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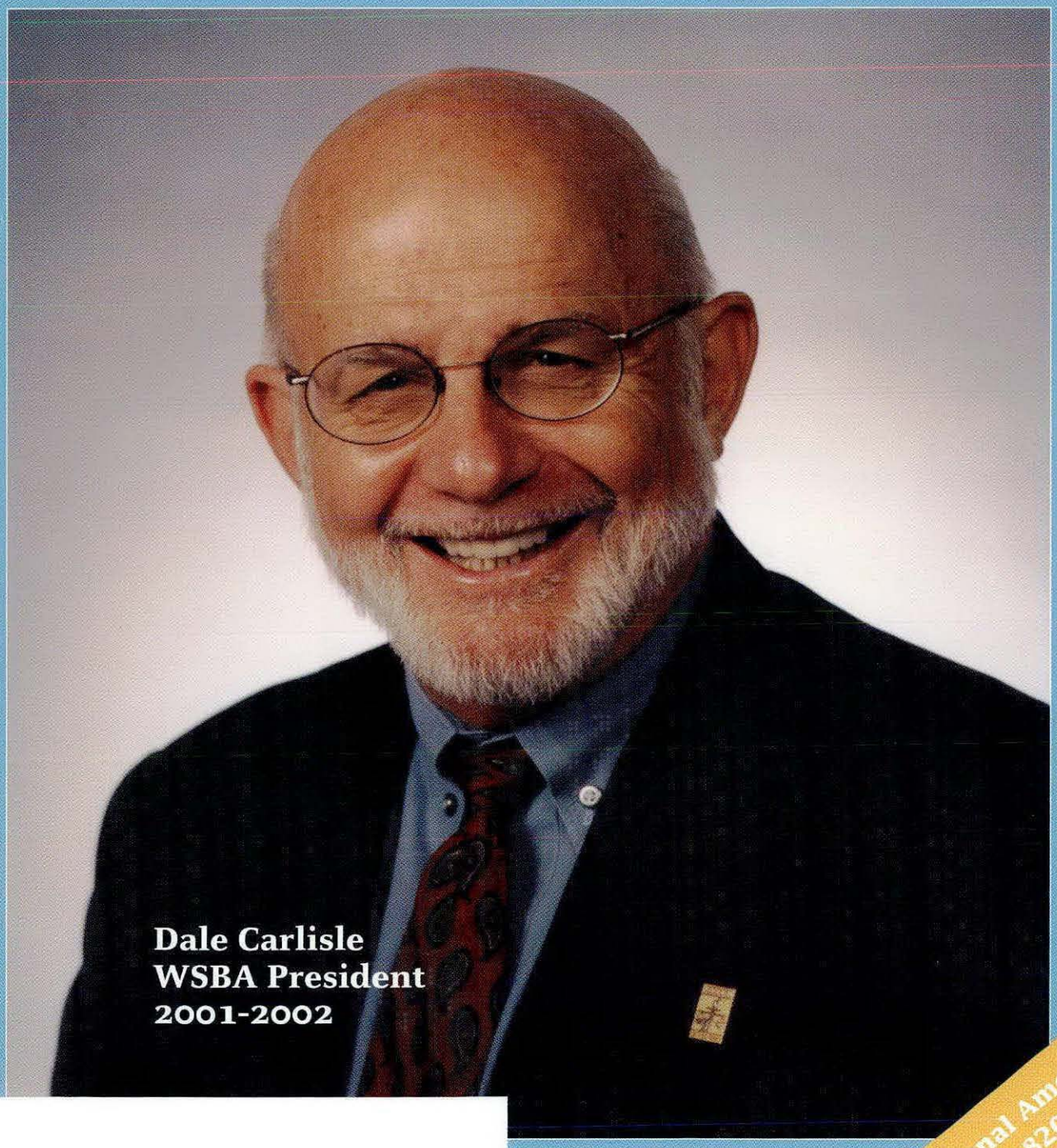

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Constitutional Amendment
ESJR 8208
p. 21

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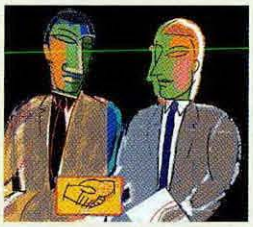
Contents

Articles

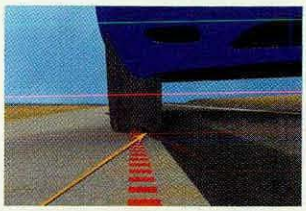
Columns

Departments

Listings



P. 24



P. 34

P. 42

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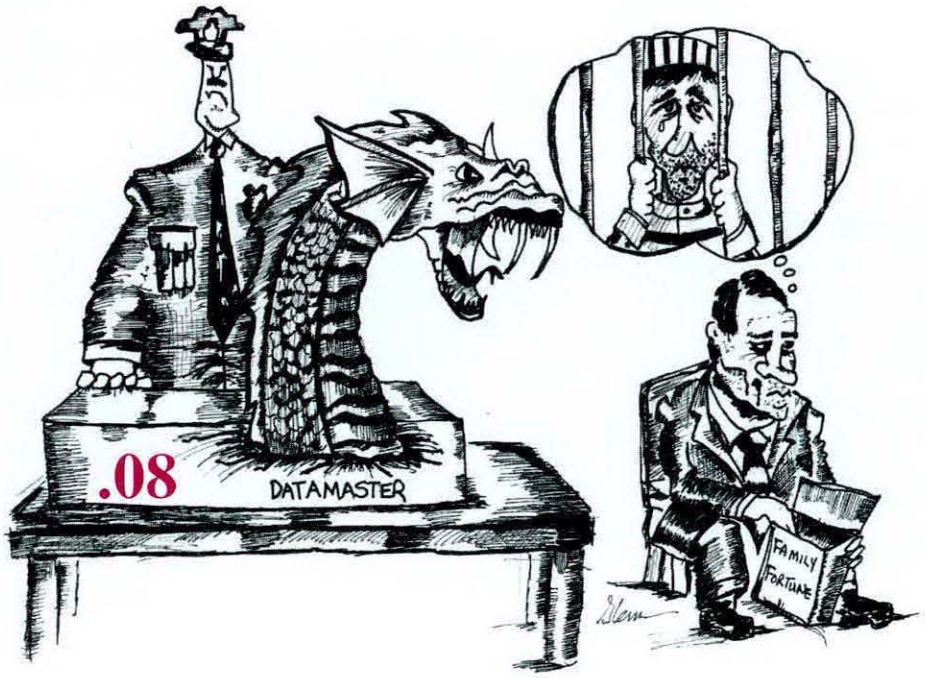

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Letters

Bar News *has received many letters, both pro and con, in response to the article "Washington Rejects 'Friendly Parent' Presumption in Child Custody Cases" by Margaret K. Dore and J. Mark Weiss (August* Bar News, *p. 32). This month, we publish two representative letters in opposition. Next month, we will carry representative letters supporting the viewpoints of the authors, as well as a short response from Ms. Dore. — Editor*

"Friendly Parent" Presumption Article Inspires Debate

Editor:

I was disappointed by the article "Washington Rejects 'Friendly Parent' Presumption in Child Custody Cases." It was obviously intended to deter passage of the friendly parent bill this year. The friendly parent bill does not create a presumption, and isn't comparable to laws in other states. It simply adds one more to the list of statutory factors used in deciding parenting cases. The repeated use of the word "custody" throughout the article, a term which was thankfully banished by the Parenting Act of 1987, is a not-so-subtle attempt to turn attention away from the child-centered Parenting Act and back toward the "child as property" notions that preceded it.

The claim that "in Washington ... there is no automatic right of contact between children and noncustodial parents" is outrageous. It ignores U.S. Supreme Court rulings that parents have a constitutional right of association with their children and the principles enunciated in RCW 26.09.002, the policy statement of the Parenting Act. The authors base their claim on dicta from the *Littlefield* decision. The *Littlefield* decision was explicitly rejected in the Relocation Act of 2000, with broad support from the family law bar, primarily because it attempted to reintroduce the "child as property" notion. Citing *Littlefield* as authority for anything is ill-advised.

Claiming three Washington cases have "clearly rejected the friendly parent concept" is a stretch. Only the *Lawrence* decision mentions the term "friendly parent," and it did so under very odd circumstances. The appellant argued, even though there wasn't a word about the friendly parent concept in the trial court ruling, that the trial court might have used the friendly parent concept, and the Court of Appeals remanded to determine if that was true, because it would be impermissible. Having the Court of Appeals rule on "might have beens" in family law cases is a prescription for disaster. The *Lawrence* opinion itself begs for legislative correction (by holding that the failure to pass the bill is proof of the Legislature's repudiation of the friendly parent concept) and exemplifies why passage of the friendly parent bill is necessary. Banning all consideration of friendly parent issues from the courtroom places unacceptable limits on the scope of discovery, parenting evaluations, and the best interests of the child. We need to shine a light on parenting cases, not throw a bushel over them.

The article claims "under the friendly parent concept, custody is awarded to the parent most likely to foster the child's relationship with the other parent." Wrong. It doesn't create a presumption, just another factor. Another straw-man argument is that "friendly parents are

those who do not make allegations about the other parent, do not withhold access to the child, and are cooperative." Wrong again. A friendly parent is one who does not make unfounded allegations about the other parent, does not withhold access without basis, and is cooperative when appropriate. Whether parents are unfriendly depends on whether their actions are well-founded or at least in good faith. Intention is a key element of many legal determinations. The fact that it can be a tough call does not eliminate the need to make the call.

The argument that "the friendly parent concept rewards manipulative litigation tactics" is wrong. Claims made by an opponent aren't always manipulative litigation tactics — sometimes the claims are true. This argument also assumes that trial judges can only be manipulated by those who claim alienation, not by those who may be alienating. I am unwilling to assume judges are usually wrong and usually err in the same direction.

I won't attempt to refute bizarre, anonymous war stories such as the one recited in the article; nor will I assume no reasonable person could come to the same conclusion as the trial judge did in that story. On the other hand, I have no problem with the *Nunn* and *Schroeder* cases. The *Nunn* case correctly ruled the mother's effort to defend herself was not, by itself, sufficient basis to find her unfit. The *Schroeder* case made a similar point about contempt. There is no reason those cases would not remain good law with the friendly parent factor in place.

The claim that "in the context of domestic violence, the 'Catch 22' of the friendly parent concept can be deadly" is an unworthy attempt to hide behind a worthy cause. No effort is made to back up "deadly" or "dangerous" other than hypothetical surmises. The need to protect victims of domestic violence should not be trivialized by implying that allegations of unfriendly parenting are just another form of domestic violence. Even victims of domestic violence cannot be allowed to lie or act against their child's best interest with impunity. Determining the accuracy and significance of such claims is why we have courts.

The article attempts to create its own presumption that any potential misapplication of a rule requires us to abandon the rule. Nice try, but wrong. Mistakes in applying a rule (and there has been no showing of mistakes relating to the friendly parent factor) cannot invalidate a rule. We wouldn't have any rules at all if this logic were followed because our justice system hasn't attained infallibility. Nonetheless, it remains the best known system for determining the facts.

The bottom line: prohibiting the court from considering relevant evidence is not in a child's best interest. Is the friendly parent factor relevant? The article claims "the problem is that custody becomes a reward or punishment for behavior uncorrelated to a child's best interests." I disagree. Unjustified interference with a parent/child relationship is not "uncorrelated to a child's best interests." The Legislature has been strongly supportive of enacting the friendly parent factor, but it has been bottled up in committee by exactly the same misleading and emotional arguments contained in the article. I believe common sense and faith in our jus-

tice system will prevail in the next legislative session.

Douglas P. Becker
Seattle

Editor:
If you can't win an argument fair and square, distort the facts and omit information — like Margaret Dore did in her article titled "Washington Rejects 'Friendly Parent' Presumption in Child Custody Cases." This article refers to legislation that would allow courts to take into account the willingness of a parent to allow access of a child to the other parent when determining residential schedules. I am the author of this legislation.

First of all, Washington did not reject this concept. In the state Legislature, SB5511 (friendly parent factor) passed the Senate 47-2 this year. The House passed the same bill (88-7) in 1999. I believe this hardly constitutes a rejection. Although the bill has not passed simultaneously from both houses, rarely do any new bills move at light speed through this process — especially bills dealing with family law. The Washington State Bar Association's Family Law Section has also endorsed this bill.

Second, this legislation did not repeal "the best interest of the child" standard. In fact, upon reading the text, you'll discover that it reaffirms it! Parental cooperation is merely added to the long list of factors used by the court when determining the residential placement of children. And like these other factors, the best interest of the child remains the overriding standard.

Third, this legislation does not turn a blind eye to domestic violence. As is current law, the courts cannot even consider the factors used in placement if domestic violence exists.

A couple of years ago, a study commissioned by the Gender and Justice Commission concluded that serious deficiencies existed in family law. From too much conflict to too little legal assistance, the report identified over 10 areas of concern. Yet not one legislator except myself has lifted a finger to help solve these problems. This road has not been easy, as evidenced by the article, which disseminates false and misleading information.

If you are interested in examining changes in family law, or would like the actual text of the bill being referred to in the article (SB5511), please e-mail my legislative office at kastama_ja @leg.wa.gov. My office will reply promptly.

Senator Jim Kastama
Olympia, 25th District

Editor:
I have read Ms. Dore's and Mr. Weiss's article with awe. Clearly it would take volumes to refute the misinformation contained in the article. This is the trademark of a seasoned offensive litigator! Suffice it to say, however, that for every woman and child where this "rebuttable standard" could be shown to cause harm, I can show you 50 where it will do nothing but better serve the best interests of the children by reducing the animosity and acrimony between the parents. Should the presumptions of the law serve the two percent or the 98 percent? Are we going to trample the rights and well-being of the majority of our children for a few?

What Dore and Weiss fail to consider

is the overriding objective of the Parenting Act (vs. case law): to maintain the relationship of both parents with the children (absent a 26.09.191 finding) and to "reduce the acrimony." (See dissent in *Littlefield*. Also note majority opinion in *Littlefield* was specifically overturned by the Legislature in 1999 and should not be used as authority.)

The real Catch 22 is the father that faces the typical "every other weekend" schedule during the interim proceedings. If he fights to see his child(ren), he is engaged in the abusive use of conflict or is found to be intransigent, and loses. If he doesn't fight to see his child for more than this, he has abandoned his children, and loses. (I know of one father who was found intransigent and fined $25,000 for simply going to trial with the position of "near equal," or in the alternative, "father majority residential parent," and he would see to there being "near equal." And no, there wasn't even a hint of a 191. Further, the position was very similar to the position of the GAL who was "hand-picked by the court.") (Note: *Schnieder* is regularly disregarded by the superior courts and by the appellate courts in unpublished opinions in this regard.)

If there is a 191 reason for restricting contact, then it should be brought and applied. Further, the burden of proof in this regard should rest with the accuser — not the accused! We have billions of dollars allocated for women and children in need in this area (see WSBA Access to Justice *Washington State Domestic Violence Civil Justice Project Report*, December 1999). There are virtually no funds available to help fathers prove their innocence!

Until there is parity in the courts or the courts begin to see the fight of fathers to see their children as paternal concern and not as "abusive use of conflict," statutes such as the "friendly parent presumption" are highly necessary. Using "the friendly parent" as one weighted factor in making a determination of custody can do nothing but reduce acrimony, reduce family and domestic violence, preserve familial finances, and better serve the best interests of our children of divorce.

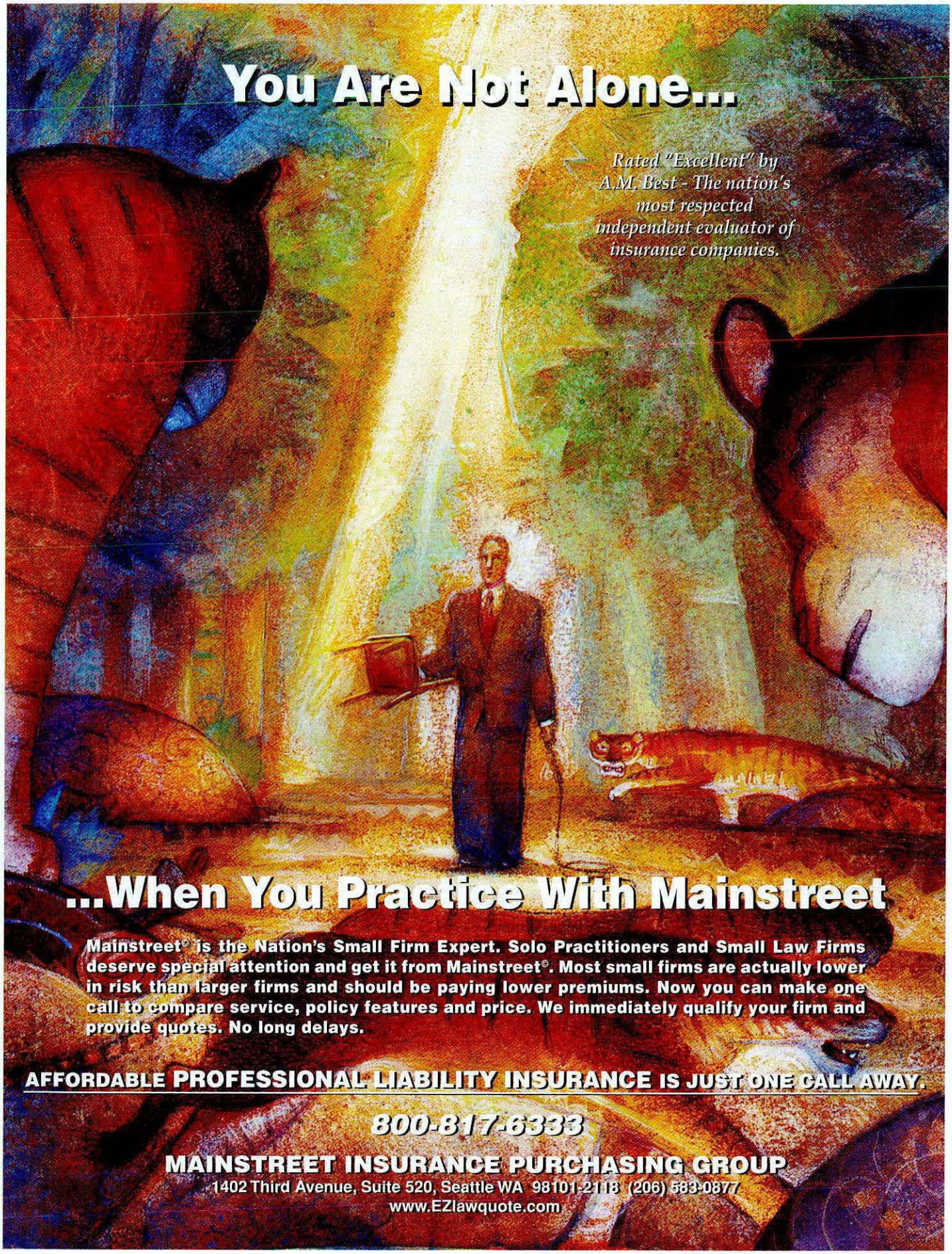
Doug Martin
Shared Parenting of Washington
Olympia

The "Born Method" of Practicing Law

Editor:

Rob Born of Clinton has proposed a fascinating procedure so that bar examinees will no longer have to suffer "callous indifference ... loss of revenue and anxiety" (August *Bar News*, p. 12). According to Mr. Born, by statistically weighing the answers, we could eliminate 45 days from the "two-and-a-half-month" waiting period. Simply thinking about the boost to the economy the extra 45 days of income from newly minted lawyers will bring to the state makes me tingle. (There might be some loss in the economy from Bar applicants foregoing treatment for anxiety, but I assume Mr. Born has factored that into his plan.)

While I care deeply about the care and well-being of lawyer wannabes, there is a greater lesson in this for me. This is such a good idea that I intend to use the "Born Method" throughout my practice. From now on I will only read the first 23 percent of a reported case. If that portion favors my position, I need read no further. Imagine the time savings (I will not, of course, bill for reading the whole case, but I will be able to review more cases,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thus increasing my income).

When in court I will provide the bench the first few pages of my pleadings and wait to see if more are needed. Judicial economy being what it is, I cannot imagine judges not being enthusiastic supporters of this. The Supreme Court appears to have already accepted the "Born Method" for presidential elections, so there should not be any pesky questions from Washington courts.

When preparing legal descriptions, close will count (recording clerks tells me most attorneys have been practicing the "Born Method" for years — we just did not have a formal name for it before).

I am sure that with lawyers being what we are, my colleagues will come up with numerous uses for the "Born Method." I await suggestions.

Jeffrey L. Price
Gainesville, FL

Surname Appropriate in Editorial

Editor:

I just have to put in my two cents' worth regarding John Panesko's critique (August *Bar News*, p.12) of Editor Panitch's column excoriating the current administration's decision to dispense with the ABA as a screening aid for federal judicial positions. I agree with Panesko in his criticism of the failure to refer to the president of the United States as such. However, it is the custom and usage of all print news media to refer to any individual only by their surname, once the full name has been used. It was actually improper for the editor to refer to Martha Barnett as "Ms. Barnett," because the custom and usage also dictates that titles such as "Mr.," "Mrs." or "Ms." be used only when referring to a deceased person. Barnett would not have appreciated that. It very definitely is not contempt for a print news medium to refer to living persons by their surname alone, Panesko. (If I had used "Mr. Panesko" in that last sentence, that could have been taken as condescending or as mocking with faint praise.)

Ron Mattson
Renton

ABA Positions Liberal?

Editor:

Regardless of whether the ABA is liberal, or whether President Bush was right or wrong in terminating the ABA's involvement in judicial selection, it's difficult to support Mark Panitch's ultimate conclusion (May *Bar News*, p.15). He claims that lack of ABA judicial screening will result in political opponents being "free to challenge a nominee's integrity, judicial temperament and professional competence" and require that nominees "defend every minor ethical lapse, injudicious outburst and possible professional error." Since this is exactly the situation that we have had for at least the past 20 years with ABA screening in place, it would be easier to argue that the ABA's involvement somehow resulted in partisan political attacks by what would otherwise be extremely civil and polite senators. In reality, however, I seriously doubt the involvement of the ABA had any effect on the process in the past, and I doubt much will change in its absence. Politicians will be politicians, and the process will remain very political for key appointments.

For those interested in whether the

ABA might be considered a "left-leaning" organization, I'd suggest simply reviewing the ABA's Web site (http://www.abanet.org). There you can review the ABA's "2001 Priorities" on issues such as tort reform, immigration, and even gun control, to reach your own decision.

When I performed this task, I discovered that I agreed with most ABA positions and disagreed with a few, but regardless, I found most of the ABA's "2001 Priorities" to be what I would consider clearly liberal positions. After reviewing the ABA's positions, I don't question why President Bush made the decision he made, for he is a conservative politician. I only question how Mark Panitch could believe that the ABA is not a "left-leaning" lawyers' group.

Kary L. Krismer
Seattle

Opposition to Diversity Seats

Editor:

I am very much opposed to the proposal to create two seats on the Board of Governors for "underrepresented" groups of lawyers. I am confident that, if enacted, it will create far more problems than any it may solve.

What does "underrepresented" mean? Does it refer to any group which claims to not presently have proper representation on the board? If so, I thought the governors were supposed to represent all the lawyers of their district. Does it mean underrepresented within the Bar? If so, who will determine which of the many groups who are allegedly "underrepresented" within the Bar deserve a special slot of their own on the Board of Governors?

In short, I feel that this is a road down which the Bar will regret having gone, wholly aside from the cogent legal challenges raised by previous writers.

Steve Carmick
Chehalis

Comment on Editorial Addressing Diversity Seats

Editor:

I usually enjoy reading Mark Panitch's columns. It is clear that he puts a great deal of time and thought into most of them, and they make for interesting reading. His column in the August *Bar News* (p.17) is an exception, however.

In his August column, Mr. Panitch discusses the ongoing process of filling the two "underrepresented" or "diversity" seats. He defends the positions, bemoans the number of white faces he sees at bar meetings, chides minorities for not making enough applications to fill the positions, and concludes by referring to people opposed to the creation of these positions as "opponents of diversity." The latter assertion is what prompted me to respond.

I have previously written to express my opinion that the creation of the two positions is unnecessary and unreasonable, and that the action is not supported by any demonstrable need. I even concluded with some tongue-in-cheek request for recognition of my own particular underrepresented group. Then I waited for the abuse to come flying at me. To my surprise, the few comments I heard were generally in agreement.

That, combined with Mr. Panitch's acknowledgment that there have been few

applications for the "diversity" seats, confirms my suspicions. The Board of Governors, while very likely well-meaning in their intent, are solving a problem that does not exist. In doing so, they are singling out groups of people for special treatment. It is this separate disparate treatment that I find objectionable. I am not an opponent of diversity; I am an opponent of those who would treat people differently based upon their race, age, ethnicity, religion, sex, sexual preference, etc.

This is an old debate in a relatively new forum. Affirmative action, which has been reduced or eliminated in many jurisdictions, was created to address past discriminations. While it had laudable goals, by its very definition, it sought to remedy sins of the past by taxing the participants of the present without regard to whether those present participants had created any of those past sins. It was, and is, a form of discrimination itself. The bar should be an egalitarian entity that treats people evenly, without regard for race, religion, etc. If it is engaged in a systemic practice of deselecting or excluding members of our profession, then that part of the system needs to be fixed.

I am not clear as to why Mr. Panitch finds the number of white faces on the board "disconcerting." I also fail to see how the diversity seats will result in, as Mr. Panitch puts it, "younger, darker and less well-established lawyers." Does this mean a 45-year-old African-American partner at Perkins Coie or one of the larger Seattle firms is automatically excluded? If so, I must have missed that part of the rules creating the seats. And what does this say about other "underrepresented" groups? Is the board saying, "well, we have wrongfully been excluding you all these years, and to make it up to you, we are going to let representatives from two of the possible dozens of groups join our fraternity"? What's next? Is the board going to bus white lawyers to practice in geographic areas where minorities appear in larger numbers than in the general population?

Diversity makes the world a much more interesting place and makes life a far more interesting journey. Diversity is a good thing. Disparate treatment is not. The Board of Governors has sought to treat groups of people differently based upon an arbitrary categorization and, arguably, to an arbitrary degree by selecting which two groups get to join the party. That discriminates against the rest of the members, however honorable the goals.

Tom Pacher
Coupeville

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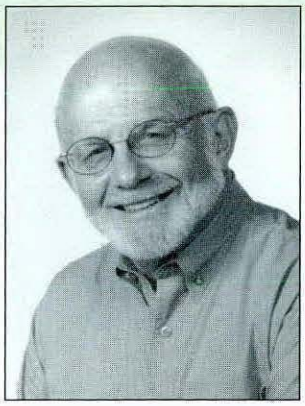

President's Initiatives

by Dale L. Carlisle
WSBA President

This is the first opportunity in 16 years for a Tacoma lawyer to speak to you as Bar president. I am honored to be chosen president, and am enthusiastic about serving you and the Association. This year I expect to work with WSBA staff, the Board of Governors, our members who volunteer for Bar committees and sections, and judges throughout the state. Together we can take steps to improve our justice system and benefit our clients and the public.

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This is my first chance to write a column in a regular publication since I was an editor and sports columnist for my high-school newspaper quite a few years ago. For several years, I have been reading columns in the Pierce County *Bar News* and *Washington State Bar News* written by the president of each organization. I have enjoyed these columns and have been educated by them. Apparently, bar presidents have the opportunity to entertain, educate, and encourage their members to action through the use of a monthly column. I expect I will do some of each over the year. Through this column, I hope to solicit your input and action on items that are currently being considered by the Association and its Board of Governors. Following are only some of the initiatives and projects that are under way. With your help and the help of the board, they will be completed in the next year.

Definition of the Practice of Law and the Practice of Law Board

During 2001, the Supreme Court will appoint a board to administer practice of law rules GR 24 and 25, which were adopted by the Supreme Court this year. Many committees and task forces of the Bar have previously approached this issue and failed to make significant progress. A broad-based committee suggested a definitional rule and, after review and comment from other parties, a rule creating a Practice of Law Board. The board, which will consist of 13 members, at least four of whom will be nonlawyers, will be appointed by the Supreme Court. The purpose of the board will be to accept and review complaints and concerns expressed by those who believe an unauthorized practice exists, and issue advisory opinions.

A second purpose of the board will be to review different areas of the law where a special license for a limited practice should be granted to a nonlawyer. The reason for this is to provide consumers with access to the court system, and assistance by someone who has special training and can expedite legal issues in an efficient and cost-effective way. An example of a current licensing system likely to serve as a model is the system for licensing real estate escrow officers to complete real estate forms. This licensing is now administered by the Supreme Court; however, after the Practice of Law Board commences its operation, limited practice officer licensing, along with any other licensing the board elects to address, will be administered under the direction of the WSBA.

It is the intent of the Board of Governors to suggest to the Supreme Court a list of potential nominees for positions on the Practice of Law Board. I would appreciate suggestions from Association members on potential nominees for the board, both lawyers and nonlawyers. The Board of Governors will also suggest regulations for the board to consider. We would like to have Practice of Law Board appointments completed by the end of the year, and hope that the board can commence its operation by the summer of 2002.

Constitutional Amendment/Courthouse Efficiency

The centerpiece of the Board for Judicial Administration's legislative "Project 2001" is a constitutional amendment to allow judges to move from county to county and court to court, increasing the usage of judges pro tem. This amendment, which will be on the November ballot as ESJR 8208, is discussed by Chief Justice Gerry Alexander in the article that begins on page 21. Our Court Improvement Committee, the Board of Governors, and many judges worked side by side to urge the state Legislature to pass this proposed constitutional amendment for placement on the November ballot. I believe we owe it to our clients, the courts and the public to educate as many people as possible and to help obtain the required votes to pass this amendment. I

request that members, after reviewing Justice Alexander's article and the amendment, find opportunities at programs, election presentations, and elsewhere to include speakers on this topic, including judges or members of our Court Improvement Committee. If you can't find a speaker, please consider making a presentation yourself.

Expansion of the Board of Governors

By the time you read this column, the Board of Governors will have expanded by two members. By having a 13-member board, we hope to communicate with as many members as we can throughout the state. To obtain input, we will continue to hold "listening lunches" at many of our Board of Governors' meetings in different counties. Having broader-based membership on the board, coupled with "listening lunches," allows us to obtain as much input as we can and still make decisions on a timely basis. This varied input is my definition of diversity in our Association.

Thank you for spending your time in reviewing these comments and those that I will continue to report in the next 12 months. Your actions, suggestions, input and help are necessary for me to do this job well.

Proud to Be a Lawyer... a Female Lawyer

by Victoria L. Vreeland and Karen K. Koehler

As a lawyer — a *female* lawyer — you have a great tradition to be proud of. Lawyers are the enforcers of rights and responsibilities, and there have been many lawyers (who also happen to be women) who have worked tirelessly to ensure justice and the rule of law despite the greater challenges they faced because of their gender. Throughout most of our history, education, let alone a legal education, was not available to women.[1] Women were denied licenses to practice law since they were not considered "persons" under law. So, although the list may be shorter and the names not as well-known, our past is rich with women lawyers who make us proud to be lawyers.

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In Colonial America, she was the first to hold land in her own right. She managed her several thousand acres so successfully that in 1647 the provincial governor appointed her executor of his estate, which included the duties of Lord Baltimore, the colony's proprietor. At that time, Maryland was a colony in chaos — soldiers were clamoring for their pay, and there was a shortage of food. She sold the lord's cattle to prevent insurrection, incurring his wrath, but the assembly declared "it was better for the Colonys' safety that time in her hands than in any mans [*sic*] else in the whole Province." Despite her wisdom and leadership, in 1648 the Colonial Assembly denied her request for the right to vote as a "freeman." Her name is **Margaret Brent**, and although she did not attend law school or take the bar exam, she was America's first woman lawyer.

When she decided to become a lawyer, she had no mentor, having never met another university graduate, law student or lawyer who was female. In 1869, she attended Washington University in Missouri, the first university to admit women. After graduating from law school, she helped found the National Woman Suffrage Association with Susan B. Anthony and Elizabeth Cady Stanton. In 1887, President Grover Cleveland appointed her the first female federal marshal. She dedicated her life to advancing justice and equality for all. Her name is **Phoebe Wilson Couzins** and she was a lawyer.

She ran the *Chicago Legal News*, worked to secure passage of a bill allowing married women to keep their own wages, passed the Illinois Bar exam with honors, and applied for bar admission. The Illinois Supreme Court denied her a license to practice law because she was female. The U.S. Supreme Court upheld that decision in *Bradwell v. Illinois*, 83 U.S. 130 (1873). Justice Bradley's concurring opinion chided her audacity and condemned the notion of women as lawyers:

It is to be also remembered that female attorneys at law were unknown in England, and a proposition that a

Women Remain Underrepresented in Law

The ABA Commission on Women in the Profession 2001 survey found that women remain under-represented in positions of greatest influence, status and economic reward. They account for 15 percent of federal judges and law-firm partners, 10 percent of law school deans, and earn, on average, $20,000 less than their male counterparts. The major barriers include unconscious stereotypes, inadequate access to support networks, inflexible workplace structures, sexual harassment, and bias in the justice system. Compared with men, women are less likely to work in law firms and more likely to work in public-interest and public-sector office. One reason: a man's chance of becoming a partner in a law firm is two to three times higher than a woman's. Women of color face even greater disparity and hold fewer than one percent of equity partnerships.

The commission concluded that equal opportunity for women in the law cannot be achieved without commitment in both institutional and individual priorities. Legal employers and bar associations have to translate principles into practice, hold leadership accountable for results, and ensure that structures permit rather than prohibit diversity.[4]

woman should enter the courts of Westminster Hall in that capacity, or as a barrister, would have created hardly less astonishment than one that she should ascend the bench of bishops, or be elected to a seat in the House of Commons ... That God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws, was regarded as an almost axiomatic truth ... In view of these facts, we are certainly warranted in saying that when the legislature gave to this court the power of granting licenses to practice law, it was with not the slightest expectation that this privilege would be extended to women.

The civil law, as well as nature itself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say the identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea for a woman adopting a distinct and independent career from that of her husband ... for these reasons I think that the laws of Illinois now complained of are not obnoxious to the charge of any abridging any of the privileges and immunities of cities of the United States.[2]

In 1890, shortly before her death, she was finally admitted to the bar. She banged on the doors of the profession until they were opened to her sex, and compelled legislators and judges to "proclaim that it was not a crime to be born a woman."[3] Her name is **Myra Bradwell** and she was a lawyer.

She was born in 1823, daughter of free blacks, but was forbidden from attending public school in Delaware. Her family's shoemaking store was part of the Underground Railroad helping escaped slaves flee to Canada, where she moved to teach the former slaves. She succeeded in opening the first racially integrated school despite powerful opposition. At age 30, she became the first North American black woman newspaper publisher and proprietor. During the Civil War, she was an army recruiting officer. A gifted lecturer, she inspired those attending the Annual Convention of the National Woman Suffrage Association. She founded the Colored Women's Progressive Association. In 1883, at age 60, she received her law degree from Howard University School of Law — the first woman to do so, and the second black woman to earn a law degree from any North American institution. She was a pioneering force in the black women's movement of emancipation. Her name is **Mary Ann Shadd** and she was a lawyer.

1947, she began practicing labor law in New York, but her commitment to women's rights led her into politics. She was the first Jewish woman elected to Congress, and the first woman elected on a peace and women's rights platform. As

her first congressional act, she introduced a resolution calling for the withdrawal of all U.S. troops from Southeast Asia. She introduced the bill that established Women's Equality Day on August 26, and was an early co-sponsor of both the Equal Rights Amendment and the Freedom of Information Act. Her support for universal childcare, reproductive rights, equal pay, and women's health and educational equity led the way for the enactment of key legislation. She clearly articulated the feminist argument through her unique sense of humor:

- Women have been trained to speak softly and carry a lipstick. Those days are over.
- The test for whether or not you can hold a job should not be the arrangement of your chromosomes.
- Our struggle today is not to have a female Einstein get appointed as an assistant professor. It is for a woman schlemiel to get as quickly promoted as a male schlemiel.

She was a champion for humanity and for women. Her name is **Bella Abzug** and she was a lawyer.

In the 1960s she was one of 16 women in a group of 500 men at Harvard Law School. There, she confronted "Ladies' Day," a humiliating routine in which a professor sat all the women in front of the class while he and the male students questioned them. In the 1970s, she became the first female attorney general in Florida's history and held the job for 15 years, hiring women to fill half of the 16 open positions. She was accused of sounding more like a social worker than prosecutor. The anti-pornography group American Family Association picketed her home because she refused to censor certain rap music. She publicly scolded the governor for his appointment of 32 white males to his 37-member Commission on Government for the People. She stood firmly on the side of civil liberties and compassion for humanity. Her decisions could not be bought. In 1993, she became the first female U.S. attorney general. Her name is **Janet Reno** and she is a lawyer.

She was born on a farm, the youngest of 13 children raised in poverty. Her parents taught her to respect her conscience and speak the truth. She graduated from

Oklahoma University with honors, and later from Yale Law School. In 1991, she braved the skepticism, cruelty and jests of 15 white male members of the U.S. Senate, as well as much of the nation, when she related her EEOC work experience with U.S. Supreme Court nominee Clarence Thomas. By recounting his spurned advances, sexual braggadocio and pornographic tales, she forced the issue of sexual harassment onto the national agenda. By opening her private life to ridicule, she became a voice for victims of gender-based oppression. Her name is **Anita Hill** and she is a lawyer.

Her parents were simple middle-class folk, her mother a homemaker. In college she developed a passion for helping children. When her husband took office as president of the United States, she became a powerful symbol of the changing role and status of women in American society. In 2001, she became the only sitting first lady to be elected to office, as a U.S. senator. She said: "The challenge now is to practice politics as the art of making what appears to be impossible, possible." And perhaps one day this too shall come to pass — a woman will become this nation's president. Her name is **Hillary Rodham Clinton** and she is a lawyer.

The practice of law is a helping profession and the pursuit of justice and equality is extremely worthy of respect. So be proud of your rich legal heritage and be proud to be a lawyer — a lawyer who just happens to be female.

Victoria L. Vreeland is a partner in the Seattle office of Gordon, Thomas, Honeywell, and a member of the WSBA Board of Governors. Her practice focuses on civil rights, employment, sexual coercion, commercial litigation and insurer receiverships.

Karen K. Koehler is a partner with LePley & Koehler in Bellevue. She is the WSTLA vice president of continuing legal education, chair of the law school advocacy committee, and chair of the insurance law section. Her trial practice focuses on plaintiffs' personal injury and insurance bad faith.

NOTES

1. In 1886, the first woman graduated from Yale Law School, which then changed the rules to bar women from the law school until 1920. Columbia University did not admit women until 1919; Harvard, 1950; and the University of Notre Dame, 1967. The New York Bar Association excluded women through 1937. In the 1950s and 1960s, women made up less than four percent of the legal profession.
2. 83 U.S. at 140 (1873).
3. The tribute to Bradwell in the February 24, 1894 edition of the *Chicago Legal News* stated: "The future historian will accord her the breaking of the chain that bound woman [*sic*] to a life of household drudgery. She opened the door of the professions to her sex, and compelled law makers and judges as well, to proclaim that it was not a crime to be born a woman."
4. *See*, ABA Commission on Women in the Profession, *The Unfinished Agenda: Women and the Legal Profession* © 2001 American Bar Association; http://www.abanet.org/ftp/pub/women/unfinishedagenda.pdf.

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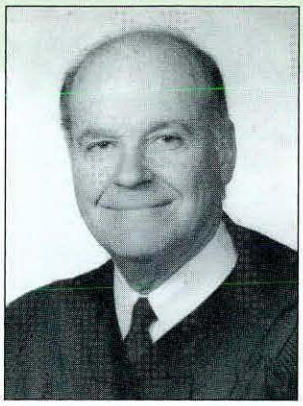

Constitutional Amendment:

Portability of Judges to Increase Courthouse Efficiency

by Chief Justice Gerry L. Alexander

Full text of ESJR 8208:
The Washington State Constitution is amended to provide that, in addition to those persons currently authorized to be a judge pro tempore in superior court, any sitting elected judge may serve as a judge pro tempore in superior court without the approval of the litigants, as provided by court rule. The rule must require that assignments of judges pro tempore be based on the experience of such judges and provide for the right, exercisable once during a case, to a change of a judge pro tempore.

One of the strong arguments for this proposed change is to improve the ability of superior courts to offer citizens a trial or hearing date certain for civil matters.

As a member of the legal community, you are likely to have experienced the frustration of seeing civil trials postponed due to increases in criminal dockets. If your civil trial has been set for two or more years in the future, I am sure you will agree that Washington courts would be well-served by changes that will help solve critical issues facing the judiciary: more efficiency in our courts and more judges to handle increasing caseloads.

Next month, Washington voters will have an opportunity to improve the efficiency of our courts by voting for a constitutional amendment — ESJR 8208 — that will allow for the expanded "use of judges pro tempore."

Thanks to support from the Washington State Bar Association and many other groups, the joint resolution sponsored by Senators Adam Kline and Dow Constantine passed both houses of the Legislature with solid bipartisan support.

ESJR 8208 would allow presiding judges of superior courts to use elected judges from other court levels to hear cases and other matters without the approval of litigants. These "portable" judges would all be elected, remaining accountable to the public.

Impetus for Change

In the current fiscal environment, an important goal for the judiciary is to use judicial resources in the most efficient manner possible. Washington has more than 300 elected judges at four levels of court who serve every day in courtrooms throughout the state. Unfortunately, current law creates a barrier to the most effective use of these judges in superior courts.

In 2000, my predecessor, Chief Justice Richard Guy, appointed a blue-ribbon commission (Project 2001) to study the state's judicial system. Members of the judiciary, public, and county clerks, attorneys and elected officials (145 in all) made many fundamental recommendations to improve our justice system. One of the commission's recommendations, a change to the restriction on the use of judges pro tempore, was identified as a top priority to increase the efficiency of our courts.

The commission recommended that presiding superior court judges be given the ability to appoint a qualified elected judge from another level of court to sit temporarily on their overburdened court without the consent of the parties or their lawyers.

One of the strong arguments for this proposed change is to improve the ability of superior courts to offer citizens a trial or hearing date certain for civil matters. With this change, local superior courts would be able to schedule more civil trials without the need for continuances or "bumping" due to a large influx of criminal cases.

Current statutes for courts of limited jurisdiction already allow judges from other levels of court to sit as judges pro tempore without the consent of parties. This amendment would offer superior courts throughout the state the same option.

Proposed Rule Protects Parties' Interests

In January, as the language of the constitutional amendment was being developed, discussions also took place with members of the bar and bench regarding the provisions of a companion court rule that would implement the amendment if it is passed.

This informal group included judges from all four levels of court, and representatives from the Washington State Bar Association, Washington State Trial Lawyers, Washington Defense Trial Lawyers, and King County Bar Associa-

tion. After lengthy negotiations, the workgroup agreed on a proposed court rule for the Supreme Court's consideration.

Many thanks are due to the dedicated members of the workgroup led by Kirk Johns, chair of the WSBA Court Improvement Committee. Members of the workgroup included: Wayne Blair, Justice Tom Chambers, Hal Hodgins, Jim Macpherson, Mary McQueen, Jan Michels, Judge Jim Murphy, Jon Ostlund, Jan Eric Peterson, Judge David Steiner, Steve Toole, Mary Wechsler and Mark Weiss.

If the voting public approves the amendment, the Supreme Court will formally consider the agreed proposed rule. Highlights of the draft rule include:

- Any party to a matter that is assigned an elected judge pro tem shall be entitled to one "change of judge" by simply filing a notice. The parties will still have the existing right to file an affidavit of prejudice under RCW 4.12.050. The notice of change of judge operates to bar any later assignment of the affected judge to the case.
- The presiding judge of a superior court will make assignments based on experience and demonstrated ability of the elected judge pro tempore with the subject matter and level of complexity of the case.
- Each superior court will file a list of judges who may be assigned cases in the coming year with the Administrative Office of the Courts (AOC). The rule provides for a minimum of three pro tem judges in any county, while limiting the number to 15, so the attorneys and parties can become familiar with the pro tem judges on the county list. Pro tem lists must be filed with AOC in the same manner as local court rules and will also be available on the AOC Web site.

Practical Applications

If voters approve, the amendment will allow a local superior court presiding judge to request an elected appellate or limited jurisdiction judge — on a temporary basis — to handle motions or hear cases without the consent of the parties or their lawyers. I anticipate these portable judges would most likely be used for routine and high-volume calendars that involve nondispositive proceedings, such as arraignments and motions.

While judges from other courts can serve now as pro tems in superior court, this amendment would allow presiding judges more flexibility to handle their motions calendars. To some this change may seem minor, but the effect is significant, since many court calendars contain up to 50 motions a day.

Pro tem judges may on occasion be given emergency trial assignments in circumstances where the superior court has experienced a fluctuation in case filings and needs help. A presiding judge might also make a "court congestion assignment" in circumstances where significant backlogs have developed, thus offering more certainty to attorneys and litigants that an experienced judge is available to hear their case.

Opportunity Awaits

Throughout this process, I have been extremely gratified by the support offered by the leadership of the Washington State Bar Association, Board for Judicial Administration and members of the Washington State Legislature, which approved ESJR 8208 by a two-thirds vote on April 18, 2001. The judiciary is extremely hopeful that the citizens of our state will also lend their support to this important judicial reform.

As attorneys and members of the legal community, you can play an important role in increasing public understanding of our system of justice. We now have a unique opportunity to spread the word about the benefits of this proposed constitutional amendment which will help superior courts balance their workload, resolve cases more quickly, and provide courts with flexibility to meet trial needs based on local conditions, resources and talents. Please join me in supporting this important and much-needed change to our judicial system.

Note: The Committee for Cost-Effective Justice was formed July 5, 2001 to promote ballot measure ESJR 8208, which is scheduled for a vote in the November 6th general election. For further information on the ballot measure or the committee, contact WSBA Director of Legislative Affairs Gail Stone at 206-733-5925 or gails@wsba.org.

Washington Supreme Court Chief Justice Gerry L. Alexander was first elected to the Supreme Court in 1994. He joined the state's highest bench with over two decades of trial and appellate court experience, having served as a judge in Thurston and Mason county superior courts from 1973 through 1984, and as a judge of the Court of Appeals, Division Two, from 1985 through 1994. He assumed the position of chief justice in January 2001.

Dale L. Carlisle: *Staying the Course*

by Allison L. Parker • *WSBA Communications Specialist*

When WSBA President Dale L. Carlisle attended a reunion earlier this year, a classmate said, "You know, I don't remember you, but I recognize your smile and your voice. You've got a lot of enthusiasm and you're always smiling." Carlisle believes enthusiasm is contagious, and he hopes his excitement for the WSBA will expand members' participation in Bar activities.

A native of Walla Walla, Carlisle has practiced law with Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim in Tacoma since 1965, including a seven-year stint as managing partner. He currently serves as of counsel to the firm, and focuses on real estate, corporate and securities law. Carlisle also served as an assistant U.S. attorney, an Air Force JAG officer, and as in-house counsel for a real estate development company.

> "The first thing I would like to do is have the members feel involved in the Association and feel that it's relevant to them. This includes expanding peoples' participation in committees and programs, and expanding member benefits."

A commitment to service has characterized Carlisle's career. In fact, he continues to practice law because he believes it is a way to make an impact on the community. He has served on numerous county, state and national bar committees; is a frequent speaker at seminars; and has been an adjunct professor at Seattle University School of Law. Carlisle was director of the Broadway Plaza Development Association and served as Tacoma City Club president. He thinks those activities, among others, have prepared him well for the WSBA presidency.

"I've been the president of almost every organization I've ever belonged to, starting with the law school student bar association. Every time you do that, you learn to be humble, how to reach a consensus with other people, rather than be divisive. You learn the psychology of an organization," Carlisle explains. "I've been practicing for a while. I've done a lot of things at the local and state bar levels. I have the time to commit to the Association and the members.... I've kept track of the issues that affect lawyers. I want to help the Board of Governors work on those issues. It's a challenge — and I look forward to this kind of challenge."

In recent years, WSBA presidents have taken on specific causes or objectives. Carlisle would like to expand member interest and participation in Bar activities. He also intends to continue the progress of the Long-Range Strategic Plan by using WSBA programs and services already in place.

He says, "The first thing I would like to do is have the members feel involved in the Association and feel that it's relevant to them. This includes expanding peoples' participation in committees and programs, and expanding member benefits. The Bar has a lot of programs and activities in progress. We also have a number of objectives. I want us to focus on the objectives, and achieve those objectives through the programs currently in place....

Members can look forward to us continuing to have BOG meetings around the state, and continuing to have opportunities at those meetings to tell us what they think the Bar ought to be doing, to become involved, and to assist us in becoming relevant to them. They can look forward to having the Bar and the board focus on objectives. We will ask them to do their part via involvement in committees, etc.... If members don't want to or are not comfortable coming to us, we'll go to them. If they want to come to us, we'll welcome them.... Every one of us is willing to listen to a member that has a problem with the Association or a suggestion for how we can better do our jobs. We welcome those comments.... The Association is not just one face. It's the faces of all our staff, volunteers and 26,000 members."

Carlisle says, "I've had the good fortune to always do things that I have an interest in. It's important to identify those things ... and try to do them well."

PART TWO

Better Late than Never: Settlement at the Federal Court of Appeals

by Mori Irvine

The attorney and the client should review the case and their mediation plan shortly before the mediation. The lawyer should explain to the client his role, the attorney's role, and the mediator's role in the process.[3]

Becoming an Effective Appellate Advocate in Mediation[1]

Lawyers must take responsibility to make mediation work. This means they must bring the same creativity, energy and dedication to mediation that they bring to their other appellate duties. The successful mediation starts with a lawyer who is prepared and has the correct attitude. Both parties must enter the process with the intention of trying to resolve the problem and with the belief that settlement is possible. Mediation works because the parties make it work. It is a mechanism, not a remedy.

As the attorney better understands mediation, he can modify his negotiation strategy to maximize the use of the process and the mediator. For example, because mediation is a settlement tool and not a means to an end, the attorney must take the opportunity to educate the opposition about the merits of the case. The more the attorney can convey to the other side the merit of his client's position, the more the other side will want to settle the matter. Lawyers can assist their clients in increasing the potential of the mediation process by following the "Ten Commandments of Effective Mediation."[2]

Commandment One: Be Professional

Courtesy, professionalism, and a willingness to work with the other side will reap substantial benefits in reaching a settlement that satisfies the most important interests of the client. The participants

should approach the process optimistically and with a willingness to listen and learn. The attorney and the client should review the case and their mediation plan shortly before the mediation. The lawyer should explain to the client his role, the attorney's role, and the mediator's role in the process.[3]

The attorney and his client should always be respectful, attentive and courteous in the mediation. The participants should be on time for the mediation; tardiness sets a poor stage for settlement discussion because it sends the message to the waiting participants that they are not as important as the latecomers.

Upon arrival, the lawyer should introduce himself and his clients to all the other participants. The attorneys should identify their respective positions so everyone knows who is playing which role during the mediation. The attorney must have present at the mediation the client with adequate authority to settle.[4]

During the joint session, the attorney and client should listen carefully to the mediator and to the opposing counsel during his opening remarks.[5] This is not the time for the attorney to flip through her file, look at her calendar, or read the newspaper. In short, the Golden Rule applies in mediation.[6] Mediation is "a process governed by mutual respect, not by... rudeness which too often characterizes adversarial law practice."[7]

Commandment Two: Use Temperate Language[8]

A lawyer should never insult, threaten, or make personal attacks. The use of pejoratives, such as fraud, liar or malingerer, attacks the integrity of the other side. As a result, they will not trust the lawyer (or his client), and without trust, there can be no settlement. In all the years I have mediated cases, I have never seen a lawyer purposely insult his opponent or his opponent's client and still persuade the other side to enter into a favorable settlement.

Personal attacks kill a mediation because the decision-maker in mediation is not the mediator; he is the adversary on the other side. The opponent is the one who must be persuaded. The correct use of language — a lawyer's stock in trade — is crucial to the success of any mediation. That means the use of "I" statements instead of "you" statements. "I" statements make a point without hurting;[9] "you" statements are inflammatory;[10] "why" statements antagonize.[11] To paraphrase Abraham Lincoln, the lawyer defeats his enemy not by attacking, but by making him his friend.

Everything a lawyer says in a joint session should be designed to create a contextual shift in the mind of the opponent. The goal is for the opponent to see that the lawyer and his client are reasonable and have valid reasons for their position. The lawyer wants the other side to really hear and understand what they are being told. To start the shifting process, the lawyer needs to tell them something new. The person whose expectations must be met to settle the case is sitting across the table. The lawyer must work to shift the opponent's evaluation closer to his, and this is done most effectively by using language that draws — not repels. The level of client attentiveness is extremely high in mediation. Clients are listening very carefully. The attorney should give them new information, and use language to move them toward the attorney's position rather than push them away from it.

Commandment Three: Listen Carefully

Temperate language alone, however, will not persuade the other side to settle. To successfully draw the other side to a position, the lawyer must listen to him with the kind of attention that makes the other person feel not only heard, but also seen. To do this, the attorney must engage in "active listening."[12]

Active listening is a process of hearing what the speaker is saying, understanding it, and responding with a statement that reflects and mirrors what the speaker has said.[13] "[Mediations] usually begin as conflict situations and, as such, generate feelings of mistrust, fear and anger that are counterproductive to establishing a cooperative or problem-solving bargaining relationship."[14] Interpersonal techniques, such as active listening, facilitate cooperation because the other side believes the lawyer understands his concerns. An attorney can develop this rapport with the other side without "giving up" anything on the merits. Therefore, active listening can be regarded as "the cheapest possible concession."[15]

An attorney who is an active listener, especially with her own client, will also take advantage of the opportunity to learn new things. Even on appeal, cases are not static. Everything continues to evolve: The law changes, circumstances change, the decision-makers change, new case law comes down. All these things can affect the settlement posture of the case.

Importantly, by carefully listening, the lawyer can learn how the client feels about the case.[16] Feelings are facts, and the attentive attorney will learn which feelings are at work in the particular case, giving her an opportunity to effectively deal with those feelings rather than letting them go unexpressed and unresolved. Unattended feelings have derailed resolution in many cases.[17] For example, many clients believe, especially when the litigation at the trial level ended in a summary judgment or other "premature" end, that they are entitled to their day in court. An attorney who is attentive to her client's feelings will be more able to help the client become psychologically ready to settle the case and put the matter behind him.

Listening carefully also allows the attorney to ferret out the interests of the parties instead of focusing only on their positions.[18] This is crucial in permitting the lawyer to understand and contrast the parties' interests and positions. They may be different, and a solution may be available that will satisfy the interests of both sides.[19]

The cardinal rule of mediation is to "seek first to understand, only then to be understood."[20] That requires the attorney to listen carefully.

Commandment Four: Know the Client's Interests and Issues

The lawyer's preparation goes beyond knowing the circuit's rule that governs the mediation session.[21] The attorney must be able to identify and articulate the issues and common interests in the case. To be able to do this, the attorney and client must be prepared. An attorney must never go to a mediation and "wing it." The deal that is made at mediation is final; there is no alternative after the settlement is completed.

An attorney who is an active listener, especially with her own client, will also take advantage of the opportunity to learn new things.

An important step in the attorney's and client's preparation for mediation is an exploration into what is really driving the client and what he wants to accomplish with the appeal. This means the client must think seriously about the consequences of going forward. He can do that only if the attorney has given him a realistic analysis of the benefits and risks on appeal. "The dialogue between lawyers and clients must take into account practical, ethical, and moral considerations."[22] The lawyer must give the client a realistic analysis of fairness considerations and make the client aware that surprises occur during the course of the appeal. For example, new case law may come down during its pendency that completely obliterates or otherwise weakens the client's position.

To organize the client's concerns and assess his expectations, the lawyer and

the client should explore the client's Best Alternative to a Negotiated Agreement (BATNA)[23] and Worst Alternative to a Negotiated Agreement (WATNA)[24] before the mediation. No one is prepared to commence a negotiation and make intelligent settlement decisions until she truly understands her BATNA and is able to express it clearly. A carefully considered BATNA provides a useful measuring tool for the various offers on the table; it will drive the client toward an offer that is better than the BATNA and away from an offer that is not. In addition, if the lawyer and client become concerned that the WATNA is highly likely,[25] an even slightly better offer will seem more attractive.

To assess the client's BATNA at the appellate level, the attorney must do the math for the client. He must articulate for him what the appeal will really cost in time, money and stress. If a plaintiff is successful in overturning on appeal a summary judgment granted to the defendant, that is not the same thing as "winning the case." The client must be made aware that a victory at the court of appeals may sometimes mean just more litigation, more work, more expense and more frustration. In addition, the attorney must keep in mind each side's tolerance for risk and willingness to "roll the dice." Finally, the lawyer must be candid and honest in assessing alternatives. When one side says the cost of defending the appeal is $1,000, and the other side says they will accept the $80,000 their opponent would spend on the appeal, probably neither side is being realistic in assessing the financial aspect of their BATNA.

Commandment Five: Identify any Common Interests

It is not enough that the lawyer knows the interests that drive his own client. It is equally important that the attorney be fully prepared to acknowledge the other party's interests, perspectives and feelings as well. That means that the attorney must think carefully about the opponent's BATNA. Doing so will allow the attorney to better identify common interests between the parties. If there are no common interests, many parties do share an interest in getting on with their lives, putting the conflict behind them, saving the cost of appeal, resolving the matter in a way that is satisfactory to all, and feeling respected. Identifying the common interests is more than an academic exercise. With common interests comes motivation, with motivation comes concessions and solutions, with concessions and solutions comes settlement.

Commandment Six: Show Off Your Preparedness

Mediation is a rare opportunity to have the opponent's decision-maker give settlement talks his undivided attention. Two things — the Confidential Mediation Statement and the lawyer's opening remarks — are the foundation of the lawyer's presentation and, therefore, should be the focus of her preparation. They require that the attorney analyze her client's problem, consider the possible solutions, and devise a strategy for persuading her opponent to settle on favorable terms. Done well, these items show the other mediation participants that the lawyer has complete mastery over the case, has carefully considered the risks and benefits of the appeal, has weighed the alternatives, and has devised possible resolutions to the conflict.

- *Confidential Mediation Statement*

The Circuit Mediation Office recom-

mends that lead counsel submit a "Confidential Mediation Statement" before the mediation.[26] The statement does not become part of the court file, nor is it shared with the other side.[27] The statement should be in letter form, addressed to the mediator, and should provide the information necessary for the mediator to assist the parties in seeking settlement.

At a minimum, the statement should include the following elements: a brief recitation of the circumstances that gave rise to the litigation, the present posture of the case including any matters pending in the lower court or in related litigation, and recent developments that may impact the resolution of the case. It is helpful to include the history of efforts to settle the case, including prior offers or demands, a summary of the parties' legal positions, and a candid assessment of their respective strengths and weaknesses.

The mediator needs to know which individuals and counsel should be directly involved in the settlement discussions, and needs to have a description of any sensitive issues that may not be apparent from the court records but will influence the settlement negotiations. It is particularly helpful for the mediator to know the nature and extent of the relationship between the parties and their counsel.[28] The attorney should add any suggested approaches for the mediator to take in an attempt to settle the case,[29] as well as any suggestions for creative solutions and a priority list of the client's interests.

It is not helpful to send pleadings instead of a candid, narrative mediation statement. Pleadings do not tell the mediator much about the problem that must be solved to settle the case.[30] They do not contain the essential interests of the client, nor are they candid assessments of the case. Likewise, statements that are mere rants or generalized adversarial posturing are also unhelpful.

The Confidential Mediation Statement is one of the most important tools that the mediator has with which to assist the parties in reaching settlement.[31] I am constantly surprised to see how few attorneys take advantage of the chance to submit one.

- *Opening Remarks*

There are two means of persuading the

The more each side appreciates the opponent's merit, the more likely the case will settle.

opposition in a mediation. The first is direct persuasion in the joint session through the lawyer and client's presentation. The second is indirect persuasion through the mediator by arming her with information during the caucus that she will present to the other side during succeeding caucuses. The objectives[32] of the opening remarks are to build rapport,[33] influence expectations,[34] and set a cooperative and reasonable tone.[35]

In the joint session, the attorney should make a short presentation to the mediator and the other side. He should discuss the facts, the record, the law and the practical points. This concise presentation should include a discussion of the issues on appeal, the best evidence in the record, the most favorable applicable law, and the practical advantages to the other side of settling.

This presentation can include visual aids if they would aid in the mediator's and the opponent's understanding of the case and the client's interests. The attorney should consider softening the adversarial tone of his arguments by being openly empathetic to the other party, by expressing an understanding of the perceived plight of the other side. A good, empathic opening by a well-rehearsed and skillful lawyer directed at the other side, rather than exclusively to the mediator, can set the stage for a good settlement.

A good opening avoids discussing money,[36] never sets a "bottom line," and avoids posturing. Instead, it attacks the problem to be solved, not the people involved.[37] The successful lawyer uses language to draw the other side to his evaluation of the case and to his suggestions for settlement.

Just as a strong and empathetic opening can move the case toward a favorable settlement, some things will doom the case to impasse, including arrogance; hostility; abusive tactics; an emotional "jury" speech; or a conclusory, generalized pitch that does not focus specifically on key points of the case.

The time expended in preparing for these remarks is important for another reason. During mediation, just as in trial, the clients are constantly evaluating the lawyers and comparing them. The better-prepared lawyer will shine in comparison to his less-prepared colleague who is "winging" the mediation. This means the unprepared attorney's client will develop doubts about the strength of his case and will more readily compromise.

Commandment Seven: Know Your Case

Credibility requires equal parts honesty and knowledge. The lawyer must be prepared on both fronts. The lawyer's goal in mediation is not merely to argue the merits of the case, but to overcome the inherent distrust of the adversary and to maximize the concept that a dispute is a problem to be solved together.[38] But a case settles only when each side appreciates the merit of the other side's case. The more each side appreciates the opponent's merit, the more likely the case will settle. This means the lawyer must be prepared to articulate the strengths and weaknesses of his case. He should discuss the weaknesses openly and candidly, and describe how he will handle them and minimize their impact. Acknowledging these vulnerabilities and analyzing how they impact the case will build credibility and trust in both the other attorney and the mediator.

One of the roles of a mediator is to ask probing questions about the case. The lawyer's role is to answer these difficult questions. The attorney who is thoroughly prepared and has carefully thought through the potential pitfalls of the case will build credibility with the mediator and make the lawyer look good to his client. Be honest and forthright with the mediator and give an honest assessment of the case.

In addition to thinking about his own case, the lawyer should spend time analyzing how his opponent might overcome his weaknesses and how his case's strengths can be minimized. A fair resolution requires constant re-evaluation and compromise.

Commandment Eight: Search for Solutions for Both Sides

Mediation is a rare opportunity to be creative in solving the client's problem. Remember that the appeal started out as a problem the client brought to the lawyer to solve. The trial lawyer restructured the problem into a lawsuit. Mediation works to deconstruct the lawsuit back into a problem, and then strives to solve the problem. Mediation "captures the human element which is so often missing when lawyers do most of the talking and translate client stories into legal context."[39]

That means the lawyer must be concerned, creative, and willing to look "outside the box" to achieve a satisfactory result. Before the mediation, the client and lawyer should explore various options for resolution. By "brainstorming" about each party's interest (what he wants and why), the participants can avoid getting caught in the rut of looking only at the legal positions and the asserted legal rights.

This type of thinking takes creativity and flexibility. Creative business alternatives and options are the most fertile areas for these types of solutions. This is particularly true where the parties want or must have a continuing relationship. In searching for business alternatives, concessions should be considered and evaluated. Each side probably values and prioritizes some items differently. This allows the parties to trade concessions that are more valuable to the receiver than the giver.[40] This type of exchange begets settlements.

Before mediation begins, the client should prioritize his options. Even so, the client must stay flexible, and focus on accomplishing his long-term goals. In the mediation, neither side should hesitate to start the settlement discussion. Both sides should be prepared to do "the dance of negotiation."[41]

Commandment Nine: Support Your Proposals

If possible, search for independent, objective benchmark standards for your disputed issues.[42] In a property-value dispute, look at what sales values of comparable properties have been. In employment discrimination cases, comparable verdicts can serve as the objective basis as can the criteria set out in the statute.[43] The object is to link the settlement proposal to something solid rather than the attorney's "gut feeling" or the client's wish list. This type of objective data is difficult to acquire during the mediation. This means the lawyer must make this part of the premediation preparation.

Even with prior preparation, the lawyer and the client must be prepared for shifting positions during the course of the mediation. The client must be ready and willing to re-evaluate his settlement proposal as new information comes to light. As this additional information becomes available, the lawyer and client will continually evaluate and assess if the client is better off with a mediated agreement or with the appeal.[44]

Even with prior preparation, the lawyer and the client must be prepared for shifting positions during the course of the mediation.

During the course of the mediation, it is important to avoid "backtracking" from the last settlement proposal before mediation. In appellate mediation, this is relatively easy because there has usually been a dispositive decision since the last settlement talks. If the settlement posture must be changed, however, it should be linked to some factors that have changed in the interim that justify the shift. These factors must be clearly articulated to the other side. An unexplained change in settlement posture will affect the opponent's perception of good faith, and the attorney who shifts the prior settlement offer should be prepared for the other side to respond to the change by also backtracking from their prior settlement offer.[45]

New settlement proposals should not be disclosed in the joint session, but should be held until after the attorney meets privately with the mediator.

Commandment Ten: Let Everyone Win

Success in mediation depends on each side making a decision the other party wants. Both the lawyer and the client should work hard to make the choice to

settle as painless as possible for their adversary.[46] Everyone is motivated by self-interest. If a proposed settlement satisfies the opponent's interests, it is easy for the opponent to agree to the terms. Therefore, seeking to satisfy the other side's interests will often work to satisfy the lawyer's own client's interests.

Once a settlement has been reached, the work is not over. In memorializing the terms of the agreement, there are some simple rules that should be observed. Now is not a time for the attorney to acknowledge that he had no chance of prevailing on appeal. The client and lawyer should not gloat or brag about how happy they are about the terms of the settlement. They should not laugh or joke, especially if hard feelings were present in the case, or if the opposing participants are not pleased with the outcome.

Conclusion

As the attorney and client enter mediation, even at the appellate level, they must both keep in mind that "a dispute is a problem to be solved together, not a combat to be won."[47] Mediation has the "capacity to reorient the parties toward each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward one another."[48]

The mediator plays many important roles in helping the parties come to a resolution. First, the mediator is there to help the parties establish a constructive setting for negotiation. Second, the mediator helps the parties examine and clarify their interests, keeping them focused on what is important to them in resolving the dispute, not just on their stated positions. Third, the mediator helps deflate unreasonable claims and helps the parties develop practical goals and settlement terms with which they can be satisfied. The mediator does this by seeking common ground for discussion, keeping the negotiation going, and articulating possible grounds for agreement.

But no matter how skilled the mediator, the mediation is only as good as the parties and attorneys let it be. The clients must be prepared to put the dispute behind them, and the lawyers must be well-prepared to help their clients solve the problem.

For those willing to put in the effort, this article provides some guideposts for mediating in the federal courts of appeals.[49] It is worth the effort to make that process more productive. Mediation is the ultimate contact sport. It takes energy, skill, timing and patience. The end result is worthwhile. Mediation settlements result in higher client satisfaction, better client relationships, lower cost, less delay, and higher compliance with the settlement terms. The mediator is only part of the solution. Attorneys are equally important, for they help guide their clients toward responsible decision-making in mediation.[50] To accomplish this, the lawyer must learn to be a problem-solver and a peacemaker for the client, as well as his sword and his shield.[51]

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NOTES

1. Over the years I have had the good fortune to learn a great deal from my colleagues about this subject. They have been extraordinarily generous with their ideas, insights and materials. The final distillation of these ideas will reflect much of what I have learned from them. As their materials have been completely assimilated into my thinking, individual citation is no longer possible. Nonetheless, I want to credit those whose impact has been the greatest: Professor Lela Love's presentation on the panel "Bringing Out the Best in (and Managing the Worst of) Lawyers During the Mediation Process" at the 26th Annual International SPIDR Conference conducted on October 17, 1998 in Portland, Oregon; Charles F. Guittard, Marsha L. Merrill, Broadus A. Spivey, J. Ross Hostetter, Joe D. Milner Jr. and Tom Arnold, and their work on the program conducted by the state bar of Texas titled "How to Use Mediators to Get a Fair Settlement for Your Client," conducted on September 18, 1992.
2. Professor Lela Love's presentation of "Call the Law" while on the panel "Bringing Out the Best in (and Managing the Worst of) Lawyers During the Mediation Process" at the 26th Annual International SPIDR Conference conducted on October 17, 1998 in Portland, Oregon, is the foundation for what follows.
3. That means the attorney must understand mediation himself. That requires self-education on the lawyer's part.
4. *See* Fed. R. App. P. 33 ("Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case.").
5. In one well-known study it was found that when people are listened to, their blood pressure goes down. Steven Keeva, *Beyond Words*, A.B.A.J., Jan. 1999, at 61 (citing James J. Lynch, *The Language of the Heart: The Body's Response to Human Dialogue*).
6. "So in everything, do to others what you would have them do to you." *Matthew* 7:12 (Family Worship Bible).
7. Nolan-Haley, *supra* note 48, at 1371 (footnote omitted).
8. I credit Tom Arnold of Texas for many of these observations.
9. "I felt hurt when I heard what you said about how women should not be firefighters" makes the point about how the client felt about what her opposing counsel said.
10. "You said women are too weak to be firefighters" puts the other side on the defensive. When someone is defensive, he or she stops hearing the speaker and is busy formulating a response.
11. "Why do you always denigrate women?" can lead nowhere productive.
12. Donald G. Gifford, *Legal Negotiation* 89-90 (1989).
13. *Id.* at 90.
14. *Id.* at 89-90.
15. *Id.* at 90 (footnote omitted).
16. At this point, many readers are saying, "So what, I don't care how anyone *feels* about this case, the law is the only important thing that matters." Not so. Look at any futile litigation that goes on like the case of Jarndyce and Jarndyce in *Bleak House*. More is at play in a lawsuit than just a judicial interpretation of the law. "At the present moment there is a suit before the court which was commenced nearly twenty years ago, in which from thirty to forty counsel have been known to appear at one time, in which cost have been incurred to the amount of seventy thousand pounds, which is *a friendly suit*, and which is (I am assured) no nearer to its termination now than when it was begun. There is another well-known suit in Chancery, not yet decided, which was commenced before the close of the last century and in which more than double the amount of seventy thousand pounds has been swallowed up in costs." Charles Dickens, *Bleak House* viii (Signet Classic 1964) (1853) (emphasis in original). Put another way, the lawyer should ask himself, "Am I paying enough attention to the people problem?" Roger Fisher & William Ury, *Getting to Yes* 19 (Bruce Patton ed., 2d ed. 1991).
17. Mediators learn early that they must allow the parties to "vent," and failure to do so can create a major roadblock to settlement later. Listen, and if you hear a party resisting settlement because of "principle," then he has probably not been carefully listened to, and his feelings have not been taken into account.
18. Fisher & Ury, *supra* note 64, at 40.
19. The classic example is the two businesses fighting over an orange crop. Each claims to own it. The *position* of each party is that it is entitled to full possession of the crop. The *interests* are different. One company wants the juice of the crop to make frozen orange juice. The other company wants the orange peels to make marmalade. Both companies' *interests* can be satisfied without ever deciding the legal issue of title. If the lawyers focused exclusively on the parties' positions, this solution would not be possible.
20. From a prayer attributed to St. Francis of Assisi.
21. *See generally*, 11th Cir. R. 33-1 Circuit Mediation Office. Knowing the rules is extremely important, and should not be neglected.
22. Nolan-Haley, *supra* note 48, at 1388.
23. Fisher & Ury, *supra* note 64, at 99.
24. The flip side.
25. At the 11th Circuit Court of Appeals, only 17 percent of civil cases will be reversed on appeal. That means that the appellant will lose 83 percent of the time.
26. 11th Cir. R. 33-1(d).
27. *Id.*
28. If the parties have never spoken, and the lawyers communicate only by fax, the mediator needs to know this.
29. What is the problem to be solved? What should be the sequence of issues addressed? What are the necessary terms in any settlement reached?
30. On a more practical note, why send the same brief that was unsuccessful in persuading the judge in the trial court?
31. There is an important caveat in using a

Confidential Mediation Statement. In at least one jurisdiction, a lawyer was admonished by his bar association for being too candid in his confidential statement to the mediator. The bar found that the lawyer had violated Rule of Professional Conduct 1.6 by revealing client confidences without permission. Disciplinary Notices, Wash. St. *Bar News*, May 1999, at 53. Clearly, a lawyer must be sensitive to his ethical obligations, even when engaged in mediation.

32. I have Charles Guittard, *Attorney's Opening Statement in Mediation*, to thank for these observations (unpublished work on file with author).

33. Did the attorney establish personal credibility? Did the attorney affirm his respect for his opponents? Did the attorney use active listening techniques? *Id.*

34. Did the attorney state the client's perspective in understandable terms and manner? Did the attorney use effective presentation techniques? Did the attorney create the appearance of significant strength or uncertainty? Did the attorney address the opponent's needs and alternatives? *Id.*

35. Did the attorney project willingness to explore settlement? Did the attorney emphasize that *if* a settlement agreement is reached, it must be superior to the client's appeal options? Did the attorney emphasize that *if* a settlement agreement is reached it must be fair to the client? *Id.*

36. Money is not warm and cuddly. The lawyer is building rapport at this point. Money discussions should be left for later.

37. Fisher & Ury, *supra* note 64, at 17.

38. I credit Tom Arnold of Texas for this expression.

39. Nolan-Haley, *supra* note 48, at 1375.

40. This is called "logrolling." *See* Gifford, *supra* note 60, at 32 (identifying logrolling agreements as those "in which the parties trade concessions on different issues on which they place differing priorities, so that both parties are more satisfied than if they merely conceded equivalent amounts on each issue"); Fisher & Ury, *supra* note 64, at 72-74.

41. If the other side does not have to work for a resolution, he will never believe that he could not have gotten more. A somewhat challenging road to settlement yields a greater *sense of satisfaction* with the result. However, I am not suggesting the participants turn the mediation into a death march to resolution.

42. Fisher & Ury, *supra* note 64, at 81.

43. *See, e.g.*, Title VII, Civil Rights Act of 1964, 42 U.S.C. § 2000(e).

44. That is why it is so important to consider and develop a "Best Alternative to a Negotiated Agreement." Fisher & Ury, *supra* note 64, at 99.

45. I am consistently surprised to see parties *increase* their demands after *losing* at the trial court. The concept of sunk costs seems alien to them. This approach toward settlement makes resolution much more difficult.

46. Fisher & Ury, *supra* note 64, at 76.

47. I credit Tom Arnold of Texas for this expression.

48. Lon L. Fuller, *Mediation — Its Forms and Functions*, 44 S. Cal. L. Rev. 305, 325 (1971).

49. Anyone who appeals federal civil cases will probably find himself involved in one of the circuit mediation programs. To learn more about them, the reader can refer to Robert J. Niemic, *Mediation and Conference Programs in the Federal Courts of Appeals: A Sourcebook for Judges and Lawyers* (1997). This source book is a reference guide on mediation and conference programs in the federal courts of appeals. This publication was undertaken by the Federal Judicial Center in furtherance of the center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration.

The federal courts of appeals are not alone in pursuing appellate mediation. State courts of appeals are experimenting as well. *See* Richard Birke, *Bargaining in the High Courts: Settlements and the Oregon Court of Appeals*, 31 Willamette L. Rev. 569 (1995); Roger A. Hanson, *An Assessment of Florida's Fourth District Court of Appeal's Settlement Conference Program*, 18 Fla. St. U. L. Rev. 177 (1990). My suggestions are probably equally applicable to other mediation programs.

50. Nolan-Haley, *supra* note 48, at 1381.

51. Janet Reno, Address to the American Association of Law Schools (Jan. 9, 1999).

A Primer *on* Forensic Animation

by Steven P. Breaux

As is true in most areas of our society, technology is playing an ever-increasing role in how attorneys practice their profession. And while many facets of these changes are easily understood and seamlessly adopted into how the law is practiced, there are some circumstances in which the application of technology is either misunderstood or viewed with suspicion.

Such is often the case whenever computer animation is sought to be used at trial. In such circumstances, there is usually a lack of knowledge of either the technology involved or the standards of law under which it is to be used. By gain-ing an understanding of how computer animations are produced, and how courts have viewed their use, it is possible to more effectively practice law, whether computer animation is being considered for use on behalf of a client, or has been presented by an opponent.

Litigators considering the use of a forensic animation are frequently concerned about the costs involved, both in time and money.

The Animation Process

The first step in the production of forensic computer animation is the creation of a collection of three-dimensional models in virtual space using computer software. While animations used in video games, motion pictures and Web graphics can be made in a free-form manner, those used in forensic animation need to be created in accordance with high standards of accuracy. The models are based on a variety of reliable data including measurements and photographs taken by expert witnesses, and are built with software capable of constructing accurate three-dimensional models such as Autodesk's AutoCAD software.

These models can be classified according to their purpose and level of detail as either *primary objects* or *secondary objects*.[1] Primary objects are the central focus of an animation, the documentation and accuracy of which are essential. As such, their undocumented or inaccurate inclusion in a forensic animation can preclude its use. Secondary objects are used primarily to provide a background environment in which the action of the animation takes place, and are generally used to orient the viewer.

A series of different models are created, including a "scene" composed of the static environment in which the action of the animation will take place, and one or more primary objects (characters, cars, etc.) that will move around within the scene. The models are given material characteristics (color, shade, texture, shininess, bumpiness, etc.) consistent with their real-world counterparts. Virtual lights are placed within this scene, and virtual cameras are created to view it.

The motion of objects within a computer animation is then established by defining a timeline during which the action of the animation takes place. This timeline includes 30 increments, known as frames, for each second of time during which the animation takes place. The animator identifies key points on the timeline and defines any change in an object's position or rotation at these points. This process, known as "keyframing," establishes how the action takes place within the animation.

While the motions of objects in animated sequences of video games, motion pictures and Web graphics regularly defy the laws of physics, those in a forensic animation need to be well-defined and scientifically consistent. For animations illustrating an automobile accident, for example, the motion of impacting vehicles should be established by a recognized expert in the field of accident reconstruction using hand calculations or scientific software that is generally accepted within the field. The expert witness then provides the data in a format usable by the animator for inclusion in the animation. It is important to recognize that in this case the animation is an illustration of the expert's reconstruction of the accident; the animation must conform to the reconstruction, and not the other way around!

The accuracy and number of keyframes in a forensic animation are important elements in determining its quality, since the computer-animation software fills in the incremental changes left undefined by the keyframing process. While any inaccuracy in the keyframes makes a forensic animation technically corrupt, an insufficient number of otherwise accurate keyframes results in the computer-animation software providing interpolation of motions that may or may not be correct. Since computer-animation software programs have a variety of methods for computing such interpolations, it is crucial that accurate keyframes be established to the greatest extent possible.

Once the models are built and the keyframing complete, the computer-animation software executes a process known as "rendering," during which it looks at the scene through virtual cameras, and colors the objects it sees. This

rendering produces one image for each frame of the animation, each of which is saved as a digital image. When the rendering is completed, these images are played back at a rate of 30 frames per second to provide the real-time imagery of the animation. This playback is then recorded to an appropriate medium, usually VHS tape, for later use in deposition or trial.

Time and Money — The Cost of a Forensic Animation

Litigators considering the use of a forensic animation are frequently concerned about the costs involved, both in time and money. And rightfully so! When computers were first employed in the production of animations, six-figure costs were not unheard of, and the lead time necessary was often prohibitive in the fast-paced field of litigation. Yet today, even with well-known progresses in computing technology, most attorneys are surprised to find out how quickly and inexpensively a computer animation can be produced. The old concerns are not completely outdated, however, since these costs are highly variable depending on the complexity of the scenario being animated and the level of detail necessary in the animation.

Most computer-animation projects are talent-intensive on the front end and computer-intensive on the back end, because of the animation process outlined above. At the start of the project, the animator and associated experts are deeply involved with building the computer models to be used and establishing the timeline of the animation. At this phase of the project, the pace of progress is limited by the talent and experience of the animator — the more detailed the computer models to be constructed for use in the animation, the more time the animator must spend in constructing them. Likewise, the process of keyframing the motion data provided by associated experts, and confirming that the animation accurately illustrates that data, is a time-consuming process which is crucial to the successful production of a forensic animation.

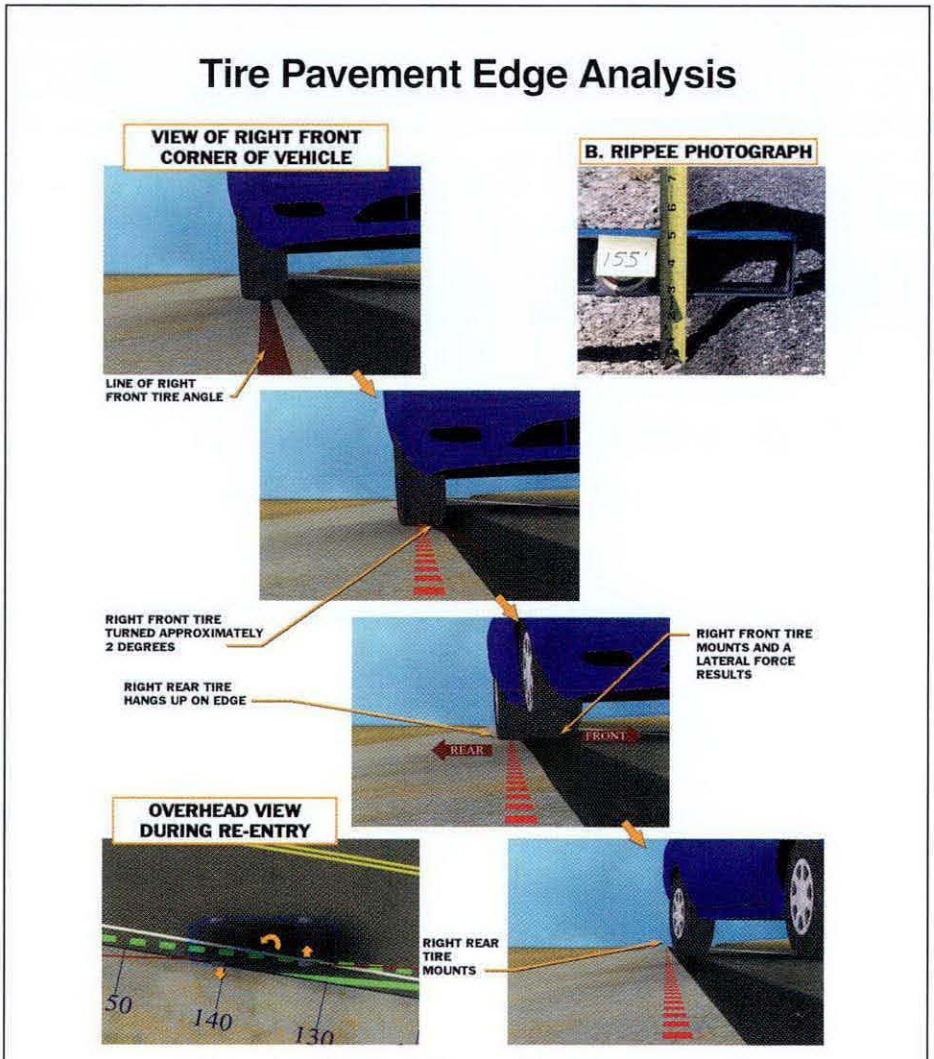
Once this has been completed, the computer renders the images that will be edited into the final videotaped animation. This phase of the project is dependent on the length of the animation, the complexity of the images being viewed, the number of different viewpoints being rendered, and the speed of the computer doing the rendering. In all, the animation can take anywhere from a few seconds to several minutes per frame to render, meaning that an animation 10 seconds long might take hours or even days for the computer to render.

While some animators may charge for computer time or a per-frame fee for rendering, this is usually not the case. If it is, you should definitely pay for the finished frames (those recorded to videotape), but not computer time, since paying for computer time means you're best served by a fast computer while the animator is best served by a slow computer.

Admissibility — Issues and Answers

There has been a persistent misconception about the standards to which forensic animations should be held when they are brought into a courtroom. When animations were first produced on a computer, there was a fallacy about them which followed this line of thought: a) the animation was made by a computer; b) computers are scientific instruments; therefore, c) the animation is scientific in nature and must measure up to the standards applied to scientific evidence.

This argument is based largely on false premises, and has been pushed aside on numerous occasions. One of the first such circumstances was in *New York v. McHugh*,[2] a criminal case in which the defense sought to introduce a computer animation of an automobile accident to illustrate their theory that the accident was attributable to weather conditions. When the prosecution moved for a *Frye* hearing[3] to determine if the animation software was generally accepted in the scientific community, the court held that



Trial graphic utilizing still images from forensic animation

a *Frye* hearing was not necessary, and that the animation would be allowed into evidence if the proper groundwork was established and the expert qualified. In its decision, the court noted that the animation was being used to illustrate the opinion of an expert witness, and that it could be admitted, provided that it "... fairly and accurately reflect the oral testimony offered and that it be an aid to the jury's understanding of the issue." The court also took note of the nature of the animation and the role a computer played in its creation, deciding that "... the evidence sought to be introduced here is more akin to a chart or diagram than a scientific device. Whether a diagram is hand drawn or mechanically drawn by means of a computer is of no importance."

Another common objection to the use of forensic animations is that they are inaccurate recreations of events, rather than illustrations. Such was the case in *Datskow v. Teledyne Continental Motors*,[4] in which an animation was admitted that illustrated an expert's theory of where a fire began inside an aircraft engine and how it spread. When the defense objected that the animation was a recreation rather than an illustration, the trial court admitted the animation as evidence and distinguished between an illustration and a recreation as "... the difference between a jury believing that they are seeing a repeat of the actual event and a jury understanding that they are seeing an illustration of someone else's opinion of what happened."

In this context, it is important to note that forensic animations are most often used to illustrate one or more expert witnesses' opinions of how an event occurred, even though the circumstances of those events are some of the very things being disputed. In *Hinkle v. Clarksburg*,[5] the court admitted an animation and instructed the jury that the animation was "... not meant to be an exact recreation of what happened during the shooting, but rather it represents Mr. Jason's evaluation of the evidence presented." When the case was appealed, it was argued that the animation was inadmissible because it attempted to recreate events, but failed to reflect conditions substantially similar to those existing at the time of those events. The court, however, found that "the jury understood that the very thing disputed in this trial was the condition under which the shooting occurred. In light of this fact and the court's cautionary instruction, there was no reason for the jury to credit the illustration any more than they credit the underlying opinion."

Perhaps the most common objection to the use of forensic animations, however, is the claim that their use will be more prejudicial than probative.

Perhaps the most common objection to the use of forensic animations, however, is the claim that their use will be more prejudicial than probative. Of all possible objections, it is perhaps this one that is the most contentious, since the issue is largely left to judicial discretion. In *Datskow v. Teledyne Continental Motors*, cited above, the court rejected the defendant's claim that the plaintiff's use of a computer animation was unfairly prejudicial. In rejecting the motion for a new trial, the court stated that "the mere fact that this was an animated video with moving images does not mean that the jury would have been likely to give it more weight

than it would otherwise have deserved."

In *Hinkle v. Clarksburg*, the trial court had given very clear instructions to the jury as to the purpose of the animation. Later, the U.S. 4th Circuit found that "the jury understood that the very thing disputed in this trial was the condition under which the shooting occurred. In light of this fact and the court's cautionary instruction, there was no reason for the jury to credit the illustration any more than they credit the underlying opinion."

In *People v Hood*,[6] both the prosecution and defense used animations to illustrate their version of events in a murder case. The trial court issued instructions to the jury before the prosecution's animation was played, and later provided further instruction regarding both animations when the defendant was on the stand. On appeal, the defendant's contention that the trial court abused its discretion in determining that the probative value of the prosecution's animation outweighed its prejudicial impact was rejected. "The animation was clinical and emotionless. This, combined with the instructions given the jurors about how they were to utilize both animations persuades us that the trial court did not abuse its discretion in this regard."

This opinion, however, is not universally held. While some courts may genuinely feel that jurors are susceptible to the "seeing is believing" bias, other courts, less eager to accept technological advances, may simply use undue prejudice as a rationale for a decision to keep such exhibits from being used. It is worth noting that the claim of animations being unfairly prejudicial is often coupled with other arguments in successful attempts to prevent them from being used at trial, as was the case in *Sommervold v. Grevlos*.[7] While the animation was not allowed because it was not similar enough to conditions present at the time of a bicycle accident, the trial court also decided that it would have been more prejudicial than probative because "a video recreation of an accident ... becomes in the nature of testimony and it stands out in the jury's mind. So it emphasizes that evidence substantially over ... ordinary ... spoken testimony." The appeals court ruled that the trial court had exercised proper discretion in excluding the animation.

Another example is *Missouri v. Starr*.[8] In this case, the trial court refused to admit an animation illustrating the testimony of a criminal defendant after the prosecution objected, claiming that other already admitted demonstrative evidence could have been used to aid the jury's understanding of the defendant's version of a shooting. The decision was upheld on appeal, with the court finding that the trial court did not abuse its discretion by refusing to admit the animation as demonstrative evidence. It wrote, in part, that "because of the forceful impression made upon the minds of the jurors by this kind of evidence, it should be received with caution."

The entire issue of admitting forensic animations can best be resolved by recognizing that, in most circumstances, they are being used not as substantive evidence but rather as demonstrative or illustrative exhibits of such evidence. Animations of aircraft accidents, for example, are usually little more than three-dimensional illustrations of the data contained on the flight data recorders of the aircraft. While this data and the devices which recorded it should be held to the standards of substantive evidence, any illustration of such data is simply a tool to aid the jury in understanding what such data represents.

In situations where animations are being used to illustrate the opinions of expert witnesses, such as automotive accident reconstruction, it is the methodology used by such experts to arrive at their conclusions that should be subject to the standards of substantive evidence. In this instance, the animation would be offered as a demonstrative exhibit summarizing the findings of the expert. In either case, ample instruction offered to the jury at the time the animation is viewed could preclude any claim of undue prejudice. As was pointed out by the court in *Datskow v. Teledyne Continental Motors*, "if audio or visual presentation is calculated to assist the jury, the court should not discourage the use of it.... With proper instruction, the danger of overvaluing such proof is slight."

The Right Tool for the Job – Using Forensic Animation

After achieving an understanding of how computer animations are produced and how the courts view their use, it is pos-

sible to establish a strategy concerning their use.

For those considering the use of a forensic animation, there is first a need to establish whether or not such an exhibit is appropriate. While computer animation offers all the advantages of most visual aids, including the enhancement of juror comprehension and retention of information, this does not automatically make it a tool to be used on every job. The obvious benefits must still be weighed against the costs, for although technological advances have made the production of computer animation increasingly affordable, there is still considerable cost involved. Furthermore, such an exhibit lends itself to some cases better than others.

There are many different criteria for establishing the need for a forensic animation in a case. Perhaps the single best criteria is whether or not a forensic animation will illustrate, better than other media, an important element of the case to the trier-of-fact. If a live or videotape demonstration is possible, this may be preferable. However, computer animations are often more practical and cost-effective than live demonstrations of catastrophic events. Additionally, computer animations are particularly useful in demonstrating the limits of perception-reaction time, and illustrating the relative movement and placement of objects, making them especially suited to accident reconstruction. These considerations should be discussed with the expert witnesses who will be sponsoring the animation, and they should be comfortable with the idea of having their analysis and conclusions summarized with an animation.

Such was the situation in one recent case, *Waski v. State of California,* which centered around allegations that a state highway was improperly designed because there was a drop-off of several inches between the paved roadway edge and the adjoining gravel shoulder. When a vehicle's right-side tires went off the paved roadway, these tires met resistance as the driver attempted to steer the vehicle back onto the roadway. This resistance resulted in a loss of vehicle control, causing the vehicle to yaw into an oncoming minivan containing the Waski family.

While working on this case with accident reconstruction engineer Greg Stephen, we agreed that explaining the dynamics of the vehicle's steering, along with the interaction of the tires against the raised roadway edge, was an important element of getting a jury to understand the overall accident reconstruction.

After reviewing the accident-reconstruction data, I drafted a project proposal that was forwarded to attorney Richard Watters, of Miles, Sears & Eanni, who was representing the Waski family. The proposal highlighted the manner in which a three-dimensional computer animation would focus on the right-side wheels of the vehicle and their interaction with the roadway edge, and how such an animation would enhance the testimony of the accident reconstructionist.

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In this case, low-speed vehicle tests could be conducted, and the wheels' alignment with the roadway edge videotaped. This, however, would require considerable resources, including the closure of a state highway under controlled conditions, yielding a "re-enactment" that would be nothing at all like the actual accident. Meanwhile, the proposed animation would use the actual accident-reconstruction data being testified to by an expert witness, and would include viewpoints hard to achieve with video cameras. Watters, who approved the animation, later found it to be "a cost-effective tool in illustrating the opinions of our accident reconstructionist experts and our traffic-engineering experts."

Once the usefulness of a forensic animation has been established for a given case, there is a need to identify and retain an appropriate source. This process should be viewed with all of the same considerations as retaining any other expert witness, since, even though they seldom testify, the work of forensic animators is often highly scrutinized. Any firm considered for such an undertaking should specialize in forensic animations rather than list it as one of their many capabilities, and should have considerable experience in providing animations for use by expert witnesses — your *big* case shouldn't be their *trial* case. If an expert witness or graphic-exhibit vendor is able to offer animation production, use similar considerations and insist on having the costs of animation production itemized and billed separately so you know exactly what you're paying for.

In the above-mentioned case, the attorney had already retained an expert witness in the field of accident reconstruction. This expert, in turn, forwarded an animation proposal from a colleague with whom he had worked closely in the past. Since the accident reconstructionist and forensic animator had worked together previously, there was an understanding of the methods employed by each, and an efficient production process familiar to both of them. The proposal outlined the manner in which the animation would be produced, including the specific time requirements for each phase of production, and associated costs.

When the animation is in production, consider the process of how the animation will be presented. It is particularly useful to have an early draft of the animation presented during the sponsoring expert's deposition to establish the intention to use such an exhibit. Before presenting the animation at trial, be prepared to establish the relevance of the animation as an exhibit that will fairly and accurately illustrate the expert's testimony, as well as laying a foundation so the animation will assist the jury in understanding the evidence and testimony being presented.

The admissibility of the animation in the Waski trial never really came up, according to Watters. "The foundation for the animation was Mr. Stephens' accident reconstruction." Still images from the animation were incorporated into exhibits boards, which also showed photographs of the roadway edge drop-off, and helped tie the accident reconstruction and animation together.

The animation should be authenticated by having the sponsoring witness testify that the scene or object is fairly and accurately reproduced within the ani-

mation. "We played it during Greg Stephens' testimony," said Rick Watters after the Waski trial, "and he used it to illustrate how the pavement edge drop-off caused the vehicle dynamics and physical evidence." Finally, be prepared to offer limiting instructions as a counter-argument against claims of undue prejudice.

Finding the Achilles Heel — Vulnerabilities of Computer Animation

There is a similar strategy that can be employed to prevent an animation from being used at trial. While any animation being presented should be based upon the sound findings of expert witnesses, this primary area of focus is often overlooked. Although the methods and findings of opposing experts are scrutinized as a matter of course, it should be recognized that any animation based on a tainted analysis would be similarly tainted. Furthermore, even if the testimony of the opposing experts withstands challenge and their findings are sound, there is usually nothing more than their testimony to establish that the animation is an accurate representation of their findings.

Herein lies the greatest vulnerability of most forensic animations. Some expert witnesses sponsoring animations have nothing more to do with the production of the animation than supplying the data used and reviewing the animation to ensure that it "looks right." Even if the animation is produced in-house by the sponsoring expert witness, it is highly unlikely that the expert produced it themselves, or even closely supervised the production. Just as accident reconstruction experts have assistants draw scene diagrams from their survey notes, they may have someone else producing their animation while they themselves know little about the specifics of how such a production is accomplished.

Specific questions should be asked about the process of animation production, including identifying the individuals actually involved in the animation processes described above. Whether the animator is an employee of the sponsoring witness or an independent vendor, inquire about them. If at all possible, have the actual animator testify as to their qualifications, experience and the processes involved in producing the animation. In short, scrutinize the actual process of animation production just as you would the work of any expert witness. If necessary, consider retaining a qualified consultant to review the animation and have him suggest questions that will expose any of its weaknesses.

Finally, proceed with challenges to the relevance and admissibility of the animation. Carefully review the animation to see if it contains images that could be considered inflammatory or prejudicial. If there are characters in the animation, they should appear more like animated mannequins then humans — especially if they are involved in graphic sequences such as automobile accidents and murder scenes. If the animation illustrates an automobile accident and is intended to show what happened prior to an impact, attempt to have the animation cut off at the moment of impact rather than showing what happens afterward. The post-impact sequences in such animations are generally the most dramatic and violent, particularly if pedestrians or ejected passengers are involved.

Object to overly dramatic camera movement in any forensic animation. These animations are supposed to be demonstrative, not Hollywood, and such camera movements can deceptively disorient a viewer. Sound effects should be excluded from forensic animations unless their inclusion can be authenticated. While an accident reconstructionist can testify to a vehicle's motion after impacting a telephone pole, it is very unlikely he can quantify what the pre-impact skidding sounded like.

Summary

Like any tool, forensic animation is best used if its strengths and weaknesses are known. There are jobs for which it is the right tool, and other jobs for which it should be kept in the toolbox. If used properly, it can be an efficient aid in building a stronger case. Its proponents can take advantage of its visual effects, and its opponents can exploit its pitfalls, if its capabilities and limitations are fully understood.

Steven P. Breaux is a forensic animator with Perceptual Motion, a Gig Harbor firm specializing in the production of computer animations for use by attorneys and their expert witnesses. He can be contacted at 253-265-3577.

NOTES

1. Grimes, W. (1994), "Classifying the Elements in a Scientific Animation," *Society of Automotive Engineers Paper* 940919.
2. New York v. McHugh, 124 Misc.2d 559; 476 NYS2d 721 (1984).
3. Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).
4. Datskow v. Teledyne Continental Motors, 826 F.Supp 667 (W.D.N.Y. 1993).
5. U.S. 4th Circuit, Hinkle v. Clarksburg, 81 F.3d416 (4th Cir. 1996).
6. Court of Appeal, Fourth Appellate District, Division Two, State of California 53 Cal. App. 4th 965 (1997).
7. Supreme Court of South Dakota, 518 N.W. 2d 733 (1994).
8. Court of Appeals of Missouri, Western District, 998 S.W.2d 61, 1999 Mo. App. Decision.

The Board's Work

by Mark A. Panitch
Bar News Editor

Upcoming BOG Meetings

October 19-20, 2001 – Vancouver, WA
November 30-December 1, 2001 – Tacoma, WA
January 18-19, 2002 – Olympia, WA

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 Lori Lee at 206-727-8244 or loril@wsba.org.

Seattle • September 13-15
After more than a year of debate and preparation, the WSBA Board of Governors quickly chose two new at-large members, **Zulema Hinojos-Fall** and **David W. Savage**, and then authorized creation of a third new position reserved for young lawyers. The new governors were each chosen on the first ballot.

The move to create the YLD seat came at the close of the Friday session. It was led by outgoing Governor **Lindsay T. Thompson**, and supported by several other outgoing governors. The decision was made with virtually no debate.

On Thursday, the board considered applications from 16 WSBA members, and heard presentations from 14 members for the two previously created at-large seats. Seven of the 14 applicants who were interviewed by the board were either Hispanic or African American. The balance was made up of white lawyers who argued that they represented some specific "underrepresented" geographic area or practice specialty.

Ms. Hinojos-Fall, an administrative law judge at the Equal Employment Opportunity Commission (EEOC), previously served as a senior trial attorney at EEOC, as a King County deputy prosecutor, and as a Seattle assistant city attorney. She graduated from law school at the age of 40 after working for many years in the airline industry. She was born in Mexico, and immigrated to the United States with her family when she was 10 years old.

Mr. Savage is a well-known Pullman lawyer and a partner in the law firm Irwin, Myklebust, Savage & Brown. He stated in his application and in his interview: "If Section M had simply provided for a single at-large position, I would not submit this application, as I feel strongly that the board should first be enhanced by the inclusion of traditionally underrepresented lawyers. The second position, however, gives me confidence that the board can achieve this important first goal while also providing for the inclusion of segments of the Bar that have been underrepresented for other reasons."

Several nonminority lawyers made essentially the same argument to the board. **Pamela B. Loginsky**, counsel at the Washington Association of Prosecuting Attorneys and a long-time Kitsap County deputy prosecutor and appellate specialist, told the board that she would represent the state's 781 deputy prosecutors and 500 municipal attorneys.

Michele Earl-Hubbard, a lawyer at Davis Wright Tremaine in Seattle, voluntarily acted as the firm's pro bono coordinator before a full-time paralegal was appointed to the job. She told the board that she would represent her various pro bono constituencies — the indigent, children, and the mentally and developmentally disabled — as well as her main practice area — the media.

Among the six minority attorneys not chosen for a BOG seat were King County Superior Court Judge **Donald D. Haley**, attorney and teacher **Stephanie A. Delaney,** public defender **Howard L. Phillips** and Yakima legal services attorney **Sonia M. Rodriguez.**

Judge Haley described a life of experience that could have come from an Alex Haley novel. He attended segregated schools in Louisiana and went to high school at a blacks-only "training academy" where the curriculum was limited to teaching trades and farm skills. In 1951, at the urging of a relative, he came to Seattle where he was able to enter the University of Washington and get the education he was denied in his home state. Seven years later, he graduated from the UW law school. Since that time he has been active in the King County Bar Association; the WSBA; the National Bar Association and its local affiliate, the Loren Miller Bar Association; and the NAACP. Judge Haley has been on the bench since 1983.

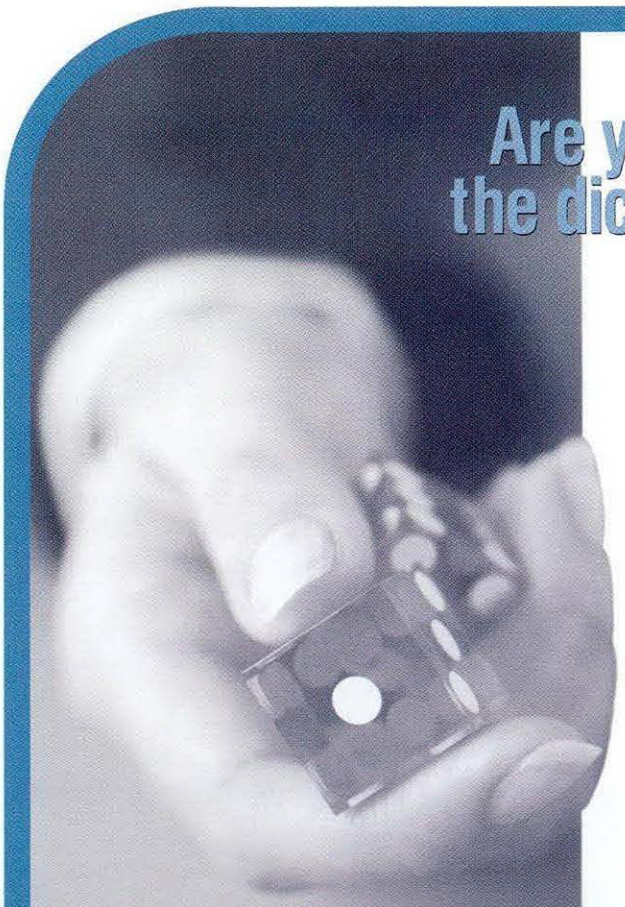
Stephanie Delaney ran for election to the BOG in the last election cycle, but was defeated by Governor **Bryce H. Dille** of Puyallup. Ms. Delaney teaches in the paralegal program at Highline Community College and volunteers with the Northwest Women's Law Center. She has been active in WSBA technology initiatives.

Howard Phillips is a managing attorney with the Northwest Defenders Association. He is a Seattle native who, except for years away at college or in the Army, has always lived in the Central District or Rainier Valley. He is a graduate of the UW law school.

Sonia Rodriguez is a Spanish-speaking legal services attorney who lives in Yakima, and also serves clients in Benton, Franklin, Kittitas, Klickitat and Walla Walla counties. She was admitted to the Bar in November 2000 and is an active member of the Hispanic Bar Association. In an interesting example of mentoring, Ms. Rodriguez listed new Governor Zulema Hinojos-Fall as a reference.

Although there was virtually unanimous agreement that a minority person should be appointed to one seat, there was intense debate among governors over the second seat; however, Mr. Savage was elected on the first ballot for the second seat. Governor **Brooke Taylor** of Port Angeles argued that Savage represented small town and rural attorneys and would enhance the BOG's geographic diversity. He also noted that Spokane lawyers have a "lock" on the Fifth District, virtually ensuring that a Pullman lawyer could not be elected. Taylor himself was appointed by BOG in a special selection process.

[*Editor's Note:* Deadline pressure forces an abbreviated report on this important meeting. We may carry further reports on the September BOG meeting in the November *Bar News.*]



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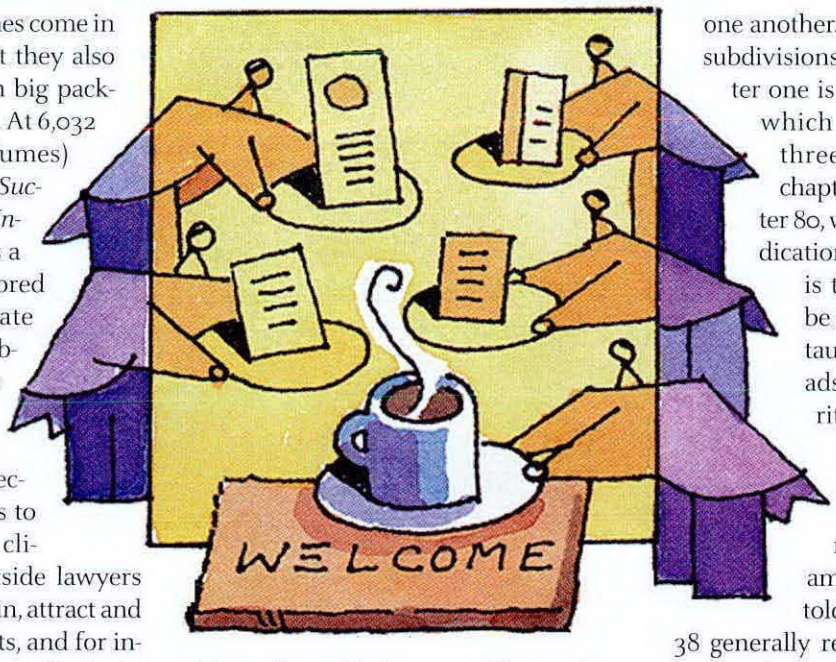
Successful Partnering Between Inside and Outside Counsel

by Barrie Althoff

Good things sometimes come in small packages. But they also sometimes come in big packages. Or *really* big packages. At 6,032 pages (four loose-leaf volumes) and four diskettes of forms, *Successful Partnering Between Inside and Outside Counsel* is a really big package. Sponsored by the American Corporate Counsel Association and published by West Group, the book explores how inside and outside lawyers can work together to most effectively provide legal services to their common corporate clients. It is valuable for outside lawyers wanting to better serve, retain, attract and understand corporate clients, and for inside lawyers wanting to more effectively manage and retain outside lawyers, and work with them as partners to solve their mutual clients' legal needs.



This package is full of practical insights into how to understand, interpret, create, foster and improve the relationship between inside and outside corporate counsel. It also has numerous practical checklists and useful forms. The book embodies its title. The 80 chapters were jointly written by numerous corporate general counsel and senior law firm partners. The impressive biographies of the authors (including several from Washington) alone take up nearly 130 pages. Chapters usually reflect practical perspectives and insights from both inside and outside lawyers. If a work as large as this can be said to have an underlying theme, it may well be that for partnering to be successful there must be good and frequent communications between inside and outside counsel based on their mutual respect for one another and their mutual understanding of their separate roles.

Successful Partnering Between Inside and Outside Counsel, West Group and American Corporate Counsel Association, four volumes, 6,032 pages and four diskettes of forms; $350; to order, call 800-344-5009.

No one is likely to read the work straight through, nor was it apparently intended as such. Rather, the work's table of contents should be relished like a menu in a fine restaurant with its promises of apéritifs, entrées, full-course meals, desserts, coffees, wines, and so on. The reader may choose the chapter best suited to the perceived hunger for knowledge.

Relishing the table of contents of this book, however, may lead to intellectual indigestion since often there is no clearly perceived sense of organization in the arrangement of its 80 chapters. Often it is not clear why any particular chapter is placed where it is or how the various chapters conceptually interrelate with one another. There are no major topic subdivisions of the book; rather, chapter one is followed by chapter two, which is followed by chapter three, which is followed by chapter four, all the way to chapter 80, without there being any indication of what the "big picture" is that several chapters may be addressing. It is as if a restaurant menu intermixed salads, desserts, beverages, apéritifs, etc. Even where adjacent chapters are related to one another, there is nothing that alerts the reader to that fact. For example, nowhere is the reader told that chapters 30 through 38 generally relate to regulation of the legal profession (lawyer ethics, professionalism, regulation, licensing and training, attorney-client privilege, attorney work product, and multidisciplinary practice), with chapter 35, which relates to corporate internal investigations, inexplicably stuck in the middle.

The book should thus be viewed as a collection of 80 very good essays on the common theme of partnering, rather than as a structured and cohesive study of partnering. A detailed index in the final volume helps readers locate topics of interest. I hope that a later edition of this work will rearrange chapters by their underlying common themes, and break the book into a number of logical principal topic headings.

The range of topics covered in the book is both diverse and immense. The first volume addresses mostly management of legal services. It has chapters on whether a matter should be handled by inside or outside counsel; selection of out-

side counsel; requests for proposals, bidding and presentations; marketing; fee arrangements; engagement letters; budgeting; evaluating legal risks and costs; communications; billing; expenses and disbursements; the relationship between the legal department and the corporation; management of law departments; staffing of law firms; managing legal research; the role of local and specialized counsel; use of coordinating counsel (usually to coordinate major litigation); and international work and representation of European companies in U.S. litigation.

The second volume continues discussion of the management of legal services and also addresses lawyer regulation. It covers use of contract lawyers; representing clients with insurance; specialized approaches to outsourcing and insourcing legal work; technology; management of corporate documents; benchmarking and evaluation of performance of counsel; ethics, conflicts of interest, attorney-client privilege and attorney work product; outside counsel in other than law firms (multidisciplinary practices); internal investigations; licensing and admittance to practice; professionalism; continuing legal education and training; diversity; operating a small law department; large companies with small legal departments; quality management and project management; civil justice "reform"; joint legislative and regulatory lobbying efforts by inside and outside counsel; and opinion letters.

The third volume continues coverage of management of legal services, and begins coverage of substantive areas of practice and litigation management. It includes chapters on corporate governance; compliance; transactions; information technology transactions; joint ventures; valuation of a business being acquired; securities; commercial finance, workouts and bankruptcy; employee benefits; advertising review, clearance and challenges; alternative dispute resolution; arbitration of international commercial disputes; determination of litigation forums; pleadings and pretrial motions in complex commercial cases; discovery and information-gathering; expert witnesses; trial preparation and presentation; and use of jury consultants.

The fourth and final volume continues litigation issues, and returns to other substantive areas of practice. It has chapters on settlement, appeals, high-profile litigation, patents and trade secrets, trademarks, copyright litigation, employment law, environmental law, mass torts, real estate law, and six chapters describing specific corporate legal departments' methods of partnering between inside and outside lawyers. It also contains various tables and a 276-page index.

...the work's table of contents should be relished like a menu in a fine restaurant with its promises of apéritifs, entrées, full-course meals, desserts, coffees, wines, and so on.

The individual chapters are generally well-written with good practical advice, but vary considerably in the depth with which they treat their subject. The ethics chapter, for example, is a good overview of some principal ethical issues likely to arise for inside counsel, but is not complete in itself and even as supplemented by several other chapters. It should be viewed as an appetizer rather than a full-course meal. Similarly, the chapter on securities provides a useful overview of several of the more important federal securities issues and laws (but is nearly silent on the importance of state securities laws); it also provides a good discussion of how inside and outside lawyers can partner in complex securities offerings.

Many chapters dealing with substantive law concisely introduce the area of law for a nonspecialist lawyer, and then supplement it with a valuable and often very candid discussion of how inside and outside counsel can partner in that substantive area. Most chapters conclude with a practical checklist of ideas and practice tips and with useful model forms (also available on accompanying computer disks, although the reviewer's copy of this work arrived without any disks).

Depending on the commitment to partnering and the personal characteristics of the participants, partnering between inside and outside counsel can range from the dreaded to the sublime. The relationship is sometimes uneasy and often unstable. At one time, inside lawyers often acted as clearing-houses for their corporate clients — spotting legal problems and routinely sending them to an outside law firm (often the firm wherein they had formerly been an associate). Sometimes inside lawyers handled their corporate client's routine legal matters, but sent tough legal problems to outside counsel. Some inside lawyers continue that practice, but just as frequently save the tough and often more interesting legal matters for themselves, and instead send routine legal matters out for competitive bid to outside lawyers.

Today, there is a greater likelihood that inside counsel will not just hand off a legal problem to outside counsel. Instead, there will more likely be a far greater effort for inside and outside counsel to work together, not just to save money for the corporate client, but to provide that client with more effective and efficient legal services.

For partnering to work, the concept cannot be merely a euphemism for cost-cutting of legal bills or marketing of limited-scope legal services. For partnering to be successful and mutually satisfying, inside and outside counsel must have mutual respect for and understanding of each other's role and the scope of their respective responsibilities, must communicate well and frequently to reconfirm that role and scope, and must be responsive to and flexible with one another as needs and resources change. When partnering goes well, mutual clients benefit. Implementing the suggestions in this book will help inside and outside counsel both better serve their common clients and increase their personal satisfaction in the practice of law.

Barrie Althoff is chief disciplinary counsel for the Washington State Bar Association. Previously in private practice, he regularly partnered with inside corporate counsel, and later worked for the Securities & Exchange Commission.

The WSBA Fee-Arbitration Program:

What's in It for You?

by Fred Diamondstone • *ADR Standing Committee Member*

Counselor, how do you resolve fee disputes with your clients? Do you simply write off the fee, or refund the money you believe you earned? Do you dread filing a lawsuit to collect the fee? Do you bring a lawsuit, and face the almost obligatory counterclaim for malpractice? There is an alternative.

The WSBA Voluntary Fee-Arbitration Program has only one purpose: to decide the fair and reasonable value of a lawyer's legal services for a client.[1] The program has helped resolve hundreds of attorney-client fee disputes since its inception in the 1970s. Recent program statistics show the following number of cases resolved:

Year	Cases Resolved by Hearing	Cases Settled
1997	50	15
1998	38	4
1999	34	7
2000	42	17

While hearings typically involve relatively small- to moderate-sized fee disputes, it is not unusual for cases in the $20-30,000 range to be scheduled for hearing. In the past, three cases have been scheduled that involved claims of $100,000 or more, and two of those cases settled prior to hearing.[2]

Other options, of course, are either to write off the fee or to litigate the fee claim. Insurance carrier Seabury & Smith, as a part of their application process, specifically asks whether the lawyer sues for fees. The reason is simple: the insurer perceives that there is a greater than 50 percent likelihood of a counterclaim.[3] Another carrier, Great American Property and Casualty Group, estimates that 10 percent of the malpractice claims that they review are brought as counterclaims in response to a suit for fees. They note that even where the insured lawyer chooses to handle the counterclaim without notifying the carrier, the lawyer has the obligation to notify the carrier at renewal. This requirement is in response to a question on the renewal application, which asks whether a claim has been made against the lawyer in the past 12 months.[4]

A useful feature of the WSBA's arbitration program is that either party may require the other to deposit the disputed amount in trust with the Bar Association; the WSBA will distribute the award according to the decision. Furthermore, RCW 7.04.150 provides that the award is enforceable through confirmation by the court; hence, if a hearing occurs, collections should not be an issue.

A review of program statistics for the year 2000 reveals three significant trends. First, fee arbitration petitions tend to be filed by clients rather than attorneys. Second, attorneys tend to decline arbitration or do not respond to the request for fee arbitration. Third, awards tend to result in favor of attorneys. The following tables provide additional information.

Fee Arbitration 2000	No.	Percent
Petitions filed in 2000	142	
Filed by client	113	80%
Filed by attorney	21	15%
Both parties filed	8	6%
Files closed without hearing	100	70%
Hearings held	42	30%

The majority of cases are closed without a hearing, mostly due to attorneys declining to participate or not responding to hearing requests. The second most frequent reason for closing a file without arbitration is that the parties resolve their dispute before proceeding to a hearing. In both cases, the $75 filing fee paid to the WSBA is returned to the participants.

Files Closed without Hearing	100
Agreement reached before arbitration	17
Unable to process petition (fee or form needed)	8
Client unable to post bond	3
Attorney declined arbitration or did not respond	59
Client declined arbitration or did not respond	8
Open grievance	5

LAP Confidentiality

Confidentiality is, and always has been, a hallmark of the Lawyers' Assistance Program (LAP). Previously, LAP confidentiality was covered in Rule for Lawyer Discipline (RLD) 12.17. Now, Admission to Practice Rule 19(b)(2) (adopted by the Washington State Supreme Court on June 12, 2001, with an effective date of September 1, 2001) addresses LAP confidentiality. With the adoption of APR 19, RLD 12.17 has been repealed. APR 19(b)(2) uses the same language as RLD 12.17. It states:

Confidential communications between a lawyer and staff or peer counselors of the Lawyers' Assistance Program shall be privileged against disclosure without the consent of the client to the same extent and subject to the same conditions as confidential communications between a client and psychologist.

Cases Heard	42	
Amount in dispute:		
$5,000 or less	22	52%
$5,001 to 10,000	8	19%
$10,001 to 15,000	3	7%
$15,001 to 20,000	3	7%
Above $20,000	6	14%

Of the 42 hearings conducted, clients requested hearings in 30 cases, both parties made requests in six, and attorneys requested hearings in the remaining six cases. In 18 of the cases, the entire amount in dispute was awarded to the attorney. In 21 cases, the award to the attorney was less than the entire disputed amount, but more than half. The remaining three cases resulted in awards in favor of the client.

A case is heard by a one- or three-member arbitration panel, depending on the amount in dispute. Where the disputed amount exceeds $5,000, the dispute is heard by a three-member panel composed of one lawyer and two nonlawyers, unless the lawyer and client agree to have the case decided by a single lawyer arbitrator. The arbitration program is based on RCW 7.04, which provides that the arbitration award is binding, and both parties waive their right to bring or defend an action in court except to the limited extent that RCW 7.04 may allow otherwise.

Arbitrators are experienced in hearing fee disputes. Many lawyers have served on the panel for numerous years and have substantial dispute-resolution experience. The majority of nonlawyers have served for more than 10 years, and contribute their knowledge from backgrounds in business and community service. All volunteers take their responsibility very seriously to be fair, serve members and the public, and maintain the confidentiality of the proceedings.

The Bar has surveyed participants to determine program satisfaction and to address possible changes in the arbitration program. Although the return rate on exit surveys is low (25 percent), most respondents gave the program high marks. Ratings of the WSBA's administrative services and process ranged from fair to outstanding. Respondents gave uniformly good to excellent ratings with respect to the overall performance of the arbitrators and the fairness of the process.

The Bar has identified arbitrators, both lawyers and lay persons, throughout the state. The program, which is voluntary, inexpensive, confidential and nondisciplinary, is one of the most effective ways to resolve fee disputes. WSBA staff would be pleased to answer any questions about the fee arbitration or mediation programs and assist in processing requests for fee arbitration. For information, contact Talia Clever at 206-733-5923 or taliac@wsba.org.

Fred Diamondstone has practiced law in Seattle for 25 years. He handles personal injury and civil rights cases, and he also serves as a mediator. He is a member of the ADR Standing Committee, which advises the WSBA Fee-Arbitration Program.

NOTES

1. For other disputes between lawyers and clients, disputes between lawyers, or between lawyers and other professionals, consider the WSBA's Mediation Program.
2. All statistics were kept by or derived from reports of the WSBA's ADR Program administrative staff. No data identifying the parties are included in the program statistics.
3. Telephone call with Pam Blake, Seabury & Smith, July 2001.
4. Letter of Jeff Goode, Great American Property and Casualty, vice president for claims, dated July 24, 2001.

Changing Venues

Honors and Awards

TeamChild and TeamChild Executive Director **Elizabeth M. Calvin** have been awarded Senator Patty Murray's 2001 Golden Tennis Shoe in recognition of their efforts to give young people in trouble opportunities to succeed. TeamChild is a unique collaboration between civil legal services and public defenders, working closely with juvenile justice professionals.

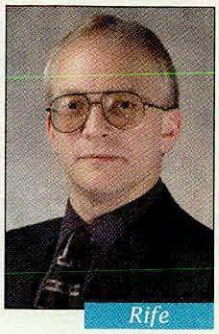
U.S. District Court Judge **Robert J. Bryan**, of Tacoma, has been elected president of the 9th Circuit District Judges Association. Judge Bryan has served on the federal bench since 1986. He previously served as a Washington superior court judge for 17 years.

Randy J. Aliment has been appointed chair of the business torts committee of the American Bar Association tort and insurance practice section.


Shin


Delue


Morgan


Rife

Thomas M. Nickel has been appointed to the editorial board of *The Federal Lawyer*, a monthly publication of the Federal Bar Association. Mr. Nickel is a sole practitioner in Bellevue, focusing on business law and intellectual property.

Roger A. Felice, of Spokane, has been selected to serve as president-elect of the Washington State Trial Lawyers Association (WSTLA). One of his goals will be to continue educating the public on the power and value of legal rights. Kennewick lawyer **William J. Flynn Jr.** was awarded WSTLA's Trial Lawyer of the Year Award for his work on behalf of injured clients. Tacoma lawyer **Terry S. Barnett** received the Public Justice Award for his efforts on behalf of injured workers involved in L&I disputes. **Randolph I. Gordon** received the Professionalism Award for his extensive work in public legal education. New WSTLA President

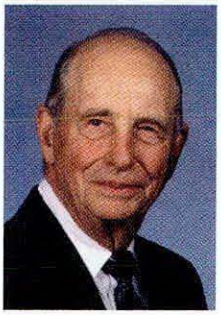
In Memoriam

Sue E. Crystal, administrator of the state Health Care Authority, passed away August 25 after a long struggle with cancer. She was 48. Ms. Crystal served as Governor Locke's executive policy, deputy policy and health policy director. She also served as health policy director to former Governor Mike Lowry. Before moving to the executive branch, Ms. Crystal served as policy director for the Democratic Policy Office in the state House of Representatives and legal counsel to the U.S. Senate Appropriations Committee. Memorials may be made to cancer research organizations or the Nisqually River Basin Land Trust.

Former King County District Court Judge **Gilbert L. Duckworth Jr.** died June 5 at age 80. He earned a law degree at the University of Washington in 1950, and practiced law for 13 years prior to his election to the district court. He retired from the bench in 1987. Judge Duckworth served as an Army sergeant in World War II, and remained in the Army Reserve until 1981, retiring as colonel. He was an active member of the King County Bar Association, Renton School Board, Renton Jaycees and Greater Renton Chamber of Commerce. Memorials may be made to the American Cancer Society.

Robert C. Keating passed away August 10 at age 86. He graduated from the University of Washington School of Law in 1939 and began a nearly 60-year career in law and insurance. Mr. Keating served in the Army in World War II, rising to the rank of captain in the Counter Intelligence Corps. In 1951, he helped found Western Pacific Insurance Company and served as executive vice president and general counsel. He was an active member of Seattle Claims Adjustors, Pacific Claims Executives and Washington Defense Trial Lawyers, and served on Insurance Commissioner Dick Marquardt's Insurance Tort Reform Committee. Memorials may be made to Holy Trinity Lutheran Church on Mercer Island.

Robert A. Purdue, long-time managing partner of the Seattle firm Montgomery Purdue Blankinship & Austin,



died August 3 at age 84 from congestive heart failure. Mr. Purdue graduated from the University of Washington School of Law in 1942. Following service in World War II as a Navy intelligence officer, he joined the firm then known as Montgomery & Montgomery. He practiced law until his retirement in 1995, and continued to serve as a mentor to younger lawyers in his firm after retiring.

Former San Juan County Prosecutor **Michael Redman** died August 19 at age 59, following a battle with pancreatic cancer. After graduating from Seattle's Franklin High School in 1959, he attended Yale University and served in the Army during the Vietnam War. When he returned, he attended the University of Washington School of Law and joined the firm then known as Foster Pepper Riviera. In 1974, Mr. Redman was elected San Juan County prosecutor. He served as executive secretary of the Washington Association of Prosecuting Attorneys from 1977 to 1994, and then served as executive director of the Washington Council on Crime and Delinquency. Memorials may be made to Compassion in Dying of Washington.

Steven G. Toole received the association's President's Award from Past-President **Maria S. Diamond**. The award was presented in appreciation of Mr. Toole's involvement in WSTLA's legislative and judicial-relations programs.

Irvin W. Sandman, a shareholder in the Seattle firm Graham & Dunn, has been appointed co-chair of the American Bar Association's Hotels, Resorts and Tourism Committee. The committee reviews matters relevant to the acquisition, development, financing, operation and disposition of hotels and resorts.

Washington Defense Trial Lawyers have elected the following officers: **Bradley A. Maxa**, president; **Karen R. Bertram**, vice president; **Jim S. Berg**, secretary; **Joanne T. Blackburn**, treasurer.

The following lawyers in the Seattle office of Foster Pepper Shefelman were named "Super Lawyers" by *Washington Law and Politics*: **Thomas F. Ahearne, Christopher M. Alston, Brad J. Berg, Jack J. Cullen, Robert J. Diercks, Stephen DiJulio, Peter S. Erlichman, Timothy J. Filer, Gary E. Fluhrer, Camden M. Hall, Allen D. Israel, Dillon E. Jackson, Stellman Keehnel, Mike D. Kuntz, Marco J. Magnano, Roger D. Mellem, Chuck P. Nomellini, Judy M. Runstad, Hugh Spitzer, V. Rafael Stone, Mike K. Vaska, Thomas M. Walsh, J. Tayloe Washburn** and **Joe P. Whitford**.

Movers and Shakers

June Shin has joined the Olympia firm Owens Davies as an associate. Her focus is on litigation and tax issues.

Jonathan R. Flora and **Christina A. Gerrish** have joined the Seattle firm Short Cressman & Burgess PLLC as associates. Mr. Flora works in the business and taxation section, concentrating on federal and state tax planning for businesses. Ms. Gerrish is part of the real estate litigation group, and she focuses on the litigation and arbitration of claims related to real estate, land use and construction.

Dana D. Delue, Christian J. Morgan and **Knute A. Rife** have joined the Seattle firm Ferring Nelson LLP as associates. Mr. Delue focuses on civil litigation with an emphasis on construction law. Mr. Morgan concentrates on construction law, commercial transactions and insurance-related litigation. Mr. Rife is an experienced trial and transactional lawyer who has practiced real estate, construction, land use and environmental law in Washington and Utah.

Judith A. Endejan has joined Graham & Dunn as a shareholder. She is part of the firm's technology and emerging companies and communications teams. **Ellen L. Szymanski** has joined the firm as an associate on the real estate team.

W. Scott Railton has joined Chang & Boos in Bellingham. He practices U.S. immigration law with an emphasis on immigration benefits for business executives and other professionals. He also deals with the litigation of constitutional aspects of immigration matters.

Tom Barnett (a member of the California and New York state bars) has been appointed vice president and general counsel of Electronic Evidence Discovery Inc., the world's largest provider of electronic discovery services to law firms. Prior to joining the company, he practiced with a high-tech law firm in Silicon Valley.

Robert K. Costello has been appointed deputy attorney general, and will serve as a member of the state attorney general's executive team. The 10-member executive team oversees the operations of the Office of the Attorney General.

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

Jennings P. Felix (WSBA No. 136, admitted 1948), of Seattle, has been disbarred by order of the Supreme Court effective June 19, 2001, following a hearing. The discipline is based upon his failure to promptly deliver client funds in a 1995 personal-injury case, and lack of diligence in an estate matter between 1993 and 1998.

Matter 1: In 1993, Mr. Felix agreed to represent two passengers injured in an automobile accident. Mr. Felix and the clients signed a contingent-fee agreement stating Mr. Felix would receive 33.33 percent of the gross recovery if the case settled. In November 1995, Mr. Felix received settlement checks of $17,000 for client A and $125,000 for client B. In December 1995, Mr. Felix disbursed $35,820.50 of client B's settlement to the client, $25,000 to himself, and $12,500 to his partner. In March 1996, he sent client B an additional $1,756.27 based on an error in calculating costs. In May 1996, Mr. Felix sent another $5,000 to client B and paid himself another $5,000. In June 1996, Mr. Felix paid himself $10,000 from client B's settlement. The next month, he sent the client an additional $10,000. In September 1996, Mr. Felix withdrew $8,000 from client B's settlement for himself and the client. Mr. Felix and his firm received a total of $60,500, or 48.4 percent of client B's settlement.

In December 1995, Mr. Felix sent $8,223.60 to client A and $4,800 to Mr. Felix's firm. For both clients A and B, Mr. Felix withheld funds for possible reimbursement to the insurance company, indicating that he was retaining funds in case the insurance company wanted him to pay it back. He told the clients he would try to negotiate less, and that he would keep half of the difference; however, this was not in his fee agreement. For client B, Mr. Felix withheld $31,366.55 for amounts the insurance company paid directly to health providers under the client's own PIP coverage. He also withheld an additional $17,000 for car repairs, even though the car repairs were paid by another insurance company. Mr. Felix withheld these amounts in addition to the costs and $3,303 "owed to State Farm." Mr. Felix told client B that he had received letters on these issues from the insurance company, but upon request, did not provide copies to the client.

As of the date of the hearing, no subrogation claims had been made for any amounts paid for clients A or B. At hearing, Mr. Felix testified that he believed he needed to hold back the funds in case the insurer attempted to collect those amounts from him under the hold-harmless agreement. He also testified that he could not

recall any time when an insurance company had attempted to collect from him under such an agreement. The client eventually called State Farm (Insurance) and learned that the company did not intend to request reimbursement.

Matter 2: Mr. Felix drafted a will for an employee, naming himself both executor and trustee. The will was admitted to probate in March 1993. Mr. Felix never filed an inventory or made annual accountings.

In April 1997, because the file was still open, the court directed Mr. Felix to close the estate, file an explanation of why the estate had not been closed, or appear on May 29, 1997 to explain the file status. Mr. Felix did not comply with this order. He was sick during this time and obtained several continuances.

On January 14, 1998, the court appointed a guardian ad litem (GAL) for the client's son. On March 11, 1998, the court ordered that the estate assets be transferred to the GAL. Mr. Felix failed to transfer the assets. On April 10, the court removed Mr. Felix as personal representative and trustee, and entered a $65,000 judgment against him.

Mr. Felix's conduct violated RPCs 1.5(a), requiring lawyers' fees to be reasonable; 1.5(c)(1), requiring contingent fees to be in writing; 1.14(b)(4), requiring lawyers to promptly pay client funds upon request; 8.4(c), prohibiting conduct involving honesty, fraud, deceit or misrepresentation; 1.3, requiring lawyers to diligently represent their clients; and 3.4(c), requiring lawyers to comply with court orders.

Linda Eide represented the Bar Association. Kurt Bulmer represented Mr. Felix. The hearing officer was Robert Hardy.

Disbarred

William I. Freeman (WSBA No. 17586, admitted 1988), of Vancouver, has been disbarred by order of the Supreme Court effective June 20, 2001, following a default hearing. The discipline is based upon his failing to diligently represent and adequately communicate with multiple clients, allowing a nonlawyer to hide assets in his trust account and splitting fees with this nonlawyer, charging unreasonable fees, and failing to cooperate with the Office of Disciplinary Counsel.

Matter 1: In July 1994, a husband and wife retained Mr. Freeman to represent them in a real estate transaction. On October 5, 1995, the arbitrator entered a $13,089.08 award against the clients. The clients directed Mr. Freeman to file a request for trial de novo. Mr. Freeman failed to file this notice within the 20-day deadline; consequently, the award became final. Mr. Freeman agreed to pay the client's debt over time; however, the terms of the agreement were not fair to the clients. Mr. Freeman did not explain the conflict of interest or suggest that his clients obtain independent legal advice. Mr. Freeman breached the agreement and the clients paid the remaining debt.

Matter 2: In the 1990s, Ms. N operated a company that dispensed hearing aids. Ms. N also assisted clients with filling out and filing disability claims with the Department of Labor and Industries (L&I). Ms. N charged a contingent fee for this assistance and also paid referral fees for referrals of clients with hearing loss. RCW 51.48.280 prohibits kickbacks, bribes and certain representation fees relating to L&I disability claims, including hearing-loss claims. L&I investigated Ms. N for violating RCW 51.48.280, and she retained Mr. Freeman to represent her. During the investigation, Ms. N and Mr. Freeman agreed that Ms. N could deposit her client's contingent fee into Mr. Freeman's trust account to conceal that she was continuing to take these payments.

Between 1998 and 2000, Mr. Freeman and Ms. N engaged in a business venture to represent individuals with hearing loss. Ms. N advertised for clients and then referred them to Mr. Freeman. Mr. Freeman then charged the clients contingent fees between eight and 12 percent. Ms. N or her employees actually performed the work on these cases. Mr. Freeman did not provide any legal services to these clients.

Matter 3: In 1999, Mr. Freeman represented a criminal defendant arrested for violating sentencing terms and conditions. The prosecutor in the case told Mr. Freeman that he would not agree to release the client from custody. After this conversation, Mr. Freeman obtained the client's release through an ex parte order. Mr. Freeman did not tell the judge that the prosecutor objected to the release. When the prosecutor learned of the release, the court scheduled a hearing. Neither Mr. Freeman nor his client appeared at the hearing. The court ordered a warrant for the client's arrest and released the bail. The prosecutor charged the client with jumping bail. The client was arrested and later pleaded guilty to this charge.

Matter 4: In 1999, Mr. Freeman represented a client charged with theft. After arranging for interviews with two theft victims, Mr. Freeman fell asleep during his questioning. He also fell asleep during the prosecutor's interview with the client's alibi witness.

Matter 5: In December 1999, Mr. Freeman represented a client charged with driving without a valid driver's license. The client required a state-subsidized interpreter. Mr. Freeman did not appear for the trial setting conference, so the date was continued. The client and the interpreter both appeared. Neither Mr. Freeman nor the client appeared for the continued conference, and the court ordered a warrant for the client's arrest.

Matter 6: In early 2000, Mr. Freeman represented a client charged with forgery. The court agreed to supervised release with several conditions. Mr. Freeman obtained his client's signature on the release order without informing him of the conditions, and subsequently the client violated the conditions. Mr. Freeman did not appear for the client's May 16, 2000 trial, nor did he provide any explanation to the court for his absence. On May 24, 2000, Mr. Freeman was personally served with the prosecutor's motion for sanctions and an order to show cause, requiring his appearance, but Mr. Freeman did not appear. The court found him in contempt for failing to appear at the client's trial.

Matter 7: In 2000, Mr. Freeman represented a client in a domestic-violence and stalking case. The prosecutor identified two critical witnesses for the case, and explained that they could be charged with obstructing a public servant if they failed to cooperate. Mr. Freeman agreed to represent the witnesses in a claim against the police while the domestic violence case was pending. Mr. Freeman did not explain the potential conflict of interest to the three clients and did not obtain a written waiver of the conflict. Mr. Freeman fell asleep during the prosecutor's interview of the critical witnesses.

Matter 8: In 2000, Mr. Freeman repre-

sented a criminal defendant. Mr. Freeman appeared late for the first suppression hearing, submitted no pleadings or documents, and did not inform his client that he was required to attend the hearing. The court sanctioned Mr. Freeman $400, allowed him until the next day to file pleadings, and rescheduled the suppression hearing. Prior to the date of the hearing, the client was arrested on new drug charges, so the hearing was continued again. Mr. Freeman did not attend the second suppression hearing and the court sanctioned him an additional $1,000. The client was still in custody and was brought from the jail to attend the hearing. The court appointed a new lawyer to represent the client.

Matter 9: In 2000, Mr. Freeman represented a defendant charged with unlawful possession of a controlled substance. After negotiating a plea agreement with the prosecutor, neither Mr. Freeman nor his client attended the hearing to enter the agreement with the court. Mr. Freeman also failed to appear for the client's trial date.

Matter 10: In 2000, Mr. Freeman represented a criminal defendant. Mr. Freeman failed to appear for the client's trial-readiness conference. Mr. Freeman also failed to appear at a later readiness hearing. The client appeared at this hearing and told the court that he could not reach Mr. Freeman.

Matter 11: In 2000, Mr. Freeman represented a criminal defendant. Neither Mr. Freeman nor his client appeared at the May 17, 2000 pretrial conference. The court authorized issuance of a bench warrant. The client contacted the prosecutor, who allowed the client to reschedule the conference. The client appeared at the rescheduled conference without Mr. Freeman, and the court appointed another lawyer to represent the client.

Matter 12: In 2000, Mr. Freeman agreed to represent a criminal defendant. Mr. Freeman did not appear at a required hearing, and the court issued a bench warrant for the client's arrest. The prosecutor served Mr. Freeman with a motion for sanctions and a show-cause order. Mr. Freeman did not appear and the court found him in contempt.

Matter 13: Mr. Freeman failed to respond to the Bar Association's written requests for information. He also failed to appear for his deposition after personal service of the subpoena. He did appear at a rescheduled deposition, but failed to bring the requested client files.

Mr. Freeman's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to promptly respond to clients' reasonable requests for information regarding the status of their matters; 3.3(f), requiring that, in ex parte proceedings, lawyers inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse; 8.4(d), prohibiting lawyers from engaging in conduct prejudicial to the administration of justice; 1.2(d), prohibiting lawyers from counseling or assisting clients in criminal or fraudulent conduct; 5.4, prohibiting lawyers from entering fee-splitting arrangements with nonlawyers; 7.2(c), prohibiting lawyers from giving anything of value to a person for recommending the lawyer's services; and 8.4(b), prohibiting committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer.

Jonathan Burke represented the Bar Association. Mr. Freeman represented himself. The hearing officer was Bert Markovich.

Disbarred

C. Allen Grider (WSBA No. 16927, admitted 1987), of Clarkston, has been disbarred by order of the Supreme Court effective May 31, 2001, following a stipulation. The discipline is based his failing to preserve client funds and entering into an unfair business transaction with a client from 1998 through 2000.

Matter 1: In October 1990, Mr. Grider established a trust for a client. The client was the grantor, and Mr. Grider and the client were named co-trustees. Mr. Grider also drafted a will for this client, naming himself as executor and trustee. The will contained a specific bequest to D.C., who was raised as the client's daughter but was never legally adopted. At the time of the client's death on May 11, 1995, the trust had $110,709.36 in assets. Mr. Grider sent monthly checks to D.C. beginning in June 1995.

In February 1998, he wrote D.C. "there should be sufficient income from the investments to keep these payments coming for many years. This I fully intend to do." D.C. did not receive any funds after September 2000. It appears that there are no remaining funds and $88,500 is missing.

Matter 2: In 1998, Mr. Grider agreed to represent a client whose husband had been killed in an automobile accident. Mr. Grider did not have a written fee agreement with the client. The court appointed the wife as personal representative of the husband's estate and also appointed a guardian ad litem (GAL) for the two children. On August 4, 1998, the insurance company issued two $77,827.59 checks, one for each child. The GAL endorsed the checks and Mr. Grider deposited them into his IOLTA trust account. On August 11, Mr. Grider withdrew $100,000 and purchased a three-month certificate of deposit in the name of "C. Alan Grider ITF and [child's name]." On August 13, Mr. Grider transferred $14,000 from the IOLTA account into his general account. Although his ledger indicates this transfer was for court-ordered fees, there were no withdrawals authorized at that time. In a declaration filed with the court, Mr. Grider stated that his fees were justified because both the insurance company and the husband's employer initially denied coverage. In fact, neither company denied coverage.

The court approved the children purchasing one half of a family home. The client found a suitable house, but Mr. Grider told her she could not buy it. Then, in January 1999, Mr. Grider sold her a remote, undeveloped five-acre parcel he owned with his wife and another couple. Mr. Grider sent the client to another lawyer to draft the documents. The GAL was not involved in this process and Mr. Grider specified all the terms.

In July 1999, the client met with the GAL. The client explained that she could not afford to put a home on the property and that no electricity, water or roads currently served the area. The GAL contacted Mr. Grider and suggested that he refund the children's money. In August or September 1999, Mr. Grider withdrew from the case, and another lawyer substituted as counsel for the personal representative. Mr. Grider sent a check to substituted counsel for the balance of the estate funds. Due to a shortage of funds in the trust account, Mr. Grider used other clients' funds to cover this check.

Matter 3: Mr. Grider represented a minor in a personal-injury case. The child had been severely bitten by a dog. On December 16, 1998, the court approved a $14,272.66 settlement. The court ordered that the funds be placed in a blocked account and not released prior to the child's age of majority without a court order. Mr. Grider's client ledger indicates that the child's money is still owed, but it is not in an IOLTA trust account or blocked account.

Matter 4: Mr. Grider's client ledger for an estate had a negative balance beginning April 30, 1999, and as of the stipulation date, December 20, 2000, that balance was negative $19,221.94. On June 19, 2000, Mr. Grider sent the beneficiary a statement indicating the estate balance was $43,069.05.

Mr. Grider's conduct violated RPCs 1.14, requiring lawyers to preserve client funds; 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, fraud, misrepresentation or deceit; 1.8(a), prohibiting entering a business transaction with a client unless the terms are fair and reasonable and the client obtains independent legal advice; and 3.3(a), prohibiting misrepresentation of material facts to a tribunal.

C. Elizabeth Williams represented the Bar Association. David A. Gittins represented Mr. Grider.

Disbarred

Mickie E. Jarvill (WSBA No. 14049, admitted 1984), of Stanwood, has been disbarred by order of the Supreme Court effective May 31, 2001, following a default hearing. The court's order conditions Ms. Jarvill's reinstatement upon paying restitution of $505,000. The discipline is based upon her use of estate proceeds for her personal use without the knowledge or permission of the co-personal representative.

Ms. Jarvill's uncle died in January 1995. Ms. Jarvill's first cousins, who lived in Oklahoma, were the beneficiaries of his estate. The estate retained two lawyers to pursue a substantial corporate issue. During the case, one cousin asked Ms. Jarvill's opinion and advice about the lawsuit and a $600,000 settlement offer. Ms. Jarvill suggested that she should be appointed co-personal representative of her uncle's estate. Based on this suggestion, the beneficiaries petitioned the court and Ms. Jarvill was appointed co-personal representative on April 15, 1997.

Ms. Jarvill recommended that all estate funds be sent to her for safekeeping. Ms. Jarvill received $645,598 in estate funds and distributed $140,414.90. On July 27, 1999, Ms. Jarvill told her cousin that she had lost all of the estate's remaining funds in a land deal. None of the beneficiaries authorized Ms. Jarvill to use the funds for the land deal. As of the date of the findings of fact, the beneficiaries had not received any additional distributions. Ms. Jarvill sent the estate beneficiaries 22 unsecured promissory notes, totaling $632,543.21. On July 26, 1999, the court removed Ms. Jarvill as co-personal representative.

Ms. Jarvill's conduct violated RCW 9A.56.030, theft; RPCs 1.14, requiring lawyers to preserve clients' property; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit and misrepresentation; and 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.

Leslie Allen represented the Bar Association. Ms. Jarvill represented herself. The hearing officer was Donald L. Logerwell.

Disbarred

Jeffrey A. Meehan (WSBA No. 18295, admitted 1988), of Vancouver, has been disbarred by order of the Supreme Court effective June 20, 2001, following a stipulation. The discipline is based upon his submitting documents to the bankruptcy court in 1996 that misrepresented the amount of work done.

In 1996, Mr. Meehan's firm represented a Chapter 7 bankruptcy trustee. Mr. Meehan, an experienced bankruptcy attorney, was the primary attorney of record. As required by the bankruptcy code, Mr. Meehan submitted fee applications to the court for his compensation. The fee applications falsely represented to the court that work done by word processors and clerks was done by paralegals and paralegal assistants. Mr. Meehan edited the word-processor time records and changed some of their entries, for example, "transcribe" to "draft," "finalize" or "analyze." The law firm received interim fees and costs of $62,616.89. A creditor filed an objection to the final fee application, alleging work performed by word processors was misrepresented as paralegal work. The bankruptcy court held two evidentiary hearings and entered a finding that Mr. Meehan knew that word-processor work was not compensable and, therefore, made a conscious decision to request compensation for services that were not compensable.

Mr. Meehan's conduct violated RPCs 3.3(a), prohibiting making false statements of material fact or offering false evidence to a tribunal; 3.4(b), prohibiting falsifying evidence; and 8.4(d), prohibiting engaging in conduct that is prejudicial to the administration of justice.

Jonathan Burke represented the Bar Association. Christopher Hardman represented Mr. Meehan.

Disbarred

Brian E. Nelson (WSBA No. 15363, admitted 1985), of Spokane, has been disbarred by order of the Supreme Court effective May 1, 2001, following a stipulation. The discipline is based his failure to properly preserve client funds. *(Note: Mr. Nelson is to be distinguished from Brian C. Nelson of London, England.)*

In July 1996, Mr. Nelson agreed to represent a client injured in an automobile accident in Idaho. The client signed a contingent-fee agreement providing a one-third fee in the event of settlement or judgment. Mr. Nelson appeared pro hac vice in Idaho and filed a lawsuit against multiple defendants. A month prior to the date set for jury trial, Mr. Nelson settled with some defendants for $7,000.

On December 2, 1999, the client endorsed the settlement checks, and Mr. Nelson told the client that he would take a $1,000 fee and write her a check for the balance prior to Christmas. The client called Mr. Nelson several times during December and January asking why she had not yet received her check. Mr. Nelson offered several explanations for the delay.

On January 10, 2000, he told the client that he had mailed the check on December 24 and had confirmed with his bank that it had been paid; however, Mr. Nelson's bank records established that he did not write a check to the client on that date. On January 12, Mr. Nelson delivered a $6,000 check drawn on his trust account to the client. Mr. Nelson's trust account contained insufficient funds to cover the check until a January 12 wire transfer from

his brother occurred.

Mr. Nelson's conduct violated RPCs 1.14(a), requiring lawyers to promptly deliver clients' funds when requested; and 8.3(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation.

Douglas Ende represented the Bar Association. Gregory S. Zoro represented Mr. Nelson.

Disbarred

Valentino J. Panizzut (WSBA No. 23074, admitted 1993), of North Carolina, has been disbarred by order of the Supreme Court effective June 20, 2001, following a stipulation. The discipline is based upon dishonest conduct, failing to properly preserve client funds, and charging an excessive fee in 1995 through 1998.

Matter 1: In 1995, Mr. Panizzut agreed to work for a law firm. His compensation was based on a percentage of the fees from the cases assigned to him, with a larger percentage if he brought the case into the office. The firm policy required Mr. Panizzut to advise his employer of client matters he opened, so that a client number and ledger could be prepared. Mr. Panizzut was required to deposit all client funds into the firm trust account.

In March 1999, the employer terminated Mr. Panizzut and reviewed his client files. During this review, the employer discovered at least 17 client files in which Mr. Panizzut had kept fees for himself, while the clients believed that the money would be applied to their fee obligation to the firm. Mr. Panizzut admitted keeping some of the fees, but disputed others, and returned $9,004.82 to the firm.

Matter 2: In 1996, Mr. Panizzut agreed to represent a client in a Labor and Industries (L&I) claim. In October 1997, L&I awarded the client $22,725.47. L&I mailed two checks totaling $6,156.88 to Mr. Panizzut in October and November 1997. The checks were made out to the client and Mr. Panizzut. Mr. Panizzut signed both his and the client's name and deposited the checks into a separate trust account he established. He did not inform the client that he had received the funds and retained them as his fee. This amount is higher than the statutorily allowed fee in these cases.

In December 1997, Mr. Panizzut sent the client $1,011.86 he received from L&I. In August 1998, Mr. Panizzut sent a letter to L&I withdrawing an appeal, requesting a lump-sum payment, and changing the mailing address to his own address. On September 23, 1998, Mr. Panizzut deposited the $15,556.73 lump-sum payment into his trust account. When the client called to ask about her funds, Mr. Panizzut did not tell her he had received the payment. Instead, he offered to loan her money. In March 1999, the client contacted L&I and found out about the payment. She contacted the employer, who confronted and terminated Mr. Panizzut. In October 1999, the court set reasonable attorney's fees in the case at $0.00. The employer notified Mr. Panizzut of this finding in December 1999.

Matter 3: In 1996, Mr. Panizzut agreed to represent a client in an L&I matter. In 1997, he represented the same client in a criminal matter. In October 1998, the client signed a power of attorney, so that Mr. Panizzut could handle some of his affairs while he was incarcerated. Mr. Panizzut arranged for the client's pension checks to be deposited into Mr. Panizzut's trust account; the pension fund directly deposited $1,532 into this trust account. Mr. Panizzut removed $766 without the client's permission. The pension fund learned that Mr. Panizzut had left the area and reversed the last two monthly deposits. Mr. Panizzut also opened checking and savings accounts in the client's name. Mr. Panizzut transferred $1,108 from the client's savings account to his personal checking account without authorization. The source of this money was not established.

Mr. Panizzut's conduct violated RPCs 8.4(c), prohibiting dishonest conduct; 1.14(a), requiring lawyers to preserve clients' funds and to pay these funds promptly upon request; and 1.5(a), requiring lawyers' fees to be reasonable.

Joanne Abelson represented the Bar Association. Mr. Panizzut represented himself.

Censured

Louis A. Ferreira (WSBA No. 20646, admitted 1991), of Vancouver, received a censure pursuant to a stipulation approved by the Disciplinary Board on April 13, 2001. This discipline is based on Mr. Ferreira's failure to avoid conflicts of interest and failure to keep his clients informed of all settlement offers in 1996 and 1997.

In 1993, Mr. and Mrs. G and Mr. L purchased neighboring undeveloped lots in Seattle. The developers and the engineering consultant allegedly told the Gs and Mr. L that their lots did not contain fill; however, both lots contained fill, which increased the construction costs. Both the Gs and Mr. L also had problems with the builders.

In June 1996, the Gs retained Mr. Ferreira to represent them in claims against the developers, consultants and builders. Mr. Ferreira filed two lawsuits for the Gs in summer 1996. He also met with Mr. L and added him as a plaintiff in the lawsuits. There was a dispute between Mr. L and Mr. Ferreira about whether Mr. L had a claim against the consultant. Mr. Ferreira also agreed to represent Mr. B, another neighbor, who had a claim only against the developers. Mr. G told Mr. Ferreira that Mr. G would pay Mr. Ferreira's bill and collect a contribution from his neighbors Mr. L. and Mr. B. Mr. Ferreira did not obtain a written waiver of conflict of interest from any of these clients. He also did not discuss with them how any proceeds would be disbursed or divided.

In December 1996, Mr. Ferreira obtained a default judgment against the builder. The builder stopped doing business and the clients did not recover any damages. In November 1997, the builder agreed to settle the claims by tendering the amount remaining on its bond. Mr. Ferreira prepared a stipulation that paid the entire bond proceed, $2,751.15, to the Gs. Mr. L received a copy of the stipulation and did not indicate that he disagreed. During this time, Mr. L was periodically incapacitated for health reasons; however, Mr. Ferreira did not know about the incapacity.

On December 15, 1997, the court exonerated the bond and Mr. Ferreira disbursed the proceeds to the Gs without notifying Mr. L that he had received the funds.

Mr. Ferriera's conduct violated RPCs 1.7(b), prohibiting representing clients whose interests conflict; 1.8(g), prohibiting lawyers from making an aggregate settlement without involving all clients in the settlement; and 1.2(a), requiring lawyers to abide by clients' decisions whether to accept a settlement offer.

Jonathan Burke represented the Bar Association. Mark Fucile represented Mr. Ferriera.

Opportunities for Service

Northwest Justice Project Board of Directors

Application deadline: November 15, 2001

The WSBA Board of Governors is accepting letters of interest from members interested in serving a three-year term on the Northwest Justice Project board of directors (two positions). A written expression of interest is also required for any incumbents seeking re-appointment. The three-year term will commence on January 1, 2002.

The Northwest Justice Project is a not-for-profit organization which receives funding through the federal Legal Services Corporation to provide civil legal services to low-income people. Board members must have a demonstrated interest in and knowledge of the delivery of high-quality civil legal services to the poor. Further information about responsibilities is available on request by e-mailing mac@nwjustice.org. Please submit letters of interest and résumés to the WSBA, Office of the Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330, or e-mail oed@wsba.org.

Legal Foundation of Washington Board of Trustees

Application deadline: November 15, 2001

The WSBA Board of Governors is accepting letters of interest from members interested in serving on the Legal Foundation of Washington board of trustees. There is one partial term (January 1-December 31, 2002), which will complete the term of a resigning member.

The Legal Foundation of Washington is a private, not-for-profit organization that promotes equal justice for low-income people through the administration of IOLTA and other funds. Trustees should have a demonstrated commitment to and knowledge of the need for legal services and how these services are provided in Washington. Further information about trustee responsibilities is available upon request by e-mailing bcclark@legalfoundation.org. Please submit letters of interest and résumés to the WSBA, Office of the Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330, or e-mail oed@wsba.org.

Opportunities for Citizen Members on WSBA Committees and Boards

The WSBA Character and Fitness Committee, Disciplinary Board, Lawyers' Fund for Client Protection Committee, and State Board of Continuing Legal Education all include nonlawyer citizen members. The WSBA is always interested in member referrals of nonlawyers to these important committees and boards. Members may suggest individuals to their governor, or interested persons may submit letters of application to the WSBA, Office of the Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330, or e-mail oed@wsba.org. Service on these boards is voluntary. Members are reimbursed for travel and related expenses; meetings are generally held at the WSBA office in Seattle; all appointments are for three-year terms.

- ***Character and Fitness Committee:*** Conducts hearings on Bar applications where there is a significant question as to the applicant's moral character. Hearings typically involve review of criminal histories, record of academic discipline (cheating and plagiarism), and previous Bar discipline (for lawyer applicants). In addition, the committee considers petitions for reinstatement after disbarment. The committee generally meets two to four times a year on Saturdays.
- ***Disciplinary Board:*** Reviews all recommendations for suspension or disbarment and is generally responsible for lawyer discipline. The board meets six times a year for full-day meetings. In addition, board members serve on three-person review committees which meet three to four times per year for full-day meetings to review investigation reports and requests for reconsideration of grievances dismissed by the Office of Disciplinary Counsel.
- ***Lawyers' Fund for Client Protection Committee:*** Considers applications for reimbursement for the dishonest taking of funds or property by lawyers. The committee meets quarterly for half-day meetings.
- ***State Board of Continuing Legal Education:*** Responsible for the accreditation of approved continuing legal education programs, and for enforcing required compliance by WSBA members. The board meets five to seven times per year for full-day meetings.

Nonlawyer citizen participation on these boards and committees enhances the WSBA's mission and credibility as a self-regulating agency. Citizen members consistently report that the experience is extremely interesting and enlightening, and enhances their understanding and appreciation of lawyers and the legal profession.

Committee Reports

Excerpted from recently submitted annual reports.

Alternative Dispute Resolution

The committee developed a volunteer-recruitment packet to present to interested nonlawyer arbitrators and various community organizations. In addition, the committee developed an Arbitrator Handbook, and revised procedures to assist in training both lawyers and nonlawyers. In order to publicize the fee-arbitration program and encourage attorney participation, a committee member has written an article emphasizing that the program may prevent more costly and damaging disputes (see page 44).

Civil Rights

The Board of Governors requested that the committee evaluate and make recommendations concerning the ABA death-penalty moratorium proposal. Diverse speakers were invited to inform the committee on issues related to death-penalty

implementation, and recommendations were reported to the BOG. A subcommittee was formed to research existing state and federal laws related to Evidence Rule 412. A proposed ER 412 was drafted and presented for review to the WSBA Rules Committee. The committee participated in workgroup sessions of the Washington Department of Human Rights; created a brochure identifying civil rights-related community resources; sponsored two CLE seminars; and wrote several *Bar News* articles.

Consumer Protection

The committee opposed the Uniform Computer Information Transaction Act (UCITA) due to potential harm to consumer rights. Legislation was drafted concerning practices of lenders in requiring community-property agreements as a condition of making a real estate loan. In addition, a letter to the Department of Licensing was supported concerning acts of lien services that constitute the unauthorized practice of law. An amicus curiae brief was filed concerning the unauthorized practice of law in the Supreme Court's appeal of *Jones et ux. v. Allstate Insurance Company* (decision pending). The committee monitored consumer-related legislation concerning the Consumer Protection Act, the Contractor Registration Act, and other bills before the Legislature.

Continuing Legal Education

Six subcommittees were established and staffed: Young Lawyer Development and Mentoring, Deskbook and Publications, Electronic Communications/Technology, Offsite CLE Delivery, Quality Assurance/New Speakers, and Continuing Education/Professional Liaison. The WSBA master calendar (2000-2001) was reviewed by the committee to analyze and review the scope and variety of CLE topics and programs. In addition, recommendations were made for both future topics and possible chairpersons for new courses. The committee will continue to address the ways in which new technologies can be harnessed to foster greater access and choice for all WSBA members regardless of their location.

Corrections

At the request of President Jan Eric Peterson, the committee researched and discussed the prison law library legislation and provided a recommendation to the Board of Governors.

Court Improvement

The committee reviewed and commented on the recommendations of "Project 2001," a study of court reform and ongoing planning process for the administration of Washington courts, and submitted a report to the BOG in December. The committee and its subcommittees reviewed, commented, and provided input to WSBA legislative liaisons on additional proposed legislation affecting the courts and judicial system. Judicial representation on the committee was considered. Currently, the goal is to allow one or more judicial representative(s) to participate. A review of the Walsh Commission recommendations was undertaken with a view to promote or implement one or more recommendation(s).

Court Rules and Procedures

The committee concentrated on and completed a comprehensive review of the RAPs and proposed many changes to them. It also largely completed its review of the RALJs. A few items will be carried to the 2001 fall agenda. The committee also responded to requests for comments on rules changes proposed by the Supreme Court, other WSBA committees, and interested parties/attorneys. The committee presented its annual report to the Board of Governors at its July meeting.

Editorial Advisory Board

The board recruited and interviewed for a new *Bar News* editor in 2000. Upon their recommendation, the Board of Governors approved the hiring of Mark Panitch as *Bar News* editor. The publication frequency of *Bar News* was studied and discussed. The managing editor reports that article planning, author recruitment, and content selection are being accomplished nearly an entire issue in advance.

Electronic Communications (EC2)

In order to advise the WSBA of the issues relevant to online cases and instructions, EC2 members surveyed the practices of other states and collected information about what is currently done in Washington. In addition, the committee provided comments to the King County Superior Court concerning electronic pleadings, and volunteered to participate in a pilot project. EC2 prepared a report about the use of digital signatures, tested new or revised electronic services offered by the WSBA, and explored electronic options that could allow WSBA members quality participation in virtual meetings at moderate expense.

Interprofessional

The committee's new goal is to improve communication between lawyers and other professionals. To this end, the committee planned and held a successful ethics CLE seminar addressing issues involved in working with other professionals: "Real People, Real Trouble, Ethical Tools to Avoid Malpractice Claims." A new mission statement was developed and adopted, and the long-range plan is nearing completion.

Judicial Recommendation

The committee conducted background checks and evaluated candidates for appointment to the Court of Appeals and the Supreme Court, and forwarded to the Board of Governors all candidates it found to be "well-qualified." The chair co-authored an article about the committee that was published in the June issue of *Bar News* (p. 15).

Law Clerk

The committee administers the Law Clerk Program governed by Admission to Practice Rule 6. Members serve as liaisons to the 30-35 people enrolled in the program. A regular rotation of appointments and retirements from the committee was established to ensure smooth transitions and continuity of committee relationships. Certificates were awarded to candidates upon completion of the program.

Law Examiners

The committee's main task is to prepare and grade the best bar examination possible, and to continue to streamline and update the bar exam training, preparation and grading process. Although this winter's exam was interrupted by an earthquake, those administering the exam calmed the examinees. Extra steps were taken to ensure that the exam was not compromised, and applicants received the benefit of any doubt in the scoring of their exams. The committee continues to maintain its goal of having a full exam in its "question bank." The bank serves as an excellent training tool for new examiners, and also provides a reserve of approved questions when the need arises. This year, the committee edited, revised and produced an updated version of its *Handbook of Procedures*, which dictates preparing and grading bar exam questions. Members of the committee and General Counsel Bob Welden visited the three in-state law schools last spring to speak with students about the application and examination process.

Law Office Management Assistance Program (LOMAP)

This year, the committee focused on identifying and pursuing programs, projects and methods of communication to accomplish LOMAP's mission. Included were: Lawyer-to-Lawyer (a mentoring program); "road shows" (practical seminars around the state); marketing LOMAP and its resources; on-site consultations with requesting lawyers; presentations and development of curricula for law schools; and the development of written materials to assist sole practitioners and small firms.

Lawyers' Assistance Program (LAP)

A new LAP rule (see the WSBA Web site at www.wsba.org/rules/2001/APR19.doc) was proposed by the committee, adopted by the Washington Supreme Court on June 12, 2001, and designated as APR 19. Additionally, RLD 12.17 was repealed. The new rule will be published in *Washington Reports* and became effective September 1, 2001. Two new subcommittees were formed. The marketing subcommittee reviewed current marketing activities and developed a comprehensive marketing plan. The law school presentation subcommittee coordinated contacts with the state's three law schools and developed a LAP presentation outline for use when visiting the schools. A successful, well-attended statewide conference was held in the spring at Campbell's Resort in Lake Chelan.

Lawyers' Fund for Client Protection

The committee reviews and approves (or disapproves) applications for gifts from the Lawyers' Fund for Client Protection. The committee's work is publicized on a regular basis in *Bar News*; quarterly reports are published in the January, April and July issues; and the annual report is published every October. The committee continues to develop means to publicize the activities of the fund.

Legal Assistants

The revision of its proposal on GR22 (Definition of the Practice of Law) and GR23 (Nonlawyer Practice) was presented in October 2001. After the BOG adopted the revisions and the Supreme Court published GR 25 (formerly 23) for comment, the committee submitted written comments in support of the proposed rule. The Supreme Court adopted the rules. The committee developed its own Web page and e-mail discussion group on Yahoo. Collaboration with LOMAP resulted in the committee's participation in a panel discussion about the utilization of paralegals. This effort will be expanded to present to all law schools in the coming year.

Legal Services to the Armed Forces

The committee helped sponsor legislation (SB5263) regarding the re-employment rights for those called to state military active duty. In March 2001, members made a CLE presentation at the U.S. Coast Guard installation in Seattle. The committee provided staff to assist in the drafting of a limited practice rule for military legal officers in Washington.

Legislative

The committee deals with proposals for state and federal legislation that relate to the improvement of justice. It also reviews proposed legislation of interest to the Bar and the general public, and may draft proposed legislation for submission to the Board of Governors. Additional straw polling was done within the committee after the legislative session began with regard to Project 2000 recommendations that were not finalized until after the legislative review process had ended. A meeting was organized with other groups in the legal community to gain knowledge about their legislative agendas and to communicate willingness to coordinate efforts and assist with the legislative process. A new one-page format for stating legislative positions was adopted to expedite review by the Board of Governors. Additional information about the work of the committee can be found on the WSBA Web site at www.wsba.org/c/leg.

Mandatory CLE (MCLE) Board

The board's main goal is to make the process of taking approved courses and submitting the results to the WSBA as easy to accomplish and as user-friendly as possible. The MCLE Board reviewed petitions for extensions, waivers and exemptions in an expeditious manner, and reconciled some of the new rules against petitions.

Pro Bono and Legal Aid (PBLAC)

PBLAC continues to work to implement the Volunteer Attorney Legal Services Action (VALS) Plan adopted by the Board of Governors in 1994. In an effort to publicize the good works of attorneys, PBLAC has written profiles of pro bono attorneys throughout the state that they hope to have published in *Bar News* in the coming year. In order to determine what motivates attorneys to volunteer, PBLAC devised a survey on market incentives. Data was analyzed and recommendations developed which will be considered for implementation. PBLAC's projects included: the development of a resolution for the Conference of Chief Justices (adopted in January 2001); the analysis of proposed revisions to RPC 6.1 and voluntary reporting; the establishment of statewide pro bono panels of nonlawyer volunteers who can assist local pro bono attorneys with their cases; the development of a CLE videotape library for use by staff and

pro bono attorneys; and the Corporate Counsel Partnership for Justice Videophone Client Counseling Project, linking counsel in the Puget Sound area with low-income clients in rural areas.

Professionalism

The committee again sponsored a CLE seminar: "Ethics, Professionalism and Civility: The Hard Questions" in September 2001. A Creed of Professionalism (evolved from a more complex Code of Civility) was drafted and approved by the Board of Governors. The committee focused on mentoring, and will continue its work in conjunction with the recently formed Lawyer-to-Lawyer Committee. In support of the President's Initiative Task Force, the committee was involved in presentations incorporating professionalism and civility issues for the "orientation fairs" at the law schools.

Resolutions

The committee's goal is to discuss and address any resolutions received in accordance with the WSBA governing documents. No resolutions were received this year.

Rules of Professional Conduct

This year, the committee researched, briefed, debated, drafted, frequently amended, and then issued approximately 34 informal opinions. Often inquiries require extraordinary outside work by an assigned task force selected from the committee membership. Some of the issues the committee investigated are: RPC 1.8 (e), whether the rule should be modified to allow loans to clients in emergency or exigent circumstances; and Formal Opinion 196, regarding the use of firm names, issues related to misleading names, trade names, or "ethnic" names not tied to registered attorneys before the WSBA. Committee members have begun work on an ethics deskbook, which will include chapters on a variety of topics and is intended to further help attorneys meet the ethical standards set forth in the RPCs.

We regret that reports from the following committees were not received in time for publication: Amicus Brief, Character and Fitness, Disciplinary Board, and Diversity.

Section Reports

Administrative Law

The section's annual meeting, with a CLE program focused on ADR, was held in September in Lacey. Numerous section meetings were held during the year in various parts of the state to include as many members as possible. In coordination with Lexis-Nexis, WSBA-CLE, and the section's CLE chairs, the *Administrative Law Practice Manual* went through extensive updates and was distributed at a CLE in March. The section produced a newsletter, and continues to improve its Web site.

Business Law

This section sponsored two major CLEs — the "Northwest Securities Institute" in February and the midyear meeting in May. In addition, the section presented a seminar at Celebration 2000; the Securities Committee sponsored the Meet the Securities Regulators Forum in October 2000; and the section participated in a WSBA Agriculture Law seminar and other seminars on revised UCC Article 9. Section members were furnished with section newsletters, the report of its Opinions Committee, and a summary of current developments in business law. The section's committees remained vital and contributory. In particular, the Web Site Committee continued to develop and improve the Web site; legislation was proposed, reviewed and developed by various committees; and the Committee on the Law of Commerce in Cyberspace was extremely active.

Corporate Law Department

The section sponsors a Corporate Counsel Institute designed to educate and update corporate lawyers on key current issues every other year; the next Corporate Counsel Institute is planned for later this year. The successful program of quarterly dinners for members continued. "The Law and Business of Baseball," and "Why Business Entrepreneurs Are Desperate for Good Lawyers" programs were given for CLE credit. The section also sponsored informal luncheon and breakfast CLE round-table sessions with speakers. The General Counsel Symposium was co-sponsored by the Corporate Law Section and Arthur Andersen LLP. In conjunction with the University of Washington School of Business, the section is investigating possible avenues for corporate counsel to engage in pro bono work. This program in development would enable corporate counsel to share their business expertise with new and/or struggling companies while having the necessary legal malpractice insurance to permit such pro bono work.

Environmental and Land Use Law

The well-attended 2001 Midyear Conference was held May 31-June 2. Topics included recent developments concerning the Endangered Species Act, water rights, wetlands, Shoreline Management Act regulations, and the Growth Management Act. Additional CLE events included a one-day program on the Department of Ecology's efforts to regulate storm water, and a program on the initiative process and the Endangered Species Act. The section has continued to improve its Web site, including links to agency environmental and land use Web sites. Two section newsletters were published, including one 56-page edition with articles on cutting-edge issues, legislative matters, and case law updates.

General Practice

The General Practice Section was a proud sponsor of the very successful WSBA-CLE "Best of CLE" series held in Seattle in December, and featuring a curriculum of diverse and widely popular subjects. In conjunction with WSBA-CLE and their publications division, the section published a digest of the *Best of CLE* course manual which was distributed to section members free of charge. The members of the executive committee have been actively involved in outreach programs, which include assisting in the development of a Law Office Management curriculum at the Gonzaga University School of Law, moderating WSBA-sponsored CLEs, speaking at high schools during Law Week, and

participating in the Convergence: Essential Business Skills for New Associates and Solo Lawyers symposium.

International Practice

The annual symposium of the International Law Institute is tentatively scheduled for this fall. The program is being developed in collaboration with the Women's Interest Network of the ABA International Law Section. The section's ongoing foreign lawyers matching program matches Washington practitioners with foreign attorneys and judges pursuing advanced legal education programs. Coordinating with the University of Washington School of Law, the section is assisting in bringing groups together this fall. Plans are to continue its successful Thursday brown-bag luncheons featuring various speakers. The section hopes to collaborate with other WSBA sections in developing the forums. A committee has been formed to update the third edition of *Doing Business in Washington State – Guide for Foreign Business and Investment*. The fourth edition will be published in 2002.

Law Practice Management & Technology

The section presented its annual "Winning Strategies" CLE seminar in September. The program covered a wide variety of topics aimed at new attorneys with less than three years' experience. A second seminar aimed at more experienced attorneys is under consideration. Work is underway for the Law Office Management Expo scheduled for March 2002. This event is a combination tradeshow and CLE extravaganza. The section continued its quarterly brown-bag seminar series. In an effort to make the section Web site and Internet resources user-friendly and meaningful to members, a computer consultant has been hired by the section to upgrade and maintain the Web site and list serve. In addition, rather than publishing a deskbook, the assembled content will be posted on the section Web site.

World Peace through Law

The section's speaker program on international law, human rights, and dispute resolution featured Joe Borich, Rick Lorenz, Paul Schlossman and Charles Woolery. At the annual luncheon in June, the Ralph Bunche Award was presented to Ann Stadler. A second award was given to Floyd Fulle, one of the section's founders. The section co-sponsored an event held by the City Club to honor former Secretary of State Warren Christopher. The section also produced a newsletter.

We regret that reports from the following sections were not received in time for publication: Antitrust, Consumer Protection & Unfair Business Practices; Creditor/Debtor; Criminal Law; Dispute Resolution; Elder Law; Family Law; Health Law; Indian Law; Intellectual Property; Labor and Employment Law; Litigation; Public Procurement & Private Construction; Real Property, Probate & Trust; Senior Lawyers; and Taxation Law.

Proud to Be a Lawyer

Start your day off with an inspirational story or quote! The WSBA Web site (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.

Court Rules and Procedures Committee Meeting

When it reconvenes later this fall, the Court Rules and Procedures Committee is scheduled to review the Criminal Rules for Superior Court (CrR) and for Courts of Limited Jurisdiction (CrRLJ). Please send any suggestions for rule changes to the Supreme Court of Washington, Temple of Justice, PO Box 40929, Olympia, WA 98504-0929.

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. Contact WestCoast Hotels at 800-325-4000.

Information for Your Clients

Did you know that easy-to-understand pamphlets on a wide variety of legal topics are available from the WSBA? For a very low cost, you can provide your clients with helpful information. Pamphlets cover a wide range of topics:

Alternatives to Court
Bankruptcy
Buying and Selling Real Estate
Consulting a Lawyer
Criminal Law
Dissolution
Elder Law
Landlord/Tenant Rights
Lawyers' Fund for Client Protection
Legal Fees
Marriage
Parenting Act
Probate
Revocable Living Trusts
Signing Documents
Trusts
Wills

Each topic is sold separately. Pamphlets are $9 for 25, $15 for 50, $20 for 75, and $25 for 100. Pricing for larger quantities is available on request.

Additionally, copies of *The Law Book*, a special supplement to the King County Journal newspapers, are available. The 12-page tabloid includes articles by WSBA members on a wide range of topics. The cost is $20 for 100 copies.

To place your order or for more information, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Sales tax is applicable to all in-state orders.

Lawyer Directory Enhancement

The lawyer directory on the WSBA Web site just got better! A link to your Web site can now be included in the WSBA online directory, so people can go directly from your directory listing to your Web site. This will be a significant benefit to you and those seeking information!

The regular fee for this service will be $75 annually ($50

if you sign up July 1 or later). But if you sign up before December 31, 2001, you'll pay the charter-member fee of just $50, which will cover your listing through December 31, 2002.

For more information and a sign-up form, see the WSBA Web site at www.wsba.org/directory/addlink.

Upcoming BOG Meetings

October 19-20, 2001 – Vancouver, WA
November 30-December 1, 2001 – Tacoma, WA
January 18-19, 2002 – Olympia, WA

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 Lori Lee at 206-727-8244 or loril@wsba.org.

Northwest Justice Project Receives Technology Grants to Expand Legal Resources for the Poor

In a news conference held at the WSBA office on August 22, 2001, Senator Maria Cantwell (D-WA) announced that Washington has been awarded three federal technology grants totaling $674,000 — the largest grant amount ever awarded. The recipient of the grant funds is the Northwest Justice Project (NJP), which will implement several major statewide technology initiatives.

Pictured left to right: Donald Horowitz, Access to Justice Technology Bill of Rights Committee chair; Michele Jones, Access to Justice Board chair; Jan Eric Peterson, WSBA president; Maria Cantwell, US senator; Patrick McIntyre, Northwest Justice Project executive director; Randi Youells, Legal Services Corporation vice president for programs

The $50,000 state Web site grant will help fund an online advocate resource center for lawyers representing low-income clients. A state technology grant of $374,000 will help expand the availability of NJP's Coordinated Legal Education, Advice and Referral (CLEAR) service. A $250,000 national grant will fund staff from probono.net and lawhelp.org to assist with Web site content and protocol. Included in these grants is $25,000 to support the Technology Bill of Rights project, being developed by the Washington State Access to Justice Board.

For the news release, see the Legal Services Corporation Web site at http://www.lsc.gov/pressr/releases/010822pr.htm. For additional information about the grants, contact Joan Kleinberg at the Northwest Justice Project (206-464-1519 or joank@nwjustice.org).

Revision to Superior Court Clerk Services

King County District Court, Bellevue Division, no longer assigns case numbers and schedules for superior court cases filed at that location. Filings will be accepted in a drop box and delivered to the downtown King County Superior Court Clerk for daily processing. Superior court cashier services will continue to be available on the first and third Thursdays of each month from 8:30 a.m. to 4:30 p.m. Ex parte sessions will continue to be held on the first and third Thursdays of each month between 1:30 p.m. and 4:15 p.m.

General Rule 14 Enforcement

The King County Superior Court Clerk's office is now returning all pleadings, motions, and other papers to be included in court files which do not comply with General Rule 14. Rejected documents will be returned to the filing party, and that party shall be assessed a $15 faulty-document fee. For more information about the requirements of GR 14, contact the clerk's office at 206-296-7855.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in September 2001 is 3.412 percent. The maximum allowable interest rate for October 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/usuryrate.html.

WSBA Calendars Available Via E-mail

The WSBA is now e-mailing semimonthly listings of upcoming WSBA-CLE seminars. Each seminar listed in the e-mail has a link to the brochure on the WSBA Web site, so it's easy to get additional information or register online. If you'd like to receive these e-mails, it's simple to sign up! Call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or send an e-mail to questions@wsba.org, and let us know you'd like to be on the CLE seminars e-mail list.

LAW Fund Justice Jam

The Legal Aid for Washington (LAW) Fund will host Justice Jam to celebrate the extraordinary work of legal services providers on October 26, 2001 at the General Petroleum Museum in Seattle. Tickets are $10, and the event begins at 7:30 p.m. For more information, contact LAW Fund at 206-623-5261 or lawfund@lawfund.com.

Lawyers' Fund for Client Protection Seeks Collections Lawyer

The WSBA Lawyers' Fund for Client Protection Committee and trustees are seeking a lawyer to represent the WSBA in pursuing restitution owed to the fund by disbarred and other lawyers on whose behalf payments are made from the fund. Terms are negotiable. Interested lawyers should submit letters of interest and resumes to WSBA General Counsel Robert D. Welden, 2101 Fourth Ave., Fourth Fl.,

Seattle, WA 98121-2330. For further information, please contact Mr. Welden at bobw@wsba.org or 206-727-8232. The deadline for letters of interest is October 26, 2001.

Washington Chapter of American Judicature Society Meeting in Seattle

Attorneys, judges and other interested persons are invited to attend a meeting of the Washington chapter of the American Judicature Society on October 12, 2001 from 9:00 a.m. to noon at the WSBA office. The two-part program includes Judge Robert Alsdorf, author of the I-695 trial court decision, speaking on judicial independence. There will also be a panel discussion on judicial election vs. selection moderated by Denny Heck of TV Washington. Panelists include Washington Supreme Court Chief Justice Gerry Alexander; attorneys Nicholas Corning and John McKay; and Walsh Commission members Court of Appeals Judge William Baker and attorney Mary Wechsler. For more information, contact Gail Stone at 206-733-5925 or gails@wsba.org.

2001 LOMAP Roadshow

The WSBA Law Office Management Assistance Program (LOMAP) will hit the road October 9-18, 2001. Seminars will be conducted in Colfax, Kennewick, Olympia, Vancouver, Wenatchee and Yakima. The program focuses on using technology to improve law practices, remain competitive, and exceed client expectations. CLE credits are pending. For more information, contact Peter Roberts at 206-727-8237 or peter@wsba.org, or Julie Griffiths at 206-733-5914 or julieg@wsba.org. Registration information and forms are available on the WSBA Web site at www.wsba.org/lomap.

Elder Law Section Announces Grant Program

Washington's senior citizens are well-served by the WSBA Elder Law Section. Not only do many section members volunteer their time by providing pro bono legal counseling services, the section launched its first grant program this year. The grant program will award up to $10,000 annually to Washington nonprofit programs that provide legal services to seniors. Each award will vary from $1,000 to $5,000, based on the number of award recipients, type of program, and number of seniors who will benefit from the program.

During the past two years, the section has donated $10,000 each year to the Legal Aid for Washington (LAW) Fund. The grant program was developed in keeping with the section's practice of recognizing the importance of access to legal services for all seniors. For additional information, see the Elder Law Section's page on the WSBA Web site at www.wsba.org/elderlaw.

CASA Volunteers Needed

King County Superior Court is seeking volunteers to serve as Court-Appointed Special Advocates (CASAs). Volunteers receive extensive training to represent children involved in custody and visitation disputes in family law cases. They conduct interviews, write reports, and testify in hearings or trials. For more information, contact Ed Greenleaf at 206-296-9320.

Calendar

ADR

Professional Mediation Skills Training
October 5-7 & 20-21 – Seattle. 34 CLE credits, including 2 ethics. By UW-CLE; 206-543-0059.

CONSTRUCTION LAW

Construction Law
November 29-30 – Portland. CLE credits TBD. By The Seminar Group; 800-574-4852.

EMPLOYMENT LAW

22nd Annual Employment Law Conference
November 8-9 – Chicago; November 15-16 – San Francisco; November 29-30 – New Orleans; December 6-7 – Washington, D.C. CLE credits TBD. By National Employment Law Institute; 303-861-5600.

Privacy in the New Millennium
November 28 – Seattle. 7 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ENVIRONMENTAL AND LAND USE

Takings & Condemnations
October 5 – Seattle. 7 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Land Use & GMA Update
October 31 – Seattle; October 25 – Olympia. 6.75 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

YLD: How to Draft Wills
October 18 – Seattle; October 25 – Olympia. 3 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

YLD: How to Probate an Estate
October 19 – Seattle; October 26 – Olympia. 3 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

46th Annual Estate-Planning Seminar
November 5-6 – Seattle. 15.25 CLE credits, including 1.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ETHICS

Ethical Dilemmas
October 10 – Vancouver; October 17 – Tacoma; October 24 – Spokane; October 26 – Seattle; November 7 – Spokane; November 14 – Yakima. 3 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics for Real Estate Lawyers – TeleCLE
November 7 – telephone. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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: 206-727-8319
e-mail: comm@wsba.org

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

The Ballad of Halibut Klutz – TeleCLE
November 14 – telephone. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics for Litigators – TeleCLE
November 28 – telephone. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics Play
November 28 & 29 – Seattle. 3 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethical Communication Workshop
November 29 – Seattle. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FISHERY LAW

2001 National Fishery Law Symposium
November 1-2 – Seattle. 11.5 CLE credits pending. By UW-CLE; 206-543-0059.

GENERAL

Borderline Personality Disorder
October 2 & 16 – Seattle. 1.25 CLE credits pending. By Unified Family Court; 206-205-2674.

Building Value: Strategies for Successfully Managing Growth
October 19 – Seattle. CLE credits TBD. By UW-CLE; 206-543-0059.

Legal Writing
October 19 – Seattle; October 24 – Spokane; November 7 – Seattle. 6.75 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

3rd Annual Oregon Government Law Conference
October 22-23 – Portland. 8.25 CLE credits, including 2 ethics. By The Seminar Group; 800-574-4852.

Domestic Violence
November 6 – Seattle. 1.25 CLE credits pending. By Unified Family Court; 206-205-2674.

"IME" Trick or Treat
October 31 – Seattle (live); November 14 – Spokane (video replay). 6.75 CLE credits. By WSTLA; 206-464-1011.

Computer Camp for Counselors
November 27-28 – Seattle. 4 CLE credits each. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Corporate Counsel Institute
November 29 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LITIGATION

Advanced Negotiations *(with Marty Latz)*
October 18 – Seattle. 3.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

REAL ESTATE

Real Estate Conference
November 30 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

REAL PROPERTY

RPPT Workouts
November 11 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

TAX LAW

NW Technology Tax Institute
October 26 – Seattle. 8 CLE credits pending. By UW-CLE; 206-543-0059.

Professionals

For information about advertising in the Professionals section of *Bar News*, please call Jack Young at 206-727-8260 or e-mail jacky@wsba.org.

REAL ESTATE and TITLE INSURANCE

Betty J. Schall
is available for consultation; association; or contract work in complex real property transactions, closings and title insurance issues.

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E-mail: bettyschall@uswest.net

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Seattle, WA 98121
206-448-2100
E-mail: jganzesq@aol.com

ETHICS & LAWYER DISCIPLINE

Leland G. Ripley,
former WSBA chief disciplinary counsel (1987-94), is available for consulation or representation regarding all aspects of professional responsibility or discipline defense.

206-781-8737

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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.

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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.

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Passed CPA exam in 1982

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is pleased to announce that

Robert A. Wright

has joined the firm as of counsel, and is available to public agencies and private property owners for mediation and for consultation, association or referral in cases involving eminent domain, inverse condemnation and construction law.

Mr. Wright has practiced in Washington for 33 years, including 31 years in the Transportation and Public Construction Division of the Attorney General's Office.

He acquired property for the expansion of the Washington State Convention and Trade Center in downtown Seattle (*State ex rel WSCTC v. Evans*, 136 Wn.2d 811, 966 P.2d 1252 (1998)).

His legal team recovered $20,000,000 through ADR from the contractor and its insurer for the sinking of the Lacey V. Morrow Bridge on Interstate 90.

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Reply to WSBA *Bar News* Box Numbers at:

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Bar News Classifieds
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330

Positions available are also posted by telephone at:

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and online at www.wsba.org

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Solid walnut executive conference desk and matching credenza from father's "show" office, excellent condition. 76" x 39" with 8-1/2" overhang. $7,000 new, asking $2,000. Call 425-637-3070.

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Sweeping, unobstructed view of Mount Rainier (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 Paula at 206-624-9400.

Downtown Seattle office-sharing: $200 per month. Also, full-time offices available on 32nd floor, 1001 Fourth Avenue Plaza. Close to courts. Furnished/unfurnished suites, short-term/long-term lease. Receptionist, legal word processing, telephone answering, fax, law library, legal messenger and other services. 206-624-9188.

Laurelhurst (University) area: Office suite available. Share receptionist, library, conference rooms with attorneys, CPA and consultants. Great location, nice environment. Possible joint marketing and referrals. For information, call 206-523-6470.

Mercer Island view office: Class-A building; excellent easy-access location; share amenities including clerical space, copier and fax with one other attorney and CPA. Call Jim at 206-275-0770.

Fully furnished downtown Seattle office space and adjacent secretarial and paralegal spaces available for sublet. Class-A, elegantly appointed space. Subtenant's rent includes reception service, coffee service, kitchenette, mail delivery, use of excellent law library and two conference rooms, janitorial, and all necessary amenities. Other services at cost: copier, fax, telephone/voice-mail, postage, parking. For additional details, call Brenda at 206-624-1933.

Bellevue: Delightful wooded setting close to downtown. Reasonable rents include parking. Various office configurations with or without receptionist and secretarial space. Call 425-462-5151 or 425-452-9000.

POSITIONS AVAILABLE

Safeco (Seattle) staff trial attorney: We are seeking a personal injury trial attorney with at least 10 years' insurance defense experience, a minimum of two trials to verdict in the last two years, and a minimum of 10 trials to verdict in her/his career. Candidate must have expertise in complex medical damages analysis. Position requires excellent supervisory, mentoring and coaching skills on teamed cases, as well as ability to work independently on cases. Candidate must be an excellent relationship-builder with claims staff, attorneys, nonattorney staff and clients. Position requires effective use of Microsoft Office Suite products and ability to quickly learn other automation tools currently used in the office. We are seeking an enthusiastic, creative problem-solver with a positive attitude who thrives in a dynamic office environment. Qualified candidate must be admitted to practice in Washington. Please send cover letter and résumé by e-mail to bobsto@safeco.com by October 20, 2001.

Director — Yakama Nation Office of Legal Counsel. Salary: DOE/DOQ. The director of the office of legal counsel will serve as the lead attorney to the Yakama Nation Tribal Counsel and the Yakama Nation government as a whole, and is responsible for the supervision and management of the office and its staff. The position requires strong litigation skills with significant experience in federal courts; a thorough understanding of federal Indian law; knowledge of budgetary and administrative practices with skills in fiscal management; knowledge and experience in varied areas of legal practice; a minimum of 10 years' legal experience with a minimum of six years' practice in the field of Indian law, preferably through work with an Indian tribe. Must be a member of the WSBA. Please contact the Yakama Nation Personnel Department at 509-865-5121 for a complete job description and an application packet.

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Four Lynnwood attorneys seek fifth with experience in some of these areas: civil litigation, personal injury, bankruptcy, real estate, estate planning. Perfect for downtown associate who wants to move north. Prefer attorney with client following but will consider others. Salary, medical, IRA. See http://www.jamesrobertdeal.com. Send résumé to jamesrobert@jamesrobertdeal.com.

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 first day of each month for the issue following, e.g., November 1 for the December 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.

Family law attorney: McKinley & Irvin PS seeks an associate attorney with minimum three years' family law practice experience to work in either our Federal Way, Bellevue or Seattle office. We are also seeking an associate attorney with family law experience to work under an experienced family law attorney/firm shareholder. Excellent oral and written advocacy skills necessary for both positions. We offer a competitive salary and benefits, as well as a friendly, supportive work environment, and opportunity for professional growth. Applicant must be licensed to practice in Washington. Please send résumé, writing sample, transcripts and references to: M&I, Hiring Coordinator, 33801 1st Way S., Ste. 281, Federal Way, WA 98003; http://www.mckinleyirvin.com.

Puget Sound area insurance defense firm seeks litigation associate: Applicant should have minimum two years' experience or equivalent and must be a member of the WSBA, with strong academic credentials and writing skills. Send résumé and self-edited writing sample to: Managing Partner, PO Box 2212, Tacoma, WA 98401.

Labor and employment attorney: Bullivant Houser Bailey PC is a West Coast, full-service law firm with strong business and litigation practices. We have six offices strategically located in major markets of Washington, Oregon and California. We are seeking an experienced labor and employment attorney in our growing Seattle office. The ideal candidate should have at least three years' experience in employment law, including deposition and trial experience; ERISA litigation background; independent file-management experience; as well as strong interpersonal, analytical and writing skills. The ideal candidate should also have strong leadership skills and an interest in marketing and business-development techniques. For consideration, please mail, fax or e-mail your résumé to: Jennifer Engman, Recruiting Coordinator, 1601 5th Ave., Ste 2400, Seattle, WA 98101-1618; fax 206-386-5130; e-mail jennifer.engman@bullivant.com.

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Downtown Redmond firm seeks associate: Real estate, corporate, land use, estate planning, probate, civil litigation and domestic relations. Résumé, writing sample and references required. Fax 425-885-4442. Part-time/flex-time are possibilities.

Misdemeanor public defense: Associate attorney sought for misdemeanor public defense in East King County. Send résumé to: Howard Stein, Tucker & Stein PS, Inc.;1404 140th Pl. NE, Ste. 100, Bellevue, WA 98007.

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Associate positions: Downtown law firm seeks two associates with at least two years' experience, and strong research and writing skills. One position will focus on employment and maritime litigation. The other position will focus on business transactional work and some litigation. Send résumé and writing sample to: Louis Shields; LeGros Buchanan & Paul; 701 5th Ave., Ste. 2500, Seattle, WA 98104-7051; or e-mail jlucien@legros.com. Visit our Web site at http://www.legros.com.

Quality attorneys sought to fill high-end permanent and contract positions in law firms and companies throughout Washington. Contact Legal Ease, LLC by phone 425-822-1157, fax 425-889-2775, e-mail legalease@legalease.com, or visit us on the Web at http://www.legalease.com.

Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP is actively and aggressively expanding our business and real estate/land use practices in our Tacoma and Seattle offices. Tax, ERISA, securities and banking experience preferred. Send résumé to: Executive Director, 1201 Pacific Ave., Ste. 2200, Tacoma, WA 98402; or e-mail thoml@gth-law.com.

Water rights/endangered species attorney: Yakama Nation, Office of Legal Counsel. Salary: DOE/DOQ. Attorney will serve as legal counsel to the Yakama Nation Tribal Council and the Yakama Nation government. Representation will include appearance before tribal, state and federal courts, focusing on water rights and endangered-species issues. Position requires a strong knowledge of Indian, water and endangered-species law; strong litigation skills, with experience in federal courts; minimum three years' legal practice experience, with practice in the fields of Indian, water and endangered species law. Must be a member of the WSBA. Please contact the Yakama Nation Personnel Department at 509-865-5121 for a complete job description and an application packet.

Jordan Schrader (formerly known as Tarlow Jordan & Schrader), a progressive, performance-based 55-person business, real estate and construction law firm, has outstanding opportunities for experienced, entrepreneurial, top-quality attorneys: 1) partnership opportunity for a senior-level creditors' rights and bankruptcy attorney with a full or partial book of business; 2) partnership opportunity for an experienced real estate attorney with a minimum of eight years' experience and portable business. Rainmakers with portable business are always welcome to discuss our performance-based compensation system and the strong support we provide in business development and case management. We offer an energized, client-oriented team atmosphere and a highly competitive compensation package, including a 12.5 percent employer-paid retirement plan. Reply in confidence to: Bev Davis, COO, Jordan Schrader, PO Box 230669, Portland OR 97281; 503-598-7070; bev.davis@jordanschrader.com.

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