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Washington State

BarNews

The Official Publication of the Washington State Bar

JANUARY 2001

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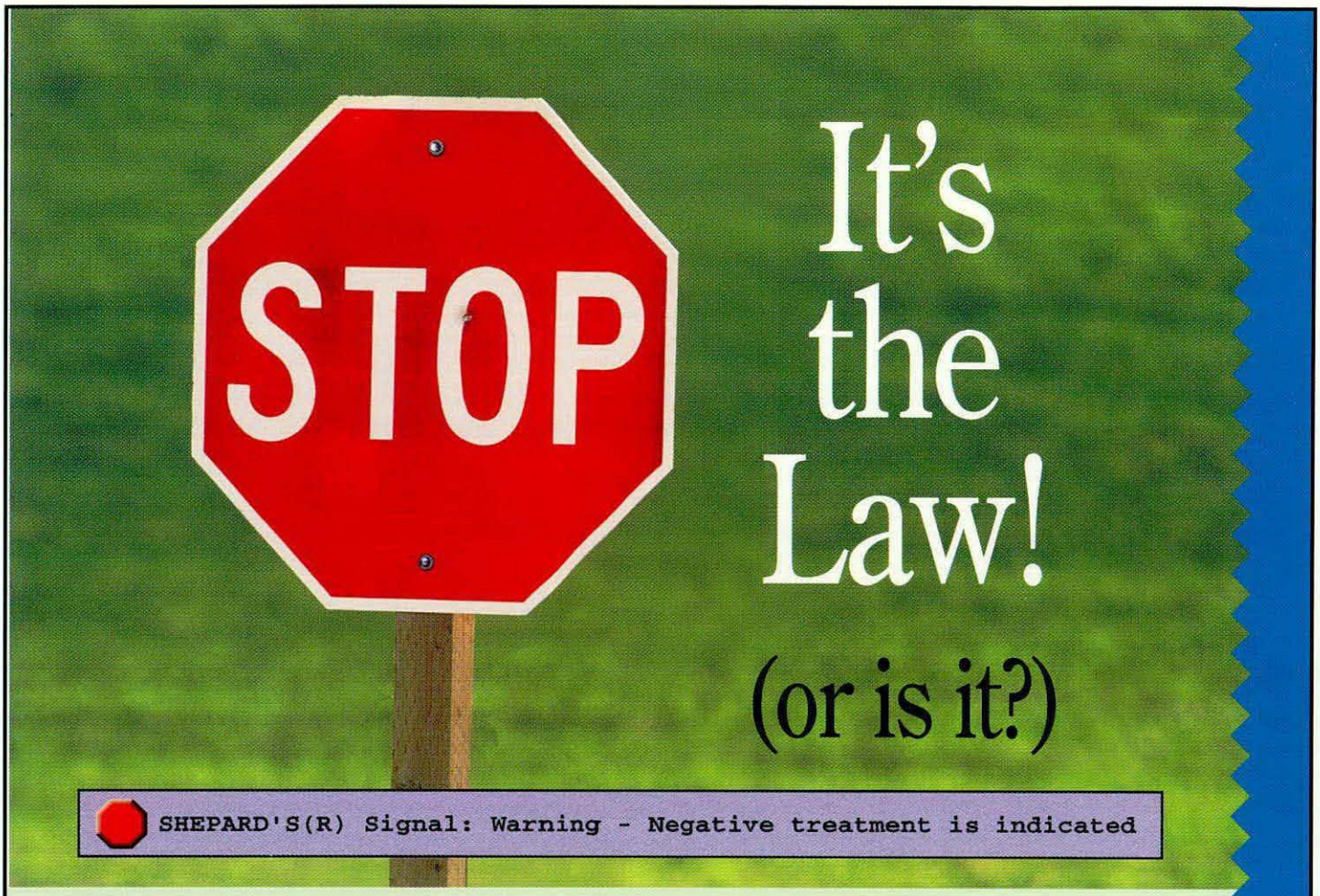

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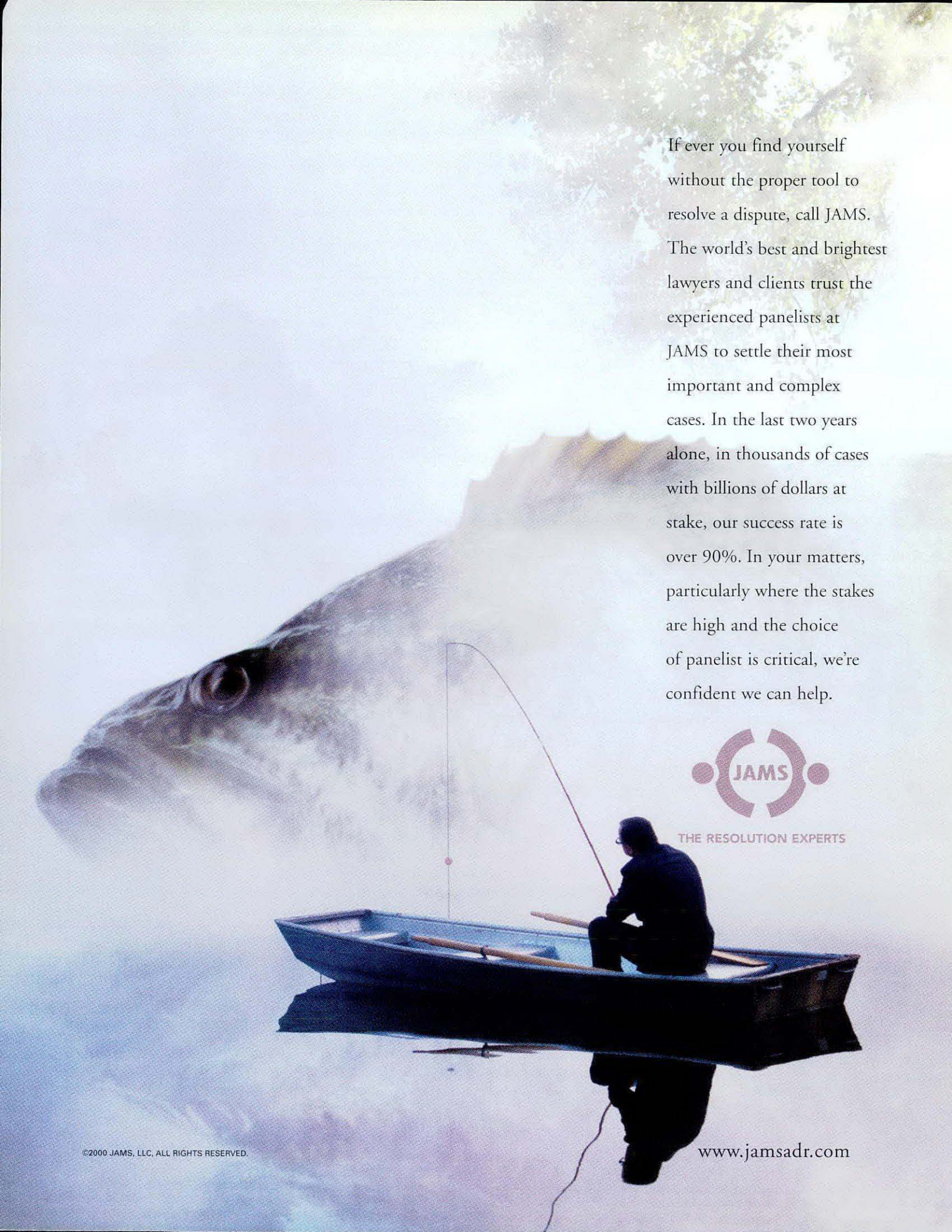

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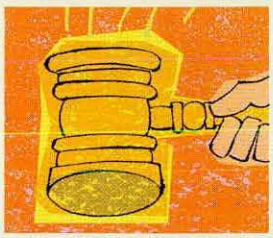

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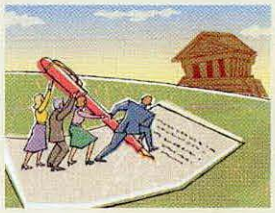

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Cover illustration by Susan LeVan

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Bar News: The Official Publication of the Washington State Bar Association

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Pictured clockwise from left: Dale Carlisle, Donald Thompson, Elizabeth Martin, Thomas Greenan and Albert Malanca.

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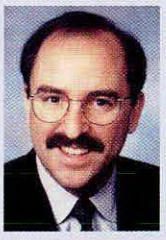

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Further Info on Unpublished Precedents — Division I Weighs in with $500 Sanction

Seattle attorney Brian J. Waid calls our readers' attention to a decision from Div. I of the Court of Appeals in which an attorney was sanctioned $500 for citing an unpublished decision after first calling the Court's attention to the 8th Circuit decision holding them to be unconstitutional. Here is what Div. I said in *Duyer v. Kislak*, __Wn. App __, 2000 Wash. App, Lexis 2408, 2000 WL 1737833, Case No. 44969-9-I (filed on November 27, 2000):

"Finally, we impose sanctions against counsel for Kislak in the sum of $500, because counsel cited and discussed at length in their appellate brief an unpublished opinion of this court in direct violation of RAP 10.4(h). We are aware of the scholarly opinion of the 8th Circuit holding unconstitutional its court rule prohibiting citation to unpublished authority. [*Anastasoff v. United States*, 223 F.3d 898 (8th Cir. Mo. 2000)]. The court strongly criticized rules like RAP 10.4(h), reasoning that they have a denigrating effect on the doctrine of precedent. Ironically, it is that doctrine of precedent on which we rely in imposing sanctions and which we are loathe to ignore. RCW 2.06.040 prohibits our publication of cases lacking precedential value and our case law holds that such cases do not become part of the common law of our state. Counsel for Kislak shall direct its payment to the clerk of this court."

We look forward to a definitive ruling on this issue from both the Washington and the United States supreme courts.

— Ed.

Impose Economic Penalties on Workplace Safety Standard Violations

Editor:

Gordon and Cook's excellent article on the deliberate intention exception to the Industrial Insurance Act (*Bar News*, November 2000, p. 26) exposes an underlying policy weakness that cannot be addressed through litigation. Washington state law provides that an injured worker must seek relief through the workers' compensation system unless "injury results to a worker from the deliberate intention of his or her employer...." With no middle ground, workers are forced to risk the uncertainty of tort litigation where their employer's intentional failure to follow safety standards has resulted in injury.

The legal guidelines of *Birklid v. Boeing* will be useful only to those workers who are desperate enough or tenacious enough to persist in litigation through the appellate courts just to overcome a summary judgment motion to dismiss. While it is progress that the Supreme Court has moved away from the rigid assault and battery standard, the new standard invites litigation which will produce many of the same uncertainties and uneven results which characterized the pre-IIA days.

What is needed is a statutory framework to address the situations described in the article's case summaries, where the courts

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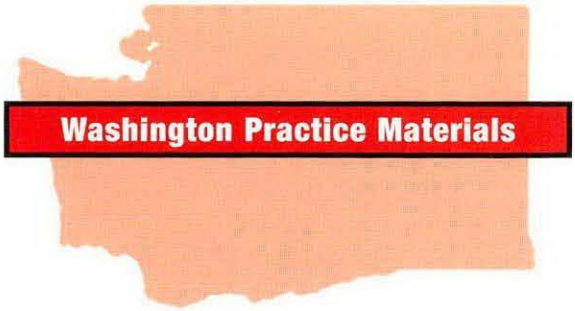

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did not find deliberate intention. In virtually all of these cases, the employer chose to ignore safety standards established under the Occupational Safety & Health Act or under Labor & Industries regulations. Industrial insurance laws from other states address this problem by providing for enhanced recovery for the worker where such violations are found. In Wisconsin, for example, workers are entitled to a percentage increase in their permanent disability awards where the agency finds a violation of OSHA or WISHA standards.

Washington should adopt a similar program. Assessing enhanced awards for injuries suffered as a result of workplace safety standards violations would result in an immediate economic penalty, which would counteract the economic incentive for the employer to ignore such standards. Attorneys and workers will be motivated to examine the circumstances of the injury and report violations. Hopefully, the result would be safer workplaces and more careful compliance. The penalty would be broadly applied at the level of the claims representative or at the level of the administrative appeal. Thus, more workers would benefit than those few who have the services of an excellent personal injury lawyer.

Terrence V. Sawyer
Spokane

Writer Believes RPC 8.4(h) Forced on Membership — Opposes Protection for "Sexual Orientation"

Editor:

On October 11, 2000, the Supreme Court of Washington signed an order under Cause Number 25700-A-691 adopting an amendment to RPC 8.4(g) and adding subsection (h). Only one justice did not sign the order, the Hon. Justice Richard Sanders.

Section (g) adds "sexual orientation" to sex, race, age, creed, religion, color, national origin, disability or mental status as a classification of protected individuals from discrimination, where the act of discrimination is committed in connection with the lawyer's professional activities. The change to section (g) allows the lawyer to decline a case or withdraw from it without disciplinary action if done in accordance with RPC 1.15.

Section (h) is an entirely new section to RPC 8.4. This section states it is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice toward judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation or marital status. A reasonable person basis is used to interpret the words or actions of the attorney to determine a violation of this rule.

When the State Bar first began their program to force this rule on its membership, many attorneys joined in an attempt to stop the adoption. That failed. We are now stuck with this rule. Time will tell how it will be applied.

I have a real problem with this rule in the fact that I don't understand it. No definition follows the term "sexual orientation." None of the other classifications require definition. Prosecuting attorneys throughout Washington could be in trouble for showing prejudice against those whose "sexual orientation" is toward dead bodies, Rhode Island Red chickens, or ten-year-old boys with blond hair. If it was the intent of the Supreme Court to limit its "sexual ori-

entation" to those who practice anal sex, they should have spelled out which sexual perversions we are being forced to tolerate. I personally don't see any difference between sexual deviants who practice homosexuality, pedophilia, necrophilia, or those who have sex with statues. (I don't know which "philia" that is). All are sexually perverted and in violation of the laws of nature.

I refrain from calling anyone a name they don't prefer to be labeled, but according to the reasonable man standard, I might be in violation of the rule if I were to behave differently toward a sexual deviant than to a normal person, even if it was unknowingly.

I realize that many, maybe even the majority of attorneys, believe that "sexual orientation" should be afforded the same protection from discrimination as the other bases. I come from an older generation and have different experience than the new breed. When I was a Los Angeles police officer, Section 288(a) of the California Penal Code called for the punishment of homosexuals (we didn't care if they were consenting) from one year in county jail to 15 years in prison. Because it was a felony, we had to investigate the crime. From that investigation I discovered how degrading and violating homosexuality can be to those practicing it. I do not feel it is behavior that society should tolerate or protect. The "don't ask, don't tell" policy of the military should suffice. But homosexuals are not satisfied with that because it prevents them from flaunting their immoral behavior in front of those who are disgusted by it.

As an attorney, I will speak up for the morals of the society in which I live. Unfortunately, it seems that even those who hold the highest judicial office of our state have lost the moral standard allowing a rule punishing those who are able to discriminate the moral from the immoral.

Thomas S. Olmstead
Seattle

Editor's Note: *Since at least 1950, Title 9 § 288a of the California Penal Code has referenced sexual assault of certain particular types and has, in fact, made the crime the lack of consent, not the commission of the act. Most lawyers would agree that the author's approach to law enforcement, i.e., "we didn't care if they were consenting," is no longer in vogue, even in Los Angeles.*

Writer Lauds Althoff Column

Editor:

In his commentary "Starving at the Banquet of Justice" (*Bar News*, November 2000, p. 46), Barrie Althoff used a term that is not heard much in America today: "the oppressed." The common perception seems to be that no one is oppressed in our country today. Certainly we have "the poor," but supposedly they are showered by governmental largess. We have "victims," but they are protected by various advocacy groups. And criminals are said to have more rights than anyone — that and they get a lawyer for free. Additionally, our public and political rhetoric presents the view that the only "oppressed" group in America today are middle-class taxpayers.

In such a world, it is difficult to determine who "the oppressed" really are. Are they, for example, the working poor who get evicted because they cannot afford an attorney to protect their rights, and can't get legal assistance because they make too much money?

The problem of access to justice — or for our purposes, access to an attorney —

occurs on many levels. It is not just that the government has cut funding for legal services; it is that the public does not support the idea that the poor should get subsidized legal service when they themselves can't afford it. It is not just that most people cannot afford to hire an attorney (even the lowest priced attorneys charge upwards of $100 per hour, meaning that even relatively simple problems will cost thousands of dollars); it is that our society values everything based on economic value, which results in the perception that "good" lawyers are high-priced lawyers, which in turn results in big corporations paying exorbitant legal fees for "the best" lawyers, which results in driving up legal fees and legal salaries.

Mr. Althoff's solution will certainly help provide wider access to justice, but it is really only a Band-Aid. The problem will continue — if not grow — until the law is treated as something other than a commodity that can be bought and sold. Until that time, it will go to the highest bidder.

Michael Coblenz
Houston, TX

Writer Vents Anger at Critic of KCBA Judicial Screening Process

Editor:

Let me begin by apologizing if the tone of this letter bespeaks my irritation. However, that is the euphemism most appropriate to the feelings engendered by yet another critical attack on the judicial screening process of the King County Bar Association (KCBA)(Letters, *Bar News*, November 2000, p. 10) by one who obviously knows not of what they write. Cronk claims that he has practiced for 37 years, but a serious question arises regarding where those years were spent, based upon the lack of knowledge his letter demonstrates.

I have served on the KCBA Judicial Screening Committee (JSC) as a member, chair and co-chair, and have participated in its judicial screening processes for the past six years. Part of that time was spent on JSC II (when there were two divisions, one for district and municipal courts [II], and one for superior and appellate courts [I]), part on JSC I, as chair of both, and as co-chair over the (re-)combined JSC. That experience puts me in a position to categorically and emphatically state that it would be difficult to find a more dedicated, hard-working and unbiased group of people than those who serve on the KCBA's JSC.

Cronk criticizes the rating process as flawed in its evaluators, their "apparent biases" (his words), and the lack of time and effort put into the task. As chair, one of the primary objectives is to attract and maintain the broadest spectrum of membership in the JSC, including all types of practice and members of both genders, and every race, creed, color, religion, gender, sexual preference and national origin. One guiding principle is that the members should have at least a modicum of experience in the court(s) for which they will screen candidates, in this way assuring that we have members who "have been there" and know what characteristics are required to adequately fulfill the functions of judge in their chosen court(s). Personally, I am a sole practitioner, but have worked in a corporate environment, in small firms, and in the public sector. During my tenure on the JSC, there were several other solo and small-firm members, as well as members of large, downtown firms. The JSC comprises 63

members from all areas of practice (emphasis being placed on litigators) and that number includes nonlawyers. From this roster, panels of at least 12 members are selected for the review of several candidates on an as-needed basis. During my tenure there were a few (not enough, by my standards) government lawyers and there were also nonlawyer members on the panels who gave very insightful perspectives on the process, the candidates, and the particular issues arising in each case.

Cronk gives far too short a shrift to the process: it is not simply a matter of reviewing a questionnaire and participating in a 20-minute interview. The questionnaire requires the identification of approximately 50 references, only 10 of which are up to the candidate to select; the others are judges and lawyers (opposing counsel) on their last five trials, judges and lawyers from their 10 most significant trials, and other categories which prevent "cherry-picking" the candidate's best friends in the profession. It also requires nonlawyer references so that the panel can speak to people who know the candidate outside of their legal/professional life. Each member of a panel assigned to review a candidate is then randomly assigned a portion of those references two weeks prior to the scheduled interview. These members are required to conduct a formatted telephone interview of each person (there is a form and a script available to assure that all necessary topics are covered), which typically takes approximately 10 to 15 minutes each. Frequently, a given reference provides additional references who are also contacted. My own experience was that I usually spent about two to four hours doing these interviews for each candidate. These interviews are confidential (as they must be to get the references to be candid and frank in their comments), but the subjects covered include all of the rating criteria which are published in the JSC bylaws.

If Cronk had taken the time, he could have read all about this in KCBA President Fred Noland's column in the September 2000, KCBA *Bar Bulletin* (sent free to all King County lawyers, whether members of the KCBA or not), the front page article by KCBA Executive Director Alice Paine in the October *Bar Bulletin*, the articles and other publications mentioned in both of those columns, or on the KCBA website, all of which explain the process. These are not secrets held by some clandestine order of "good ol' boys," but Cronk's comments are reminiscent of the old saw about "leading a horse to water." We publish and publicize our "rules" and "standards," but we can't make anyone read them.

There is one critique Cronk makes which has merit — the JSC does not have the time to personally view a candidate in action. However, JSC members frequently have their own personal experiences with a candidate which are shared with the panel. Cronk's suggestion that persons aspiring to the bench be given pro tem assignments during which their performance could be reviewed is, at first blush, intriguing and attractive. However, candidates in such a position are obviously going to put on only their best appearance when they know they are being watched. Common sense tells us (and real life experiences show us) it is far more enlightening to hear how the candidates conducted themselves at a time when they were not under the microscope, or at least believed they were not. That is the picture the JSC achieves through its processes.

Cronk promotes the concept of more reliable information about candidates — the establishment of a published set of defined criteria, the assignment of weights to those criteria. Such uninformed blathering is irritating. Take a look at the JSC bylaws; take a look at the publications referenced above; we already have a "published set of defined criteria." In fact, the JSC, as part of its continual self-analysis and efforts at self-improvement considered and rejected the assignment of weights to the long-established and objective criteria we have used. The reason for the rejection was that it would be too confining for all cases, and impossible to determine how much weight to assign each element. One of the strengths of the JSC is in the number and variety of its members. They come from all backgrounds with all varied experiences and, yes, biases and prejudices (any human who claims not to have any is, simply, not human), but with one common objective: the promotion and continuation of the best possible judges on all the benches in our county. A case could be easily conjured in which a candidate is totally devoid of experience in an area critical to even adequate performance on the bench, and yet achieves the highest rating because he amassed maximum "points" in other criteria.

Paid evaluators? A laudable objective. But when our judges are faced with budget cuts which mandate that they provide and clean their own robes, where does Cronk propose getting the necessary funds? A perfect world might have such a system as Cronk suggests, and a perfect world would not have "mistakes" (quotes because of the 20/20 hindsight required to label it as such) or aberrations such as Justice Sanders and Judge Burrage.

Public financing of judicial campaigns? Again, laudable, but we haven't even been able to achieve that for our nation's highest office and so how, pray tell, will we interest the public to fund these campaigns when we have lawyers like Cronk who know so little about the system of which they are a key element?

I am offended that Cronk condemns "outright appointment" of judges as "flawed" (it has worked for the federal judiciary for 200 years), and in the same breath counts among those flaws the old (and false) bromide of a "good-old-boys network." If this judicial selection issue is as important to him as Cronk claims, why hasn't he joined the KCBA and why hasn't he volunteered to serve on the JSC? If you're not part of the solution, Mr. Cronk, you're part of the problem. And I, for one, would appreciate you keeping the uninformed parts of your opinions to yourself. We who are trying to improve our imperfect human system have our jobs made the more difficult by the dissemination of such misinformation; this is especially so when it comes from one who might be presumed to know what they are talking (or writing) about.

Thank you. I feel much better now.

Ron Mattson
Renton

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... And Justice for All

by Jan Eric Peterson
WSBA President

As this legislative session opens in Olympia, it will be with the usual fanfare, including the presentation of colors and the Pledge of Allegiance. Will the legislators fulfill that pledge, which states that our national flag stands for "one nation, indivisible, with liberty and justice for all"? It does not say liberty and roads for all, nor health services, nor even education. We pledge liberty and justice. Those are the highest priorities, and it is the justice system that protects the freedoms and provides the justice. In our democracy we pledge justice for all; it must be funded accordingly.

If the system is overcome with the weight of the demands on it, and if a significant percentage of the population is unable to effectively access the justice system, we will have failed and the people will have lost faith in democracy.

We can't deliver on government's most fundamental promise without sufficient courts, judges, staff, lawyers and jurors. If the system is overcome with the weight of the demands on it, and if a significant percentage of the population is unable to effectively access the justice system, we will have failed and the people will have lost faith in democracy. The symptoms are there already: voter apathy, pathetic jury-summons response, flagging financial support, ignoring court orders and warrants, derision and lack of respect, and ultimately, growing violence. The third branch of our constitutional democracy is in trouble, and it needs the support of the legislative and executive branches.

The courts, through the Board of Judicial Administration, are recommending steps to modernize the system for greater efficiency and responsiveness. They have brought forth legislative proposals for unified family courts, maximizing the use of all judges, calendar controls, courthouse facilitators and much more. The jury commission study responds to the pathetic 20 percent summons response rate with calls for needed jury-friendly measures, beginning with at least a minimum wage of $45 a day, shorter jury terms, parking, note taking and much more. The counties, saddled with much of the burden (on average, 62 percent of counties' general fund budgets are for law and justice), might have to ask for a filing fee increase ($150?). We should support all of these efforts.

However, none of it means much to citizens without meaningful access to the system. Realistically, without professional help, a citizen doesn't get much justice. The Bar has been doing its part by supporting courthouse facilitators; opening the business of legal services to nonlawyers by proposing court rules to allow the establishment of limited practice officers; paying the interest on lawyers' trust accounts to legal services; generously supporting LAW Fund; supporting the Access to Justice Board, which coordinates legal services programs; donating millions of dollars of free legal services through pro bono work across the state; and establishing the Young Lawyers Division GAAP program of low-fee services for the working poor not eligible for below-the-poverty-line legal services. But it is not our job alone. Funding of civil legal services is the only real cost-effective solution. Many lawyers are willing to work in legal services programs for low pay, but not for no pay.

The Facts

An estimated 1.2 million poor and vulnerable people in our state lack the resources or ability to resolve civil legal problems that threaten their physical safety, shelter, access to fundamentals of health care, food, decent living and working conditions, and their basic civil and human rights. They can't even afford legal help to protect children from domestic violence, eviction and homelessness, or the elderly from abuse and consumer fraud. The civil legal services system that we have developed is in crisis because it lacks the resources to serve more than 20 percent of those people in need. This crisis has been years in the making; eligible client populations have nearly doubled, while the legal services system capacity has been reduced by nearly 50 percent during the same timeframe. In 1980, there were 36 legal services offices in Washington with 160 attorneys, for a ratio of one to every 4,219 eligible poor people. In the year 2000, we have only 10 offices with 96 attorneys, for a ratio of one to 12,389 poor citizens. Financial support from the state in the current biennium is $10.8 million. An additional $4 million is needed to maintain existing levels of operation and begin the process of restoring at least to the 1980 level, when there were offices that no longer exist in Walla Walla, Moses Lake, Ellensburg, Colville, Longview, Ab-

erdeen, Port Angeles, Mount Vernon, Bremerton, Clarkston and Port Townsend. Do the poor people of those communities not deserve legal services? Civil legal services desperately need the state's support of $14.8 million.

Legislators are well-intentioned, hard-working and underpaid public servants, and they do care what their constituents think. If enough of us speak up, we will be heard. Our legislative effort, headed by President-elect Dale Carlisle (253-620-6401); Governors Jenny Durkan, Bill Hyslop, Ken Davidson and Lucy Isaki; and our legislative advocates, John Fattorini and Gail Stone, needs volunteers. Contact Gail Stone by phone (206-733-5925), e-mail (gails@wsba.org), or mail (WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330) if you are interested in helping.

The pledge of justice for all must be kept. Let's show our legislators they have constituent support for funding the third branch of government and providing justice for all. Now is the time!

Two Cents' Worth

by Mark A. Panitch
Bar News Editor

This is a letter to the future. By the time you read this we will all know who our next president is. As I write this, though, the only certainty about this election is that the new president will be sworn in on January 20, 2001 while standing on the steps of the United States Capitol surrounded by members of Congress, members of the diplomatic corps, and hundreds of thousands of ordinary citizens.

At noon the chief justice of the United States will administer the oath of office prescribed in the Constitution. The president-elect will swear or affirm that he "will protect and defend the Constitution of the United States," and with those words he will become the president of the United States — arguably the most powerful individual in human history.

The only military presence at the Capitol will be honor guard troops in full dress uniform carrying unloaded weapons and a small battery of artillery for firing a ceremonial 21-gun salute with blank ammunition. Later there will be military bands and marching units representing all branches of the armed services in the inaugural parade.

As I write this, there is a reasonably good chance that the winner of the "popular vote" — the man who would be the president in virtually any other country — will not become our president. Instead an arcane construct called the Electoral College, created by the authors of our Constitution to insulate government from the people because they thought democracy a radical notion, may lead to the "election" of the loser.

That is why attorneys are before the Florida and U.S. supreme courts arguing about how ballots should be treated and how voters' intent should be determined. The arguments are passionate and occasionally emotional. This is high-stakes combat, fought with words and ideas, and it may be ugly and brutal — after all, the prize is the presidency of the United States. And the decision hangs on how former lawyers who are now justices interpret ambiguous evidence and poorly written statutes.

But this is not some schoolyard name-calling contest. The arguments are *legal arguments,* supported by citations to cases and evidence, and drawing on well-established rules of analysis. While each advocate seeks to bolster his position by presenting a different view of the evidence, there is general agreement about what that evidence *is*. The justices dissect the arguments with constant questions. They question both the lawyers and their arguments, probing for flawed analysis and testing the application of authority. The question for the Court is what that evidence *means.*

Lay people watch and see well-dressed and well-spoken adults apparently quibbling about the most subtle and nuanced differences in meaning. Sometimes they even see the same authority cited to support opposing contentions. Television news stars complain that the process is taking too long, but what they really mean is that it is too deliberative to make good television. Late-night TV hosts joke about lawyers talking out of both sides of their mouths. Some people even refer to an almost universally misunderstood quote from a 17th century play, and snidely proclaim that "Shakespeare was right."

Those same comics and citizens are just as quick to joke about "banana republics" whose political and legal systems are

Introducing Mark Panitch

The staff of *Bar News* is pleased to welcome Mark Panitch as the new editor. Mr. Panitch brings to this position a wealth of experience in journalism and law.

As the Washington correspondent for the *Anchorage Daily News*, he was part of a team of writers who won the 1976 Pulitzer Prize for their coverage of the construction of the Trans-Alaska Pipeline. Mr. Panitch has also written for the Associated Press and McGraw-Hill Publications. He was a press secretary for Senator Joseph Montoya during his tenure on the Watergate Committee, and a speech writer for Secretary of the Interior Cecil Andrus.

Highlights of Mr. Panitch's law career include working as a Washington assistant attorney general, an organized crime prosecutor in New York, and a judge pro tem in Seattle Municipal Court. He has been both a felony prosecutor and a felony public defender, and has worked on both sides of the mountains. Mr. Panitch currently volunteers with the King County Bar Association Spanish Language Neighborhood Legal Clinic and is in private practice.

Mr. Panitch welcomes your comments and suggestions. Please contact him by e-mail at pan-law@uswest.net; by fax at 206-727-8319; or by mail at WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98212-2330.

little more than reflections of which faction has the most vicious thugs and the most powerful weapons. We may make jokes about the death squads, but we are just whistling in the dark. We understand all too well the chaos and horror that informs the lives of most of the people living on this planet. How many of us have not seen images of mutilated bodies lying where they fell or neat rows of corpses lined up like trophies — the losers in somebody else's "free and fair election."

Fortunately, the same men who distrusted democracy and "the mob" distrusted even more the unbridled authority of the crown, so they created a third branch of government, a judiciary with the power to say no to the president. But as every lawyer knows, it was Chief Justice Marshall's opinion in *Marbury v. Madison* that really breathed life into our courts and gave us – as lawyers – the power to be more than just articulate pleaders for special interests. Because the courts have the power to interpret law, lawyers have the right to question laws in those courts. And citizens have a place to go when democracy gets out of hand and the rights of the minority are ignored.

In a very real way, we have learned to move our ultimate political and social battles from the streets to the courtroom. When fewer than a thousand votes stood between the candidates and the presidency, the campaigns didn't call in the thugs to steal the ballot boxes and intimidate election workers. They called in the lawyers to investigate the facts, research the law, write carefully crafted briefs, and offer their best arguments to the Court. Resorting to law is time consuming and arcane and difficult for many to understand and appreciate. But consider the alternative.

In a very real way, we have learned to move our ultimate political and social battles from the streets to the courtroom.

Of course the law, the courts and we lawyers are far from perfect. Like many in my generation, I spent time doing civil rights work in the South in the mid-1960s. I helped rebuild African-American churches that had been burned down after hosting civil rights meetings. I was threatened and verbally abused. The family I lived with received death threats, and windows in their home were shot out. Others fared far worse, and the law did nothing for them. A few years later I was privileged to work for California Rural Legal Assistance, and once again I saw people brutalized for seeking basic human rights. I watched in amazement as morally corrupt judges and juries mocked people seeking justice. But times do change, and lawyers and judges have been among the most important and courageous agents of change. Despite the bad jokes and misunderstanding of what we do, lawyers and courts retain a level of legitimacy unmatched by most other institutions in our country.

Sometime after this is written, a court will determine the next president of the United States. Many people will grumble and editorial writers will propose legislation to make elections more democratic. But, the colonels will stay in their barracks, the only people in the streets will be celebrating a peaceful transfer of power, the politicians will start planning for the next election, the band will play "Hail to the Chief," and the president will be sworn into office with the pomp and circumstance and routine of all his predecessors.

It could be so much worse.

"Signs" of the Times

by Jan Michels
WSBA Executive Director

Editor's Note: Executive Director Jan Michels contemplates the transition from the industrial age to the information age.

Completing the millennium feels like a relief. We can get on with the future, rather than self-consciously reflect and celebrate the passage of the 20th century.

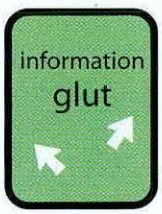
For navigating into the future, we have new road signs for the next century! The signs will help us find our way. Some words that used to be terms of art have made their way into common vocabulary and will be helpful guides on our journey into the future.

Picture digital. Picture the speed of light. Picture sound and texture traveling simultaneously to the 100 million receptors spaced throughout the universe. "Dot-com" has become common vocabulary to describe start-up ventures, information-brokering and niche markets. Moving on guts and energy, they're experimenting and pushing the edges of how we think about work, profit, economics and lifestyle — and they're here to stay, but approach with caution.

"Bandwidth" is our stop sign. The pipeline through which data flows can be so narrow that it is restrictive. Conversely, bandwidths can be so huge that data rushes through like the slipstreams of a jet.

The ancient Japanese concept of "yin and yang," opposing forces seeking reconciliation, has acquired new fashionable western words: interstatia, nexus and matrix. The concepts of interstatial parts, points of intersection and non-linear management behind the new words constitute a road-sign warning that ideas no longer exist in isolation, and that a whole is more than the sum of its parts. Ideas need balance.

It used to be that having all kinds of information made you smart. But information is now everywhere, and what makes us "smart" is using our intuition, experience and judgment to turn information into usable knowledge. Smart people learn how to recognize, market and capitalize on their knowledge. The information road sign points to the need to work at a higher level than mere information processing, and to find direction by processing knowledge.



"Information glut" is the warning sign that says we've input too much data without turning the data into useful knowledge. We're data conflicted! Each month I get 30 state bar journals, various ABA mailings, countless marketing packets and many technology magazines. I force myself through them, afraid of missing something, but much of the information takes me nowhere. The road sign warns me that to support my current goals, I need to screen out what I can't turn to knowledge.

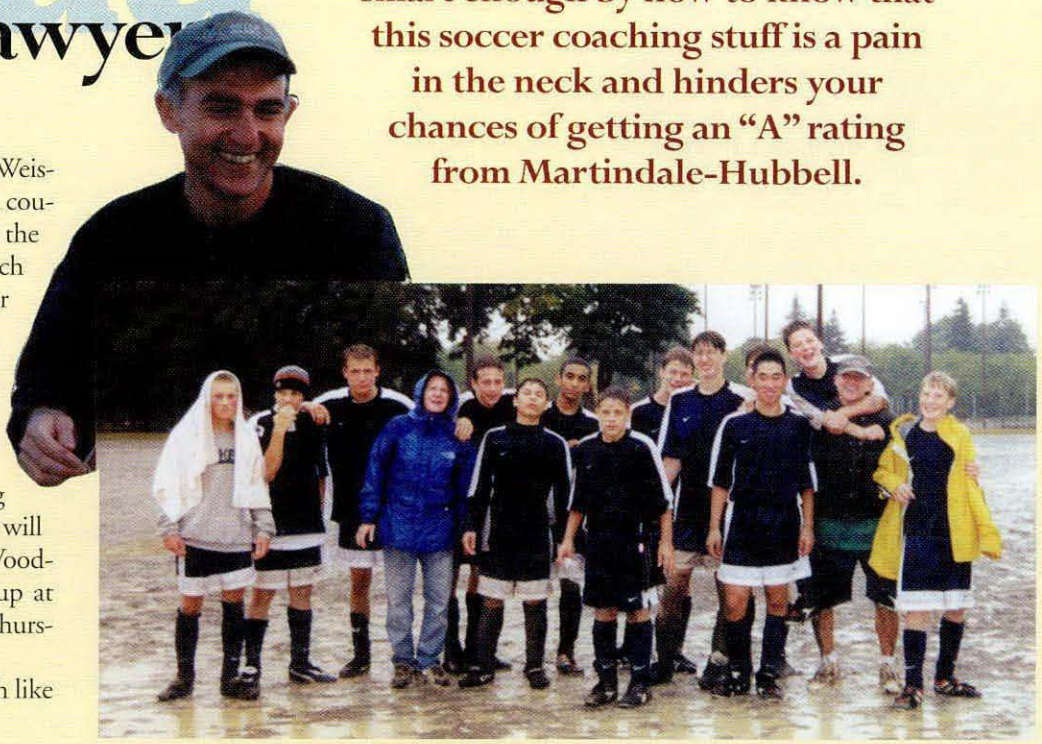
"Danger." This sign warns us that we have a world of choices. Finding what we want can become an intellectually challenging game. The fascination of knowing that information we used to pay for is now readily available on the Internet can be addictive. But this road sign can also be read to say, "slow down." Use only what you need to do your work or improve your life.

So where do the signs point? My husband — a historian and philosopher by preference and education, a technologist by profession — charges me with "artifact behavior" when my harder/faster/longer work syndrome prevails over "smarter" and more currently relevant techniques. We all have artifact habits that were formed and worked well in the primarily industrial, assembly-line age of the 20th century. Things no longer develop in a linear fashion; hard work and dependable habits don't always suffice. We need to develop a textured understanding of the information age. These road signs will help guide us to this new frontier. They will direct us to the future and tell us what we need to do to adapt to this new world of experience in the 21st century. See you on the journey!

by Jay Flynn

Proud to Be a Lawyer

Andy works with Marler Clark. He's 48 years old and should be smart enough by now to know that this soccer coaching stuff is a pain in the neck and hinders your chances of getting an "A" rating from Martindale-Hubbell.



The Firebirds take a moment to pose for this photo before pushing on to victory.

When you first meet Andy Weisbecker, you know within a couple of minutes that he is the kind of guy you would want to coach your kid's soccer team. Fortunately, for about 17 sets of parents in Seattle, Andy is doing just that.

For the past eight years, Andy has left an office full of yapping files, urgent phone messages, anxious clients, and interrogatories demanding answers by Monday, because 17 kids will be standing by themselves at Lower Woodland Park Field if he doesn't show up at exactly 5:00 p.m. every Tuesday and Thursday.

Now, here are the duties of a coach like Andy at soccer practice:

1. Set up the nets.
2. Remember to bring the balls.
3. Remember to bring goalie gloves and goalie gear.
4. Bring a ball pump.
5. Build self-esteem.
6. Have fun.
7. Vainly attempt to keep the attention of a group of 15-year-olds for one hour.
8. Teach the game of soccer.
9. Hone specific soccer skills.

These responsibilities, of course, do not take into account his coaching duties on Saturday:

1. Set up the nets.
2. Remember to bring the balls.
3. Remember to bring goalie gloves and goalie gear.
4. Bring a ball pump.
5. Try to win the game.
6. Tell the kids it's okay to lose the game.
7. Tell the kids it's okay to lose several games in a row.
8. Worry just a little bit about parents who are meticulously tracking every second their child plays in the game.
9. Don't forget that Carl's grandparents from Omaha are coming to the one game they'll get to see Carl play this season, so he had better get some extra time in the game at center forward even though Carl couldn't beat his grandmother in a one-on-one drill, and even though you're playing your cross-town rivals who have beaten you three times in a row. (This last duty is courtesy of your wife who gives you these instructions as you leave for the game.)

So what kind of attorney voluntarily puts himself into a position like this when it is just as easy to convince himself that he deserves a relaxing Saturday, and anyway, he's no coach, he's never played the game, and the demands of a law practice make it impossible to guarantee that he can be at a soccer field by 5:00 p.m. two nights a week, not to mention it's cold and wet in November? Who needs the aggravation?! Well, plenty of attorneys do — more than you'd imagine. Guys like Andy Weisbecker.

I have had the good fortune to work on a couple of cases with Andy. In the last case, I felt we had a difficult client to deal with, but Andy was magic. The client agreed with anything he said, while she constantly argued with me. A first-class people person, Andy has been practicing law for 20 years. The child of an American father and an Italian mother, he spoke English to his dad and Italian to his mother while growing up in Italy. The first time he came to America, it was to go to college in Seattle.

Andy works with Marler Clark. He's 48 years old and should be smart enough by now to know that this soccer coaching stuff is a pain in the neck and hinders your chances of getting an "A" rating from Martindale-Hubbell. Yet, for eight years he has spent countless Saturday mornings stringing up the goal nets while standing on a bucket, all the while dodging errant balls that could very well cause some kind of head injury.

As we both have coached soccer for a number of years, we have had long discussions on the travails of trying to coach while working in a profession where there is never

enough time. So the other day, I asked Andy why he coaches. He coaches because he loves his son Lucas who plays on the team (and because he's a great father). He has also found other benefits as he leads his Firebirds into the league championship this year. His answers to my question will give you some insight into the kind of guy he is.

"Coaching makes me a better person and a better attorney. To be a good coach you have to listen, which is a very crucial trait in our profession. Kids know if you are really listening to them rather than listening in a distracted manner, and they respond to that individual attention.

"Clients also appreciate attorneys who really listen to what their concerns and needs are. Through my work with the soccer team, I feel my clients get a better attorney. Not only do I get better results in my cases, but my clients feel better about me when the case is over.

"I also feel that I am doing my little bit to blast away at some of the public's myths and preconceptions about attorneys. I hope I am showing the kids and their parents that attorneys are not the remote, aloof, argumentative, overbearing pains that the media portrays us to be. Hopefully, the people I deal with through soccer will feel a little less intimidated about the whole justice system. Of course, coaching is also a heck of a lot of fun."

Our profession demands lots of time, which conflicts with the scheduled disruptions implicit in coaching. I'm amazed and proud that attorneys like Andy Weisbecker, and countless others of us, give up our time to coach. Andy tells us a lot about the kinds of people who make up the profession of law.

So all of you attorneys in your early 30s with young kids about to enter the realm of organized sports — fight the pressure, ditch the office, and get out there with the kids. Jam the time into your schedule so you can't give in to the 100 good reasons you should be at the office. You will be a better attorney, father or mother; make more money; add balance to your life; breathe fresh outdoor air in the afternoon; and make a positive contribution to a lot of young lives. It will seem like a gigantic burden at first, but trust us, years from now you will look back and smile.

China Moves to Protect Intellectual Property, Encourage Foreign Business:

A Summary of China's Regulation on Computer Software Protection

by Gordon Liu

In September 2000, the U.S. Senate voted to pass the permanent normal trade relation (PNTR) with China, clearing the last hurdle in America's acceptance of China into the World Trade Organization (WTO). The Information Technology Industry Council (ITI)[1] hailed the vote as "a solid win for continuing America's technological leadership and one of the final steps in opening China to trade." ITI's reaction to the event symbolized the widespread optimism among U.S. technology companies about China's anticipated accession into the WTO.

From a statistical standpoint, the optimism may be justified. China, with its 1.2 billion people and ever-expanding middle class, is one of the fastest-growing markets for information technology. China is the world's second largest market for cellular phones, and the fastest-growing market for personal computers. China's Internet population has doubled every year since 1997 and is expected to reach 20 million by the end of 2000.

After China joins the WTO, its tariffs on the import of American technological products and services will be substantially reduced. American companies may own up to 50 percent of Chinese telecommunication companies, which is an unprecedented opportunity in the tightly controlled telecommunication sector.

China's market and profit potential cannot be ignored by U.S. software companies, which generate 60 percent of their revenue from overseas sales. Yet, a major concern about doing business in China has been its lack of protection of intellectual property, especially computer software. Industry experts estimate that over 90 percent of business application software used in China was pirated in 1998, depriving software companies of nearly $1.2 billion in licensing revenue.

In June 1991, China published the "Regulation on the Protection of Computer Software" promulgated by the State Council. The Regulation is the first of its kind and contains provisions closely parallel to the Berne Convention. It demonstrates the efforts of the Chinese government to bring its laws on intellectual property protection in tune with the global system. To provide a basic understanding of China's laws on computer software protection, this article summarizes the Regulation.

Summary of the Regulation

1. The Purpose of Enactment

According to Article 1 of the Regulation, the purpose of the law is to (1) protect the rights and interests of creators of computer software; (2) adjust the relationships of interest during the development, dissemination and use of computer software; (3) encourage the development and circulation of computer software; and (4) promote the development of computer applications.

2. The Scope of Protection

Under the Regulation, "computer software" includes computer programs and related documentation.

"Computer program" means coded instructional sequences, symbolic instructional sequences, or numeric language sequences which can be automatically converted into coded instructional sequences for the purpose of obtaining a certain result, and which are operated on information-processing equipment such as computers.

"Related documentation" means written materials and diagrams, using natural or formal language, which are used to describe the contents, organization, design, functions and specifications, development circumstances, testing results, and methods of use of the program (for example, program design explanations, flow charts, user manuals, etc.).

Under Articles 5 and 7 of the Regulation, to be entitled to protection, computer software must be independently developed and must be in material form. Ideas, concepts, discoveries, principles, algorithms, processing methods and operations used in the development of such software are not protected under the Regulation.

3. Computer Software Copyright

Under the Regulation, the intellectual property right related to computer software is classified as "copyright." The Regulation uses such terms as "computer software copyright," which includes the following particular rights:

- right of publication, meaning the right to decide whether the software should be released to the public;
- developer's right of authorship, meaning the right to indicate the developer's identity and to place his name on the software;
- right of use, meaning the right to use the software by copying, demonstrating, distributing, altering, translating, annotat-

ing, etc., under the precondition that such use does not harm the public interest;

- right of licensing use and receiving remuneration, meaning the right to license others to use the entire software or a part of it, and the right to receive remuneration for the license;
- right of transfer, meaning the right to transfer to others the right to use and the right of licensing the software under the Regulation.

The computer software copyright belongs to the "software developer," unless the developer transfers or assigns this right to others. "Software developers" are (1) legal persons; (2) organizations which are not legal persons but actually organize and undertake the work of development, or provide working conditions to complete the development of software and take responsibility for the software; or (3) citizens who rely on their own resources to complete the software and who take responsibility for the software.

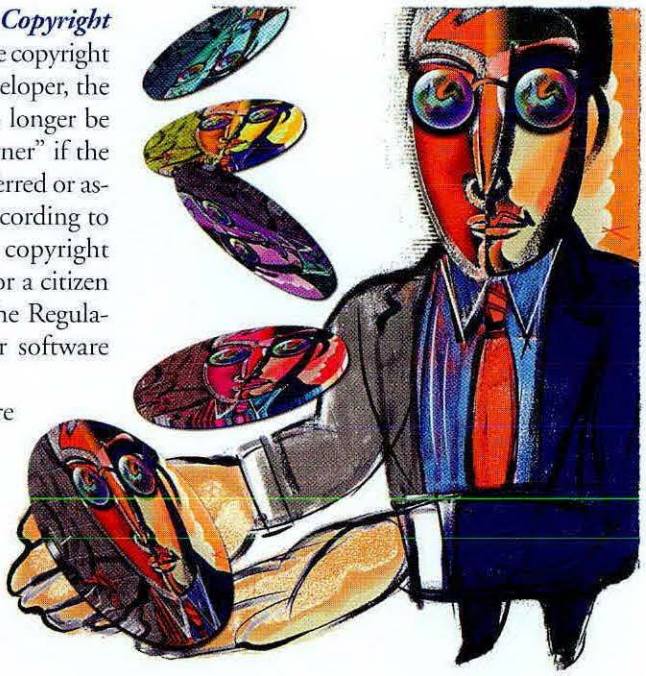
Article 6 of the Regulation states that Chinese holders of computer software copyright enjoy protection under the Regulation regardless of whether the software has been published and regardless of where it has been published. Foreign computer software copyright-holders enjoy protection under the Regulation if the foreign copyright holder's software is first published in China. If such software is published outside of China, foreign copyright holders may enjoy protection under the Regulation according to a bilateral agreement signed between the copyright holder's country and China, or according to an international convention to which both China and the copyright holder's country are signatories.

Article 15 of the Regulation provides that, except for the right of authorship, the term of protection for computer software copyright is 25 years, ending on the 31st of December of the 25th year after the first publication of the software. However, prior to the expiration of the first 25-year term, the computer software copyright-holder may apply to the Software Registration Administration Organization to extend the protection by another 25 years. The term of protection for any computer software copyright shall not exceed 50 years. Subsequent transfer or assignment of computer software copyright does not extend the total term of protection of such copyright.

4. Ownership of Software Copyright

Although computer software copyright belongs to the software developer, the software developer may no longer be the "software copyright owner" if the software copyright is transferred or assigned to another party. According to Article 3 (4), a "software copyright owner" is an organization or a citizen who, in accordance with the Regulation, enjoys the computer software copyright.

Under Article 11, where there are two or more software developers for one piece of software, the ownership of such software copyright shall be enjoyed jointly by such developers, unless the shares of ownership are predetermined in a separate agreement among the developers. However, the exercise of the software copyright by co-owners/developers shall be according to the written agreement among the parties. In absence of such written agreement, each co-developer shall be entitled to enjoy the copyright on the part of the software which was developed by each co-developer if the software can be used in separate parts. If the software cannot be used in separate parts and a consensus cannot be reached by the co-developers as to the issue of ownership, neither party can prevent the other from exercising his rights, except for the right of transfer, unless an unusual reason exists. But the profits generated from the software shall be fairly shared by the co-developers.



... a major concern about doing business in China has been its lack of protection of intellectual property, especially computer software.

Under Article 12, the person who developed the software under commission shall retain the copyright to such software if there is no written agreement indicating otherwise between the person who commissions the work and the person who performs the work, or if the copyright ownership is not clearly stated in the written agreement.

Article 13 provides that unless there is a project document or contract stating otherwise, an organization which developed the software pursuant to tasks assigned by its superior organization or governmental agency shall retain the copyright to the software. If a piece of software has significant implication to national and public-security interest and is developed by organizations within the national and public-security system, then the relevant departments of the State Council, the People's Government of provinces, autonomous regions, or centrally controlled cities shall have the right to designate organizations to use the software under permission. The designated organizations using such software shall pay a fee to the designating agencies.

Article 14 describes a "work-for-hire" situation where an employee of an organization develops the software within clearly defined developmental goals for work, or if the software is the predictable or natural result of the employee's work activities within the organization, the organization shall have the copyright to the software. However, if the software is not the predictable or natural result of the employee's work, has no direct relationship to the content of the employee's work, and is developed without use of the organization's material and technical resources, then the copyright for the software belongs to the employee.

5. Registration of Software Copyright

Under Article 23, the Software Registration Administration Organization is the designated agency charged with process-

ing and issuing software copyright registration. All applications for registration of software copyright must be submitted to the Software Registration Administration Organization which, if an application is approved, will issue document of proof of registration and make public notice of the registration.

Article 25 states that any application for software copyright must be completed with (1) a fully executed software copyright registration form; (2) the software identifying materials; and (3) a registration fee. The Software Registration Administration Organization is authorized and empowered under the Regulation to promulgate specific software copyright application procedures and fee standards.

The registration of software copyright is the prerequisite for initiating the alternative dispute resolution procedure or civil lawsuits under the Regulation. Documents of registration or application are the initial proof that a software copyright is effective or is being processed for approval.

Article 26 provides that a software copyright may be cancelled by the Software Registration Administration Organization if (1) a final judicial judgment compels such cancellation; or (2) it is determined that the applicant submitted materially false information in the application.

6. Transfer and Assignment

Under Article 9 (5), the right of transfer extends to the right of use and the right of licensing, but does not include the right of publication and the right of authorship. Articles 18 and 20 contain relevant language to the same effect.

Under Article 27, the transferee of a software copyright must notify and put the transfer on record with the Software Registration Administration Organization within three months of signing the contract of transfer, or otherwise lose the right to contest any infringement of the transferred software copyright.

In addition, Article 28 requires that when a Chinese national transfers his software copyright to a foreign national for software created within China's territory, the Chinese national must first request approval for such transfer by the relevant agencies of the State Council, and file a report with the Software Registration Administration Organization.

A software copyright owner may authorize the use or grant a license to use the software and charge a fee for such use or license. The terms and conditions of the use and license should be put in the form of a written contract in accordance with Chinese laws and regulations. The use and license contract may not exceed 10 years, however, the contract may be extended by the parties when the 10-year term expires. A transferee of the right to use, or license to use, a software copyright may transfer the same right or license to use to a third party. Such transfer should be in the form of a written contract in accordance with Chinese laws and regulations.

7. Succession and Termination

A software copyright is inheritable, and may be inherited by the software copyright owner's heirs under the People's Republic of China Inheritance Law. However, Article 16 of the Regulation specifies that the heirs may inherit the right of use and the right of licensing under Article 9, but is silent on the right of publication, the right of authorship, and the right of transfer. The act of inheritance does not change the term of protection in Article 15.

Article 17 describes that in the event of a reorganization or restructuring of an organization which owns a software copyright, the succeeding entity shall be the legal owner of the rights related to the soft-

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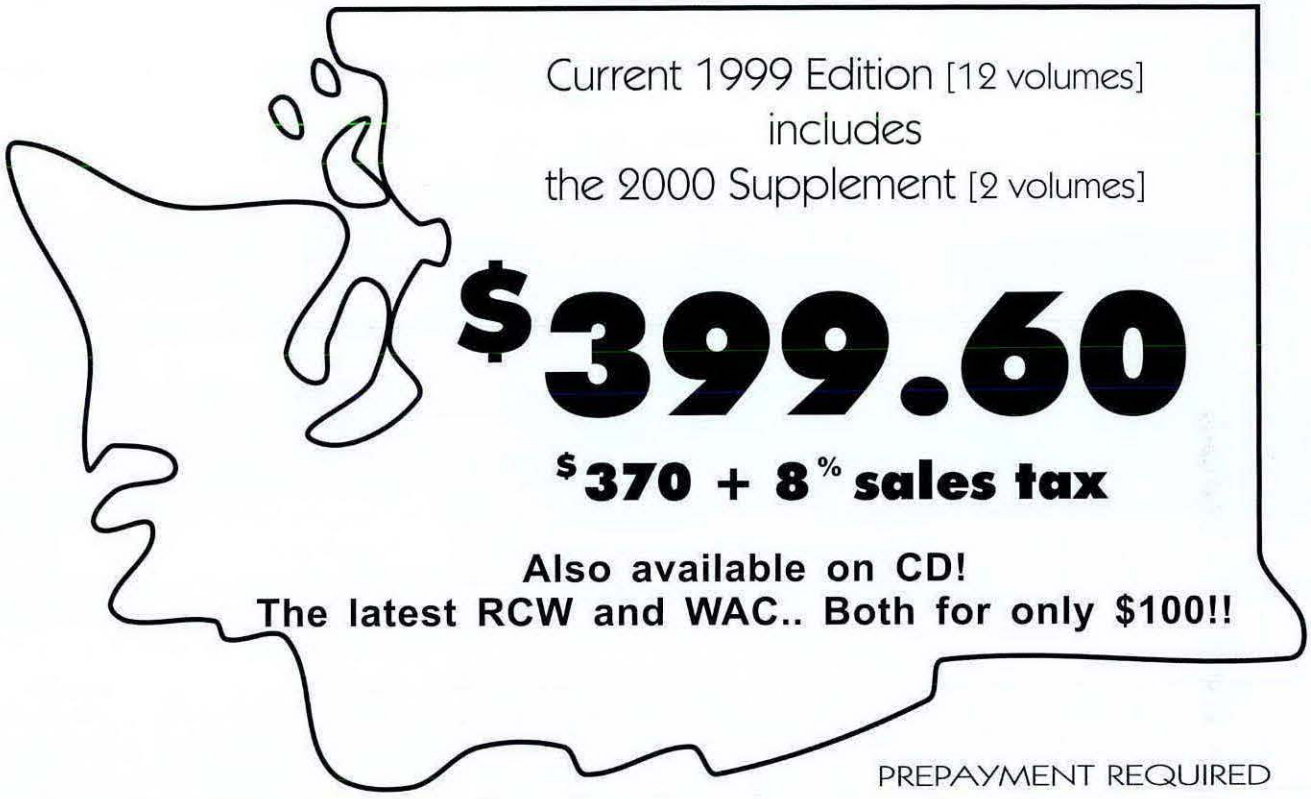

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ware owned by its predecessor.

A software copyright shall terminate during its term of protection, and all rights relating to the software shall enter public domain, when either of the following events occurs: (1) the organization which owns the software copyright dissolves and there is no legal successor; or (2) the citizen who owns the software copyright dies without a legal heir.

8. Infringement and Civil Actions

In Article 30, the Regulation sets forth specific acts of software copyright infringement, which include: (1) publishing computer software without the owner's consent; (2) taking computer software belonging to another and publishing it in one's own name; (3) taking computer software developed in cooperation with another person and publishing it as one's solely owned work without the permission of the co-developer; (4) signing one's name on software developed by another person or altering the signature of another person on the software; (5) revising, translating or annotating the software without the permission of the software copyright owner or his legal transferee; (6) copying computer software, in whole or in part, without the permission of the computer software owner or his legal transferee; (7) disseminating or disclosing computer software to the public without the permission of the software copyright owner or his legal transferee; or (8) effectuating the licensing or transfer of computer software to a third party without the permission of the software copyright owner or his legal transferee.

However, under Article 31, the similarities between newly developed software and software already in existence do not constitute acts of infringement if such similarities are necessary to (1) implement national policies, laws or the regulation; (2) set technical standards; or (3) allow expression due to limited categories or forms of expression.

In the event a software user unknowingly used a software which infringed upon a software copyright, and the software user acquired the infringing software from a supplier who knowingly committed the act of infringement, the supplier of the infringing software shall be liable to the copyright owner for any loss and damage. However, the software users may also be required to destroy the infringing software in order to force the losses back onto the supplier.

Under Article 30, anyone whose copyright is infringed by another may bring civil action against the infringing party. The software copyright owner's legal remedies include restraining of infringement activities, elimination of the effects of the infringement, public apology, loss of profit, and other applicable civil penalties. In addition, the State Software Copyright Executive Administration Department may impose administrative punishments such as confiscating illegal income or fines, etc.

9. Alternative Dispute Resolution

Articles 34 through 36 provide for mediation as an alternative dispute resolution to civil lawsuits. Under these articles, both software copyright disputes and software copyright contracts may be mediated. However, mediation is not a prerequisite to filing a civil lawsuit and is not binding upon the parties. A party may still sue in the People's Court if he is unwilling to mediate the matter or he is dissatisfied with the mediation result.

In addition, the parties may apply to the State Software Copyright Arbitration Organization for arbitration of their dispute pursuant to an arbitration provision

in their contract or a subsequent written arbitration agreement between the parties. If a party fails to comply with the arbitration ruling, the other party may file a lawsuit in the People's Court to enforce compliance with the arbitration ruling. However, if the People's Court decides that the arbitration ruling is illegal and refuses to enforce such ruling, the party may bring a lawsuit on the merit of the case directly before the People's Court.

If there is no arbitration provision in the contract or subsequent written arbitration agreement, the parties may bring civil lawsuits directly before the People's Court.

Concerning the administrative penalties imposed by State Copyright Executive Administrative Department, the penalized party may seek review of the administrative penalties by the People's Court. If he chooses to do so, he must appeal the penalties within three months from the receipt of notice of penalty. Upon the expiration of the three-month period, if no action seeking review has been instituted, the State Copyright Executive Administrative Department may apply to the People's Court to force compliance with the administrative penalties.

Conclusion

While the Regulation adopts many concepts and provisions similar to international conventions on copyright protection, it is designed to cope with China's reality and the existing laws and regulations. China's legal framework is developing, and the laws are often enforced on the basis of need. For U.S. firms planning to develop or license computer software in China, the ownership and transfer provisions of the Regulation may prove problematic. Any joint venture agreement, employment agreement, or licensing and transfer agreement must be drafted carefully for effective protection allowed under the law. Upon occurrence of infringement, rather than taking the matter straight to court, U.S. firms should first consider alternative dispute resolution. China's administrative adjudication of disputes on intellectual property has been considered fair and efficient by many experts. Therefore, it may be advisable to include a binding arbitration clause in the software transfer or licensing agreement.

Of course, computer software piracy will not disappear overnight in China, with or without WTO membership. But signs indicate that the government and courts are beginning to take the matter seriously. There have been reports of Chinese authorities closing down factories which illegally copy and distribute computer software, music CDs, and hit Hollywood movies. But like most things in China, change will come slowly. As long as software piracy is still a major concern, U.S. firms should use all necessary caution in deciding on an entry strategy and selecting a local partner, and always be mindful that compliance with the law is but one step toward appropriate protection of their computer software.

Gordon J. Liu, a solo practitioner in Bellevue, Washington, focuses on business, corporation and commercial laws and litigation, with a special emphasis on China-related matters.

NOTE

1 ITI is an industry-wide association that consists of such companies as 3COM, AOL, Apple, Canon USA, Cisco, Compaq, Dell, HP, IBM, Microsoft, Intel, Motorola, Amazon.com, Panasonic, Sony, Unisys, Eastman Kodak, and Nortel Networks. Its website is http://www.itic.org.

A Review of Significant Criminal Law Decisions of the 1999 Term of the United States Supreme Court

by Craig Hemmens, J.D., Ph.D.

Introduction

During its 1999 term the United State Supreme Court handed down signed opinions in 73 cases. This is half the number of opinions issued during terms in the mid-1980s, and is the fewest number of cases decided by signed opinion since the early 1950s. It continues a downward trend in signed opinions, as the 1998 term had only 75 opinions. Over 8,000 cases reached the Court, the vast majority being denied review. While the number of opinions declined, there were a number of significant decisions, spanning the landscape of constitutional law.

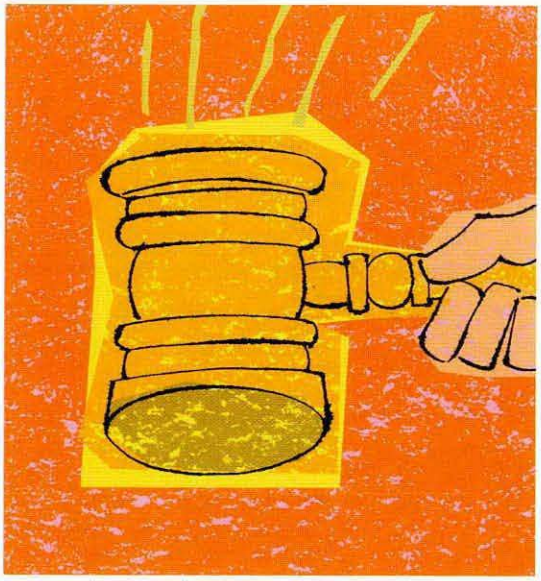
There were 44 decisions (60 percent), with at least a 7-2 majority; of these, 29 decisions were unanimous. While this presents a picture of general ideological agreement, it should be noted that there were 21 cases with 5-4 decisions (27 percent), and the dissents were at times quite acrimonious. Clear ideological blocs have formed, with the Chief Justice and Justices Scalia and Thomas frequently aligned against Justices Stevens, Breyer, Ginsburg and Souter. Justice O'Connor emerged as the key vote, filing only four dissents and being in the majority in all but one of the 5-4 decisions. Interestingly, Justice Thomas dissented more frequently than O'Connor, but was also in the majority in all but one of the 5-4 decisions. Justice Scalia and Justice Stevens disagreed the most, in 44 cases. In contrast, Chief Justice Rehnquist and Justice O'Connor disagreed in only 10 cases.

Majority opinion authorship was fairly evenly divided, with each justice writing between eight and 10 majority opinions. The most prolific opinion writer was Justice Stevens, with 33 opinions. The least prolific writer was Justice O'Connor, with 15 opinions. Following a trend in recent years, Justice Stevens filed the most dissents (18).

The Court reversed or vacated lower court decisions in over half of its decisions. The 9th Circuit, a favorite target of the Supreme Court, was reviewed 11 times, with the high court affirming only one decision while vacating two and reversing eight others.

More than a third of the written opinions handed down by the high court dealt with criminal law and procedure issues. The Court interpreted several key provisions of the Anti-Terrorism and Effective Death Penalty Act and the Prison Litigation Reform Act, and issued several major Fourth Amendment rulings. As usual, several cases involved the interpretation of federal criminal statutes. Several cases dealt with subject matter unrelated to the criminal justice system, but the decision in the case has major implications for the criminal justice system. Also, several "non-decisions" warrant mention, including two death penalty cases and a search and seizure case.

Following is a summary of the significant criminal justice-related decisions of the 1999 term, arranged alphabetically by subject. The case history, rationale of the Court, and vote totals are included.



Death Penalty

Ramdass v. Angelone, 68 USLW 4486 (2000)

Ramdass was convicted by a Virginia court of murdering a convenience store clerk during an armed robbery. During the punishment phase of the trial, the prosecution argued that the aggravating factor of "future dangerousness" justified imposition of the death penalty, and mentioned Ramdass' prior conviction for armed robbery as evidence that he was likely to reoffend if ever released from prison. At the time, Ramdass had been found guilty of armed robbery in another case, but the judge had not yet entered a formal judgment of guilt. Under state law, Ramdass would be ineligible for parole if the prior armed robbery conviction were upheld, as he would then fall under the state's three-strikes law, which eliminated the possibility of parole for habitual offenders. Ramdass did not argue at his murder trial that he was ineligible for parole. The jury sentenced him to death. While his case was on appeal, the Supreme Court announced, in *Simmons v. South Carolina* (1994), that a defendant who is ineligible for parole has a right to inform the jury of that fact

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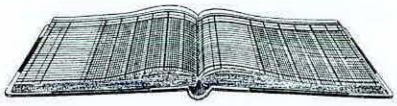

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when the jury is considering the issue of future dangerousness. Ramdass then argued on appeal that the jury should have been instructed that he was ineligible for parole based on his prior convictions. The Virginia Supreme Court held that because Ramdass had not conclusively established he would be parole ineligible at the time of his murder trial, he was not entitled to have the jury apprised of the effect of parole ineligibility. The 4th Circuit denied his habeas petition, holding that the question of whether a defendant was ineligible for parole was a matter of state law.

The Supreme Court affirmed the lower courts. The plurality opinion by Justice Kennedy agreed with the Virginia court that Simmons was inapplicable because Ramdass was not conclusively ineligible for parole when the jury considered his sentence. He did not become parole ineligible until the judgment of guilt was entered, and this occurred after his murder trial and conviction. Justice O'Connor provided the crucial fifth vote in a concurrence in which she said *Simmons* was inapplicable because it applied only to cases where the only thing between defendant and parole ineligibility is a "ministerial act," such as a parole board decision. Justice Stevens dissented, arguing it was unfair to allow the state to use the defendant's conduct in another case as the basis for proving future dangerousness while effectively preventing the defendant from using the prior case judgment to show future dangerousness was not an issue in the present murder case. 5-4 decision.

Weeks v. Angelone, 68 USLW 4060 (2000) Weeks was convicted in a Virginia court in 1993 of murdering a state trooper. During the penalty phase of his trial, the jury was given a pattern instruction (approved by the Supreme Court in *Buchanan v. Angelone*, 1998) that the death penalty was appropriate if the state proved beyond a reasonable doubt at least one of two aggravating circumstances: (1) that the defendant would continue to be a serious threat to society; or (2) that the crime was "outrageously or wantonly vile, horrible or inhuman." The instructions said further that "if you believe from all the evidence that the death penalty is not justified," the jurors should impose life imprisonment. The law did not require a jury to impose a death penalty even if the state proves an aggravating factor; they could still hold that any

mitigating factor(s) outweigh the aggravating factors. The jury interrupted its deliberations to ask the judge: "If we believe that Weeks is guilty of at least one of the alternatives, then is it our duty as a jury to issue the death penalty?" In response, the judge simply instructed the jury to reread the instruction, refusing a defense attorney's request to more clearly explain the alternatives. Two hours later, with several members in tears, the jury returned with a death sentence. On appeal, Weeks argued that the jury had mistakenly believed that it was required to impose a death sentence if the state proved the existence of an aggravating factor, and the judge's failure to clarify the situation beyond reference to the jury instruction constituted a violation of due process. The Virginia Supreme Court had upheld the conviction and sentence, and the 4th Circuit rejected the inmate's petition for a writ of habeas corpus.

The Supreme Court upheld the sentence. In his majority opinion, Chief Justice Rehnquist said the record indicated there was at worst a "slight possibility" that the jury mistakenly believed a death sentence to be mandatory once the state proved the existence of an aggravating factor. Rehnquist noted that a jury is presumed to understand a judge's answer to its question. The fact that the jurors then spent two hours in further deliberation showed that they were weighing the mitigating and aggravating evidence and were not simply imposing a death sentence automatically. The four dissenters, in an opinion by Justice Stevens, disagreed vigorously with both the majority's factual analysis of the case and its legal conclusion. Justice Stevens said there was a "virtual certainty" that the jury was confused, and that there was no reason to believe the judge's answer had resolved the confusion. He argued the jury instruction may have caused the jury to erroneously believe they had to impose a death sentence if the prosecution proved either aggravating factor. Justice Stevens said it was just as likely that the jurors spent the next two hours continuing to debate the meaning of the instruction that continued to confuse them, and the fact that several jury members were crying indicated they disagreed with the imposition of the death penalty. 5-4 decision.

None of the current justices opposes the death penalty in principle, unlike Justices Brennan, Marshall, and ultimately Blackmun, who shortly before he retired stated bluntly: "I shall no longer tinker with the machinery of death."

Knight v. Florida (1999)

None of the current justices opposes the death penalty in principle, unlike Justices Brennan, Marshall, and ultimately Blackmun, who shortly before he retired stated bluntly: "I shall no longer tinker with the machinery of death." As many as four of the current justices have voiced serious concerns about the process, however. Inmates on death row in Florida (24 years) and Nebraska (19 years) argued that their prolonged confinement on death row constituted cruel and unusual punishment. In both cases, the prolonged residence on death row was due in substantial part to the states' responses to the inmates' successful challenges to unconstitutional state procedures. Rather than proceed quickly to new trials, as the lower courts had ordered, the states spent years appealing the adverse rulings back up through the judicial system. Eventually, the states prevailed and the inmates were again sentenced to death.

The Supreme Court refused the petition for certiorari. What makes this "non-decision" notable is the exchange between the justices. Justice Breyer, who wanted the court to hear the appeals, and Justice Thomas, who did not, engaged in an unusual written exchange. While Justice Breyer did not take a stand on the merits of the inmates' contention that their prolonged incarceration violated the Eighth Amendment, he said their argument could not be rejected out of hand, and that if the delay was caused by the state the claim was "a particularly strong one." Justice Breyer also noted that courts in a number of other countries have concluded that such delays are inhumane. Justice Thomas vigorously disagreed with Justice Breyer, and placed the blame for the delays squarely on the Court's "Byzantine death penalty jurisprudence" and "undue solicitude for defendants' rights" as well as the inmates' delaying tactics. Justice Thomas also dismissed Breyer's suggestion that the Court consider

the actions of other countries. The only other justice who entered the discussion was Justice Stevens, who had first identified the issue in *Lackey v. Texas* (1995), when he called for review of a Texas inmate's argument that 17 years on death row was cruel and unusual. Since then, dozens of inmates have made similar arguments, none successfully. Ordinarily, the Supreme Court waits for a conflict to develop among the lower courts before agreeing to hear a case, and the absence of such a conflict may have persuaded some justices to decide against adding the issue to the court's docket. Appeal dismissed.

Bryan v. Moore (1999)

Florida was one of four states that required those sentenced to death to be executed by electrocution. Most of the 38 states with death penalty laws have switched since 1950 to lethal injection as the primary means of execution. Once, 26 states used electric chairs. Bryan, an inmate on Florida's death row, argued that electrocution violated the Eighth Amendment's ban on cruel and unusual punishment.

The Supreme Court accepted his appeal when electrocution was the only method used by the state, but backed away from deciding whether electrocution is "cruel and unusual punishment" when the Florida Legislature responded to the granting of certiorari by passing legislation providing for death by injection unless an inmate preferred the electric chair. The Court then dismissed the case as moot. Now, only three states (Alabama, Georgia and Nebraska) require death by electrocution. The issue may return to the nation's highest court in a case from one of those states. Appeal dismissed.

Habeas Corpus Petitions

Edwards v. Carpenter, 68 USLW 4308 (2000)

In an effort to avoid the death penalty, Carpenter pled guilty and was sentenced to prison for robbery and murder. His sentence was affirmed by the state courts. His attorney failed to challenge the sufficiency of the evidence on direct appeal or in his state habeas petition. Carpenter then sought habeas relief pro se in federal court, challenging the sufficiency of the evidence. This claim was procedurally defaulted by the court on the ground that Carpenter had failed to raise this issue on direct appeal or in his state habeas petition, and the time limit for such a claim had since run. Carpenter argued that it was because he received ineffective assistance of counsel on direct appeal that he had not raised the issue there, and that this should excuse his procedural default on his sufficiency of the evidence claim in federal court. The district court granted relief, a decision affirmed by the 6th Circuit.

The Supreme Court, in an opinion by Justice Scalia, held that a habeas petitioner must establish both cause for and prejudice from his procedural default in state court in order to use the procedural default on one issue (ineffective assistance of counsel) to excuse his procedural default on another issues (sufficiency of the evidence). Scalia made clear that the Anti-terrorism and Effective Death Penalty Act (AEDPA) did not affect the "cause and prejudice" rule that a federal habeas court may not entertain a claim that was procedurally defaulted in state court unless the inmate can show cause for the default and prejudice. 9-0 decision.

Slack v. McDaniel, 68 USLW 4315 (2000)

Slack was convicted of second-degree murder in Nevada and unsuccessfully chal-

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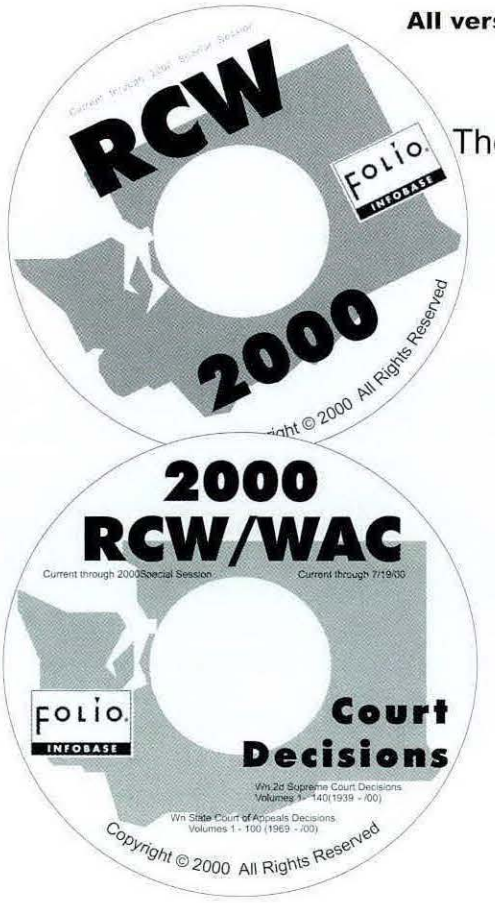

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lenged his conviction on direct appeal. He then filed, in 1991, a federal habeas petition, seeking to raise issues he had not yet presented to the state courts in a state habeas petition. He then filed a motion to hold his federal petition in abeyance while he pursued his state habeas petition. The district court dismissed his federal habeas petition without prejudice. After exhausting his state remedies, in 1995 Slack filed another federal habeas petition, including in it issues previously considered by the state courts and some issues not considered by the state courts. The state sought dismissal of this petition, arguing that because the federal petition included some issues not considered by state courts, it should be dismissed. The district court agreed and dismissed Slack's 1995 petition with prejudice on the grounds it constituted a "second or successive petition," barred by the AEDPA, which was enacted in 1996. Slack then filed a notice of appeal, which was treated by the federal district court and 9th Circuit as a certificate of probable cause (a pre-AEDPA device) and denied.

The majority opinion by Justice Kennedy held that: (1) Slack's right of appeal was governed by the pre-AEDPA law, since he filed his petition prior to the enactment of the AEDPA; and (2) when a claim is denied on the merits, a habeas petitioner must establish that reasonable judges would find the district court's assessment of the merits was debatable or wrong, but when a claim is denied on procedural grounds, as was the case here, a habeas petitioner must establish that reasonable judges would find both that the district court's assessment of the merits and procedures were debatable or wrong. 6-3 decision.

Williams v. Taylor, 68 USLW 4279 (2000)

Michael Williams was convicted in a Virginia court of two murders and sentenced to death. His conviction and sentence were upheld on direct appeal and state habeas. In his federal habeas petition he raised several issues, including: (1) a claim that his right to an impartial jury was violated by the seating of a juror who failed to reveal possible bias, of which the prosecutor was aware but failed to reveal; and (2) a claim that he was denied due process when the prosecution failed to disclose a psychiatric report on an accomplice who testified for the state. Evidence on these claims had not been previously submitted on direct appeal or in the state habeas petition.

The federal district court agreed to hold an evidentiary hearing on these issues, but before the hearing took place the 4th Circuit ruled that Williams was not entitled to it because he had failed to develop the factual basis of these claims in the state court proceedings. The AEDPA limits the ability of a habeas petitioner to raise an issue in federal court that was not first developed in state court. The meaning of the phrase "failed to develop" was the central issue in this case. Williams argued that he had not presented these issues in the state courts due to being unaware of the facts because the state itself suppressed the facts until after the state proceeding. The 4th Circuit determined that the reason for the failure was immaterial.

In a unanimous opinion authored by Justice Kennedy, the Supreme Court held that Williams should not have been penalized by the state's failure to provide needed evidence. In his opinion, Kennedy said the 4th Circuit misused the word "fail," which he said connotes some omission, fault or negligence on the part of the person who has failed to do something. Use of the phrase "has failed to" instead of "did not" clearly indicates that Congress did not intend to limit habeas petitions where the

inmate was not responsible for the delay in developing new evidence. The proper question was whether the prisoner made a reasonable attempt to investigate and pursue claims in state court, in light of the information available at the time. 9-0 decision.

Williams v. Taylor, 68 USLW 4263 (2000)

Terry Williams was convicted in a Virginia court of murder and sentenced to death. His sentence was upheld on direct appeal, but during the state habeas proceeding the court determined, after hearing new evidence on the matter, that while the conviction was valid, because the defense attorney failed to present significant mitigating evidence during the sentencing phase, Williams received ineffective assistance of counsel. The state Supreme Court disagreed, finding that Williams had not proven sufficient prejudice to justify resentencing. Williams then filed a federal habeas petition, and the federal district court judge agreed with the trial court judge that there was sufficient evidence of ineffective assistance of counsel, and that there was a reasonable probability the result would have been different had this evidence been presented, a finding required under *Strickland v. Washington* (1984). The judge applied the portion of the AEDPA which provides that in reviewing a habeas corpus petition, the federal court may set aside a state court decision only if that decision "was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court." The 4th Circuit reversed, interpreting the AEDPA provision as permitting reversal of a state court decision only if "reasonable jurists would all agree [it was] unreasonable."

There were two controlling opinions in the Supreme Court. Justice O'Connor held that the AEDPA requires a federal court to defer to a state court decision it regards as incorrect, as long as the decision was not "unreasonable." It is not enough that one federal judge subjectively believes the decision was unreasonable; rather, there must be evidence that the state court decision was "objectively unreasonable." The dissenters to this portion argued that federal judges should not have to defer to state court decisions they believed were incorrect, and that it was the federal courts' independent responsibility to interpret federal law. If Congress had intended federal courts to defer even to decisions they regarded as incorrect, the 1996 law would have said so clearly, rather than by indirection. Applying the law, the court then voted 6 to 3, in an opinion by Justice Stevens, that Williams was entitled to a new sentencing hearing because his lawyer's performance at the original hearing amounted to ineffective assistance of counsel. The dissenters to this portion of the opinion argued that while Williams had received ineffective assistance of counsel, he had failed to prove it actually made a difference in the outcome of his sentencing hearing, as required by *Strickland*. 5-4 decision.

Prison Litigation Reform Act

Miller v. French, 68 USLW 4535 (2000)

In 1975, inmates at an Indiana prison filed a conditions of confinement lawsuit which resulted in an order of ongoing injunctive relief. In 1996, Congress enacted the Prison Litigation Reform Act (PLRA), which included a provision allowing prison officials to file a motion to terminate relief, the filing of which operates as a stay on the original injunction ordering relief until the district court rules on the motion to terminate relief. In 1997, Indiana prison officials filed a termination motion, and inmates sought to enjoin the operation of the

"automatic stay" on the grounds that that portion of the PLRA violated the separation of powers doctrine because Congress was intruding on the authority of the judicial branch. The district court enjoined the stay, and the 7th Circuit affirmed, ruling that while the PLRA did not permit the district court to enjoin the automatic stay, that provision violated the separation of powers doctrine.

The Supreme Court, in a majority opinion by Justice O'Connor, reversed the 7th Circuit, holding that the PLRA's "automatic stay" provision does not violate the separation of powers doctrine. The Court also noted that the plain language of the statute eliminated the equitable power of the district court to enjoin the automatic stay. 5-4 decision.

Right to Counsel

Martinez v. Court of Appeal of California, 68 USLW 4040 (2000)

Martinez represented himself at his trial in California state court on embezzlement charges. He was convicted, but filed an appeal and a motion that he wished to represent himself on appeal. The state appeals court denied his motion to represent himself, holding there was no constitutional right to represent oneself on appeal. A 1975 Supreme Court decision (*Faretta v. California*) held that criminal defendants had a Sixth Amendment right to represent themselves at trial. This right did not extend to appeals, the state court ruled, as the Sixth Amendment does not apply to appeals, and due process does not require courts to allow defendants to represent themselves. Martinez then filed an appeal with the Supreme Court, which accepted the appeal and appointed a lawyer to represent Martinez before the high court.

The Supreme Court ruled unanimously that criminal defendants do not have a constitutional right to represent themselves on appeal. Writing for the Court, Justice Stevens said the historical analysis that supported the *Faretta* decision did not apply to appeals, which were not available at common law and, although provided for by law in the state and federal systems today, are not guaranteed by the Constitution. Justice Stevens wrote that states had the discretion to decide whether the government's interest in the integrity, efficiency and fairness of the appellate proceeding outweighed the inmate's interest in acting as his own lawyer. 9-0 decision.

Roe v. Flores-Ortega, 68 USLW 4132 (2000)

Flores-Ortega pled guilty to second-degree murder. The trial judge informed him he had 60 days to file an appeal, but defense counsel failed to file an appeal within the time period. An appeal subsequently filed by Flores-Ortega was denied as not timely. He then sought habeas relief, arguing his counsel's failure to file an appeal within the time period constituted ineffective assistance of counsel. The district court denied relief, but the 9th Circuit reversed, ruling that a defense counsel's failure to file an appeal was per se ineffective assistance of counsel unless the defendant specifically instructed the defense attorney not to file an appeal.

The Supreme Court vacated the 9th Circuit decision, rejecting application of a per se rule in this situation. Flores-Ortega did not lose his appeal, however. The Court held that defense counsel has a Sixth Amendment duty to consult with a client about the possibility of an appeal if a rational defendant would want to appeal or this particular defendant expressed a desire to appeal. The Court remanded the case to determine whether defense counsel had consulted with Flores-Ortega. If not, the

Court held, he need show only a "reasonable probability" that, but for counsel's failure, he would have appealed. Justice Souter dissented in part, saying the better rule would be to hold that a defense attorney "almost always" consult with a client as to the efficacy of an appeal. 6-3 decision.

Smith v. Robbins, 68 USLW 4069 (2000)

Robbins was convicted in a California state court of second-degree murder. His court-appointed counsel determined that there were no grounds for appeal, and filed a brief silent on the merits of the case, while offering to brief any issues raised by the appellate court. This procedure was in accord with California state practice, but differed from the practice outlined by the Supreme Court in *Anders v. California* (1967). In *Anders*, the Court held that appellate counsel who believe an appeal is without merit must explicitly state such and request to withdraw, after filing a brief identifying any "arguable" issues, even if he or she thinks these issues are frivolous. The California state courts denied review. Robbins subsequently filed a federal habeas petition, alleging he had been denied effective assistance of counsel because his appellate counsel's brief did not comply with the *Anders* requirements. The district court and the 9th Circuit concluded the *Anders* procedure was constitutionally required.

The Supreme Court, in a majority opinion written by Justice Thomas, affirmed the constitutionality of the California procedure. The majority explained that the *Anders* procedure was not mandatory, but just one possible method of dealing with potentially meritless appeals. The majority stressed its reluctance to require the states to follow one set procedure when others, such as the California procedure in this case, might function equally well. The dissenters argued that failing to require appellate counsel to undertake a "partisan scrutiny of the record" for potential appealable issues weakened the right to counsel. 5-4 decision.

Search and Seizure

Bond v. United States, 68 USLW 4255 (2000)

Bond carried a one-pound brick of methamphetamine in a duffel bag he stowed in the storage compartment above his seat on a Greyhound bus. A border patrol agent, conducting a routine immigration check as the bus traveled through Texas, felt the solid object as he walked through the bus conducting a "probing tactile examination" of passengers' carry-on luggage. Bond was arrested and convicted of drug possession. Two lower federal courts rejected Bond's argument that the agent's action violated the Fourth Amendment prohibition on unreasonable searches. Determining whether an expectation of privacy is reasonable under particular circumstances is the key to deciding whether an invasion of that privacy by a government agent violates the Fourth Amendment. As the court's precedents have developed it, the inquiry has two parts: (1) Did the individual have an expectation of privacy, and (2) was that expectation of privacy one that society recognizes as reasonable? The agent's probe was not a search in the constitutional sense, the 5th Circuit ruled, because a bus passenger did not have a reasonable expectation of privacy in his luggage.

The Supreme Court disagreed and reversed Bond's conviction. Writing for the court, Chief Justice Rehnquist first noted that Bond manifested a subjective expectation of privacy by placing the bag directly above his seat and using a solid-colored bag

that hid the contents from view. He than asserted that there was an objective expectation of privacy because the border patrol agent's conduct in probing the bag exceeded the sort of handling that a passenger would expect from his fellow passengers. Rehnquist acknowledged that while passengers expect others to handle their luggage, they do not expect that others will "feel the bag in an exploratory manner." Prior decisions (*California v. Ciraolo*, 1986; *Florida v. Riley*, 1989) permitted police to conduct an aerial surveillance of a person's property; the Justice Department argued that the search here was no different. The Court disagreed, noting that the physical invasion here was more intrusive than a "mere visual inspection." Justice Breyer filed a dissenting opinion in which he argued that the agent's squeezing in this case was no different than the kind of squeezing that luggage is likely to receive from fellow travelers, and so there was no objective expectation of privacy. 7-2 decision.

Flippo v. West Virginia, 528 US 11

In 1996, Flippo was convicted of murdering his wife after a trial in which prosecutors introduced into evidence photographs the police took from a briefcase they found at the crime scene and opened without a warrant. Flippo had initially summoned the police to the murder scene, his vacation cabin, where he said both he and his wife had been attacked by an unknown intruder. The photographs indicted that Flippo, a minister, was having a homosexual relationship with a member of his church, and provided a possible motive for killing his wife. In allowing the photographs into evidence, the trial court said the police were allowed to examine "anything and everything found within the crime scene." The West Virginia Supreme Court upheld Flippo's conviction. In an unsigned opinion issued without briefing or oral argument, the Supreme Court reversed the conviction, reiterating that there is no "crime scene exception" to the search warrant requirement. The trial court's ruling "squarely conflicts" with *Mincey v. Arizona* (1978), in which the Supreme Court refused to create a crime scene exception to the search warrant requirement. The general rule is that a warrantless search by the police is invalid unless it falls within one of the exceptions to the warrant requirement. Here, the court noted, there was no emergency or danger

to the police or others that would have precluded getting a warrant after the site of the crime, in a remote state park, had been secured. The decision addressed only the application of the 1978 precedent, sending the case back to the state courts with other issues unresolved. State prosecutors remained free to argue, for example, that Flippo in effect consented to the warrantless search by summoning the police to the murder scene, or that the photographs did not play an important role in his conviction, and that their introduction at the trial was thus "harmless error." 9-0 decision.

In a unanimous decision written by Justice Ginsburg, the Supreme Court upheld the Florida court's exclusion of the gun from evidence. An anonymous tip that a person is carrying a gun is not enough to justify a stop-and-frisk by the police without some further sign that the information is reliable.

Florida v. J. L., 68 USLW 4236 (2000)
Miami police received an anonymous phone tip that a black teenager (a 15-year-old identified in court documents only as J. L.) dressed in a plaid shirt, standing with two companions at a bus stop was carrying a concealed handgun. Police officers went to the scene, found it as described, detained and frisked the juvenile, and pulled a gun from his pants pocket. The Florida Supreme Court suppressed the gun as the fruit of an illegal search. In *Terry v. Ohio* (1968), the Supreme Court permitted police officers to conduct a stop and frisk based on "reasonable suspicion" rather than the more exacting standard of probable cause. In *Alabama v. White* (1990), the high court held an anonymous tip which provided an accurate prediction of the suspect's future movements was sufficient to create reasonable suspicion for a stop. In *New York v. Quarles* (1984), the Court created a "firearms exception" to the Miranda warning requirement for questions related to finding a firearm discarded by the suspect in a public place. A number of lower courts had interpreted these decisions as creating the requisite "reasonable suspicion" justifying a stop and frisk for a weapon mentioned in an anonymous tip. The Florida Supreme Court was in a minority of courts that refused to create such a "firearms exception."

In a unanimous decision written by Justice Ginsburg, the Supreme Court upheld the Florida court's exclusion of the gun from evidence. An anonymous tip that a person is carrying a gun is not enough to justify a stop-and-frisk by the police without some further sign that the information is reliable. The court declined to create a "firearms exception" allowing anonymous tips to permit *Terry* stops if the tip mentions a weapon, saying such an exception would be too broad, and would enable people to harass others by filing false tips. Additionally, such a rule would not be easily confined to guns, but would logically extend to "bare-boned" tips about narcotics on the ground that guns are often associated with drug dealing. Justice Ginsburg distinguished *White* by saying that for an anonymous tip to be reliable enough to justify police action, it must do more than simply describe a suspect's appearance and location. In this case, Ginsburg noted that the tip had offered nothing beyond mere description, in contrast to the tip in *White*, which provided predictions about future movement, thus permitting the police to verify its reliability. In the context of an anonymous tip rather than observed behavior, reasonable suspicion requires that the tip be reliable in its assertion of illegality and/or conduct, not just in its tendency to identify a particular person. Recalling that the court had described *White* as "close," Ginsburg said this case was on the other side of the line. She did suggest that the need for reliability might be relaxed in contexts where great danger was alleged — as in a report that someone was carrying a bomb — or in places such as airports or schools, where the reasonable expectation of privacy is diminished. 9-0 decision.

Illinois v. Wardlow, 68 USLW 4031 (1999)
As four police cars on narcotics patrol at noon approached the Chicago sidewalk where he was standing, Sam Wardlow turned and ran down an alley. An officer caught him and, in a pat-down search, felt a gun in a bag Wardlow was carrying. Wardlow was arrested and subsequently convicted of illegal possession of a firearm. The Illinois Supreme Court reversed his conviction, on the ground that fleeing from the police at high speed did not provide the "reasonable suspicion" necessary to justify a stop-and-frisk procedure. The state court reasoned that because people have the right to walk away from an encounter with the police, they also have the right to run away. In its appeal, Illinois argued that unprovoked flight from the police should always give rise to reasonable suspicion, regardless of the presence or absence of any other element. Most lower courts that had

considered the matter had held that running from the police, even in a high-crime area, was not enough to justify being stopped and searched by the police.

The Supreme Court, in a 5-4 decision authored by Chief Justice Rehnquist, upheld the stop-and-frisk in this case. Rehnquist held that Wardlow's presence in an area known for heavy narcotics trafficking, combined with his unprovoked flight, justified the *Terry* stop. The Chief Justice noted that the determination of reasonable suspicion is based on "common-sense judgments and inferences about human behavior," and that the circumstances in this case constituted reasonable suspicion. Rehnquist distinguished between a mere refusal to cooperate with the police and "headlong flight" — the first is permissible, but the second suggests a desire to evade the police rather than a simple desire to go about one's business. Rehnquist's brief five-page majority opinion did make it clear that flight alone would not automatically justify a stop, but it should be given heavy weight in the analysis. Justice Stevens's dissenting opinion noted that the majority failed to acknowledge the growing evidence of police practices of "racial profiling" and singling out members of minority groups for police scrutiny, and suggested that some minorities might believe that contact with the police can itself be dangerous, and thus encouraged flight from the police. The dissent also said the known facts of the case were too ambiguous to justify the conclusion that the officer had the requisite level of suspicion. 5-4 decision.

Self-Incrimination

Dickerson v. United States, 68 USLW 4566 (2000)

In 1968, by passing 18 USC 3501, Congress attempted to overrule the *Miranda* decision, which required police officers to inform a suspect in custody of his rights before they could lawfully interrogate him. Under this statute, applicable only to federal courts, a confession could be admitted even when the suspect was not Mirandized if the prosecution could establish the confession was voluntarily given. This was the test used by the Court prior to *Miranda*. Doubts about the constitutionality of the statute led federal prosecutors to ignore it for many years. Dickerson was questioned without being Mirandized and made incriminating statements related to his participation in a bank robbery. When his statements were challenged, the prosecution argued 18 USC 3501 applied. On appeal, the 4th Circuit accepted the argument that the federal statute applied and held Dickerson's statements admissible under the voluntariness test. The 4th Circuit relied on language from several Supreme Court cases that suggested the Miranda warnings were not constitutionally mandated but were merely prophylactic rules.

The Supreme Court, in an opinion by Chief Justice Rehnquist, overruled the 4th Circuit and struck down 18 USC 3501. In so doing, the Court held that the Miranda warnings are in fact constitutionally required and are not just a prophylactic rule. The Court acknowledged that there was some language in subsequent opinions, including some authored by then-Justice Rehnquist, suggesting Miranda warnings were not required by the Constitution, but pointed out that the *Miranda* opinion itself clearly stated otherwise. Furthermore, subsequent cases in which the Court applied the rule to state courts indicated it was a constitutional rule rather than a mere rule of evidence. As Congress lacks the authority to overrule via statute a Supreme Court decision interpreting the constitution, 18 USC 3501 was therefore void. Rehnquist also noted that while the current Court might not agree with *Miranda*, the principle of stare decisis and evidence that the rule has not adversely affected law enforcement augured for the status quo. Justice Scalia dissented, ridiculing members of the majority for changing their position and arguing the later cases proved *Miranda* was not a rule of constitutional dimension and that stare decisis does not justify keeping what he believes is a clearly erroneous decision. 7-2 decision.

United States v. Hubbell, 68 USLW 4449 (2000)

In 1994, former Associate Attorney General Webster Hubbell pled guilty to mail fraud and tax evasion charges and was sentenced to almost two years in prison. As part of his plea agreement he promised to provide special prosecutor Kenneth Starr with information relating to the Whitewater investigation. In 1996, Hubbell was served with a subpoena requesting documents. He asserted his privilege against self-incrimination and was granted immunity. He then produced over 13,000 pages of documents, some of which were later used as the basis for his indictment for tax fraud. The district court dismissed the indictment on the ground that the documents used to obtain the indictment came from an immunized act, the production of subpoenaed documents. The District of Columbia Court of Appeals affirmed, ruling that the indictment was flawed unless the prosecution could establish "with reasonable particularity" that it had independent knowledge of the documents, something the prosecution acknowledged it could not do.

The Supreme Court, in an opinion by Justice Stevens, upheld the lower courts, ruling that documents produced in response to a broad subpoena under a grant of immunity cannot be used as evidence if the prosecutor did not previously know of the documents' existence. The Court said the subpoena in this case amounted to nothing more than a "fishing expedition." The Court made clear that just as the privilege against self-incrimination protects the target of grand jury investigation from being compelled to verbally answer incriminating questions, that same privilege exists for the "testimonial act" of document production. Chief Justice Rehnquist was the sole dissenter. 8-1 decision.

Conclusion

The Supreme Court's 1999 term was marked by a number of significant decisions involving criminal justice. In most cases, the Court continued its record of upholding law-enforcement authority, but not always. Law enforcement won 17 times, while criminal defendants and inmates won 11 times. Even when the criminals won, they sometimes lost, as in the *Williams* case. Coming from a court that is decidedly conservative on criminal law issues, decisions like *Bond* and *J. L.* may indicate not a change in the Court's direction, but rather that some lower courts have misread the Court as tilting even further toward law enforcement than in fact it has.

Craig Hemmens is an assistant professor of criminal justice administration at Boise State University in Boise, Idaho. He has a J.D. from North Carolina Central University School of Law and a Ph.D. in criminal justice from Sam Houston State University.

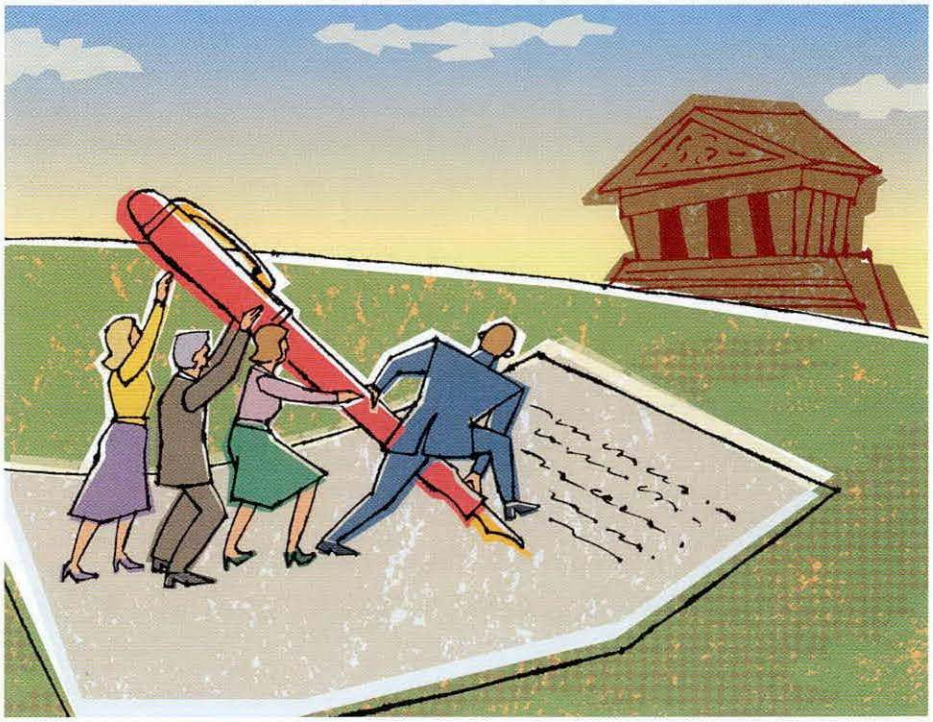
Defining "The Practice of Law" — Untying the Gordian Knot

Robert D. Welden • *WSBA General Counsel*

As the story goes, King Gordius tied his cart with a knot so complex that the people came to believe that whoever could figure out how to untie the knot would become the ruler of all Asia. Many tried and failed. In his quest to become conqueror, Alexander tried, and like the others, also failed. Finally, he grew impatient, drew his sword in the finest Indiana Jones-fashion, and cut the Gordian Knot. After his subsequent conquest of Asia, many looked back at that moment as the key to his triumph.

Determining what constitutes "the practice of law" may be the key to untying the Gordian Knot of the unauthorized practice of law (UPL). To this end, the Board of Governors has submitted to the Washington Supreme Court a proposed court rule (General Rule 22) defining the practice of law. In order to implement that rule, the board also submitted a proposed rule (General Rule 23) establishing a practice of law board which would address issues regarding both unauthorized practice of law and regulation of authorized practice by nonlawyers. (The text of the proposed rules can be found at www.wsba.org/proposed.)

This article discusses the background of these proposals, the current consideration of them, and future challenges facing the bar. The premise of these efforts is this: If we can define the practice of law, then we can equally define the unauthorized practice, and can provide protection for the consumer of legal services, assurance of competent legal assistance, and a system that provides recourse when incompetent or dishonest service is provided.



Just as severing the Gordian Knot did not resolve Alexander's future battles, defining the practice of law will not resolve the issues of the future of the profession.

A Little History: How the UPL Knot Got Tied

Today there is almost no enforcement of restrictions on unauthorized practice of law. The reasons for this are both historical and legal.

According to a study by the American Bar Association, issues of unauthorized practice of law go back to colonial times before there was an organized bar. The ABA study describes a continuing tension between hostility toward lawyers and efforts to control unauthorized practice of law. The ABA study notes that these UPL activities were generally perceived to be driven by protection of lawyers' private interests rather than public demand for consumer protection.

Between the 1870s and the 1920s, many states enacted UPL legislation. Washington passed a law in 1921 that only persons admitted to practice in Washington could practice law, and made violation of that statute a gross misdemeanor (Rem. Rev. Stat. ß139-4; 139-22. Cf., RCW. 2.48.180). In 1925, a case came before the Washington Supreme Court in which it was charged that one Charles Chamberlain "willfully and unlawfully represented himself to be, and practiced as an attorney and counsellor at law, and did work of a legal nature for compensation." One of the issues raised by Chamberlain was that the statute did not define the practice of law. In upholding the statute, the Supreme Court said:

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

Thus, the Supreme Court held that the practice of law is what lawyers do. As early as 1930, the WSBA established an Unauthorized Practice of Law Committee that investigated UPL complaints and brought civil enforcement actions. This system continued until about 1980. During that period, the UPL Committee presented reports annually in which they decried the difficulty of their task because of the lack of documented cases of harm to the public of what was widely acknowledged within the bar to be a problem of unauthorized practice of law.

In the 1970s, the U. S. Department of Justice filed Sherman Act violation actions against the Virginia State Bar Association and others, and the Federal Trade Commission launched a nationwide investigation into alleged unlawful restraint of trade activities of bar associations. As a result, in 1979 the WSBA Board of Governors directed the UPL Committee to limit its activities to studying what its role should be and making reports to the board.

Several studies on UPL and related issues were reported to the board between 1979 and 1995. Also, in 1997 the WSBA proposed legislation to make UPL a per se violation of the Consumer Protection Act. Each of those efforts failed at least in part because of the inability to define what it is that is being regulated, i.e., the practice of law.

The result is that today the WSBA has no role in attempting to regulate the unauthorized practice of law. RCW 2.48.180 makes UPL a crime, and also empowers prosecuting attorneys, along with the attorney general, to seek injunctive relief against unauthorized practitioners. The reality is that very few public prosecutions are brought because of the limited resources of prosecutors and because of the difficulty of proving the offense except in extreme cases.

Untying the Knot: Defining the Practice of Law

The Washington Supreme Court has made efforts at defining the practice of law, but only on a case-by-case, piecemeal basis. In 1998, Cashmere lawyer Steve Crossland, who was formerly on the Board of Governors and who had participated in three of the previous UPL-related reports to the board, proposed the establishment of a "blue ribbon" Committee to Define the Practice of Law to draft a definition of the practice of law.

The committee presented its final report and proposed definition in July 1999. (The report is posted on the WSBA website at www.wsba.org/c/cdpl/home.htm.) The proposed definition was submitted by the Board of Governors to the Supreme Court for adoption as General Rule 22. The Supreme Court published the proposed rule for comment in the January 11, 2000 Advance Sheets (139 Wn.2d No. 6). Many comments were received and forwarded to the Board of Governors. The board referred them to the Committee to Define the Practice of Law for review and recommendation. The committee was expanded to add representatives from the Superior Court Judges' Association, the Washington Association of County Clerks, the Access to Justice Institute of the Seattle University School of Law, lawyers and nonlawyers from the Access to Justice Board, and former citizen members of the Disciplinary Board.

The board directed the committee to make recommendations regarding changes in light of the comments to the Supreme Court, and regarding implementation of the definition, if adopted.

Once the practice of law is defined, the issue becomes who is and who is not authorized to practice law. The committee recognized that these are major, controversial issues falling under the rubrics of "unauthorized practice of law" and "access to justice." Succinctly stated, should anyone other than lawyers be authorized to practice law?

In originally drafting the proposed definition, the Committee to Define the Practice of Law debated this issue and concluded that there are already many areas in which nonlawyers are authorized to practice (see proposed GR 22 (b)). In discussing the implementation of this definition, the expanded committee did not undertake to go further in trying to resolve this issue. The committee agreed on a statement of principle drafted by lawyer member Jim Bamberger that guided their work:

> All members of society should be able to afford/retain essential legal assistance from individuals who have the requisite skills and competencies and operate subject to an oversight/regulatory scheme that ensures that those whose important rights are at stake can reasonably rely on the quality, skill and ability to perform necessary appropriate tasks.

The committee drafted proposed GR 23 to establish a Practice of Law Board which would serve (1) to consider issues relating to the unlicensed or unauthorized practice of law, issue advisory opinions, and make appropriate referrals to prosecution authorities; and (2) to regulate the practice of law by recommending to the Washington Supreme Court any future limited licensing of nonlawyers to practice law.

No conclusion was reached on whether there should be any future limited licensing of nonlawyers to practice law, but the Practice of Law Board establishes a mechanism for considering the issue. The proposed rule sets out criteria to be used in considering whether to recommend to the Supreme Court that nonlawyers be authorized any limited practice. This rule would not authorize anyone to practice law. Nor would it empower the Practice of Law Board to authorize anyone to practice law. Rather, it establishes a mechanism by which complaints of unauthorized practice of law may be investigated and resolved, or reported to an appropriate enforcement agency. It also establishes a mechanism and criteria for consideration of any recommendation to the Supreme Court that it adopt court rules pursuant to GR 9 to authorize the limited licensing of nonlawyers to engage in the regulated practice of law.

The Knot Untied: Whither the Future of the Profession of Law?

Just as severing the Gordian Knot did not resolve Alexander's future battles, defining the practice of law will not resolve the issues of the future of the profession. The challenges for the bar are many. On all sides, nonlawyers are seeking to occupy turf lawyers once thought was exclusively theirs. This ranges from the independent paralegal advising individuals on divorce and bankruptcy, to CPAs and others seeking adoption of rules to permit multidisciplinary practice, to lawyers from one state seeking authority to engage in multijurisdictional

practice in other states, to the proliferation of legal information and services on the Internet.

The WSBA Long-Range Strategic Plan, adopted by the Board of Governors, includes Goal No. 5: *The WSBA will address the unauthorized practice of law, multi-disciplinary practices, and other external influences and market pressures that impact the delivery of legal and law-related services.* President Jan Eric Peterson has established a Futures of the Profession Study Group, chaired by Seattle lawyer Tom Fain, to answer the following questions:

1. Do we change the RPCs to allow multidisciplinary practice? Why or why not?
2. Do we change the RPCs and/or APRs to deal with multijurisdictional practice? Why or why not?
3. How can we anticipate and deal with the effect of the Internet on the practice of law?

The study group is concentrating on the multidisciplinary and multijurisdictional practice issues, and expects to report to the Board of Governors at the July 2001 meeting. Issues relating to the Internet will be considered as time permits within the structure of the study group, but may take further consideration.

Public distrust of lawyers is probably no less today than it has been in the past. As a 1995 American Bar Association Nonlawyer Practice Report states: "The debate over delivery of law-related services and their cost is a public concern that will be debated by the public, not just by the legal profession." Lawyers have never been successful when their only interest was in "turf protection." But even when motivated by a desire to protect the public, lawyers' motives are viewed with suspicion. Consumer protection cannot be just a catchphrase; it must be a sincere, motivating and manifested principle to gain the trust and support of the public.

There are worlds of apathy, ignorance and indifference waiting to be conquered. Defining the practice of law is a step, but only a step, toward this eventual conquest aimed to protect the public, assure competent legal services, and develop a system to provide recourse to the consumer when things go wrong.

Technology Basics Manual: Fundraising for Access to Justice

by Joyce Raby

WSBA Justice Programs Technology Specialist

Part of the mission of the Access to Justice Board of the WSBA is to provide ongoing support to the 35 volunteer lawyer programs in Washington. This includes helping promote pro bono service; providing assistance in program management, training volunteers, and providing technical support, one of the primary responsibilities of my job.

I have spent the better part of the last 15 years working in various capacities with information systems departments, and it was with great excitement that I took on the challenge of supporting such diverse organizations as the volunteer lawyer programs. These programs offer legal services to low-income people in need of assistance, primarily through the efforts of pro bono attorneys. Examples of these programs include the Thurston-Mason County Volunteer Legal Clinic, the Northwest Immigrants Rights Project, Blue Mountain Action Council, and a number of other programs scattered across the state — almost one in every county.

My goal in writing *Technology Basics* was to provide the documentation needed to help program coordinators take full advantage of their computers without the expense of purchasing numerous manuals. *Technology Basics* provides easy-to-understand advice about how to keep a computer running in tip-top shape. The manual includes information on such common topics as networking, telecommunications, PC maintenance, backup rotations and disaster recovery.

While I don't think John Grisham has anything to worry about, through sales to date we have more than covered the cost of production and are running in the black. We are excited to have a revenue stream for access to justice that can be invested in supporting volunteer lawyer programs.

To order a copy of *Technology Basics* please use the coupon below and mail to: LOMAP, Order Processing, WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330 or call Kaitlin Mee at 206-733-5914. All proceeds from the sale of the book go to support access to justice initiatives in Washington.

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The Board's Work

by Mark A. Panitch
Bar News Editor

Port Ludlow was the venue for the December Board of Governors meeting which saw progress on several Bar initiatives, the long overdue —and now unfortunately posthumous — admission of 1902 University of Washington law graduate **Takuji Yamashita**, and a step toward changing the fundamental nature of the first-year law school experience in this state.

Board members also enjoyed visiting the historic Jefferson County Courthouse and meeting with members of the Jefferson and Clallam County bar associations.

Takuji Yamashita

Despite a steller performance in law school and a "highly creditable" performance on the bar exam, Yamashita was denied admission to the bar because he wasn't a U.S. citizen. He was wasn't a U.S. citizen because Washington's attorney general could not figure out whether Japanese counted as white or "whitish" people, and only a "free white person" or (after the civil war) a person of "African descent or nativity" was eligible for citizenship. It was not until 1952 that Japanese immigrants were granted citizenship rights and 1973 before the Supreme Court struck down barriers against bar admission for resident aliens

Judge **Ron Mamiya**, representing the Asian Bar Association of Washington, and **Lish Whitson**, representing the UW law alumni association, made a moving presentation, describing Yamashita's lifelong struggle to overcome the racial barriers that were so common in the United States and Washington state.

Governor **Stephen Henderson** moved that the WSBA join with the UW law school and the Asian Bar Association to petition the Supreme Court for posthumous admission. Governor **Jenny Durkan** seconded. The BOG unanimously agreed to join in petitioning the Supreme Court to finally admit Yamashita.

The Rule Against Perpetuities

Washington law students soon may no longer be heard mumbling "21 years plus a life in being" like a secret incantation or initiation rite. **Mike Carrico** of the Real Property, Probate and Trust Section reported that legislative amendment of The Rule Against Perpetuities was in the works. The amendment suggested by the RPPT would limit future generation-skipping trusts to 150 years. Governor **Daryl Graves** moved that WSBA sponsor the bill. The vote was 9-0 in favor. Bar traditionalists asked if The Rule in Shelly's Case would be next.

Executive Reports

President **Jan Eric Peterson** reported that he had attended nine formal meetings or dinners; met with a labor representative regarding legislative funding for legal services; met with **Bonnie Glenn**, co-chair of the WSBA Diversity Committee and president of the Loren Miller Bar Association; wrote two *Bar News* columns; and was sued twice in his representative capacity. In addition, he noted that his Proud to be Lawyer initiative would be accomplished largely with volunteers, but those aspects of the plan needing funding would be presented to the Budget & Audit Committee and be subject to board approval.

President-elect **Dale Carlisle**, interim chair of the Member Benefits Task Force, reported that the MBTF would hold its first meeting in December.

Executive Director **Jan Michels** submitted a lengthy written report describing her attendance at an ABA "briefing session" for newer bar executives, detailing new bar admissions through new House Counsel (82) and reciprocity (109 admitted, 55 pending) rules, and providing information on the first WSBA broadcast e-mail (9,000 transmitted, the experiment was a success). In addition, she reported that our Supreme Court has ordered re-authorization of the Access to Justice Board and has ordered that our annual bar dues be increased. (See your licensing packet or the WSBA website at www.wsba.org/license-form.htm.)

Michels also reported that **Michael Hoff** has been hired as part-time addiction counselor in the LAP, **Robert Maira** (formerly assistant to Justice Bridge) has been hired as section liaison, and the WSBA charity auction netted over $3,000.

Other Matters

Public Legal Education. Judge **Marlin Applewick** and former Superintendent of Public Instruction **Judith Billings** reported that several programs are now underway, including: retired judges as counsel to teen courts; retired judge funding the purchase of 260 copies of the "Street Law" textbook; a gateway website; "law school for legislators" on January 5 with a "law school for media" to follow; a media guide on who to call for answers about the law; developing civics programs for schools; and making civics a core competency subject for high school graduation.

Reciprocity. Both Oregon and Idaho are looking at instituting reciprocity programs in the coming year. Some governors were concerned that Washington had created a loophole that allows anyone to apply for admission in Washington by first gaining admission to the Washington, D.C. Bar, which allows admission by motion rather than on a reciprocal basis.

WSBA General Counsel **Bob Welden** pointed out that there are significant financial "disincentives" for multiple bar admissions. The governors agreed to review the situation in six months and authorized the president to write a letter to the Oregon and Idaho bars supporting reciprocity.

Legal Services. The BOG restated its commitment to a $14.8 million state funding level for legal services. Among the options for funding suggested by Governor Locke's office are use of general fund dollars and an increase in court filing fees.

Project 2001/Court Improvement Committee. Project 2001 suggested a number of changes to court rules and practice and a constitutional amendment that would allow counties to use retired judges (statewide) and judges from courts of limited jurisdiction as pro tems on an almost unlimited basis. **Kirk Johns**, chair of the CIC, urged the BOG to oppose the concept without the addition of safeguards such as additional affidavits of prejudice or limits on jurisdiction. There was extended and lively discussion on this issue. District Judge **Judith Eiler** strongly urged approval. Governor Durkan recommended that the BOG use caution when dealing with constitutional amendments. After several unsuccessful efforts to modify or amend the recommendation, the BOG finally voted 5-4 to oppose the recommendation. Governors Graves, Thompson, Henderson and Hyslop voted to support the recommendation.

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What to Do While Your Dream Job Materializes

by Rebecca Nerison, Ph.D.
WSBA Lawyers' Assistance Program Psychologist

I've always felt that looking for a job is one of the most difficult tasks on the face of the earth. Active job-seekers expose themselves to scrutiny and rejection with each application or résumé that is sent. Inactive (or underactive) job-seekers are subject to self-criticism and self-recrimination because they're not doing what they "should" be doing. Rejection and/or self-recrimination are not attractive alternatives. So what can you do until you find that perfect union of your skills and a great employer's needs? (Hint: Matching your skills to an employer's needs should be your primary objective.)

Maintaining self-confidence and a sense of one's competence is difficult for job seekers with a clear direction and purpose in mind. It can be next to impossible for those whose career goals are unclear. Therefore, the first tactic I suggest is to ask yourself from the outset, "Is my ladder propped against the right wall?"

What do I mean by this? We've all heard about climbing the ladder of success. The problem is some people climb to the tops of their ladders only to discover that they've arrived somewhere they really don't want to be. This happens to a lot of lawyers. They may have hated law school. Or they played the part of the good soldier and powered through, despite misgivings. Then, they wake up two, seven or 25 years later, to discover they're miserable. Some considered soul-searching at the outset can prevent this tragedy. It is a tragedy when a person must grit her or his teeth just to get through the day. I advise testing the hypothesis that you really *want* to work as a lawyer. This requires brutal honesty with yourself.

First, **work.** Do anything that will allow you the freedom to pursue a law job for at least two or three hours during the day. It doesn't matter what the job is. You could mow lawns, stock books or grocery shelves at night, be a night watchman, type stuff or do data entry. It doesn't matter. The point is to be out among the working and the living — hopefully the two aren't mutually exclusive — earning grocery money. The benefits include reducing isolation and exposing yourself to industries you may never experience again.

At this point I can hear that voice inside you asking: "Why should I stock shelves? I'm a lawyer, for crying out loud! That's totally beneath me!"

Get over yourself. A huge ego is your prerogative, of course, but be aware that huge egos alienate people and usually mask a bundle of insecurities. Successful people in all fields have a service mentality. With the right attitude this skill can be developed at McDonald's better than at the city's largest law firms. Don't misunderstand: I'm not suggesting a minimum-wage job as a long-term strategy. I know you have huge student loans and rent to pay. This is an interim, transitional strategy only.

Ask for help. Develop a morale-maintenance program with your friends and family. Looking for work is difficult, and the "Lone Rangers" have it the worst. Tell everyone you know what you're looking for, and ask for suggestions. Ask for names of those who might know helpful people. Ask someone to cook dinner for you once a month and check on your progress. Is it humiliating to ask for help? That's a sign in itself that you need some. Humans are social creatures who need each other; don't fight your nature.

Give it away. Volunteer for something. Anything. You may not qualify to provide volunteer legal services since many agencies want experience, but ask anyway. You can always answer the phone or stuff envelopes or empty the trash. Need is everywhere; proximity can work in your favor. And maybe there's some legal work you can do. Could you figure out how to write a will for your sister? Help a friend with his DUI or rental agreement? This is how lots of people get started in solo private practice. An experienced attorney should look over your work at first, but this is how most lawyers learn their jobs — from scratch.

Read. Try *Ask the Headhunter* by Nick Corcodilos for suggestions on how to get and do great interviews. This book is best for people with experience. (Visit the website at www.asktheheadhunter.com.) For recent graduates, Kimm Alayne Walton's books (e.g., *Guerilla Tactics for Getting the Legal Job of Your Dreams*) are good resources. For a thoughtful approach to vocation and calling, read Parker Palmer's *Let Your Life Speak*. This is a beautifully written, inspi-

The WSBA Lawyer Services Department offers these four programs:

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

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

The Professional Responsibility/Ethics Program — 206-727-8284: 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.

rational book – one of my favorites. Anything written by Barbara Sher is great for help with clarifying what you want to do and how to start doing it. Her four books are *Wishcraft – How to Get What You Really Want, How to Live the Life You Love, I Could Do Anything if I Only Knew What it Was,* and *How to Create Your Second Life at Any Age.* Julia Cameron's books (*The Artist's Way,* et. al) are great for ensuring that you don't become a uni-dimensional person.

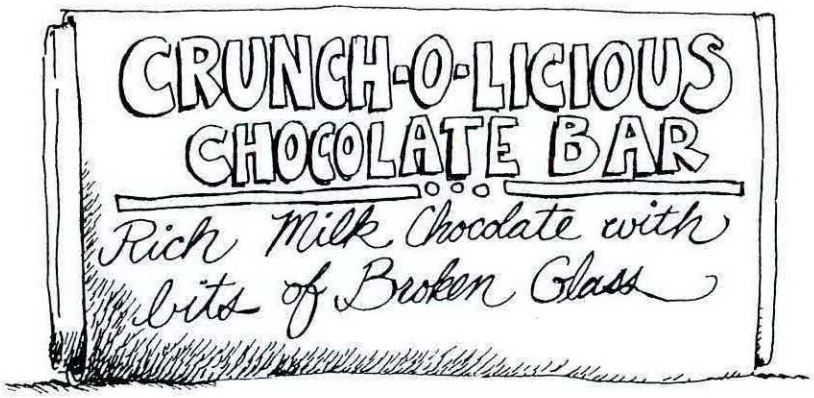
For those of you who are feeling badly about not being hired by a large law firm, read Patrick Schiltz's article in the *Vanderbilt Law Review* (Vol. 52:871), "On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession." Even if you don't want to work for a big firm, read this article. It may help clarify whether you want to work as a lawyer at all.

Hang out with lawyers. Attend CLEs and make it a point to talk to someone there. Join your local or specialty bar association and volunteer for a committee. Attend state bar section meetings. Get involved with associations affiliated with your practice interests: human resources groups, human rights organizations, real estate associations, small business organizations, Chamber of Commerce, etc. If you feel shy, introduce yourself to someone and ask if they've attended this event before.

Believe in yourself. Do whatever it takes to build a quiet confidence in yourself and your abilities. Keep a journal recording your thoughts and feelings as the days go by. Track the success of your efforts so you can do more of what's working. Ask someone who cares about you to tell you everything that's good about you. And if you find yourself feeling demoralized and discouraged, call the WSBA Lawyers' Assistance Program. Don't wait until you're so depressed you can't get out of bed. (If you're already there, call anyway.)

Looking for a job is one of the hardest things you'll ever do. Give yourself credit for what you accomplish and let go of your failings. Do what you can do and don't worry about what you can't do. Best wishes to you as you continue on your journey.

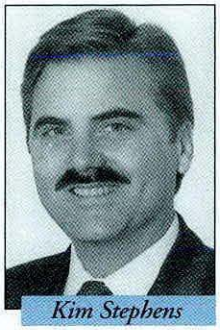
Rebecca Nerison is a psychologist with the Lawyers' Assistance Program. She can be reached at 206-727-8269 or rebeccan@wsba.org.



CHOCOLATE TORT

Changing Venues


Sheryl J. Willert


Kim Stephens


Ashley M. Bale


Robert Tad Seder

Honors and Awards

The Honorable **Gerry L. Alexander** has been elected chief justice of the Washington Supreme Court. As the 52nd chief justice, he is the court's chief spokesman, presides over public hearings, and acts as the adminstrative head of the state's trial and appellate court system. He also co-chairs the 20-member Board for Judicial Administration. Justice Alexander was recently awarded the University of Washington School of Law Distinguished Alumni Award, along with The Honorable **William Fremming Nielsen**, chief judge of the Eastern District of Washington U.S. District Court.

The Honorable **Betty B. Fletcher**, a member of the U.S. Court of Appeals for the 9th Circuit, has been honored with the Henry M. Jackson Public Service Award by the University of Washington School of Law Alumni Association.

Montesano lawyer **Vini Samuel** has received the state Democratic Party's annual Rising Star Award for her work with the Grays Harbor Democratic Central Committee, the Montesano City Council, and the American Civil Liberties Union. Ms. Samuel works for the Aberdeen firm of Micheau Reed and focuses on estate planning and probate work.

Nancy Nellor, a partner with the Vancouver firm of Morse & Bratt, has been elected president of Southwest Washington Independent Forward Thrust (SWIFT). Founded in 1975, SWIFT has given more than $2.9 million in grants to Southwest Washington community organizations and charities.

The Northwest Tribal Court Judges Association has elected the following board members for 2000-2002: president, **Martin Bohl**, chief judge, Upper Skagit Tribe of Indians; vice-president, **Mary L. Pearson**, chief judge, Spokane Tribe of Indians; secretary/treasurer, **Michelle Demmert**, associate judge, Northwest Intertribal Court System; director, **Patricia Paul**, pro tem tribal judge, Northwest Intertribal Court System; director, **James Underwood**, tribal judge, Goshute tribal court; delegate, **Mary Wynne**, justice, Puyallup and Spokane tribal courts; alternate delegate, **Buford Johnson**, justice, Confederated Tribes of Warm Springs.

Vancouver lawyer **Juliet C. Laycoe** received the George C. Marshall Leadership Award. The award is presented annually to a Clark County resident under age 35 who represents leadership, community service, vision and honor.

The Defense Research Institute (DRI), the nation's largest association of civil litigation defense lawyers, has elected Seattle lawyer **Sheryl J. Willert** as first vice-president. The first female and first African-American officer of the organization, she will become DRI president-elect in October 2001 and president in October 2002. Ms. Willert has been the managing director of Williams, Kastner & Gibbs PLLC since 1996.

Seattle lawyer **Jeffrey I. Tilden** has become a fellow of the American College of Trial Lawyers. Mr. Tilden is a partner in the firm of Gordon Murray Tilden.

Movers and Shakers

Graham & Dunn has added four new attorneys to its Seattle office. **James H. Simon** is a shareholder and member of the labor and employment team. **Randall H. Moeller** has joined the intellectual property team as of counsel, and **Michael A. Raskasky** has joined the banking and financial institutions team as of counsel. **Michael C. Williams** is an associate on the technology ventures and e-commerce team.

Steven N. Ross has joined Wolfstone, Panchot & Bloch PS as of counsel. His practice emphasizes labor and employment law. **Kevin D. Hull** has joined the firm as an associate, focusing on litigation and family law.

Kim Stephens has become a named owner of the Seattle firm of Tousley Brain PLLC. The firm is now known as Tousley Brain Stephens PLLC. Mr. Stephens has been with the firm since 1981.

Rebecca McIntyre has joined the University of Washington Real Estate Office, handling real estate transactions for the university and off-campus university leasing, acquisition and development.

Daniel Huffman has been appointed an administrative law judge for the Office of Administrative Hearings in Everett. Prior to his appointment, Mr. Huffman was a claims officer for the Everett Division of Child Support Services.

The Seattle office of Miller Nash LLP has added **Ashley M. Bale** to its litigation department. She focuses on litigation, environmental and natural resources law, and telecommunications utilities and regulation.

Robert Tad Seder has joined the civil division of the Snohomish County Prosecutor's Office.

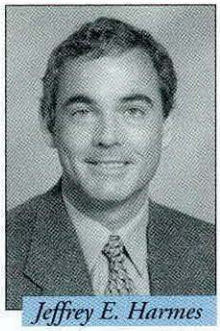
Theona Jundanian has joined the Casey Family Program (CFP) as senior program counsel. The CFP is a nationwide, nonprofit foundation headquartered in Seattle which helps foster children and families.

Eric A. DeJong has joined the Seattle office of Perkins Coie as a partner in the corporate finance group. He focuses on emerging companies, corporate finance, securities regulation, and mergers and acquisitions, as well as general corporate law. **Clemens H. Barnes** has joined the firm's labor and employment law group. He focuses on employment law advice and representation; union-management issues; special government contractor obligations; and employment contract, pay practices and wrongful discharge litigation.

Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim PLLC has added **Steven T. Reich** to its Seattle office as an associate. Prior to joining the firm, he was the assistant city attorney in Coeur d'Alene, Idaho, and Bremerton, Washington.

Timothy D. Benedict has joined the Seattle firm of Hillis Clark Martin Peterson PS as an associate, focusing on commercial litigation.


Kathleen A. Nelson


Jeffrey E. Harmes

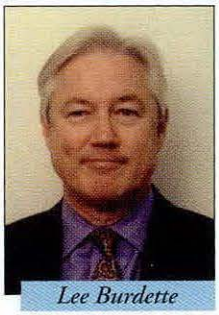

William Gleeson


Kyung Sam Shinn

Richard G. Matson has been elected to the board of directors of Bullivant Houser Bailey PC, and **David A. Ernst** has been reelected to serve another board term. Mr. Matson focuses his practice on general litigation, trial practice and alternative dispute resolution. Mr. Ernst chairs the firm's food and beverage industry group, and focuses on litigation issues unique to that industry. **John S. Cullen** and **Petrea Knudsen Reilly** have joined the firm as associates. As a member of the business practice group, Mr. Cullen focuses on business transactions, taxation issues and intellectual property law. Ms. Reilly is part of the insurance practice group and has experience in insurance defense litigation.

Olympia lawyer **Brent F. Dille** has joined the firm of Owens Davies Mackie PS. His practice emphasizes business, real estate, municipal and land use law.


Al Van Kampen


Lee Burdette


David C. Burkett

Al Van Kampen, **Lee Burdette** and **David C. Burkett** have merged their firms to become Burkett, Burdette & Van Kampen PLLC.

Brian McGinn has become a principal in the Spokane firm of Winston & Cashatt. His practice includes real estate, contracts and commercial litigation. **Mike T. Howard** and **Courtney R. Tombari** have joined the firm as associates. Mr. Howard focuses on personal injury and insurance law. Ms. Tombari's practice emphasizes commercial, transactional and general litigation.

Lane Powell Spears Lubersky LLP has added **Kathleen A. Nelson** to the Seattle office as an associate. Ms. Nelson focuses on civil litigation and insurance defense.

Matthew V. Honeywell has joined the Law Offices of Thomas A. Campbell in Auburn. His practice focuses on criminal defense and personal injury litigation.

Joseph Gaffney has joined the individual, estate and trust services group in the Seattle office of Dorsey & Whitney LLP. He also serves as firm-wide group co-chair. **Ryan Rein** and **Craig Aird** have joined the group as associates. All three previously practiced at Foster Pepper & Shefelman.

Jeffrey E. Harmes has joined the Seattle office of Gray Cary Ware & Freidenrich LLP as a partner. He chairs the firm's Northwest intellectual property group. (He is a member of the Oregon Bar.)

William Gleeson has joined the Seattle office of Preston Gates & Ellis as a partner in the business practice group. Mr. Gleeson is a former Securities Exchange Commission attorney and Loyola Law School professor. (He is a member of the Illinois and Maryland Bars.)

Kyung Sam Shinn has joined the Bellevue firm of Peterson Russell Cofano PLLC as an associate. Ms. Shinn concentrates her practice in real estate, immigration and corporate law.

Spokane lawyer **John O. Cooney** has joined the Law Offices of John Cooney and Associates PS as an associate in criminal law practice.

Carney Badley Smith & Spellman has added **John Greene** to its tax and transaction practice group.

Disciplinary Notices

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

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

Disbarred

Claere Shea (WSBA No. 24938, admitted 1995), of King County, has been disbarred by order of the Supreme Court effective February 29, 2000, following a default hearing. The discipline is based upon making false statements regarding proceedings instituted for revocation of her license to practice law, providing multiple social security numbers to employers and the Bar Association, falsely representing to an employer that she had professional liability coverage, and falsely denying that she had been previously admitted to the Bar Association under another name.

On June 15, 1987, Claere Shea applied for admission to the WSBA using the name Claire Axelrad Merrit. The real Claire Axelrad Merrit was admitted to practice in another state in 1978, and has never applied for admission to the WSBA. On October 27, 1987, Claere Shea was admitted to the WSBA under the name Claire Axelrad Merrit and given the WSBA No. 17244.

In March 1990, the WSBA received information from the Federal Bureau of Investigation indicating that they believed Ms. Shea's true identity may be Patricia A. O'Shea, who had an outstanding felony arrest warrant for larceny in Massachusetts. In May 1990, the WSBA granted Ms. Shea's request to change her name of record to Claire O'Shea. On November 17, 1990, the WSBA filed a motion with the Supreme Court to have Ms. Shea's credentials rescinded. The Court granted the motion.

On June 16, 1994, Ms. Shea submitted an application to take the bar examination and to be admitted to the WSBA. This application used the name Pat Shea, indicated that she had never practiced in Washington, and that proceedings had never been instituted against her for revocation of any license. Ms. Shea passed the winter 1995 bar exam, was admitted to the WSBA and assigned WSBA No. 24938. On February 11, 1997, Ms. Shea requested that her WSBA records be changed to reflect her name as Claere Shea.

Ms. Shea responded to a newspaper advertisement for a contract lawyer. She told her potential employer that she had professional liability insurance and provided the name of the company. After the employer was not able to verify the coverage, Ms Shea admitted that she did not have liability insurance.

During the investigation of this matter, Claere Shea appeared personally at the WSBA offices. Although her hair color had changed, WSBA staff members recognized her as the same person formerly known as Claire Axelrad Merrit or Claire O'Shea. Ms. Shea claimed that one of her sisters was the person who worked as the contract lawyer without liability insurance.

On February 19, 1998, Ms. Shea applied for a legal assistant position in the "D" law firm. Her résumé contained misleading and false information about her experience and education. The D law firm hired Ms. Shea on April 22, 1998. Prior to leaving the firm without notice on October 2,1998, Ms. Shea downloaded many computer files from the firm's local area network onto a disk and then deleted the files from the network. Subsequently, the firm was able to recover the files using a computer security service. They found that some of the pleadings included a signature block for Claere P. Shea, Attorney at Law, WSBA No. 24938.

Ms. Shea's conduct violated RPCs 8.1(a), prohibiting knowingly making a false statement of material fact in connection with a bar admission application; 8.1(b), knowingly failing to disclose a fact necessary to correct a misapprehension created in the bar application process or knowingly failing to respond to a lawful demand for information from an admission authority; 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; 8.4 (c), prohibiting engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and RPC 7.1, prohibiting making false or misleading communications about the lawyer or the lawyer's services.

Timothy Leachman and Maria Regimbal represented the Bar Association. Ms. Shea represented herself. The hearing officer was Jack Cullen.

Disbarred

G. Michael Sweet (WSBA No. 1808, admitted 1968), of Seattle, has been disbarred by order of the Supreme Court effective March 27, 2000, following a hearing. The discipline is based upon his misappropriation of client and law firm funds.

Matter 1: Mr. Sweet was a partner in a law firm from approximately January 1987 until April 1991. During that time, Mr. Sweet managed several real estate partnerships through which the firm members invested. Between March and December 1990, Mr. Sweet misappropriated approximately $55,866 from three of these partnerships. Mr. Sweet caused distributions to be made without the partnerships' authorization. He also increased the amount due from the partners. In March or April of 1991, after questioning by his law partners, Mr. Sweet admitted taking $9,000. During this same period of time, Mr. Sweet misappropriated approximately $24,500 of firm money paid by clients for attorneys' fees. In April 1991, Mr. Sweet repaid the firm $24,500.

Matter 2: In April 1991, Mr. Sweet transferred to inactive status. On May 18, 1992, he was suspended from practicing law in Washington for failure to pay his Bar Association licensing fee. In September 1993, a personal friend contacted Mr. Sweet about advice on settling his father's estate. Mr. Sweet told the friend that he was retired from practicing law and recommended Ms. L to the friend. Mr. Sweet also told the friend that because Ms. L was newly admitted to the Bar, Mr. Sweet would supervise her work. The friend retained Ms. L to handle the probate of his father's estate. The friend was named personal representative. Mr. Sweet periodically consulted with the friend and gave legal advice about the estate.

In December 1993, Mr. Sweet asked the friend for $2,200 to pay an accountant to file income tax returns for the estate. Mr. Sweet also contacted the real estate broker and a mortgage company regarding the sale of the house that was part of the estate.

When the house sold in July 1994, Mr.

Sweet told Ms. L that he had the friend's permission to invest the proceeds. Ms. L deposited the $46,166.76 check into her pooled IOLTA account and then paid the money out either to Mr. Sweet or third parties at Mr. Sweet's direction. Mr. Sweet did not repay or invest the money. In October 1994, Mr. Sweet told the friend that he was taking the probate file from Ms. L to be sure she had done the work correctly. In November or December 1994, Mr. Sweet told the friend that he was afraid Ms. L had stolen the $47,000 she had put into her trust account. In late December 1994, Mr. Sweet admitted to the friend that he had talked Ms. L into giving him the house proceeds.

Matter 3: In 1993, a friend asked Mr. Sweet to prepare loan transaction documents. The friend planned to loan his son money to pay off the son's home mortgage. On May 5, 1993, the friend gave Mr. Sweet a check for $48,000 to pay off the son's mortgage. Mr. Sweet deposited this money into his personal bank account. Mr. Sweet paid the son's monthly mortgage payments until August 1994. When the son learned that the mortgage had not been paid off, Mr. Sweet told him that there was a problem with the escrow company. Mr. Sweet did not pay off the mortgage. On December 22, 1993, Mr. Sweet went to the friend's house and told him that someone had threatened to kill Mr. Sweet's wife and two children. At Mr. Sweet's request, the friend gave him $12,000. Mr. Sweet promised to repay the loan with interest. Mr. Sweet did not repay the loan until July 1994, when the friend threatened to tell Mr. Sweet's wife about his comment regarding the death threats. There was never a death threat against Mr. Sweet's family.

On February 14, 1997, Mr. Sweet pleaded guilty to two counts of theft in the first degree. Mr. Sweet received an exceptional sentence on April 11, 1997. The court also ordered restitution.

Mr. Sweet's conduct violated RCW 9A.56.030; 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; RPC 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation; RLD 1.1(l), subjecting lawyers to discipline for practicing law while on inactive status or while suspended from the practice of law for any cause; and RLD 1.1(p), subjecting lawyers to discipline for conduct demonstrating unfitness to practice law.

Jean McElroy represented the Bar Association. Mr. Sweet represented himself. The hearing officer was David T. Patterson.

Lawyers' Fund for Client Protection

The Lawyers' Fund for Client Protection Committee meets quarterly to review applications for gifts from the fund. The committee is authorized to make gifts to qualified applicants of up to $3,000. On applications for more than $3,000, the committee makes recommendations to the Board of Governors, who are the fund's trustees.

In order to conserve fund resources, and because there was only one application sufficiently developed for committee review, the committee conducted a mail ballot in November 2000 and took the following action:

Charles W. Burns (WSBA No. 12957, Colville; disbarred): Last year the fund paid nine applications concerning Burns. This application had been deferred for further investigation. Burns misappropriated funds owing to the applicant from a personal injury settlement. By a vote of 12-0, the committee voted to approve a gift to the applicant of $1,333.

The committee chair is Seattle lawyer Thomas R. Dreiling. WSBA General Counsel Robert Welden is staff liaison to the committee.

Suspended

Kenneth R. Mitchell (WSBA No. 17401, admitted 1987), of Tacoma, has been suspended for 60 days following a stipulation by order of the Supreme Court dated April 13, 2000. The discipline is based upon his failure to diligently represent and accurately communicate with a client, failure to refund advanced costs, and failure to cooperate with the Bar Association.

On August 6, 1990, a client retained Mr. Mitchell to collect unpaid trailer rental charges. The client paid Mr. Mitchell $200 for the court filing fee. Several weeks later when the client called, Mr. Mitchell told the client the lawsuit had been filed. The client called periodically for status updates and Mr. Mitchell told him the case was going well. Sometime prior to the summer of 1993, the client went to the Pierce County courthouse and learned that the lawsuit had not been filed. Two weeks later, Mr. Mitchell admitted he had not filed the lawsuit and promised to make the client's case a priority.

On June 28, 1993, Mr. Mitchell wrote to the opposing party, referring to himself as the client's lawyer in a matter pending before the Superior Court of Pierce County. Mr. Mitchell told the client that he had scheduled depositions and that they were continued. The client took time off from work to attend the depositions. When they did not occur, Mr. Mitchell asked the client for documentation of his lost wages, stating that he would seek sanctions against the opposing party.

On September 9, 1994, Mr. Mitchell admitted to the client that he had not filed the lawsuit or scheduled the depositions. Mr. Mitchell agreed to refund the client's $200, but had not done so at the time the stipulation was signed. The client filed a grievance with the Bar Association. Mr. Mitchell did not respond to the Bar Association's requests for information until he appeared for a deposition. He did not provide the documents requested in the subpoena duces tecum.

Mr. Mitchell's conduct violated RPC 1.3, requiring lawyers to diligently represent clients; RPC 1.4, requiring lawyers to keep clients informed of the status of their matters and promptly respond to reasonable requests for information; RPC 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation; RPC 1.14(b)(4), requiring lawyers to promptly deliver client funds held by the lawyer, upon request; RPC 1.15(d), requiring lawyers to protect clients' interests when withdrawing from a case; and RLD 2.8, requiring lawyers to cooperate with Bar Association investigations.

Marsha Matsumoto represented the Bar Association. Mr. Mitchell represented himself.

Opportunities for Service

Applications for Appellate Court Vacancies

Application deadline: February 28, 2001

The WSBA Judicial Recommendation Committee is currently accepting applications from attorneys and judges seeking consideration for appointments to fill potential appellate court vacancies. Candidates will be interviewed by the committee at its April 6 meeting.

The committee's recommendations are reviewed by the WSBA Board of Governors and then referred to the governor for review when appointments are made to fill vacancies on the Washington Court of Appeals and Supreme Court.

To obtain an application, please contact the WSBA at 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330; 206-727-8227; or scots@wsba.org. Please specify whether you need the application designed for a judge or a lawyer.

WSBA Presidential Search

Application deadline: May 15, 2001

The WSBA Board of Governors is seeking applicants to serve as president of the Association for 2002-2003. Pursuant to Article IV(A)(2) of the WSBA Bylaws, the 2002-2003 president's primary place of business must be in King County.

Applications will be accepted through May 15, 2001, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no less than five or more than 10 selected references. Endorsement letters received by May 31, 2001 will be considered by the Presidential Search Committee and the Board of Governors. Applications and endorsement letters should be sent to the Office of the Executive Director, WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330.

Confidential interviews with the committee will be conducted May 16-31, 2001 at the WSBA office. In addition to these interviews before the committee, candidates will be invited back to the June Board of Governors meeting for an interview before the full board, in open session. Direct contact with the governors is encouraged.

The member selected to be president will have an opportunity to provide a significant contribution to the legal profession. While prior experience on the WSBA's Board of Governors may be helpful, there is no requirement to have been a member of the board or to have had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2001. The term as president-elect will begin at the WSBA's annual business meeting in September 2001. In September 2002, at the annual business meeting, the president-elect will assume the position as president of the Association. The president-elect will be expected to attend two-day board meetings every six weeks, as well as attend numerous subcommittee, section, regional, national and local meetings. During his or her service, the candidate will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time must be devoted to communication by letter, e-mail and telephone in connection with these responsibilities.

Presidential Search Committee: Victoria Vreeland, Chair; Dale L. Carlisle; Daryl L. Graves; Lucy Isaki; Jan Eric Peterson; Lindsay T. Thompson

Statute Law Committee

Application deadline: January 26, 2001

The WSBA Board of Governors is accepting letters of interest from members interested in serving a six-year term on the Statute Law Committee (Code Reviser), commencing April 1, 2001. The incumbent is eligible for re-appointment and must also submit a letter of interest.

This 12-member committee of lawyers seeks to foster accurate publication of laws and agency rules services in a professional and strictly nonpartisan and cost-effective manner. The primary responsibilities are to periodically codify, index and publish the Revised Code of Washington; and to revise, correct and harmonize the statutes of administrative or suggested legislative action as may be appropriate. The committee meets at least twice a year.

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

Notice of Public Meeting

The Northwest Justice Project (NPJ), a 501(c)(3) not-for-profit organization which provides civil legal services to eligible low-income clients, is the current recipient of federal funding made available through the Legal Services Corporation. Year 2001 quarterly meetings of the Board of Directors will be held at 9:30 a.m. on January 27, April 28, July 21 and October 20.

All meetings are open to the public except limited portions, which may be closed pursuant to a majority vote of the board and certified by the NJP's executive director or general counsel. In a limited executive session, the board reviews, considers and/or votes on matters related to: 1) litigation to which the program is or may become a party; or 2) internal personnel, operational, investigative and sensitive labor-relations matters. A copy of the certification and board meeting minutes will be maintained for public inspection at the program's main office at 401 Second Ave. S., Ste. 407, Seattle, WA 98104, and will be otherwise available upon request.

For specific meeting site information, please call Lisa Giuffré at 206-464-1519 or 888-201-1012.

Discipline 2000 Task Force to Meet

The Discipline 2000 Task Force will meet January 26, 2001 from 9:30 a.m. to 1:30 p.m. at the WSBA office. For more information, contact Randy Beitel at 206-727-8257 or randyb@wsba.org.

Notice to Counsel — Criminal Cases

Pursuant to RCW 9.94A.120, effective July 1, 2000, the law-related supervision of offenders was changed. Some counsel continue to use outdated or inaccurate forms, which results in having to later amend forms submitted to DOC. The updated forms are available through the courts or may be downloaded from http://www.courts.wa.gov/forms/home.htm, or obtained on disk from Merrie Gough, Office of the Administrator for the Courts, PO Box 41174, Olympia, WA 98504-1174; telephone 360-357-2128; fax 360-357-2127.

ABA Accepting Nominations for Pro Bono Publico Awards

The ABA Standing Committee on Pro Bono and Public Service is seeking nominations for the Pro Bono Publico Awards. The awards recognize lawyers and firms for extraordinary contributions in extending legal services to indigent people. Nominees may be individual lawyers, law firms, government attorney offices, corporate law departments and other institutions which have demonstrated outstanding commitment to volunteer legal services for the poor. Nominations are due by March 1, 2001. For more information, contact Dorothy Jackson at 312-988-5766 or jacksond@staff.abanet.org.

Use *Resources* to Your Advantage

Would you like your name and/or firm listed under your area of practice in the yellow pages of the upcoming (Spring 2001) WSBA *Resources* annual directory?

Resources is used by thousands of lawyers, and the yellow pages are a valuable one-stop resource for all your legal service needs. Find consultants, paralegals, contract attorneys, business appraisers and more.

The cost for a listing, which may include the firm name, individual's name, address, phone, fax, e-mail and website, is $35. A toll-free number may be listed in addition to a general number.

To reserve your yellow page listing in the 2001-2002 *Resources* directory, complete this form, enclose a $35 check payable to the WSBA, and mail by February 28 to:

Washington State Bar Association
***Resources* Yellow Pages**
2101 Fourth Ave., Fourth Fl.
Seattle, WA 98121-2330

If you wish to be listed under more than one category, the cost is $35 for each listing. For more information, contact Allison Parker at 206-733-5932 or allisonp@wsba.org.

Firm/Individual's Name _____

Address _____

City/State/Zip _____

Phone/Fax _____

E-mail _____

Website _____

Category _____

Court Rule Amendments

Please be advised that proposed amendments to the Washington Rules of Court will be published for comment in the Supreme Court advance sheets dated January 9, 2001 (142 Wn.2d, No. 4). They will also be published in the Washington Register and available on the Internet at http://www.courts.wa.gov or at www.wsba.org. Comments are due by April 30, 2001 and should be directed to the Clerk of the Supreme Court, PO Box 40929, Olympia, WA 98504-0929. E-mail comments not exceeding 1,500 words may be directed to Lisa.Bausch@courts.wa.gov.

ABA Business Law Section Seeks Award Nominations

The ABA Business Law Section is seeking nominations for its National Public Service Award. This award recognizes significant pro bono services rendered to the poor in a business context. Nominations are due by February 1, 2001. For more information, contact Joanne Travis at 312-988-5680 or travisj@staff.abanet.org.

American Lawyers Needed for Legal Seminar in China

Global Volunteers is seeking North American lawyer and judge volunteers to participate in a two-week program in Xi'an, China. Participants will have the opportunity to share their knowledge of American law while learning about the Chinese legal system. They will conduct and participate in seminars on business law, arbitration and mediation, maritime law, criminal law, and international contracts; observe Chinese court in session; visit the Shaanxi Provincial People's Congress; participate in seminars presented by Chinese lawyers; and teach conversational English and legal terminology to Chinese law students. The cost is $2,295 per person, plus airfare. For more information, contact Global Volunteers at 800-487-1074, or visit their website at http://www.globalvolunteers.org.

Law Week

Under the leadership of Seattle lawyer Ron Bemis, the WSBA Law Week 2001 Committee is actively recruiting volunteer lawyers and judges to participate in Law Week during the week of May 1. The program is designed to increase students' understanding of the important role the law plays in their lives. Last year, over 12,000 Washington students and nearly 500 lawyers and judges participated in the program. For more information or to volunteer, visit the Law Week website at www.lawweek.org, or contact Lisa KauzLoric at 206-733-5944 or lisak@wsba.org.

Board of Governors Recognizes Local Heroes

Kennewick lawyer Fran Forgette and Clallam County Court Commissioner William G. Knebes were recently honored with "Local Hero" Awards.

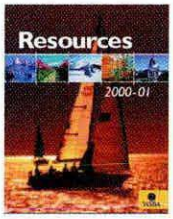
Mr. Forgette, a partner in the firm of Rettig, Osborne, Forgette, O'Donnell, Iller & Adamson, received the award for outstanding service to the Bar and the residents of the Tri-Cities area. He has been active in the Tri-City Mid-Columbia Education Alliance, is a past-president of the Tri-City Area Chamber of Commerce, and immediate past-president of the Tri-Cities Cancer Center Board of Directors.

Commissioner Knebes received the award for his service to the bench, bar and residents of Clallam County. Serving Clallam County for nearly 20 years, he developed and implemented a unified family court system, to ensure one judge handles all cases involving a particular family. He was founder of the Peninsula Dispute Resolution Center, and serves as the center's advisor. Commissioner Knebes also developed and implemented the Clallam County Court Appointed Special Advocate Guardian Ad Litem Program. He established the Clallam County Domestic Violence Task Force, and he works with the Clallam County Pro Bono Lawyers' Courthouse Facilitator Program to assist those without an attorney.

WSBA Staff Raise Money for Holiday Charities

The WSBA staff raised over $3,200 to benefit First Place and the Make-a-Wish Foundation. The money was raised at an annual in-house auction of goods donated by staff members as well as by outside businesses and individuals.

Resources on Sale for Half Price



The 2000-2001 *Resources* membership directory is now on sale for half-price:

$8.69 – WSBA members in-state
$8.00 –WSBA members out-of-state
$18.46 – non-WSBA members in-state
$17.00 – non-WSBA members out-of-state

To order a copy of *Resources*, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or mail a request to WSBA, Order Processing, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330. Payment may be made by check (payable to WSBA), MasterCard or Visa, and must accompany your order.

Upcoming BOG Meetings

The Board of Governors meeting schedule is as follows:

Jan. 19, Cavanaugh's at Capitol Lake, Olympia (half day)
Feb. 9-10, Inn at Gig Harbor, Gig Harbor
April 6-7, LaConner Country Inn, LaConner
May 4-5, Coeur d'Alene Resort, Coeur d'Alene, ID

With the exception of a one-hour executive session the morning of the first day, BOG meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated, but not required. Please contact Lisa KauzLoric at 206-733-5944 or e-mail oed@wsba.org.

Goldmark Award Luncheon

The Legal Foundation of Washington will host the 15th Annual Goldmark Award Luncheon on Friday, February 23, 2001 at the Washington State Convention & Trade Center from noon to 1:30 p.m. The Legal Foundation is a not-for-profit organization which has provided over $51,000,000 for legal services to the poor since 1985.

Kenneth A. MacDonald of MacDonald Hoague & Bayless will receive the Goldmark Award for Distinguished Service in recognition of his exceptional leadership and tireless lifelong efforts to expand access to our justice system. The Honorable Robert F. Utter, retired Chief Justice of the Washington State Supreme Court, will give the keynote address.

The Goldmark Award honors the memory of Charles A. Goldmark, Seattle attorney, community leader, and ardent supporter of access to justice. Mr. Goldmark was the Legal Foundation's president at the time of the tragic assault in 1985 that led to his death.

To purchase a ticket to the luncheon, contact Dee Thierry at 206-626-2536 or dtheories@legalfoundation. org.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in December 2000 is 6.10 percent. The maximum allowable interest rate for January is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988-June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date appears at www.wsba.org/barnews/.

Proud to Be a Lawyer

Start your day off with an inspirational story or quote! The WSBA website (www.wsba.org) features a new "Proud to Be a Lawyer" item each day. Please help us gather stories about your fellow members of the Bar, or share your favorite quote. Contact Allison Parker at allisonp@wsba.org or 206-733-5932.

Mugs and Mousepads

Mugs and mousepads featuring the distinctive Celebration 2000 logo are now for sale. Mousepads show the logo in full color, while the mugs are in black and white.

To place your order, please send this order form with your check (payable to WSBA) to WSBA, Order Processing, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330.

Mugs
Quantity _____ @ $5 each = _____

Mousepads
Quantity _____ @ $5 each = _____

Shipping and handling: $1.50

Total: _____

Name _____

Address _____

City/State/Zip _____

Note: Prices include sales tax.

WSBA Labor and Employment Law Section Elects Executive Committee

The newly created WSBA Labor and Employment Law Section has more than 350 members, and recently elected its first Executive Committee. The committee includes Co-chairs Thomas T. Bassett and Michael B. Harrington; Chair-elect Joyce L. Thomas; Secretary/Treasurer Mark R. Busto; Program Chair Russell L. Perisho; and Co-editors Karen A. Pool Norby and Colleen Kinerk. The committee is currently exploring several options for providing services and resources to

section members, their clients and the public. For more information about the Labor and Employment Law Section, contact Thomas T. Bassett at 509-455-9555 or tbassett@lukins.com or Michael B. Harrington at 253-373-7842 or mharring@Kent.K12.wa.us. To join the section, contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA, or questions@wsba.org.

WestCoast Hotels Contribute to LAW Fund

WestCoast Hotels, the WSBA and Legal Aid for Washington (LAW) Fund have created a partnership to raise funds for low-income legal services. Through the end of 2001, WestCoast Hotels will make donations to LAW Fund, based on the number of nights that anyone associated with the WSBA stays at any of the 47 Washington WestCoast Hotels. By simply asking for the WSBA rate, guests will receive a reduced room rate, and LAW Fund will receive $5 for each night's stay. For reservations, contact WestCoast Hotels at 800-325-4000.

WSBA Staff Milestones

The WSBA has many dedicated staff members, and each January we recognize those who have reached significant milestones in the previous year. Congratulations to the following staff members!

15 Years – Steve Rosen
10 Years – Mary Barnes
5 Years – Leslie Allen, Felice Congalton, Joan Fairbanks, Benita Goodwin, Jean Johnson, Joy McLean, Sonia Pagonakis, Julie Shankland, Scot Stout

Snohomish County Superior Court Announces Electronic Trial Confirmation

In Snohomish County, it is the duty of each attorney of record or party pro se of a civil case set for trial to confirm the trial date no sooner than noon of the first court day of the week and no later than noon of the last court day of the week that is two weeks prior to the trial date. Pursuant to SCLCR 40 (d) (1), civil trials may now be confirmed electronically.

Electronic trial confirmation may be accomplished from the Snohomish County Superior Court website at http://www.co.snohomish.wa.us/supcourt/index.htm. A confirming party must complete each block on the electronic form, including an e-mail address, and submit it to the court. The date and time of submission will automatically be indicated on each electronic trial confirmation received. The confirming party will receive an electronic response from the court acknowledging the trial confirmation. Hard-copy trial confirmation forms and other local court forms may also be downloaded from the court website in Adobe (pdf) format.

The Snohomish County Superior Court website contains a variety of information on the court, judges and commissioners, jury service, local court rules, calendar rotations, and links to Washington state courts and pattern forms as well as other court websites. If you have questions or comments about the electronic trial confirmation process in Snohomish County, please contact Judge Thomas Wynne at 425-388-3418 or e-mail thomas.wynne@co.snohomish.wa.us.

MCLE Changes

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

MCLE Requirements

The MCLE credit requirements will remain the same:

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

Changes in Reporting

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

Changes in Rules and Regulations

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

Phasing in the New System

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

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

Geoffrey P. Chism
Randal S. Thiel
Matthew J. McCafferty
& Scott W. Campbell

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The members of the firm will
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Fax: 206-728-0936

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Associate
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Sara L. Ainsworth
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On January 1st

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became

ROGERS & FLECK, PLLC

James S. Rogers
Mary K. Fleck

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Seattle, Washington 98104
206-621-8525

Professionals

For information about advertising in the Professionals section of *Bar News*, please call 206-727-8213 or e-mail amyo@wsba.org.

APPEALS

Margaret K. Dore
Former law clerk to Washington State Supreme Court and Washington State Court of Appeals

Passed CPA exam in 1982

Special interest in appeals regarding family law, probate and real estate

206-624-9400 / 206-907-9066
www.margaretdore.com

INSURANCE

Richard Gemson, former adjunct professor of law at UPS and former in-house counsel for North Pacific Insurance Co., is available for consultation, association or referral in matters involving all types of insurance coverage.

1001 Fourth Avenue, Suite 3278
Seattle, WA 98154
206-467-7075
fax: 206-342-9650

FIBROMYALGIA

Steve Krafchick
is available for association or referral in lawsuits that include a diagnosis of fibromyalgia, especially related to motor vehicle collisions or denial of long-term private disability insurance. Steve is experienced in this complex diagnosis, and has provided counsel on fibromyalgia lawsuits nationwide.

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Seattle, WA 98121
206-374-7370
www.krafchick.com

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Sidney S. Royer
Kristin Houser
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are available for association or referral on medical malpractice lawsuits, including failure to diagnose, surgical malpractice, medication errors, and psychiatric malpractice cases.

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bhkrik@bhklaw.com

PROBATE & GUARDIANSHIP

Mary Anne Vance, co-author of the chapters on Estate Planning and Probate in Butterworth's *Washington Civil Practice Deskbook*, is available for association, consultation or referral of probate and guardianship cases, both contested and noncontested.

THE LAW OFFICE OF MARY ANNE VANCE, PS
1111 Union Bank of California Ctr.
Seattle, Washington 98164
206-682-2333
fax: 206-682-2382
e-mail: maryanne@vancelaw.com
www.vancelaw.com

BURN INJURIES

William S. Bailey, 1991 WSTLA Trial Lawyer of the Year, is available for association or referral of fire, explosion and burn injury cases.

FURY BAILEY
1300 Seattle Tower
1218 Third Avenue
Seattle, WA 98101-3021
206-292-1700 or
800-732-5298

LABOR AND EMPLOYMENT LAW

William B. Knowles
is available for consultation, referral and association in cases involving employment discrimination, wrongful termination, wage claims, unemployment compensation, and federal employee EEOC or Merit System Protection Board appeals.

206-441-7816

JOSHUA FOREMAN

announces his availability for consultation, association or referrals. Practice emphasizing representation of fathers in child custody fights.

600 First Avenue, Suite 307
Seattle, WA 98104
206-623-6750
fax: 206-623-6751
e-mail: DadsLawyer@aol.com

CHILD ABUSE

Steve Paul Moen
is available for assistance and referral of civil and criminal cases involving child abuse, delayed recall and mental health counseling.

SHAFER, MOEN & BRYAN, PS
Hoge Building, Seattle
206-624-7460

Calendar

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

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

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

ADR

Professional Mediation Training
January 19-21 & 27-28 – Seattle. 36 CLE credits pending. By UW-CLE; 206-543-0059.

BUSINESS

Drafting Real Estate Documents that Work: Condominium Issues (morning) Commercial Projects (afternoon)
January 25 – Tacoma; February 1 – Seattle. 6.5 CLE credits, including .75 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Corporate Governance
February 9 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

E-commerce Institute
February 9 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Northwest Securities Institute
February 23-24 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

COMPUTER SKILLS

Computer Camp for Counselors™
February 14 – Seattle (basic – morning; intermediate – afternoon); February 15 – Seattle (advanced – morning; PowerPoint – afternoon). 4 CLE credits per session estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CRIMINAL LAW

Forensic Criminal Evidence
February 22 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ELDER LAW

Planning for Long-Term Health Care Needs and Client Options: What Attorneys and Allied Professionals Should Know
January 26 – Seattle. 5.75 CLE credits, including .75 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

Employment Law Briefing
February 24-March 3 – Breckenridge, CO. CLE credits TBD. By National Employment Law Institute; 303-861-5600.

ENVIRONMENTAL LAW

Environmental, Land Use Law Winter Seminar
February 2 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

Understanding Business Entities in the Estate Planning Area plus Trust & Estate Litigation
February 15 – Spokane; February 16 – Seattle. 7.5 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

Solving Property Problems in Dissolution of Marriage Cases
January 26 – Portland. 6 CLE credits pending. By Oregon State Bar; 503-684-7413.

GENERAL PRACTICE

Juvenile Delinquency
January 19 – Portland. 4 CLE credits pending. By Oregon State Bar; 503-684-7413.

The Endangered Species Act
January 25-26 – Bellevue. 11 CLE credits, including 1 ethics. By The Seminar Group; 206-463-4400.

Writing for Lawyers
February 13 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Police Misconduct Law and Litigation
February 16 – Oakland, CA. CLE credits TBD. By The National Police Accountability Project of the National Lawyers Guild and The Ella Baker Center for Human Rights; 212-614-6432.

8th Annual Legal Assistants Workshop
February 16 – Portland. CLE credits TBD. By Oregon State Bar; 503-684-7413.

National Lawyers Association Educational Conference
February 17 – Orlando, FL. CLE credits TBD. By National Lawyers Association; 800-471-2994.

Keys to Practice Development
February 21-23 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Using the Internet for Legal Research
February 23 – Portland. CLE credits pending. By Oregon State Bar; 503-684-7413.

INSURANCE LAW

23rd Annual Insurance Law Seminar
January 18 – SeaTac; January 19 – Spokane. 7 CLE credits, including 5 ethics. By WSTLA; 206-464-1011.

LITIGATION

Evidence for the Trial Lawyer featuring Professor Faust F. Rossi
January 19 – Seattle. 6.75 CLE credits, including .5 ethics. By NPI and Young Lawyers Division. Call NPI; 800-328-4444.

Pretrial Preparation
February 8 – Tacoma; February 9 – Seattle. 7 CLE credits, including 1.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

TAX LAW

Planning Considerations for Retirement Plans & IRAs
January 31 – Seattle. 5.75 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Classifieds

Reply to WSBA *Bar News* Box Numbers at:
WSBA *Bar News* Box ____
***Bar News* Classifieds**
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330
Positions available are also posted by telephone at:
206-727-8261
and online at www.wsba.org

FOR SALE

Law library for sale. Washington Reports, Washington App. and West's RCWA, all current. Washington Digest, current to 1990; Washington Practice 1-1C, current; Modern Legal Forms and misc. $4,500 or best offer. 206-522-5789.

Career change: Are you tired of legal hassling? Would you like to have a solid, established business that you can own, grow and get your hands around? Do you like classic and special-interest cars? Call Terry Jarvis at 425-486-5718.

SPACE AVAILABLE

University (Laurelhurst): Executive office plus clerical space available. Share amenities including receptionist, library and conference rooms with attorneys, CPA and consultants. Great location, pleasant environment. Joint marketing and referral opportunities possible. Please contact Carol at 206-523-6470.

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

West Olympia: Two professional offices including library, conference room, receptionist, kitchen and parking; close to freeway. 360-943-7710.

Four new offices with secretary stations. Near U-Village. Two large conference rooms. Phone system in and network ready. 206-522-7633.

Downtown Seattle office space available for one, two or three attorneys. Broadacres Building, 10th Floor (near Pike Place Market). Newly built suite includes conference room, secretarial space and DSL lines. For more information, call 206-770-7606.

For sublease: Two partner-sized offices; reception services provided; Class-A building, downtown Seattle; high floor; west side. Available now. Contact Emily Coward at 206-343-9391; emilycoward@hotmail.com.

Congenial shared suite: Pike Place Market view office with secretarial space. Parking available. Receptionist, law library and conference room, fax/photocopy/postage, kitchenette, etc. Call Sara at 206-728-0234.

POSITIONS AVAILABLE

Seattle: Eight-attorney firm, AV-rated, with general civil practice, seeks associate attorney with at least two years' experience. Land use, real estate, business transactions, litigation, or family law experience preferred. Please send résumé to: WSBA *Bar News* Box 608, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330.

Gonzaga University, Dean of the School of Law. Gonzaga University invites applications for the position of Dean of the School of Law. Gonzaga University is a private, Catholic and Jesuit institution dedicated to academic and professional excellence and five major mission-related areas: faith, service, justice, ethics and leadership. Since its founding in 1912, The Gonzaga law school has emerged as a dominant, regional law school. Many of its alumni occupy prominent places in leading law firms and throughout the judiciary in Washington and neighboring states. The School of Law has 26 full-time faculty members, a budget of $9 million, and a student body of 470. It has a strong teaching faculty, many with distinguished records of legal scholarship, a supportive alumni, and a history of successful fundraising. The school is housed in an architecturally spectacular fourth-floor building, which was occupied this past fall. The building includes state-of-the art technology throughout its classrooms, offices and library. Gonzaga University is located in Spokane, Washington, and enrolls about 5,000 students. It has a clear identity and firm sense of mission concretized in its five mission areas. The university maintains a deep commitment to its Catholic Jesuit heritage, offering an education that blends theory and practice, and graduating lawyers who recognize the importance of being men and women for others. The law school provides several significant specialty programs. The Gonzaga University Legal Assistance Program provides abundant, hands-on clinical law experience to its students, while providing needed legal services to the indigent of Spokane County. The Institute for Action Against Hate is dedicated to the eradication of hate-based bias at every level throughout the U.S. and the world. The Institute for Law School Teaching provides opportunities for law professors from throughout the nation to learn better how to teach the law with effectiveness to the present generation of students. The Thomas More Scholars are a group of particularly talented and gifted students who intend to pursue careers in public service law. Required qualifications: a commitment to enhancing the five mission areas of Gonzaga University within the law school; full-time law teaching experience, and a scholarship record that would warrant appointment to full professorship; administrative, managerial and analytical skills, and demonstrated experience in these skills at progressively increasing levels of responsibility; ability to promote development and advancement of the law school; strong collaborative leadership skills; a First Professional degree in law; advanced degree preferred. Required characteristics: a commitment to developing and implementing a strategic plan in harmony with the overall university plan for improving the prestige, profile and recognition of the law school; a commitment to enhancing the diversity of the faculty, staff and students in the law school; a commitment to increasing the financial resources of the law school; a commitment to strengthening the academic quality of the law school, including admissions requirements, faculty qualifications, faculty scholarship and student profile; a commitment to maintaining and promoting an innovative, academic, legal studies program; a commitment to be an advocate for the law school, respecting collaborative faculty governance and student input on matters of student governance; a commitment to cooperation with the university's administration and staff, particularly in areas of overlapping concern (such as marketing and financial aid); a commitment to promoting the professional and social growth of the student. The position will remain open

To Place a Classified Ad:

Rates: *WSBA members:* $40/first 25 words; $0.50 each additional word. *Non-members:* $50/first 25 words; $1 each additional word. Blind-box number service: $12 (responses will be forwarded). Advance payment required; we regret that we are unable to bill for classified ads. Payment may be made by check (payable to WSBA), MasterCard or Visa.

Deadline: Text and payment must be received (not postmarked) by the 1st day of each month for the issue following, e.g., February 1 for the March issue. No cancellations after deadline. **Mail to:** WSBA *Bar News* Classifieds, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330.

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

Questions? Please contact Amy O'Donnell at 206-727-8213 or amyo@wsba.org.

until it is filled. Preliminary screening of candidates will begin on February 15, 2001. Applicants are to submit a current résumé; a letter of intent to apply; unofficial transcripts; and the names, addresses and telephone numbers of three references. Initial and confidential inquiries can be made to the search committee staff member whose name appears below. All inquiries will be held in strict confidence. The same is true for applications. Inquiries of named referees will not occur without prior notification to and agreement of the candidate. Communication and submission of materials by e-mail as MS Word or Word Perfect attachments is encouraged. Law Dean Search Committee, Michael Casey, Esq., Corporation Counsel, Gonzaga University, Spokane, WA 99258; 509-323-6430, e-mail casey@gonzaga.edu. Gonzaga University is a Jesuit, Catholic, humanistic institution, therefore, we are interested in candidates who will contribute to our distinct mission. Gonzaga University is an AA/EEO employer committed to diversity.

Coeur d'Alene, Idaho, firm is seeking an associate attorney with a minimum of two years' experience for our North Idaho/Eastern Washington practice. Insurance defense, business, commercial and/or real estate litigation experience preferred. Strong courtroom and writing skills required. Competitive salary, profit-sharing and benefits. Reply to Hiring Partner, PO Box 1336, Coeur d'Alene, ID 83816-1336.

Associate counsel positions for technology and multimedia companies: real estate associate with leasing experience; transactional/licensing associate; and 30 contracts manager/licensing counsel, plus law firm openings. Please contact Martha Baskin at Legal Reserves, mbaskin@sprynet.com; 206-628-9635.

Assistant prosecuting attorney position in Gem County, Idaho, opening January 2001. Beautiful small town near Boise! Contact Gem County Prosecuting Attorney, Box 671, Emmett, ID 83617; rklinville@aol.com.

Staff attorney, tribal legal office: Seeking attorney to provide civil legal services for low-income members of the Colville Confederated Tribes. Qualifications: WSBA member or ability to become member reciprocally. Attorney salary scale DOE. Indian preference will be applied. Obtain application from Personnel, Colville Confederated Tribes, PO Box 150, Nespelem, WA 99155. For further information call 509-634-2842.

Partnership opportunity: Thriving general practice firm on Whidbey Island seeks attorney experienced in real estate, business, estate planning and post-death administration practice. Existing clientele and case load. Candidates should be dedicated to superior client service and possess an excellent academic background, polished writing and interpersonal skills. Collegial atmosphere. Compensation based upon productivity. High quality of life in a relaxed, beautiful environment. Send résumé and writing sample to: Hawkins and Hansen PLLC, 275 SE Cabot Dr., Ste. A-9, Oak Harbor, WA 98277.

Progressive is seeking an attorney to join our recently formed staff counsel office in Bellevue, defending insureds in the greater Puget Sound region. The vast majority of the lawsuits concern motor vehicle torts. Counsel will be expected to handle every aspect of the litigation including jury trial. Qualified candidates should possess a minimum three years' insurance defense experience and WSBA membership. Progressive is the fourth largest provider of personal auto insurance in the U.S. We offer a competitive salary commensurate with your experience, a gainsharing program, and comprehensive benefits including a 401(k) plan. Please submit your résumé (indicating ad code 000969) to: Progressive, Centralized Recruiting, 6300 Wilson Mills Rd., Box W11, Mayfield Village, OH 44143; fax: 440-446-5500.

Chmelik Sitkin and Davis PS is a well-established business, municipal, litigation, real estate, and land use firm in Bellingham. We are seeking an associate attorney with a minimum of three years' experience in a well-regarded law firm, judicial clerkship, or similar experience, and demonstrated success in law school. The ideal candidate will have the desire and ability to work hard and grow with the firm. The firm provides a competitive salary and excellent benefits in an ideal location with an opportunity to develop a successful practice in a fast-growing law firm. Please send a résumé, references and a cover letter to: Chmelik Sitkin and Davis PS, 1500 Railroad Ave., Bellingham, WA 98225.

Patent attorney: Blakely Sokoloff Taylor and Zafman LLP, an intellectual property law firm, is seeking patent attorneys for their rapidly expanding suburban offices in Lake Oswego, OR, and Kirkland, WA. Earn nationally competitive salaries and work with top-tier local and Silicon Valley high-technology clients while enjoying the benefits of living in the Pacific Northwest. Seeking candidates with backgrounds in electrical engineering, computer science, and communications technologies. Candidates should be registered to practice before the U.S. Patent and Trademark Office and admitted to a state bar. Please forward your résumé in confidence to: Chun Ng, Blakely Sokoloff Taylor and Zafman LLP, 3230 Carillon Point, Bldg. 3000, Kirkland, WA 98033-7354; e-mail chun_ng@bstz.com; phone 425-827-8600; fax 425-827-5644.

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.

Looking for a little less stress in your life? Join a five-attorney firm in Southwest Washington. Seeking an attorney to do family law, debtor/creditor and civil litigation. Please send résumés to PO Box 1123, Chehalis, WA 98532.

Associate/Spokane: Creative, high-energy attorney with excellent academic background, and strong analytic, research and writing skills needed for associate position. This position is dedicated exclusively to research/writing on motion practice, briefing on civil litigation and appeal matters in ongoing employment discrimination, personal injury, contract and corporate disputes. Sole-owned trial practice with significant litigation hires within and outside of Washington state. Must have love for quality work and profession; finely tuned sense of humor mandatory. Salary DOE, health, dental, pension, parking. E-mail résumé, writing sample to: Mary@Mschultz.com; hard copy to Mary Schultz, 818 W. Riverside, Ste. 660, Spokane WA. 99201.

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

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

Assistant city attorney: Regular, full-time position with a salary range of $4,871-$6,160/month. Requires law degree with admission to the Washington State Bar Association and four years' municipal civil law experience (including trial experience) involving zoning code, land use, code compliance, property acquisition, public construction, municipal issues; and ordinance, resolution and contract drafting experience. Telecommunications permitting, franchising and leasing a plus. Valid Washington state driver's license. To apply, please complete a City of Fed-

eral Way application form and attach résumé and cover letter. Applications available at City Hall, 33530 1st Way S., PO Box 9718, Federal Way, WA 98063; phone 253-661-4080 or apply online at http://www.ci. federal-way.wa.us. Position open until filled.

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

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

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

Associate position available: Small, growing general litigation/insurance defense practice looking for a litigation associate with at least two years' experience. General/insurance litigation experience a plus. Benefits and salary DOE. Please submit writing sample and résumé to: David H. Middleton and Associates, Attn: Beverly Heunisch, 533 S. 336th St., Ste. A, Federal Way, WA 98003.

Litigation associate: Barker and Martin, PS, a three-attorney plaintiffs' firm representing homeowners associations in defective construction litigation, is looking for an associate attorney with a minimum of two years' experience. Ours is an active, motion-intensive practice, and candidates should have superior writing and academic skills, courtroom experience, and a desire to build a trial practice. Send cover letter and résumé to: David B. Merchant, 720 7th Ave., Ste. 200, Seattle, WA 98104-1900; or e-mail to davidmerchant@barkermartin.com.

Deputy prosecuting attorney: The Clark County Prosecuting Attorney has an opening for an entry-level attorney, salary $36,720. Applicants must be a member of the WSBA. Please send résumé and cover letter to Mary Young, Clark County Prosecuting Attorney's Office, PO Box 5000, Vancouver, WA 98666. Clark County is an equal opportunity employer.

Litigation and general practice associate. Small downtown firm (AV-rated) seeks a talented associate for sophisticated practice with a focus on business litigation. We are looking for motivated and personable applicants with superior academic credentials and developed writing and analytical skills. Rapid advancement and responsibility for an individual with two or more years of commercial or business litigation experience and the demonstrated ability to excel in a fast-paced, service-oriented environment. We offer high-level assignments, a pleasant small-firm working environment, and competitive salary and benefits. Résumés and writing samples to: Hiring Coordinator, 701 5th Ave., Ste. 7100, Seattle, WA 98104 or e-mail lawhire @seanet.com.

POSITION WANTED

20+ year government executive who passed Washington Bar in 1998 seeks opportunity to change careers and practice law, preferably focusing on labor or municipal law. Have been a member of the Florida Bar since 1979. Will entertain any reasonable offer that provides good income and future advancement opportunities. Please call Randy Coggan at 425-869-6521.

SERVICES

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.

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

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

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.

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.

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.

Free estate appraisals – U.S. coins. Dealer/collector paying cash! Finders fee for referrals. Member: ANA #R185172; PNNA 901. Call for appointment, 425-766-8194; discount.coins@gte.net.

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

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MISCELLANEOUS

Kauai vacation rental: Luxury home in Princeville on Kauai's north shore. 45 holes of championship golf. For photos and rates, see http://www.kauaibalihai.com or contact Arizona attorney owner at steveryan@azis.com.

Cash now vs. payments over time. We purchase all types of debt instruments including real estate notes, business notes, structured settlements, lottery winnings and inheritances in probate. Please contact us regarding the current cash value of your receivable. Wes-Com Funding, 800-929-1108; Sam Barker, Esq., president; http://www.webuynotes.com.

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BY AUTHOR

BY SUBJECT

Notice of Law Faculty Position
Low-Income Taxpayer Clinic

The University of Washington School of Law invites applications for a full-time appointment through June 15, 2002 as a lecturer in its new Low-Income Taxpayer Clinic. Renewal of the appointment will be subject to continued receipt of grant funding and performance in the position. The school seeks applicants who possess superior academic credentials. Candidates must have been admitted to practice law in some state for a minimum of three years. Substantial practice experience in federal taxation and tax litigation, and/or an LL.M. in taxation preferred. Teaching experience is preferred but not required.

The position involves:

(1) directing a law school clinical program providing legal advocacy services to low-income taxpayers who have controversies with the IRS;
(2) teaching JD and graduate law students the substantive law, procedures and lawyering skills necessary to represent the clinic's clients;
(3) supervising the students' provision of legal services to clinic clients;
(4) coordinating the clinic's activities with governmental agencies, local bar associations, other departments of the University of Washington and other entities, and developing a client referral base; and
(5) potentially teaching a non-clinical substantive law course in a related area.

The University of Washington is building a culturally diverse faculty and strongly encourages applications from women and minority candidates. The University is an Equal Opportunity/ Affirmative Action employer.

Please send a résumé and cover letter to:

Secretary, Initial Appointments Committee
University of Washington School of Law
1100 NE Campus Parkway
Seattle, WA 98105-6617

Review of applications is ongoing. We hope to do on-campus interviews before March 2001. For questions please contact:

Professor Debbie Maranville
206-543-3434
maran@u.washington.edu

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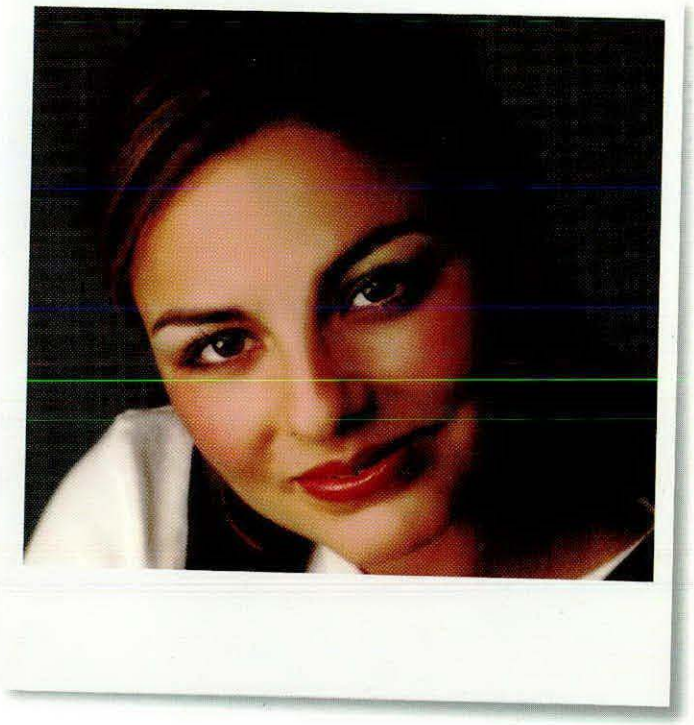

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