seidlitz did not pay. The clients never received the held monies. In December 1996, the clients faxed Mr. Seidlitz a letter detailing mistakes they believed were in the settlement statements and listing the amounts they expected to receive. Mr. Seidlitz did not respond to the letter and paid himself in December 1996. Mr. Seidlitz sent the

clients their portions of the settlement in January 1997. The clients again disputed the amounts they received. Mr. Seidlitz did not respond.

Matter 8: Mr. Seidlitz settled a client's personal injury claim for \$11,000. The insurance company issued a check on March 25, 1998 payable jointly to the client, Mr. Seidlitz and a doctor. Mr. Seidlitz deposited the check without the doctor's endorsement or permission. On April 2, 1998, Mr. Seidlitz had the client sign a handwritten disbursement statement that included a \$3,796 holdback for the doctor, which Mr. Seidlitz never paid. The client tried to discuss the bill with Mr. Seidlitz from April 1998 through September 1998, but Mr. Seidlitz did not return the client's calls.

Matter 9: Mr. Seidlitz settled a client's personal injury claim for \$20,000. The check was made out to the client, Mr. Seidlitz and a doctor. Mr. Seidlitz deposited the check without the doctor's permission or endorsement. Mr. Seidlitz disbursed some of the money to the client without a settlement statement. Mr. Seidlitz did not pay the \$1,200 in medical bills. The client paid the medical bills and then asked that Mr. Seidlitz pay her \$1,200 more from the settlement funds. Mr. Seidlitz did not communicate with the client, but sent her \$807.50 with no explanation.

Matter 10: On February 25, 1997, Mr. Seidlitz settled a personal injury claim for a father and his minor son. He sent the clients a release and told them that when the insurance company received the signed releases, they would send the settlement checks. The clients signed and returned the releases, but never heard from Mr. Seidlitz. Unbeknownst to the clients, Mr. Seidlitz received the checks. The checks were made out to Mr. Seidlitz and the clients. The checks were deposited into Mr. Seidlitz's bank account with the clients' names written on the back. In October 1997, the clients learned from the insurance company that the money had been sent to Mr. Seidlitz. After several phone calls and letters from the clients and the Bar Association, Mr. Seidlitz sent the clients two checks and a settlement statement. The settlement statement indicated a \$2,476 holdback for

a doctor's bill. Mr. Seidlitz did not pay the doctor's bill.

Matter 11: On June 6, 1997, the Supreme Court notified Mr. Seidlitz that his license to practice law was suspended for failure to pay his Bar Association dues. The Office of Disciplinary Counsel also sent Mr. Seidlitz a letter regarding his suspension. Mr. Seidlitz received both notices. Mr. Seidlitz sat as a pro tem Pierce County District Court judge on eight occasions prior to reinstating his license on June 24, 1997. RCW 3.34.060(a) and 3.34.130(1) require that a person must either be elected to serve as a district court judge or be a lawyer admitted to practice in the state of Washington to be eligible to serve as a pro tem judge.

Matter 12: A client not fluent in English retained Mr. Seidlitz to collect a past due \$10,000 loan. Mr. Seidlitz agreed to a \$1,500 fee to be paid in installments. He wrote three one-page letters in August and October 1994, and did no other work on the client's case. The client paid Mr. Seidlitz \$750. When the client determined that Mr. Seidlitz had only written three letters, he requested a refund, which Mr. Seidlitz did not provide.

Matter 13: Mr. Seidlitz failed to respond to Disciplinary Counsel's requests to respond to these grievances. Additionally, he failed to appear for a scheduled audit. Mr. Seidlitz also failed to respond to appear for a deposition, after being served with a subpoena.

Mr. Seidlitz's conduct violated RPCs 1.3, requiring lawyers to diligently represent clients; RPC 1.4(a), requiring lawyers to keep clients informed of the status of their cases and promptly comply with reasonable requests for information; RPC 1.14, for failing to properly preserve clients property by depositing client funds into a trust account and keeping records of all transactions; RPC 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation; RPC 5.3, requiring lawyers to adequately supervise nonlawyer assistants; RPC 1.1, requiring lawyers to provide competent representation; RPC 1.7, prohibiting representing a client if the representation will be materially limited by the lawyer's own in-

terests; RPC 1.15, requiring lawyers to protect a client's interests when withdrawing from representation; RPC 8.4(b), prohibiting committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects (theft); RPC 1.2(a), requiring lawyers to abide by a client's decision whether to settle a case; and RLD 2.8, requiring lawyers to cooperate with Bar Association requests for information regarding grievances or other matters under investigation.

Joy McLean represented the Bar Association. Mr. Seidlitz represented himself. Michael Downes was the hearing officer.

Suspended

Joseph Vanairsdale (WSBA No. 11994, admitted 1981), of Thurston County, has been suspended for 12 months, effective June 23, 2000, by order of the Supreme Court approving a stipulation. The discipline is based upon his closing his office without notifying his clients.

Matter 1: In April 1991, Mr. Vanairsdale agreed to collect a judgment for a client. He worked on the case for several years, but never completed it. In February 1996, he ceased practicing law without notifying his clients.

Matter 2: In 1991, Mr. Vanairsdale represented the husband in a dissolution. In March 1994 he filed a response to the wife's dissolution petition, and in July 1995 he sent proposed findings of fact, conclusions of law and decree of dissolution to the wife. In November 1995, the clerk dismissed the petition for lack of prosecution. The notice indicates that Mr. Vanairsdale received notice of the clerk's action, but he did not notify his client. In February 1996, Mr. Vanairsdale stopped practicing law without notifying his clients.

Matter 3: In February 1995, Mr. Vanairsdale agreed to probate his client's mother's estate. He filed the will in November 1995, but did not complete the probate. The client was unable to contact Mr. Vanairsdale until January 22, 1996, when he terminated Mr. Vanairsdale's services and requested that his file be returned. Mr. Vanairsdale also represented this client in a rental dispute related to property the client owned. The

parties settled the dispute and Mr. Vanairsdale deposited \$450 into his trust account. In February 1996, he ceased practicing law without notice to his clients. He was not sure what happened to the client's money.

Matter 4: In December 1995, Mr. Vanairsdale agreed to handle an estate. He filed the initial pleadings in February 1996 and then closed his law practice without notice to the clients.

Matter 5: In July 1993, Mr. Vanairsdale represented the wife in a dissolution action. In November 1993, he filed the client's petition and agreed orders. In March 1994, the court entered the decree. Mr. Vanairsdale did not complete the QDRO, necessary to allow his client to receive her portion of the husband's pension, and a note and deed of trust securing payment of the client's portion of the equity in the home. The client called Mr. Vanairsdale about these matters several times. In November 1994, he told the client he would file the QDRO within a week, but did not do so.

Matter 6: In February 1991, Mr. Vanairsdale agreed to probate his client's mother's estate. He filed the will and advised the client that the probate did not need to be finalized until she wanted to sell the house. In September 1995, the client decided to sell the house and directed Mr. Vanairsdale to complete the probate. In December 1995, he sent the client pleadings to sign and she returned them to him. He did not file anything prior to ceasing his law practice.

By failing to diligently represent his clients and closing his law office without notifying his clients, Mr. Vanairsdale's conduct violated RPC 1.3, requiring a lawyer to diligently represent clients; RPC 1.4(a), requiring lawyers to keep clients informed about the status of their cases; and RPC 1.15(d), requiring lawyers to protect their clients' interests upon withdrawal from a matter. By failing to deliver the settlement funds to a client, Mr. Vanairsdale's conduct violated RPC 1.14(b), requiring lawyers to preserve client funds in their possession and to deliver those funds upon request.

Joanne Abelson represented the Bar Association. Mr. Vanairsdale represented himself. ☐

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The Year in Review

by Richard C. Eymann and Jan Michels

The WSBA enjoyed a productive and eventful year driven by the adoption of the Long-Range Strategic Plan and its 11 strategies, and culminating in Celebration 2000. Highlights of the year include:

The Practice of Law Defined. After decades of discussion and a year's debate over a suggested court rule, the final recommendation for the definition of the practice of law was submitted to the Supreme Court. This is a threshold action to protect the public and the profession in the new age of electronic and fast-changing market forces.

Discipline Backlog Eliminated. As of June 30, 2000, there are no pending pre-2000 investigations. The Board also developed a diversion recommendation, and began a revision and simplification of the Rules for Lawyer Discipline.

Electronic Communication and Internet Culture Firmly

Established. A WSBA web presence has become a way of life! In one year, the WSBA achieved a substantial web presence; collected e-mail addresses for 40 percent of our members; and implemented listserves, forums and distributors' groups that keep the WSBA, bar leaders, sections and committees in touch with each other and the latest news.

Diversity Emphasized. This year we reached toward inclusion with two town meetings devoted to diversity issues, a special governors' outreach effort, and the president's proposal to add a diversity seat to the Board. These efforts moved the WSBA toward its goal of leadership that reflects the diversity of the bar.

Long-Range Strategic Plan Made Concrete.

While some long-range plans sit on shelves, the Board of Governors and the Long-Range Strategic Planning Committee spent the year developing strategies and action plans to achieve the 11 goals of the 1999 Long-Range Strategic Plan. The 2000-2001 Operational Plan is posted on the WSBA website (www.wsba.org), to establish our accountability to the "Raised Bar" members described.

Customer Service Orientation

Stressed. Internally, the WSBA continues its drive to be there for its members. We re-engineered the license renewal process, created an intranet so all staff have access to up-to-date information, began accepting credit cards for payment of license fees, and developed a comprehensive program to thank the many volunteers who support the WSBA.

Year 2000 Celebrated. In a gathering of judges, lawyers, bar leaders and the access to justice community, we all

celebrated the new millennium together and shared our goal of "Working Together to Champion Justice." Stories of this fabulous event will reverberate for years to come.

Death Penalty Reviewed. The Board of Governors weighed the issues of adequate representation, due process, and death penalty safeguard procedures to determine that Washington's death penalty system is basically sound, but is in need of specific review in four areas. The Board unanimously called on Governor Locke to conduct a careful study of defenders' compensation and qualifications, statewide uniformity, impact on local budgets, and federal court reversal rates.

The 1999 – 2000 Bar year was one of hard work on the issues of diversity, strategic planning, public legal education, and discipline improvements. It was also a year of rigorous debate on the practice of law, a death penalty moratorium, and governance. The WSBA has taken bold actions and made real progress on its 11 strategic goals. The finances, organization and staff are stable and productive. 1999-2000 was a good year.

Financial Highlights for Fiscal Year 1999

The Washington State Bar Association ended the fiscal year (October 1, 1998 through September 30, 1999) on target with its budget. The budget provided for a loss in order to use some of the reserves built up in previous years before requiring an increase in member license fees or other sources of revenues. We received an unqualified opinion on our financial statements from our auditors.

The WSBA's fiscal goals are to be a financially strong institution; to be accountable to our members and the public; and to use our resources wisely in ways that accomplish our mission. In order to maintain a sound reserve for future years as recommended by our auditors, member license fees required to fund the WSBA's activities in the future were forecasted and set in July 1999.

Financial Results

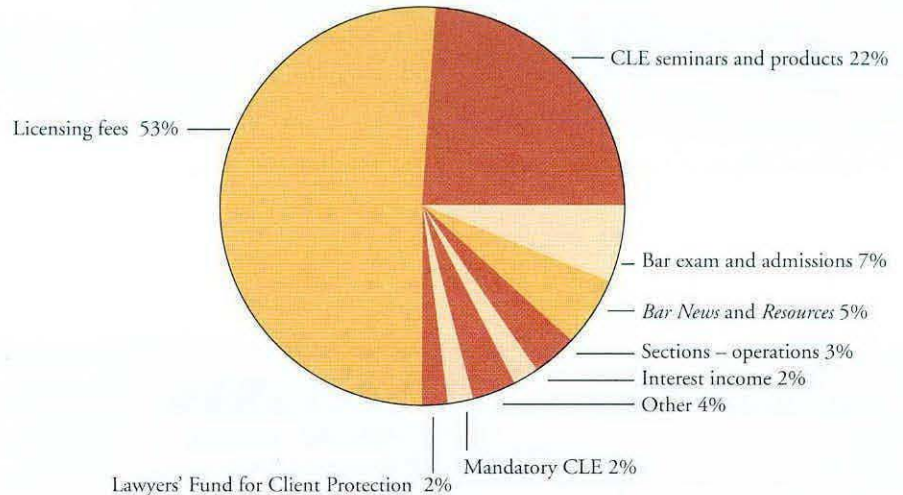
The net loss for fiscal year 1999 of \$300,823 was less than the budgeted target of \$309,656. About \$284,000 of this amount reduced the general fund reserve, as planned. At year end, the general fund reserve of about \$1,300,000, was 15.6% of general fund operating expenses, above the target of 8%.

CLE programs and products had a loss of \$106,252, compared to a budgeted gain of \$149,000. This loss was fully funded by the CLE fund balance built up in previous years. Providing CLE opportunities for members is self-funded by seminar registration fees, sales of deskbooks, etc. The remaining CLE fund balance is about \$500,000. No member license fees were used to support CLE activities.

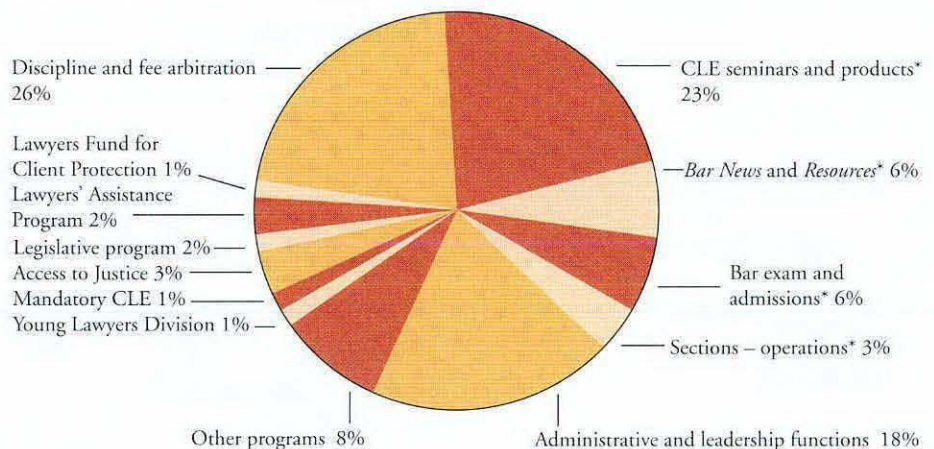
The WSBA's 23 sections ended the fiscal year with a combined net profit of \$10,560, increasing their combined fund balance to \$550,000. Sections are a voluntary activity for WSBA members and are fully self-supporting through section dues, and fees for products and services. No member license fees were used for section activities, and all net income from sections is carried forward in each section's fund balance for use by that section in future years.

The Lawyers' Fund for Client Protection had net income of \$79,000, which is available for use in future years.

Percentage of 1999 Revenues Collected from Various Sources



Percentage of 1998 Expenses Used by Activity (*activity is self-funded)



The Revenue chart (above top) shows the percentage of revenues collected from various sources.

The Expenses chart (above lower) shows the percentage of total expenses used for each regulatory activity and member service we perform. Regulatory activities such as discipline and fee arbitration, random audits of trust accounts, mandatory continuing legal education administration, licensing of members, administration of the office, and leadership activities are funded by member license

fees. The chart identifies major programs that are entirely or substantially self-funded, including CLE seminars and products, *Bar News*, the *Resources* directory, the bar exam and admissions, and section activities.

The Statement of Activities lists revenues and expenses by program.

A complete copy of the audited financial statements and auditor's report is on the WSBA website, www.wsba.org. If you would like a copy mailed to you, please contact Pat Dieken at patd@wsba.org or 206-727-8241.

Statements of Activities

	Year ended September 30, 1999			Year ended September 30, 1998		
	Revenues	Expenses	Revenues (under) over expenses	Revenues	Expenses	Revenues (under) over expenses
Unrestricted						
Licensing fees	\$5,820,922	\$ —	\$5,820,922	\$5,407,586	\$ —	\$5,407,586
Access to Justice	50,611	335,712	(285,101)	14,500	245,562	(231,062)
Administration	201,053	1,151,514	(950,461)	250,678	1,044,664	(793,986)
Bar examination and admissions	779,374	666,351	113,023	751,114	589,996	161,118
Audits (random and for cause)	—	123,168	(123,168)	—	138,490	(138,490)
<i>Bar News</i>	458,206	644,297	(186,091)	400,973	615,967	(214,994)
Continuing legal education – publications	624,727	635,207	(10,480)	699,555	608,931	90,624
Continuing legal education – seminars	1,799,480	1,895,252	(95,772)	1,785,725	1,743,604	42,121
Communications	33,254	302,441	(269,187)	11,377	161,118	(149,741)
Convention	—	15,998	(15,998)	—	—	—
Court rules	—	31,589	(31,589)	—	20,464	(20,464)
Discipline	76,086	2,804,250	(2,728,164)	53,874	2,425,663	(2,371,789)
Fee arbitration	5,850	60,299	(54,449)	4,200	33,427	(29,227)
Computer bulletin board service	—	—	—	7,730	66,257	(58,527)
Lawyers' Assistance Program	25,310	271,026	(245,716)	16,759	245,209	(228,450)
Lawyers practice assistance program	16,096	211,534	(195,438)	—	173,827	(173,827)
Law related education	—	26,967	(26,967)	—	—	—
Leadership	11,100	451,289	(440,189)	2,776	391,532	(388,756)
Legislative	—	214,459	(214,459)	—	176,838	(176,838)
Local bar support	1,479	21,498	(20,019)	1,082	14,033	(12,951)
Mandatory continuing legal education	194,908	144,783	50,125	153,082	133,497	19,585
Membership records	47,703	448,429	(400,726)	42,695	396,871	(354,176)
Professional responsibility program	—	65,140	(65,140)	—	—	—
<i>Resources</i> directory	130,487	58,253	72,234	122,255	67,645	54,610
Sections – administration	153,968	132,283	21,685	142,229	131,652	10,577
Sections – operations	375,815	365,255	10,560	432,252	353,494	78,758
Young Lawyers Division	25,090	134,255	(109,165)	39,969	137,806	(97,837)
Other	—	—	—	—	12,694	(12,694)
Total Unrestricted	10,831,519	11,211,249	(379,730)	10,340,411	9,929,241	411,170
Restricted						
Lawyers' Fund for Client Protection	229,553	150,646	78,907	223,192	207,636	15,556
Total	\$11,061,072	\$11,361,895	(\$300,823)	\$10,563,603	\$10,136,877	\$426,726

Did You Know...

The **WSBA Service Center** handles close to 4,000 calls and more than 500 e-mails per month. The Service Center plays an important role in helping to fulfill the mission of the WSBA: "...[to] serve its members and the public," and welcomes the opportunity to be of assistance to members and to the public. Call 800-945-WSBA or 206-443-WSBA, or e-mail questions @wsba.org.

Approximately 400 lawyers, 40 judges and 6,000 students participated in **Law Week 2000** in May. Lawyers and judges in 14 counties made classroom visits to discuss current legal issues and specific areas of the law.

Low-income residents of our state benefited from assistance from more than 4,200 attorneys volunteering through **pro bono programs**. (This number does not include lawyers providing fee or reduced-fee services outside organized programs.)

Washington has 32 **legal service programs**, including pro bono programs, specialized legal service programs, Northwest Justice Project and Columbia Legal Services.

Fourteen attorneys (14) participated in the **Emeritus Program**, which creates a limited license status for attorneys otherwise retired from the practice of law. The program's goal is to encourage pro bono participation by experienced attorneys and judges who want to contribute to access to justice-related efforts.

The **WSBA website** (www.wsba.org) currently has more than 3,000 "pages." The Job Center and Lawyer Search continue to be the most popular pages. For ethics opinions, *Bar News* (including current and past articles), consumer information pamphlets, section and committee information, a calendar of CLE seminars and legal events, links to numerous law-related websites and more – log on to www.wsba.org!

The WSBA was instrumental in establishing the **Council on Public Legal Education**, which is now developing a comprehensive, long-term strategy for making sure all Washington citizens are informed about their legal rights and responsibilities. The group plans to build partnerships with school districts, community groups, state agencies and other organizations that are already involved in educating the public, as well as take on new projects such as a gateway legal information website.

Approximately 1,240 members participate in **WSBA committees, boards and panels**.

The Board of Governors appointed 75 members to serve on boards, committees, commissions and task forces of **outside organizations**.

WSBA-CLE, in conjunction with 17 sections and the Young Lawyers Division, presented 112 seminars for more than 10,800 participants. More than 800 WSBA members ably served as faculty, program chairs and section CLE liaisons. Programs were presented in Aberdeen, Bellevue,

Kennewick, Mount Vernon, Olympia, Port Hadlock, Seattle, Skamania, Spokane, Tacoma and Vancouver. Additionally, 10 TELE-CLEs were presented.

The **Lawyers' Assistance Program (LAP)** offers confidential assistance with emotional, drug, alcohol, family, health and other personal problems. From July 1999 through June 2000, LAP had 1,998 contacts with Washington lawyers. LAP's 110 peer counselors throughout the state helped 57 attorneys through peer counseling.

The **Law Office Management Assistance Program (LOMAP)** offers lawyers, especially those in solo or small-firm practice, a wide range of services. These include general "prevention maintenance" reviews; consultation on specific problems; office systems procedures; reference materials for office and practice setup; and referral to consultants or vendors. From July 1999 through June 2000, LOMAP made contact with 7,796 lawyers (this number includes outreach through mailings and presentations, as well as individual consultations).

The **Alternative Dispute Resolution (ADR)** Program includes voluntary fee arbitration and mediation. From July 1999 through June 2000, the ADR program had 1,081 contacts with lawyers and others seeking assistance in resolving disputes (this number includes correspondence as well as phone contacts).

The **Professional Responsibility Program** provides information and assistance in the following areas: 1) Ethics Assistance – a WSBA lawyer assists callers in resolving ethical dilemmas; 2) Informal Opinions – issued by RPC Committee responding to written ethical inquiries from lawyers; 3) Formal Opinions and Published Informal Opinions – ethical opinions issued by the Board of Governors; and 4) Rules of Professional Conduct – rules for ethical conduct promulgated by the Washington State Supreme Court. The Ethics Line took calls from 3,023 lawyers from July 1999 through June 2000 (the Ethics Line number, which is for lawyers only, is 206-727-8284).

The members of the **Lawyer Services Department** continued their outreach to members, making 37 presentations in the past year. These presentations were made to specialty and county bar associations in Auburn, Chehalis, Chelan, Colville, Ephrata, Everett, Goldendale, Longview, Moses Lake, Mount Vernon, Pullman, Richland, Seattle, Spokane, Tacoma, Vashon, Walla Walla, Wenatchee and Yakima. Members of the department also gave internationally attended presentations for meetings held in Seattle, British Columbia, Toronto and Niagara Falls.

The **Washington State Bar Examination** is the only bar exam that still uses, exclusively, practicing members of its bar to write and grade the questions. The WSBA's dedicated Committee of Law Examiners prepares and grades two bar exams each year. Of the 482 applicants who sat

for the bar exam administered in March 2000, 369 passed, for a pass rate of 76.6%. Of the 843 applicants who sat for the bar exam administered in July 1999, 620 passed, for a pass rate of 73.5%.

WSBA membership continues to grow. As of July 1, 2000, there were 21,641 Active members, 3,468 Inactive members, and 644 Judicial members. This compares to 21,141 Active members, 3,192 Inactive members, and 626 Judicial members as of July 1, 1999.

There are currently approximately 950 individuals participating in the WSBA's **Rule 9 Legal Intern Program**.

To promote public confidence and protection of the public, the WSBA administers the **Lawyers' Fund for Client Protection**, which makes discretionary gifts to at least partially compensate clients who have been victims of attorney misappropriation. The Supreme Court assesses each lawyer \$13 annually for the Fund. During fiscal year 1999, the Lawyers' Fund for Client Protection Committee approved gifts from the fund totaling \$132,856. The Committee reviewed 95 applications for 30 lawyers, which is more than twice the number ever considered in any previous year. Of those 95 applications, 56 concerned two lawyers. Fifty-nine (59) applications were approved. Of the denials, 17 were deemed fee disputes, malpractice, or there was no evidence of a dishonest taking of funds; three had received full restitution; 11 were withdrawn for various reasons; and two were deferred.

The WSBA has approximately 8,150 active members participating in its 23 **sections**. The newest section is Labor and Employment Law.

In the period July 1, 1999 through June 30, 2000, **trust account audits** were conducted for 900 lawyers in 113 law firms. Seventy-nine (79) percent of those audited were in compliance. Of those not in compliance, the most frequent violation was unidentified excess of funds in the trust account.

During calendar year 1999, the **Office of Disciplinary Counsel (ODC)** managed a very active prosecutions and investigations caseload. Of Washington's approximately 18,250 active in-state lawyers, one in every 493 (about one-fifth of one percent) was formally sanctioned (disbarred, suspended for discipline, reprimanded or censured). One in every 1,659 (less than one-tenth of one percent) was formally admonished. Or collectively, one in every 380 Washington lawyers (less than three-tenths of one percent) was either sanctioned or admonished. Alternatively, 379 out of 380 (more than 99.7 percent) were not subject to any disciplinary action last year. The ODC continued its active preventative discipline program by making more than 70 presentations around the state, and by writing monthly legal ethics articles published in *Bar News*.

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Fax (206) 292-5901

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has become an associate of the firm.

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Attorneys at Law

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attorney for San Juan County

Susan L. Ferguson

is now of counsel to the firm.

Ms. Ferguson's practice will focus on
real estate, land use, and environmental law.
In addition, the firm continues its practice in
the areas of health care, corporate,
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formerly of Clarke & Dinsdale, LLP
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Of Counsel

Land Use/Environmental

Craig R. Aird

Associate

Estate Planning/Tax

Shelley E. McKinley

Associate

Intellectual Property/Business

Sharon E. Cates

Associate

Litigation

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ANCHORAGE

PORTLAND

SEATTLE

SPOKANE

Calendar

ADR

Training to Be a Professional Mediator
September 28-29 – Seattle. 15 CLE credits, including 1 ethics. By Alhadeff Mediation Services; 206-281-9950.

Professional Mediation Skills-Training Program
October 13-15 & 21-22 – Seattle. 36 CLE credits, including 2 ethics pending. By UW-CLE; 206-543-0059.

BUSINESS

The New Revised Uniform Commercial Code Article 9 (secured transactions)
September 22 – Seattle; September 29 – Spokane & Portland (video seminar). 7.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CONSTRUCTION LAW

Washington Construction Law
September 21-22 – Seattle. 11.75 CLE credits, including 1 ethics. By The Seminar Group; 206-463-4400.

CRIMINAL LAW

Seventh Annual Washington Criminal Justice Institute
September 27-28 – Seattle. 11.75 CLE credits, including 2.5 ethics. By WSBA-CLE and Criminal Law Section, in cooperation with other non-WSBA organizations; 800-945-WSBA or 206-443-WSBA.

ELDER LAW

Problem Solving in Elder Law Practice
September 22 – Portland. 5 CLE credits, including 1 ethics pending. By Oregon State Bar Association; 503-684-7413.

EMPLOYMENT LAW

Affirmative Action Briefing
October 5-6 – Seattle. CLE credits TBA. By National Employment Law Institute; 303-861-5600.

FAMILY LAW

Child Abuse Reporting
September 20 – Portland. 1 CLE ethics credit pending. By Oregon State Bar Association; 503-684-7413.

USURY RATE: The average coupon equivalent yield from the first auction of 26-week treasury bills in August 2000 is 6.339 percent. The maximum allowable interest rate for September 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 <http://www.wsba.org/barnews/>.

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.

Needs of Minority Children in Care
October 17 – Seattle. 1.25 CLE credits pending. By Unified Family Court Training Oversight Committee; 206-205-2674.

GENERAL

Taking and Defending Depositions: Essential Pre-Trial Skills
September 5-7 – Seattle. 18.5 CLE credits, including 2 ethics pending. By National Institute for Trial Advocacy; 800-225-6482.

Fifth Annual Americans with Disabilities Act Workshop
September 8 – Seattle. CLE credits TBA. By The National Employment Law Institute; 303-861-5600.

Winning Strategies for the Successful Private Practitioner
September 8 – Seattle. Also in Spokane and Vancouver via video conferencing. 7.25 CLE credits, including 3.75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EEO in Federal, State and Local Government Conference
September 14-15 – San Francisco. CLE credits TBA. By The National Employment Law Institute; 303-861-5600.

A Blockbuster Term: Recent Supreme Court Constitutional Law Developments
September 15 – Portland. 7 CLE credits pending. By Oregon State Bar Association; 503-684-7413.

Write to the Point: Pack Power into Your Legal Writing with a Plain English Approach
September 20 – Vancouver; September 27 – Spokane. 6.75 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Startups and Beyond: How to Help Grow Technology Companies
September 27 – Seattle. 6 CLE credits pending. By King County Bar Association; 206-340-2578.

INDIAN LAW

13th Annual Western Regional Indian Law Symposium
September 14-15 – Seattle. 13.75 CLE credits, including 1 ethics pending. By UW-CLE; 206-543-0059.

LITIGATION

Skills Training Course
September 6-8 – Seattle. 8 CLE credits per day. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Trials of the Century: Learn Top Trial Techniques
September 21 – Spokane; September 22 – Seattle. 6.75 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

TAX LAW

How to Handle/Resolve Washington State Tax Matters: Working with the Department of Revenue
September 22 – Seattle. 6.5 CLE credits pending. By WSBA-CLE and Tax Section; 800-945-WSBA or 206-443-WSBA.

The WSBA Lawyer Services Department offers these four programs:

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

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

The Professional Responsibility/Ethics Program — 206-727-8284: Lawyers can call a WSBA lawyer for assistance in resolving ethical dilemmas.

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

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

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Washington law practice available in Redmond: practitioner will phase out. Website will soon be available for current listings of practices for sale and potential buyers or parties interested in merger. For information, e-mail louismillman@coldwellbanker.com. Confidential information and consultation. Call 425-467-4180 or 800-459-5860; fax 425-646-5979.

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Renton downtown: Office and secretarial space in building with two attorneys, everything included, some referrals possible. 425-228-8899.

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Mount Vernon office sharing: Two blocks from courthouse, with four lawyers in building. Includes receptionist, conference room, kitchen, voice-mail, phone system, office machines, law library, DSL line. Call Tom at 360-428-7900.

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Preg O'Donnell and Gillett PLLC, an 11-attorney litigation firm emphasizing insurance defense, title and real estate litigation, seeks associate with at least three years' experience in insurance defense and/or construction defect. The successful candidate will be self-motivated, a good writer, and a team player. Please direct your confidential reply to: John Hegna, Office Manager, Preg, O'Donnell and Gillett PLLC, 1215 4th Ave., Ste. 920, Seattle, WA 98161-1008.

Small South King County family law firm seeks associate. Willing to train, prefer some family law experience. Strong people skills and desire to litigate required. Salary flexible and depends on experience. Please fax résumé to 206-575-1744.

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Business transactions and tax associate attorney: Karr Tuttle Campbell seeks a tax and transactions attorney to join its business and finance department. At least two years' experience is preferred. LLM in tax or CPA would be helpful. Candidates must have superior academic credentials and excellent writing and communication skills. Qualified individuals should submit a cover letter and résumé outlining their qualifications to: Carol Anne Nitsche, Director of Human Resources, Karr Tuttle Campbell, 1201 3rd Ave., Ste. 2900, Seattle, WA 98101. Competitive salary, DOE, comprehensive benefits. All inquiries confidential.

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Law office of Luce, Lombino and Riggio PS is seeking attorneys for full-time, part-time and on-call positions. Applicant must be a member in good standing with the WSBA for at least two years. Broad range of legal knowledge preferred. Salary negotiable. Please send or fax résumé to: Hiring Partner; Luce, Lombino and Riggio PS, 4504 Pacific Highway E., Ste. A, Tacoma, WA 98424-2639; fax 253-896-4557.

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Director for Industry Agreements, University of Washington Grant and Contract Services: Bachelor's degree in business or related field, or scientific/engineering/technical field, with minimum five years' experience; advanced or law degree preferred. For details, see <http://www.washington.edu/admin/employment>, Administrative/Management, Ref. P7063.

The City of Federal Way is soliciting qualifications for municipal court commissioner. The court commissioner will be appointed by the municipal court judge and serves at his pleasure. Compensation will be set at approx. \$35/hour (based upon 30 hours per week). To obtain a package, please call 253-661-4049 or visit our website at <http://www.ci.federal-way.wa.us>. Position closes September 15, 2000.

Immigration paralegal: Based in Kirkland, WA, Inteliant is a rapidly growing technical professional services company. We offer competitive salaries and a full benefits package, which includes stock options. Candidates should have a solid background in preparation of business immigration filings including H-1B petitions, Treaty NAFTA applications, and labor certification applications employment-based petitions. Requires a BA/BS degree. Two years' immigration experience is desired and computer skills are a plus. Submit résumé to arlene@inteliant.com or fax to 325-893-9518. Inteliant is an Equal Opportunity Employer.

Labor/employment attorney: Consolidated Freightways Corporation is seeking an experienced employment attorney to work at its new Vancouver, WA, headquarters. Your employment and labor law responsibilities for our 22,000-employee company will include management of employment claims and litigation, and advising management on employment issues. You will work directly with our senior employment lawyer/vice president of human resources. Minimum four years' employment law experience preferred. Candidates need excellent academic credentials, communication and analytical skills, and the ability to work independently in a fast-paced environment. Familiarity with unionized environments a plus. Employment litigation experience strongly preferred. We offer salary commensurate with experience, superior benefits, an informal working environment, and the flexibility to balance work and lifestyle. (Sense of humor definitely a plus.) Consolidated Freightways is a dynamic transportation and logistics company primarily providing less-than-truckload and logistics services throughout

the United States, Canada and Mexico. Visit our website at <http://www.cfwy.com>. Please send your résumé, writing sample and salary requirements to: Paula Craig, Consolidated Freightways, 1621 NW 21st Ave., Portland, OR 97209; fax 503-499-2355, e-mail craig.paula@cfwy.com. No calls please.

Associate attorney position: Established Seattle mid-sized law firm seeks commercial litigation attorney to join its Seattle office. Position entails immediate work in a variety of complex commercial litigation matters. Candidates must have a minimum of two years' litigation experience, high academic credentials as well as communication, writing and client-relations skills. Firm offers tremendous opportunity for professional growth. Please send cover letter and résumé to: John R. Tomlinson, Jr., Barokas Martin Ahlers and Tomlinson, 1422 Bellevue Ave., Seattle, WA 98122; jrt@bmatlaw.com.

Miller Isar, an established regulatory consulting firm serving telecommunications clients throughout the U.S., has an immediate employment opportunity for a director of regulatory compliance. The individual will manage all facets of the firm's compliance practice including: profitability, forecasting compliance practice revenues, managing existing client relationships, project management, performing regulatory research and writing, and developing new business. Successful candidates will possess a law degree, strong management and/or project management skills, excellent research and writing skills, and two years' small business management or law firm experience required. Experience in telecommunications a plus. The position offers a competitive compensation package, benefits, growth potential and a challenging, professional work environment. Qualified individuals should visit our website at <http://www.millerisar.com> and then send a résumé and writing sample

to: Andrew Isar, President, Miller Isar, 3220 Uddenberg Lane, Ste. 4, Gig Harbor, WA 98335.

Escape!! Tired of the I-5 hassle? Want to come to Eastern Washington and join a firm that has been here for over 50 years? We are looking for a lawyer who wants to buy an equity interest in this thriving practice. If you want to experience a small town practice, drop us a line at: WSBA Bar News Box 603, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330.

Attorney: Alaska Airlines is seeking a labor/employment law attorney who will be responsible for the day-to-day interpretation and administration of multiple collective bargaining agreements with the possibility of contract negotiation and/or presentation of arbitration cases. In addition, you will provide guidance to management regarding investigation and administration of discipline and a wide variety of employment questions regarding ADA, FMLA and Title VII. This position requires a strong academic background with excellent verbal and written communication skills, coupled with at least three years' experience, preferably in a corporate environment. This position is based in the multi-cultural aviation and entertainment center of the Pacific Northwest, Seattle, Washington. We offer an outstanding compensation package that includes 401(k), four weeks of paid time off, exciting domestic and international travel benefits, a pleasant nicotine-free work environment, and much more. Please e-mail your résumé in Microsoft Word format with salary requirements to: corporatejobs@alaskaair.com, fax 206-431-7038, or mail to: Alaska Airlines, PO Box 68900, SEAHE-AT, Seattle, WA 98168.

Employment relations attorney: Karr Tuttle Campbell seeks an associate with at least three years' experience in employment relations. Candidates must have superior academic credentials and excellent writing and communication skills. Current Washington State Bar membership required. Qualified individuals should submit a cover letter, résumé outlining their qualifications, and a writing sample to: Carol Anne Nitsche, Director of Human Resources, Karr Tuttle Campbell, 1201 3rd Ave., Ste. 2900, Seattle, WA 98101. Competitive salary, DOE, comprehensive benefits. All inquiries confidential.

We seek an attorney with experience in real estate and litigation. Estate planning, business law, or immigration a plus. Great for an established

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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., October 1 for the November 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.

attorney or an attorney from out of state. Mail résumé to: Attn: James, 5108 196th St. SW, Ste. 300, Lynnwood, WA 98036; e-mail jamesrobert@jamesrobertdeal.com.

Ogden Murphy Wallace PLLC, a downtown Seattle law firm, is looking for an associate to join its environmental practice group. The successful candidate should have a minimum of two years' experience working with contaminated site cleanup, property redevelopment, environmental litigation and related practice areas. Current WSBA membership required. Please send cover letter, résumé and writing sample to: Bill Joyce, Ogden Murphy Wallace PLLC, 1601 5th Ave., Ste. 2100, Seattle, WA 98101.

Associate position: Associate attorney sought by well-established, medium-sized, general practice law firm in Kitsap County. Please send brief description of professional goals, résumé, references and writing sample to: Associate Attorney Recruitment, 600 Kitsap St., Ste. 202, Port Orchard, WA 98366.

Marston & Heffernan PLLC, an AV-rated firm located in downtown Redmond park setting seeks associate(s) with minimum two years' experience for its construction law practice involving complex contract and construction defect litigation. Strong research, writing and client-relations skills required. Please send résumé to: Jackie Perrigoue, Marston and Heffernan PLLC, Anderson Park Bldg., 16880 NE 79th St., Redmond, WA 98052-0902; jackiep@marstonheffernan.com.

Patent litigator and patent attorney positions: Klarquist Sparkman LLP seeks talented attorneys with patent litigation experience as well as patent attorneys with a background in computer science, electrical engineering, biological sciences, bioinformatics or mechanical engineering. Strong academic record and at least two years' experience preferred. We offer a first-class IP practice, Fortune 500 clients, percentage of billing compensation plus attractive retirement plan, mid-sized boutique firm environment, and most importantly, a "life" apart from work in a beautiful and "livable" region. Send résumé in confidence to: Ramon A. Klitzke II, Klarquist Sparkman Campbell Leigh and Whinston LLP, 121 SW Salmon St., Ste. 1600, Portland, OR 97204; phone 503-226-7391; e-mail ray.klitzke@klarquist.com.

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.

Quality attorneys sought to fill high-end permanent and contract positions in law firms and

companies throughout Washington. Contact Legal Ease, LLC by phone 425-822-1157, fax 425-889-2775, e-mail legalease@legalease.com or visit us on the Web at <http://www.legalease.com>.

Venture lawyers wanted: Van Valkenberg Furber Law Group, a focused Seattle-based boutique, seeks lawyers experienced in representing startup and emerging growth ventures (e.g., private and public equity financings, M&A, technology licensings, business development deals and strategic alliances). Ideal candidates will have superior academic credentials and a minimum of two years' relevant experience working with VC-backed technology companies. We work closely and proactively with visionary entrepreneurs and their financial and strategic partners. Our work environment is informal, dynamic and challenging. We offer tremendous opportunities to develop project management, leadership, financial and business development skills. And our compensation packages reflect our win/win philosophy. Qualified individuals should check out our website at <http://www.vvflg.com>, and then send a brief e-mail and résumé (no phone calls please) to Brad Furber at brad@vvflg.com. EOE. All inquiries held in strict confidence.

Corporate attorney: Consolidated Freightways Corporation is seeking an experienced corporate transactional attorney to work at its new Vancouver, WA, headquarters. Reporting to the senior vice-president and general counsel, you will handle the full range of corporate legal matters, including securities, finance, corporate governance, business transactions, merger and acquisitions, asset purchases and sales, benefits, trademarks, contracts and technology licensing issues. Minimum four years' business law experience preferred. Candidates need excellent academic credentials, communication and analytical skills, and the ability to work independently in a fast-paced environment. We offer salary commensurate with experience, superior benefits, an informal working environment, and the flexibility to balance work and lifestyle. (Sense of humor definitely a plus.) Consolidated Freightways is a dynamic transportation and logistics company primarily providing less-than-truckload and logistics services throughout the United States, Canada and Mexico. Visit our website <http://www.cfwy.com>. Please send your résumé, writing sample and salary requirements to: Paula Craig, Consolidated Freightways, 1621 NW 21st Ave., Portland, OR 97209; fax 503-499-2355, e-mail craig.paula@cfwy.com. No calls please. CF is an equal opportunity employer.

Associate attorney position: Barokas Martin Ahlers and Tomlinson is seeking applications for civil litigation and business transactions practice. Entry-level position for applicant with strong academic achievement and excellent oral and writing skills. Please send cover letter and résumé to: John R. Tomlinson, Jr., Barokas Martin Ahlers and Tomlinson, 1422 Bellevue Ave., Seattle, WA 98122; jrt@bmatlaw.com.

Eisenhower and Carlson PLLC seeks to fill the following associate attorney positions (excellent academic and writing skills required): 1) for its Tacoma office, an attorney specializing in employ-

ment law with two-plus years' experience; and 2) for its Seattle office, an attorney specializing in litigation with two-plus years' experience. Please send cover letter and résumé to: Patsy Strong, Hiring Coordinator, 1201 Pacific Ave., Ste. 1200, Tacoma, WA 98402.

The finance and commercial transactions department in the Seattle office of Davis Wright Tremaine is seeking a lawyer with at least three years' experience. This practice area involves a wide range of challenging and complex commercial transactions including: secured and syndicated lending; international trade finance; vessel and corporate aircraft sales; equipment leasing, e-commerce and credit card merchant agreements; and computer hardware and software distribution and licensing. The firm's principal clients in this practice area include major international financial institutions and software companies. Please send résumé, law school transcript and brief writing sample to: Lisa Hay, Davis Wright Tremaine LLP, 1501 4th Ave., Ste. 2600, Seattle, WA 98101-1688.

Associate: The 100-plus lawyer firm of Garvey, Schubert & Barer seeks at least one associate to join its labor and employment practice, performing work initially at a two- to five-year associate level. Preferred are candidates with some labor and employment experience, excellent writing skills, high academic performance and a sense of humor. Send résumé and cover letter to: Carol Alberthal, Recruiting Coordinator; Garvey, Schubert & Barer, 1191 Second Avenue, 18th Fl., Seattle, WA 98101-2939.

Marger Johnson and McCollom PC: This full-service IP firm with offices in Portland, OR, 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, P.C., 1030 SW Morrison St., Portland, OR 97205.

Houser Martin Morris has been retained by a U.S. subsidiary of an international high-tech corporation to find an associate counsel to manage the contracts division of their growing legal department. This position's responsibilities include: general business work with emphasis in intellectual property, advertising and distribution; daily contact with Japanese parent company and its European subsidiaries. Requirements: excellent drafting and negotiating skills; minimum five years' solid transactional experience in a law firm or company; ability to mentor junior lawyers and paralegals; ability to thrive in a fast-paced, informal environment. Software licensing and/or entertainment law experience would be a plus. Contact: Victoria Harris, principal, Houser Martin Morris, PO Box 90015, Bellevue, WA 98009; fax 425-453-8726, vharris@houser.com.

Energy Northwest, located in Richland, Washington, has an opening for an in-house attorney. Energy Northwest is a public operating agency engaged in the generation of electricity and energy-related services. Five years' experience and demonstrated record of academic excellence are preferred. Applicant must also demonstrate in-depth knowledge of Washington statutory and case law relating to the following: municipal law, procurement/contracts/UCC, employment, labor, and industrial safety and health. Salary is \$64-80K. Energy Northwest is an EEO employer. Please send résumé to: Energy Northwest, Attn: Mona Ramos, PE07, PO Box 968, Dept. 944-NB, Richland, WA 99352; fax 509-372-5205, e-mail mtramos@wnp2.com.

Busy downtown Seattle plaintiff's personal injury attorney seeks full- or part-time associate. Two years' experience; Law Review preferred. Send résumé to: 500 Union St., Ste. 645, Seattle, WA 98101.

Executive Director – King County Dispute Resolution Center: Manage a well-established community organization delivering dispute resolution services, including an expansive district court mediation program and training program. This full-time position reports to the Board of Directors. Salary: \$42,000 and up, DOE. Target start date: January 1, 2001. Duties include fiscal management and development of funding resources; building relationships with courts, social and community service organizations and governmental agencies; overseeing volunteers and staff; and serving as the Center's lead spokesperson. Requirements: Minimum five years' management experience in non-profit and/or public or private social services organizations with paid and volunteer staff; certified (or certifiable within 18 months) mediator; commitment to mediation, conflict resolution and consensus building. Must be bondable. Submit cover letter describing your interest in the position, plus résumé reflecting job history by Sept. 22 to: Executive Director Search, Attn: Richard Manning, 500 Union St., Ste. 925, Seattle, WA 98101. EOE.

Associate general counsel: Onyx Software is currently seeking an associate general counsel, based out of our London office, who will be responsible for legal affairs in Europe. The primary focus will be on software licensing and day-to-day business operations of Onyx's European subsidiaries, as well as structuring, drafting, negotiating and closing software agreements with customers and partners in Europe. Ideal candidate will have a minimum of four years' relevant experience, including a background working in house for a U.S. company. Fluency in either German or French a major plus. To learn more about Onyx Software and submit a résumé, please contact us at <http://www.onyx.com/careers>.

Successful, small firm seeks business/real estate attorney. Brown Davis and Roberts, PLLC is a five-attorney firm located in Gig Harbor. Our practice is limited to business, real estate and estate planning matters throughout Western Washington. This is an opportunity for an enthusiastic

attorney to assist in our growing areas of business and real estate. Aptitude and experience in these fields are required. More important is a positive attitude and willingness to function with a team. We have developed a great atmosphere in which to work, and look forward to a team member to complement it. Please respond to steve@bdrllaw.com or Brown Davis and Roberts PLLC, 7525 Pioneer Way, Ste. 202, Gig Harbor, WA 98335.

Associate: AV-rated nine-attorney Everett law firm seeks business lawyer with a minimum of two years' experience, familiar with all aspects of commercial and business transactions. Experience in corporate, tax, estate planning and real estate desirable. Send résumé and writing sample to: Susan Anderson; Bell and Ingram, PS, PO Box 1769, Everett, WA 98206; e-mail sanderson@bellingram.com. All inquiries will be held confidential. No phone calls, please.

Associate positions: Betts, Patterson and Mines PS seeks an associate with experience in construction defect litigation. The firm seeks also an associate with experience in insurance coverage matters. Individuals with experience in either areas desiring to do first-rate legal work on challenging matters in an environment that fosters and rewards teamwork should apply. Excellent analytical and writing skills required. Send résumé, list of references, and self-edited writing sample to: Lori L. Guzzo; Betts, Patterson and Mines PS, 1215 4th Ave., Ste. 800, Seattle, WA 98161-1090.

McIntyre & Barns, a small health care/medical malpractice firm is seeking a litigation attorney for assistance in a growing practice. This position offers the opportunity for challenging, satisfying work at a progressive law firm. Excellent academic credentials and writing skills required. At least two years' litigation experience required. Send résumé and writing sample to: Lee Barns, 1325 4th Ave., Ste. 1700, Seattle, WA 98101.

CGU/North Pacific Insurance Company seeks an attorney with at least three years' litigation experience for its Bothell, WA, office. Insurance defense experience preferred. Please send résumé to: Steven L. Abel, 3330 Monte Villa Pkwy., Ste. 200, Bothell, WA 98021-8972.

Part-time attorney sought: I'm (happily) busy and need a lawyer to help with my caseload. My practice includes consumer and business clients in the creditor-debtor area. The work involves some litigation, lots of client contact. Position may be either contract or salaried, depending on the situation. Please fax résumé to Sandy, 206-224-3463.

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Contract appellate attorney: Victories in the Washington State Supreme Court, Court of Appeals and Ninth Circuit. Excellent work, modest rates. References. M. Scott Dutton. 206-324-2306, fax 206-324-0435.

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.

Complex litigation? We can co-counsel or pay contingent referral for complex litigation, including constitutional law, civil rights, employment law, commercial litigation, personal injury and workers' compensation. We have successfully litigated in the U.S. Supreme Court, and in federal and state trial and appellate courts in several western states. AV-rated law firm practicing in Oregon and Washington. Call Willner Wren Hill & U'Ren, LLP, 800-333-0328 or 503-228-4000.

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

China legal representation — the L&A law firm: China lawyers, notaries, agents for patents, trademarks and copyrights. China's largest, full-service, private law firm with offices throughout China. Attorney Edward E. Lehman. Phone 8610-6532-3891; fax 8610-6532-3877; e-mail lalaw@chinalaw.cc; website <http://www.chinalaw.cc>.

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

Contract attorney: experienced, accomplished trial and appellate attorney available. Over 15 years' experience. Litigation and writing emphasized. References, reasonable rates. M. Scott Dutton, 206-324-2306, fax 206-324-0435.

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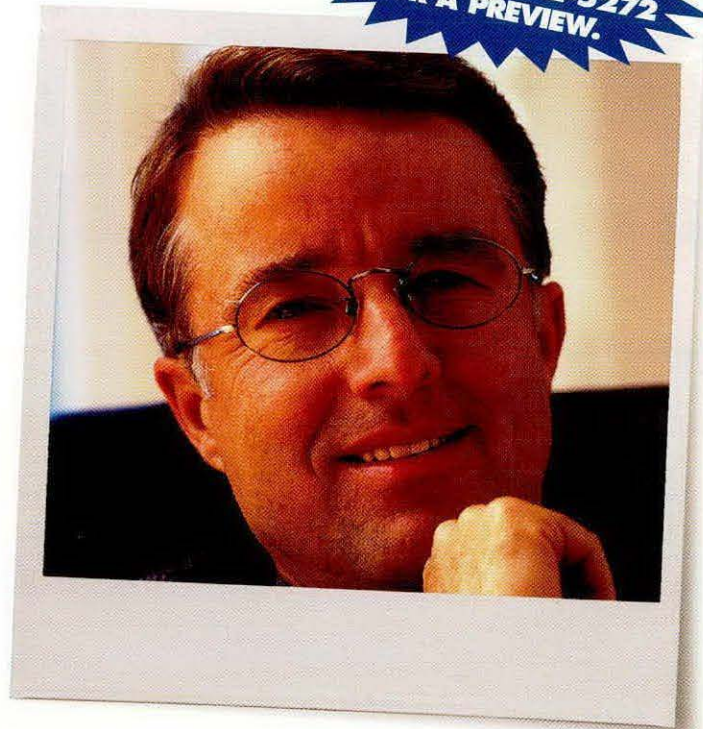
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Experienced house-sitter: available September-June. Local attorney seeks Seattle-area house-sitting position. Three months or longer. Pets OK. References available. 206-324-2751, voicemail box 2, housesit@hotmail.com.

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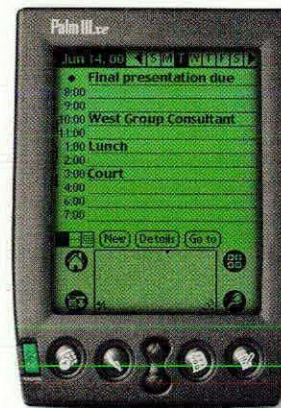
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