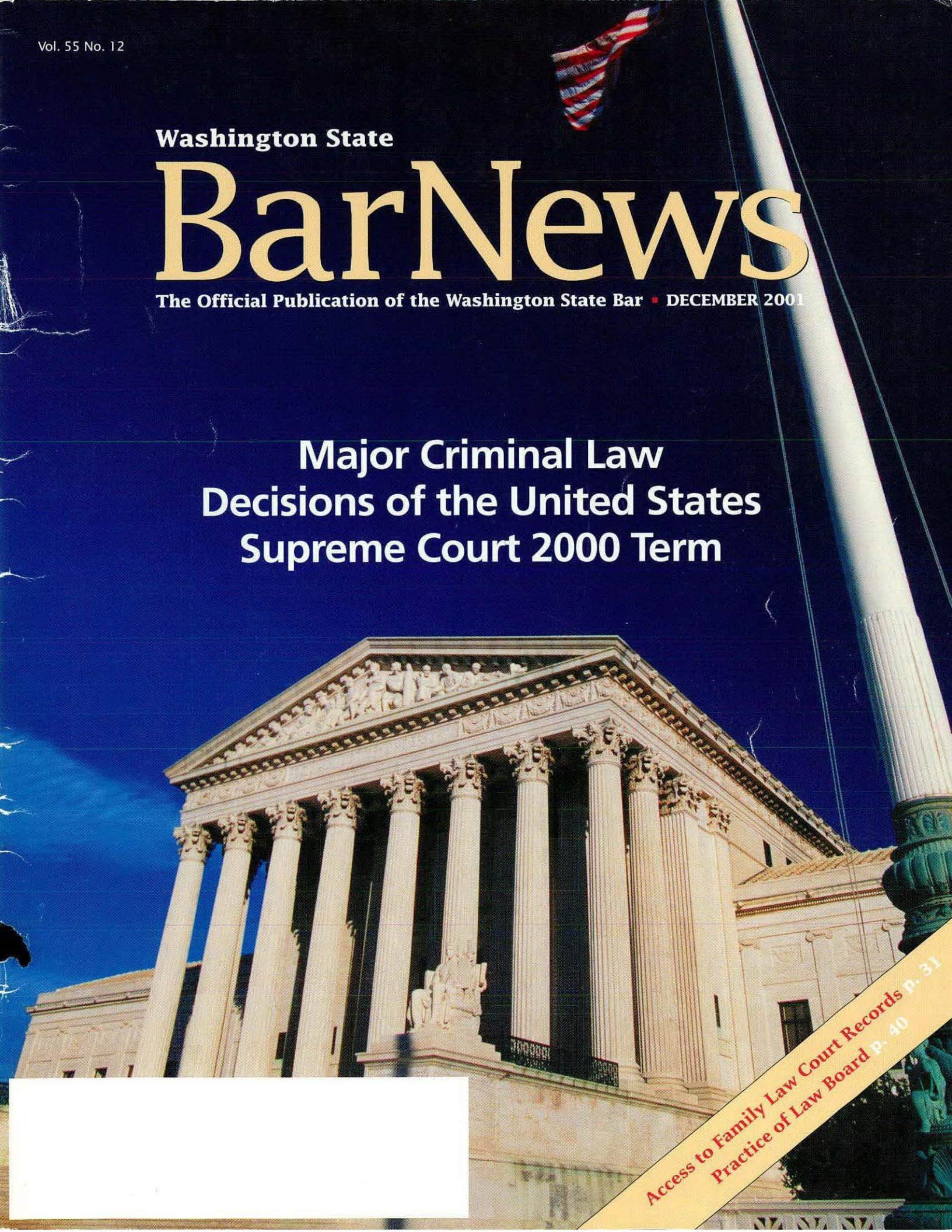
Vol. 55 No. 12



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Major Criminal Law Decisions of the United States Supreme Court 2000 Term

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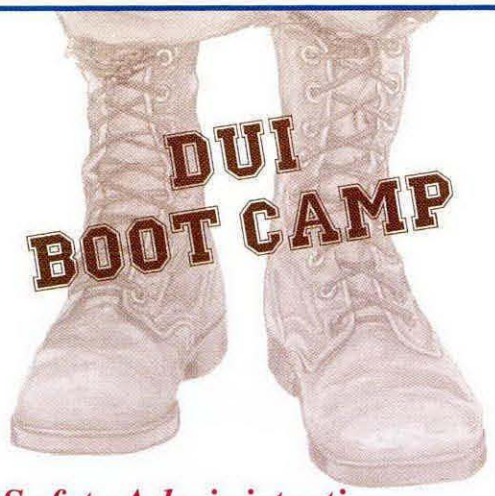

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December 2001

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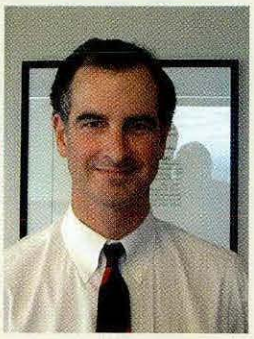
Breaking News
A 9th Circuit Court of Appeals' panel has reversed a previous decision which outlawed IOLTA accounts as unlawful takings. Details on the IOLTA litigation will appear in the next issue of *Bar News*.

IN MEMORIAM



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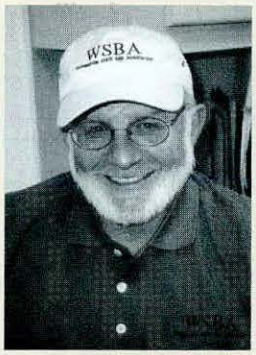

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Working together to champion justice

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Praise for "Proud" Article

Editor:

I would like to thank Governor Vicky Vreeland and Karen Koehler for their terrific article in the October *Bar News* (p.17) titled "Proud to Be a Lawyer ... a Female Lawyer." Reading these terrific stories of courageous and pioneering women lawyers makes us all proud to be lawyers. Well done.

Jan Eric Peterson
Seattle

In Support of "Friendly Parent"

Editor:

Bravo to Douglas Becker, Senator Jim Kastama and Doug Martin for their insightful letters supporting the "friendly parent" legislation (SB 5511). I, too, wholeheartedly support the friendly parent factor, because it promotes cooperation, not conflict.

As a family law attorney for 14 years, I have seen more than enough conflict between parents over their children. Nothing in the current Parenting Act clearly promotes cooperation. Instead, parents in divorce wars battle to gain and hold ground, not wanting to cede anything to the other parent, for fear of having it used against them. (Ask any attorney whether they advise their clients to let the other parent have more time with the children during a heated parenting case.)

The friendly parent factor would encourage parents to cooperate, and is a positive attribute that parents can demonstrate. Margaret Dore's tired, old, apocryphal stories about manipulative parents using friendly parent as a weapon do not undermine friendly parent, they only demonstrate that parents can and do use manipulation and tactics during litigation. What a surprise! Ms. Dore is naive if she believes that lying and manipulation are confined only to friendly parent issues.

Any factor can be used and abused by litigious parents. And it is somewhat disingenuous for Ms. Dore to decry the effects of a friendly parent factor when it hasn't even been enacted yet. Isolated incidents of bad parental conduct and litigation tactics should not tar the overall policy. And, as pointed out by Senator Kastama, friendly parent bills have passed overwhelmingly in both the House and the Senate. The bills failed to advance due to politics, not policy.

Despite the alarmist claims of friendly parent foes, domestic violence is a red herring in this debate. If any Section 191 factors (including mental illness, child abuse, alcohol or drug abuse, or domestic violence) are present, the friendly parent factor cannot be applied. It appears that for some domestic-violence (DV) advocates, invoking the specter of domestic violence is all that matters. They don't let a little thing like lack of evidence get in their way. To DV advocates, any time domestic violence is alleged (by the female), there is a presumption that DV has been perpetrated (by the male). It is almost an article of faith, which must then forever dictate all aspects of the parenting plan.

I have been helping to pass friendly parent in the Washington State Legislature for over three years. Every year the opposition gets more strident and hysterical in their rhetoric. To hear them speak it is as if friendly parent is the coming of the apocalypse. They literally claim it will result in the deaths of more women and children. Yet, most parents do not engage

in domestic violence or child abuse, and these families should not be robbed of a positive family law reform because a small minority of parents engage in abusive behavior.

In fact, according to Dr. Diane Lye's Parenting Act Study (1999), only 18 percent of first parenting plans contained restrictions due to *all* limitation factors, and only a portion of those were due to domestic violence. Opposition to friendly parent because of domestic-violence concerns is truly the tail wagging the dog. Should 82 percent of parents and children be denied this improvement because of 18 percent?

Our current winner-take-all system brings out the worst in parents. The friendly parent bill will bring out the best. Currently, when one parent asks the other for extra time with the child, or to switch days or weekends, the usual answer is no, because the parent with the residential time fears losing the time if he or she gives it to the other parent. Under friendly parent, each parent would be able to allow the other parent extra time without fear of adverse consequences. Everyone wins: the parents establish a mode of cooperative behavior, and the children benefit directly from increased parental cooperation and reduced conflict. Dr. Lye's study concluded that high levels of parental conflict are detrimental to children of divorce. Friendly parent is one remedy for this problem.

Those who claim friendly parent is inconsistent with our overall statutory scheme are wrong. A form of friendly parent is already embodied in the modification statute. RCW 26.09.260(2)(d) provides that if a parent is held in contempt for denial of the other parent's residential time twice in three years, or is convicted of custodial interference, this can be a basis for modification of the primary residential parent. If friendly parent is good policy for post-decree modification, why not for initial parenting determinations? Plus, enactment of the friendly parent as an initial factor will encourage more cooperative plans in the first place, and will likely reduce the incidence of future modifications.

Finally, friendly parent is an equal-opportunity factor. It can be demonstrated equally well by both mothers and fathers. I believe the visceral opposition exhibited by most women's groups and advocates of female domestic-violence victims is due to the fact that friendly parent will level the playing field in parenting disputes. No longer will mothers have an almost automatic stranglehold on the primary residential parent. Both moms and dads will be able to demonstrate their cooperative nature, and whether they are able to place the children's best interests ahead of their own. Parenting disputes will be less about throwing mud at the other parent, and more about keeping both parents active in the child's life.

Lisa D. Scott
Bellevue

Response to "Defense Bar" Editorial

Editor:

The editor's page (September *Bar News*, p. 15) indicated you would be "proud to be a lawyer" when defense trial lawyers "stand up to defend" the plaintiffs' bar. You claimed "junk lawsuits" were prevented by Rule 11 and the RPCs.

I disagree with both your assertions. As to the latter, Rule 11 has been attacked by

the plaintiffs' bar who want to remove any language which would allow a sanction of an attorney, as opposed to a party. In terms of using the RPCs, I would challenge you to find a case where an attorney has been disciplined for a frivolous lawsuit. That doesn't happen.

As to the former, many defense trial lawyers have handled contingent fees in their careers, and when proposals to adopt an English rule have been floated, the Washington Defense Trial Lawyers has stood against those proposals. But to suggest that defense lawyers should support the rueful antics of the plaintiffs' bar is asking too much. All of us have been victimized by results of this litigious society — increased insurance rates emptying our pockets, bankrupt ski areas reducing our recreational opportunities, a packet of releases and liability waivers for our kids at soccer camp. These are the results of the plaintiffs' bar and I, for one, will not defend such results. There is too much litigation, and even though my livelihood depends on plaintiffs' lawyers filing lawsuits for me to defend, as a citizen, taxpayer, parent and human being, I will not defend junk lawsuits or other outrageous attempts to provoke more lawsuits.

I am proud to be a lawyer, but more proud to be a defense lawyer.

Andy Cooley, past president
Washington Defense Trial Lawyers
Seattle

Editor:

I am stunned and offended by your "Two Cents' Worth" column in the September 2001 *Bar News*. In that column, you suggest that "business and insurance lawyers" should start defending the civil system; and then you wrap up with this unbelievable gem: "When the defense trial lawyers stand up to defend their trial-lawyer colleagues — and with them our open, accessible civil justice system — then I'll really be proud to be a lawyer."

What planet have you been living on?

The defense trial bar in this state has a long history and storied tradition of championing the civil justice system.

The history of the Washington Defense Trial Lawyers (WDTL) is one of involvement in bar activities, legislation, and community activities to improve the system and send the message to the public that this is a system that works and well serves its constituents. I challenge you to take a look around you at the leaders of the defense bar. Even your friends among the plaintiff trial lawyers will readily concede that the giants of the defense bar in this state — Ross Burgess, Rollie Hofstedt, Mark Honeywell, Mike Patterson, Fred Gentry, Dan Keefe, Matt Murray and hundreds of others — have spent their careers doing exactly what you imply we don't do.

Like many lawyers, I handle both insurance defense work and plaintiff cases. For over 30 years, I have been telling everyone who will listen (including high-school classes, friends, family, bankers, plumbers, log scalers, clients and jurors) that, in thousands of courthouses around this country, every working day, this is a system that works. I tell them that, unfortunately, it is a system that is somewhat like the scheduled airlines. We do not hear about the 30,000 successful, safe flights every day. We only hear about the rare, unfortunate crashes.

I know for a fact that most of the defense trial lawyers that I meet, both across

the table and on the same side of the table, not only hold the same beliefs, but spread and defend these beliefs at every opportunity.

In my humble opinion, your boneheaded swipe at the defense trial bar was a case of lazy journalism that was just plain wrong. You owe a clear and ringing apology.

Thomas A. Brown
Aberdeen

Editor:

We were very disappointed with your recent "Two Cents' Worth" column in the September 2001 *Bar News*. Your bashing of the civil defense bar is inappropriate, and undermines Jan Peterson's excellent job of promoting the "proud to be a lawyer" theme. Publishing your article at the same time Mr. Peterson was finishing his term also seems ironic.

The Washington Defense Trial Lawyers has 750-800 active members and has always supported our civil justice system. Our state Bar Association should promote the "proud to be a lawyer" theme, rather than advance personal, biased, unfounded opinions aimed at a large segment of the Bar. We have good relationships with our counterparts in civil litigation and have attempted to promote Mr. Peterson's theme. Your article undermines all our efforts.

Roy Umlauf, immediate past president
Washington Defense Trial Lawyers
Seattle
Brad Maxa, president
Tacoma

Response to Umlauf/Maxa Letter

I believe the point of Mr. Panitch's editorial is the lack of public affirmation by the defense bar that the system actually works. Active debate over the roles of attorneys in litigation and how well we are fulfilling them is appropriate. What most lawyers hear through mass media, and read in profession-specific publications does not contain much "defense of the system" by the defense bar. If Mr. Umlauf and Mr. Maxa would provide some examples of the defense bar "defending the system," it would be educational for many of us, would show our common purpose, and we all would benefit. The best response to Mr. Panitch's editorial may be to give examples of why you believe his view on this subject is far wide of the mark.

Jerry Kimball
Seattle

Readers are invited to submit letters of reasonable length to the editor via e-mail at comm@wsba.org, by fax (206-727-8319), or mail. Due date is the 10th of the month for the second issue following, e.g., January 10 for publication in the March issue. Letters to *Bar News* will usually be published, unless the writer specifically asks us to withhold publication. The editor reserves the right to edit letters as deemed appropriate.

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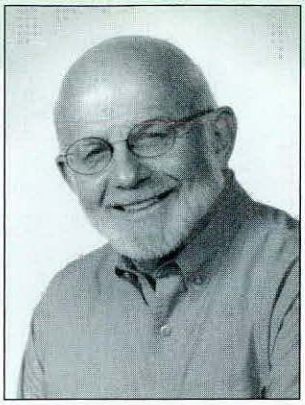


Working with Our Colleagues in Neighboring States

by Dale L. Carlisle
WSBA President

The Board of Governors is moving ahead in several areas related to multijurisdictional practice. We would like to report to you on these matters, and welcome your thoughts and suggestions concerning them.

Reciprocity

The board met in mid-October in Vancouver, Washington. In addition to a very successful "listening lunch" with members of the Clark County Bar Association, we met with 10 lawyers and four Bar Association executives from Idaho, Oregon and Utah. This regional group started about two years ago, and resulted in Idaho and Oregon adopting reciprocity rules for licensing, which tie into an already existing reciprocity rule in Washington. Utah was originally invited and did not participate, but is now considering a similar reciprocity. The ABA, at midyear and annual meetings, has featured this Northwest alliance as a unique answer to some multijurisdictional practice issues. The program was also recognized earlier this year at a Western States Bar Conference.

I am not going to recite the specifics of complying with these reciprocity rules; however, WSBA General Counsel Robert Welden has authored an article about our reciprocity rule, which includes references to the Idaho and Oregon rules ("Reciprocal Admission," *Bar News*, Sept. 2001, p. 43). All three states have instructions for application on their Web sites (Washington at www.wsba.org/faq/reciprocity.htm; Oregon at www.osbar.org/reciprocityfaq.html; and Idaho at www.state.id.us/isb/reciprocal_admission.htm). Generally, one must: (1) have practiced continuously for the prior three years; (2) pass a character and fitness requirement; (3) pay the licensing fee; and (4) take 15 hours of CLE covering ethics and special state-specific procedure areas. Idaho and Oregon will begin accepting applications by the first of the year. Each state has implementation actions in process.

The questions I am most frequently asked about the reciprocity rule is how CLE and discipline will be handled. The answers demonstrate the close relationship we have with our neighboring states. Except for 15 hours of state-admission CLEs, the current planning is that the fulfillment of CLE requirements of the attorney's state of residence meets the requirements for continued licensing in the other state. Discipline will be handled by the state in which an ethics violation occurs, and under the existing rules, the other states where the attorney is admitted will impose comparable discipline.

If Utah adopts a similar rule, we would have approximately 50,000 lawyers eligible for reciprocal practice in four neighboring states. By the end of next year, I believe this will be the case. All four states expect this to lead to more uniformity in ethics and practice rules as we continue to work together. Reciprocity will benefit WSBA members; our Northwest colleagues; and our clients, as their business and legal problems increasingly cross state lines.

In discussions with our neighboring states, it appears that many issues the other states are addressing are similar to those Washington is facing.

Pro Hac Vice Practice

Pro hac vice is another area of multijurisdictional practice which should also become more uniform. Idaho and Oregon both have a centralized system of licensing and reporting for *pro hac vice* admissions. It is generally limited to one person, one case, one court, and for up to one year. Washington has no such uniform rule; each court operates on its own. This creates issues in discipline and may also be inconsistent with our reciprocity rule. The Board of Governors has initiated a study of submitting a uniform rule to our Supreme Court. We will continue to communicate with the Oregon and Idaho bars about the possibility of having some uniformity among the three states.

All of this is consistent with our Future of the Legal Profession Study Group, which, over the past year, addressed the future of the practice of law, and recommended that we move forward with multijurisdictional practice rules. They also recommended we consider for Washington a model rule that the ABA will consider in February.

Similar Issues Facing States

In discussions with our neighboring states, it appears that many issues the other states are addressing are similar to those Washington is facing. Sharing of ideas and various possible solutions are of benefit to the bar associations of each state.

- The Oregon State Bar has its own long-standing malpractice insurance program, which it underwrites and operates. Oregon lawyers are required to participate. (This is also true in British Columbia.)
- The Idaho State Bar sponsors an annual six-week-long "law school" for non-lawyers, which operates in conjunction with one of their colleges and helps citizens with knowledge and understanding of the legal system.
- The Oregon *pro hac vice* fees are earmarked for access to justice programs. The Idaho fees are retained in their general funds.
- Oregon has a 14-member Board of Commissioners which includes three non-lawyer members. Members of the Idaho and Utah boards, like Washington, are all lawyers. All boards are generally based on geographic representation, but have some additional representation for areas of higher lawyer population.

The WSBA can only benefit from closer relationships not only with bar associations from neighboring states, but also with our own specialty bar associations. The BOG focus on continuing and strengthening these contacts will benefit Washington lawyers and their clients. I welcome your suggestions or thoughts. (Contact me at dcarlisle@gth-law.com or 253-620-6401.) As demonstrated at our Vancouver meeting, the Board of Governors looks forward to continuing to listen to and interact with our members, as well as our colleagues in neighboring states.

Two Cents' Worth

by Mark A. Panitch
Bar News Editor

"I really believe that the pagans, and the abortionists, and the feminists, and the gays and the lesbians who are actively trying to make that an alternative lifestyle, the ACLU, People for the American Way — all of them who have tried to secularize America — I point the finger in their face and say, 'You helped this happen,'" Rev. Jerry Falwell, *The 700 Club*, Sept. 13, 2001

"All these crimes and sins committed by ... Americans are a clear declaration of war on God...." Osama Bin Laden, 1998

Tens of thousands were recently slaughtered in the Balkans because they crossed themselves with the wrong fingers, or not at all.

Every time someone claims he or she has the Truth, I rush home, pack a suitcase, and get ready to run. One problem with the Truth is that it demands that believers spread it. Another problem with the Truth is that it demands that nonbelievers accept and believe it. A third problem with the Truth is that it is singular and unique. A fourth problem is that Truth doesn't handle disagreement very well. I know about these things because I am the first member of my family who has never lived in a home where the suitcase was already packed and ready so we could flee when Truth crashed through the front door.

A hundred years ago my grandparents came to America from a land where the soil was drenched in the blood of nonbelievers. Ironically, those who held the Truth on Monday could become the infidel or nonbeliever by Friday. Unfortunately, the irony of the situation was usually lost on everyone. Truth was always too busy spreading itself with fire and steel, and the nonbelievers were too busy running and dying.

The lands my grandparents came from had been overrun at one time or another by Vikings bringing their brand of paganism, Teutonic Knights bringing Christianity, Mongols and Turks bringing Islam, and then wave after wave of Christians bringing nuances of religion that even the best educated found unintelligible. Unfortunately, the question was rarely "do you understand?"; rather, it was almost always the simpler and more expedient "do you believe?" The wrong answer left another generation of widows and orphans. And, tellingly, not much has changed in the last 100 years. Tens of thousands were recently slaughtered in the Balkans because they crossed themselves with the wrong fingers, or not at all. Recently, in Ukraine, one group of Christians sought to disrupt a Papal visit, accusing the Pope of being the Anti-Christ. In those lands, Christians seem to unite only to mistreat Moslems, and Christians and Moslems seem to work together only to harass Jews.

So on arriving in America, my grandparents were stunned and overwhelmed by the open competition of political ideas and religious beliefs. When religious proselytizers knocked on their door, they came with books and pamphlets — not knives and axes. When the ward committee man came around, he brought a basket of fruit and stayed to have a cup of tea. The idea that men could vote regardless of religion or property ownership was breathtaking. The idea that the vote might actually count was beyond their experience. The idea that you could have public discussions — or even heated arguments — about religion or politics without any consequences at all convinced them that, despite all the hardships of immigration, they had made the right decision.

Of course, Grandpa and Grandma became more sophisticated. After all, in "Americanism" classes they learned that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." But in their night-school history class, they learned that the Pilgrims who came for their own religious freedom were quick to deny it to others. Rhode Island was founded by Puritan dissenters who were exiled from Plymouth; Maryland was established as a Catholic colony; new York and Virginia both favored the Anglican Church. Religious tests for public officers and voters, and even for witnesses in court, persisted in many states into the 19th century, and most schools still started the day with Bible reading or the Lord's Prayer.[1] Like most citizens (and many law students), they had a hard time with the concept of federalism. Likewise, the 14th Amendment to the Constitution.

But they got the essential message of America: You may have to listen, but you don't have to believe. You don't even have to pretend to believe. You don't even have to be respect-

ful of others' beliefs, although, as they might have said, what could it hurt?

When the Constitution says no "establishment of religion," it means the government will not establish a religion. There will be no official religion. No religion will be favored over any other. No citizen will be punished for her religious beliefs, or lack thereof. It's not unknown for children — and even adults — to occasionally come to blows over the interpretation of scripture. But a schoolyard tussle doesn't grow into a bloodthirsty mob encouraged by official clergy and backed up by the police or the military. More likely, it results in an informal civics lesson and a lecture from the school principal on the theme of religious tolerance and respect for differences.

So, you may ask, where is this going?

On September 11, the United States was attacked by people whose rage against America was fueled with Truth. Their Truth seems to be an inchoate stew of Moslem theology and ancient ethnic and tribal hatreds. It's difficult to tell exactly what they are for, but its easy to see what they are against. They are against the Western democratic, capitalist world so full of choices, decisions, temptations and — perhaps most important — ambiguity. They see America as the engine of change, and they want to derail the train. So now we seem to be at war.

Unfortunately, in wartime our own national judgment has become cloudy. We have substituted our own simplistic Truth for the much more difficult rule of law. That Truth is that winning is everything, and legal "technicalities" just get in the way — or even comfort the enemy. Consider that Lincoln "suspended" the right of habeas corpus; that thousands of legal immigrants, including U.S. citizens, were summarily rounded up and deported during the post-World War I "red scares"; that tens of thousands of Japanese were imprisoned; that hundreds of thousands of Jews were denied life-saving asylum during World War II; that the lives of thousands of school teachers, public employees and just plain citizens were ruined in the name of anti-Communism during the McCarthy era.

We are a difficult and complex nation. We are defined by common ideas and laws, not by a common ethnicity or religion. In a very real way we are far greater than the sum of our parts. Ultimately, we are defined by our ability to make decisions, accept responsibility for our own actions, and judge people as individuals. These sound like corny platitudes, but they are also words to live by.

The preamble to our Rules of Professional Conduct states: "The continued existence of a free and democratic society depends upon recognition ... that justice is based upon the rule of law grounded in respect for the dignity of the individual.... Without it individual rights become subject to unrestrained power, respect for law is destroyed and rational self-government is impossible." The words seem prescient.

So our job as lawyers is simply to protect the rights and enforce the responsibilities of Americans. In wartime there is always tension between the law and the military. In this war the tension is especially powerful because the enemy remains mostly unidentified. Government has asked the people to give it extraordinary power to intrude and snoop and arrest. After all, Government's job is to win the war.

We should not be concerned about this tension; it's our historic birthright as lawyers. Its been with us at least since *Marbury v. Madison.*[2] We should not be concerned when some official says we are obstructionists. That's called due process. We should not be concerned when some other official complains that law is complex and ambiguous and time-consuming. Bad judgments are usually made in a rush.

Our job as lawyers and officers of the court is to protect the rights that we are fighting for, to make sure there is an America to come home to. To borrow a metaphor from a previous war — our job is to make sure we don't destroy the village in order to save it. Our job is to look Truth squarely in the face and say we are a free people united by our Constitution and the rule of law.

NOTES

1. We forget that as recently as 1963 many public schools still required reading verses from the Christian Bible or reciting The Lord's Prayer at the start of every day. *See*, Engle v. Vitale, 370 U.S. 421 (1962) and Abington School District v. Schempp, 374 U.S. 203 (1963)

2. The common law looks back at least to Dr. Bonham's Case (1610), in which Sir Edward Coke argued that parliamentary laws which contravened custom and reason were invalid.

The "Giving Season" Lasts All Year for Lawyer Volunteers

by Jan Michels
WSBA Executive Director

This past spring, a survey about volunteer work was e-mailed to 11,300 members. 1,234 surveys were returned — an 11 percent response rate! The survey results are noteworthy, even if the results may be skewed toward lawyers who volunteer. The raw number of volunteer hours reported was 248,076! That's an average of 201 hours annually per survey respondent. This number represents the volunteer hours of less than five percent of the WSBA's active members. The survey verified what we have known all along — lawyers give ... and generously.

There appear to be as many ways for lawyers to support their communities and profession as there were survey respondents. Here are a few highlights about how lawyers give their time and energy:

- The top beneficiaries of lawyers' voluntary services are friends, family and neighbors — 68 percent of the respondents reported voluntarily helping these persons with their legal problems.
- Nonprofits, charities and pro bono programs also benefited — more than half of the respondents reported volunteering their assistance to these programs.
- Lawyers are active in community-service organizations — more than 40 percent of respondents participate in organizations such as Lyons or Rotary.
- Over one-third reported giving their services to their bar association, church or local school.
- Hundreds of lawyers help with organized programs for youth, senior citizens, and less fortunate members of our communities.
- A significant number of lawyers serve on volunteer search-and-rescue teams, work as volunteer firefighters, and volunteer for relief organizations such as the Red Cross.

Added to this are the voluntary fee reductions made by lawyers to clients for whom paying the full fee would be a hardship. Fifty-seven percent of those completing the survey reported voluntarily reducing their legal fee by an annual value of approximately $9,000 each.

But the cold presentation of the facts and values of lawyers' volunteer work barely tells the story. Scores of respondents added personal comments about why they volunteer and how good they feel to be giving back.

"Don't forget to mention the hundreds of lawyers who choose to work for public-service organizations for long hours and low pay — that's a form of volunteering, too."

"As I taper down my corporate practice I take more and more pro bono cases."

"I do voluntary mediations as a way of helping others."

"Since I quit practicing law, I give all my time to a missionary service for no pay at all — I thank my family for supporting me in doing this."

"I simply feel it is part of the responsibility of each lawyer to serve the public."

"Don't forget to note the contributions of my family in allowing me time for pro bono work."

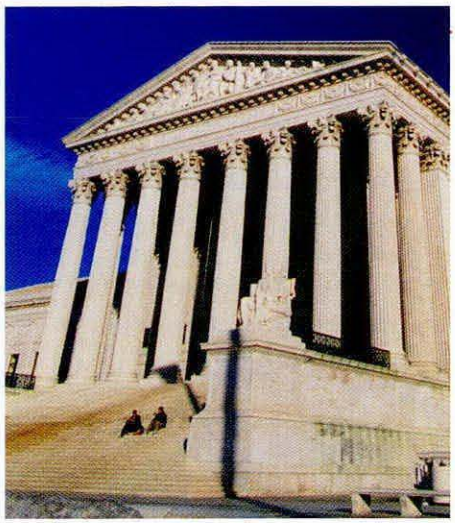
Many good ideas flowed from the survey. "Why not have a WSBA clearinghouse for worthy organizations to submit their needs for legal services to match up with lawyers willing to take on a project needing legal assistance?" asked a member. "How can we recognize the family support pro bono work requires?" inquired a number of respondents. We received many good ideas about better ways to capture the degree of volunteering lawyers do. More than 30 lawyers responding thanked the Bar for asking and caring about their volunteer service. Lawyers are proud of what they do for their communities, and this evidence shows they have every right to be proud.

There is a sad note, too, which accompanied many reports. In their own words, lawyers report, "I'm skeptical that documenting volunteer hours will affect the public's perception that lawyers are greedy and unethical." "I'm resigned to the lack of appreciation and respect for my profession." There was a begrudging and cynical tone to some of these comments: "It's just plain hard to fight against this public perception, and it wears me down," reported one lawyer.

Providing facts may help lawyers feel *proud to be a lawyer*, but may not change public opinion. That's where public legal education and working to build public trust and confidence in our justice system come in. Meanwhile, take pride in knowing that 1,234 lawyers contributed nearly 250,000 hours of service in the past year, and many more continue to volunteer their time to their communities.

Major Criminal Law Decisions of the United States Supreme Court 2000 Term: Part One

by Craig Hemmens



Clear ideological blocs exist, with Chief Justice Rehnquist and Justices Scalia and Thomas frequently aligned in opposition to Justices Breyer, Ginsburg, Souter and Stevens.

This is the first article in a two-part series.

During its 2000 term, the United State Supreme Court decided a total of 85 cases, issuing 77 signed opinions. This continues a downward trend in signed opinions, as the 1998 term had only 75 opinions, and the 1999 term, 74 opinions. Almost 9,000 cases reached the Court, the vast majority being denied review. While this term of Court will undoubtedly always be remembered as the year of *Bush v. Gore*, there were a number of other significant decisions, particularly in criminal justice.

There were a significant number of unanimous decisions, and 49 decisions (58 percent) were decided by at least a 7-2 majority. This statistic suggests the members of the high court are in ideological agreement, but it should be noted that there were 26 cases with 5-4 decisions (31 percent), and the dissents were rather acrimonious at times. Clear ideological blocs exist, with Chief Justice Rehnquist and Justices Scalia and Thomas frequently aligned in opposition to Justices Breyer, Ginsburg, Souter and Stevens.

Justices Kennedy and O'Connor continue to be crucial "swing" votes, both appearing frequently in the majority in the 5-4 decisions (each being in the majority 20 out of a possible 26 times). Chief Justice Rehnquist and Justices Scalia and Thomas were each in the majority 17 times in 5-4 decisions. The remaining four justices were in the majority in 5-4 cases much less frequently, between nine and 11 times each. Justices Kennedy and O'Connor also filed far fewer dissents than any of the other justices. Justice Stevens dissented most often (25 dissenting votes and 16 dissenting opinions), and was the only justice to file more than one solo dissent (he filed four). Majority opinion authorship was very evenly divided, continuing a trend under the leadership of Chief Justice Rehnquist. Justices Scalia and Stevens disagreed the most, in 40 percent of all cases. In contrast, Justices Scalia and Thomas disagreed in only one case.

More than a third of the written opinions handed down by the high court dealt with criminal law and procedural issues. The Court decided several significant corrections-law cases and issued a number of important Fourth Amendment rulings. As usual, several cases involved the interpretation of federal criminal statutes. Following is a summary of the significant criminal justice-related decisions of the 2000 term, arranged alphabetically by subject. The case history, rationale of the Court, and vote totals are included.

AEDPA

Artuz v. Bennett, 69 USLW 4001 (2001)

In 1984, Bennett was convicted of several offenses in New York. After his state appeals were unsuccessful, in 1998 he sought to file a *pro se* habeas petition raising claims which he was procedurally barred by New York state laws from raising in a state habeas petition. One law barred raising an issue that had been settled on direct appeal, the other barred raising a claim that Bennett had the opportunity to raise, but chose not to raise, on direct appeal.

The Anti-Terrorism and Effective Death Penalty Act (AEDPA) requires a federal habeas petition to be brought within one year of the latest of several dates. The district court dismissed Bennett's federal habeas petition as untimely, relying on 28 USC

2244 (d)(1), which requires filing within one year. Bennett's habeas petition was not filed until approximately one year and nine months after his state petitions were dismissed. The 2nd Circuit reinstated Bennett's habeas petition, relying on 28 USC 2244(d)(2), which states that the time during which a "properly filed" application for state or other review is pending tolls the running of the one-year time limit.

The Supreme Court, in a unanimous opinion by Justice Scalia, upheld the 2nd Circuit, and held that a petition is "properly filed" so long as it comports with procedural requirements such as when it is delivered, whether the filing fee was paid, and whether the proper form was used. The high court rejected the claim that "properly filed" referred to the substance of the claim — the fact that the issues raised by Bennett are banned from state review did not mean the habeas petition was not "properly filed." Additionally, only claims in a petition, not the petition itself, can be procedurally defaulted. Claims are raised, whereas petitions are filed.

Duncan v. Walker, 69 USLW 4473 (2001)
Walker filed a federal habeas petition in 1996, four days before his state robbery conviction became final. The petition was dismissed three months later on the ground that Walker had not yet exhausted his state remedies, a requirement imposed on federal habeas by the AEDPA. Eleven months later, he filed a second petition. This was dismissed by the district court as "untimely," since the AEDPA requires that federal habeas petitions be filed within one year of state review becoming final. The 2nd Circuit reversed, holding the one-year time limit was tolled during the three months the first appeal was pending. At issue was the meaning of 2244(d)(2)'s phrase "application for state post-conviction or other collateral review." The 2nd Circuit felt "other collateral review" referred to federal habeas review.

Justice O'Connor, writing for a 7-2 majority, disagreed with the 2nd Circuit's reading of the AEDPA and held that the one-year time limit was not tolled during the consideration of the first petition, thus Walker was procedurally barred from filing his second petition. The majority opinion noted that in other portions of the AEDPA, Congress used the phrase "state and federal"; therefore, if Congress meant to include "federal" within the phrase at issue here, it would have expressly done so. The dissent by Justice Breyer argued the statutory language was ambiguous, and that Congress could not have intended to deny Walker an opportunity to be heard in federal habeas review because he mistakenly filed early and the district court took a long time dismissing the early filed petition. He argued that the ambiguity in the statute should be resolved in Walker's favor.

Tyler v. Cain, 69 USLW 4620 (2001)
In *Cage v. Louisiana* (1990) the Supreme Court held unconstitutional a particular definition of "reasonable doubt." In *Sullivan v. Louisiana* (1993) the Court further held that providing an unacceptable definition of reasonable doubt to the jury was never "harmless error" and instead would likely mandate the reversal of a conviction and a retrial. In 1996, Congress passed the Anti-Terrorism and Effective Death Penalty Act (AEDPA), which limited the ability of inmates to bring successive habeas petitions.

Tyler was convicted of murder in a 1975 trial utilizing the reasonable-doubt instruction later held unconstitutional in *Cage*. He failed to challenge the instruction in a habeas petition filed after passage of the AEDPA. Section 2244(b)(1) of the AEDPA bars claims in a second habeas petition not presented in the first petition. An exception to this rule is 2244(b)(2)(A), which permits the claim if it "relies on a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable." Tyler argued this exception applied to him, as *Cage* constituted a new constitutional rule regarding due process, and that *Cage* had been made retroactive by lower courts and by the Supreme Court in *Sullivan* and other cases. The 5th Circuit disagreed, putting it at odds with a number of other federal circuit courts.

The Supreme Court, in a 5-4 decision authored by Justice Thomas, held that the Supreme Court had not made *Cage* retroactive in *Sullivan*, and thus the second habeas petition was barred. *Sullivan* said a reasonable-doubt error was a structural error, but such a holding was not necessarily retroactive. After consulting dictionary definitions of "made," Justice Thomas concluded that these definitions required that the Supreme Court expressly "hold"

that *Cage* was to be applied retroactively. The Supreme Court had not done so previously, and declined to do so here. The dissent by Justice Breyer argued that *Sullivan* and *Teague v. Lane* (1989), dealing with retroactivity and habeas petitions, taken together, logically mandated *Cage*'s retroactivity, even if they did not expressly so hold.

Appeals

Becker v. Montgomery, 69 USLW 4390 (2001)

Ohio inmate Becker filed a *pro se* Section 1983 action, alleging the conditions of his confinement violated his constitutional right to be free from cruel and unusual punishment. The district court dismissed for failure to state a claim. Becker filed a notice of appeal, using a court-provided form. On the line "counsel for appellate" he typed rather than signed his name. For a notice of appeal to be valid, Federal Rule of Civil Procedure (FRCP) 11(a) requires a signature on the form. The 6th Circuit Court of Appeals dismissed Becker's appeal on the ground that a handwritten signature was required and its absence constituted a jurisdictional defect. Becker then filed a signed motion for reconsideration, which was also denied.

The Supreme Court unanimously reversed the 6th Circuit. While agreeing with the courts below that FRCP 11(a) requires a signature, and that a typed name does not constitute a signature, the Court also noted that FRCP 11(a) provides that an omitted signature may be "corrected promptly after being called to the attention of the attorney or party." Becker had signed the notice of appeal when notified of his error, and this should have saved the notice of appeal.

The 6th Circuit Court of Appeals dismissed Becker's appeal on the ground that a handwritten signature was required and its absence constituted a jurisdictional defect.

Daniels v. United States, 69 USLW 4279 (2001); *Lackawanna County District Attorney v. Coss*, 69 USLW 4285 (2001)

Daniels and Coss both sought to challenge the validity of prior convictions which were used in a subsequent sentencing proceeding for enhancement purposes. In Daniels' case, the federal prosecutor sought to introduce evidence of four prior state convictions during sentencing for a federal firearms offense. These prior convictions qualified Daniels for a sentence enhancement under the Armed Career Criminal Act, 18 USC 924(e). After a failed direct appeal, Daniels sought habeas relief on the ground that one of the prior convictions was tainted by ineffective assistance of counsel. The 9th Circuit relied on a Supreme Court decision, *Custis v. United States* (1994), to hold that a collateral attack could not be maintained, except for the ineffective-assistance-of-counsel claim. Coss had been convicted in state court, and had his sentence enhanced based on a prior state conviction. He also argued that the prior conviction should not be used at sentencing because he had previously received ineffective assistance of counsel. The 3rd Circuit Court of Appeals permitted his appeal.

The Supreme Court, in a pair of 5-4 decisions penned by Justice O'Connor, held that habeas petitioners are not permitted to challenge the use of prior convictions in sentencing hearings, and that the appropriate forum for challenges is on direct appeal. The Supreme Court stated that ease of administration and the need for

finality justified the ban on habeas attacks. Justice O'Connor pointed out this ruling did not eliminate challenges based on ineffective-assistance-of-counsel claims, but merely limited those challenges to the direct appeal. The holding in this case merely restricted the use of federal habeas to relitigate the issue. The dissent by Justice Souter argued that the concerns of ease of administration and finality did not justify denying defendants the opportunity to challenge the use of prior convictions in federal court.

Criminal Law

United States v. Oakland Cannabis Buyers' Coop., 69 USLW 4316 (2001)

In 1996, California voters passed the Compassionate Use Act, which authorized the possession and use of marijuana for medical purposes if so approved by a licensed physician. Other states had passed similar laws. This law was in conflict with 21 USC 841, the Controlled Substances Act, which made it a federal crime to "manufacture, distribute or dispense" a controlled substance. Marijuana was listed as a Schedule I controlled substance, meaning the only exception to the general ban was for government-approved research projects.

The government sought to enjoin the Oakland Cannabis Buyers' Cooperative from distributing marijuana to its members, and AIDS and cancer patients. The cooperative admitted the research exception did not apply to them, but argued that medical necessity provided a defense to criminal liability. The necessity defense allows a defendant to break one law if doing so is necessary to avoid a greater harm.

The Supreme Court, in an 8-0 decision, rejected the cooperative's medical-necessity defense. Writing for the Court, Justice Thomas noted that Congress, by including marijuana as a Schedule I drug, had determined that marijuana has no generally accepted medical benefits. The Supreme Court was unwilling to override a legislative act which was not clearly wrong. Three justices concurred only in the judgment, and declined to join the portion of Thomas's opinion which said the defense was per se unavailable, waiting until presented with the issue to decide if the defense applied to a seriously ill patient seeking to avoid "extraordinary suffering."

Rogers v. Tennessee, 69 USLW 4307 (2001)

Rogers stabbed a man in an altercation. Fifteen months later, the man died as a result of the effects of the stab wound; Rogers was then prosecuted and convicted of murder. On appeal, Rogers argued that his prosecution was barred by the common law year-and-a-day rule, under which a defendant could not be convicted of murder if his victim died more than a year after the defendant initially harmed him. The Tennessee murder statute made no reference to the year-and-a-day rule, but there were old state cases discussing the rule. The state appellate court affirmed Rogers's conviction and formally abolished the rule, on the ground that advances in medical science made it unnecessary. Rogers then sought review in the Supreme Court, arguing that abolition of the year-and-a-day rule after he had been convicted constituted a denial of due process because it violated the *ex post facto* clause of the U.S. Constitution.

The Supreme Court narrowly upheld the decision of the Tennessee court. Writing for a 5-4 majority, Justice O'Connor held that there was no due-process violation because the *ex post facto* clause applies only to legislation, not the actions of

courts. Furthermore, abolition of the year-and-a-day rule was neither unanticipated nor indefensible. O'Connor noted that the vast majority of states that have considered the issue have abolished the rule, as advances in medical science have made it obsolete. The rule existed at a time when it was more difficult to link an injury to a subsequent death. Today, the cause of death is more easily established. Additionally, the rule had never served as the basis for a decision in Tennessee, and the current statute makes no reference to it. Thus, the court determined, individuals were on notice that the rule likely did not apply. Writing in dissent, Justice Scalia argued that the *ex post facto* clause should be applied to judicial actions.

Death Penalty

***Penry v. Johnson*, 69 USLW 4402 (2001)**

In *Penry v. Lynaugh* (1989), the Supreme Court declared the Texas death-penalty statute unconstitutional. The statute under which Penry was tried required the jury to answer "yes" or "no" to three questions, none of which allowed the jury to consider mitigating evidence. The Supreme Court held that the jury must be provided with an opportunity to consider any potential mitigating evidence. Penry was retried in 1990, before the Texas Legislature changed the death-penalty statute. The trial judge read the same three-item jury instruction as at first trial, and added a supplemental question concerning mitigating evidence. Penry was again convicted and sentenced to death.

On appeal, he argued that the jury instruction was still inadequate because it required the jury to falsely answer "no" to one of the three required questions if it answered "yes" to the supplemental question. In addition, he argued that the prosecution had improperly been allowed to introduce incriminating statements from a pretrial competency evaluation in violation of his Fifth Amendment privilege against self-incrimination. The Texas Court of Criminal Appeals denied Penry's appeal; the federal district court held that the state's decision was not an "unreasonable application of clearly established federal law." The AEDPA limits habeas corpus review to such situations. The Supreme Court held in *Williams v. Taylor* (2000) that a state court decision is not an "unreasonable application of clearly established federal law" just because it conflicts with federal precedent — the conflict must be unreasonable.

The Supreme Court, in an opinion by Justice O'Connor, ruled unanimously that introduction of psychological evidence at Penry's second trial did not constitute an "unreasonable application of clearly established federal law," and even if it did, the error in this case was harmless. More significantly, a 6-3 majority held that the modified jury instruction still violated due process, and that the state courts' failure to so hold did constitute an "unreasonable application of clearly established federal law." Justice O'Connor noted that the jury instruction was "internally contradictory" and confusing.

In 1991, the Texas Legislature changed the jury instruction to allow the jury to consider mitigating evidence. The dissent by Justice Thomas claimed the jury instruction was not confusing.

***Shafer v. South Carolina*, 69 USLW 4175 (2001)**

In *Simmons v. South Carolina* (1994), the Supreme Court held that whenever the prosecution asserts that "future dangerousness" justifies imposition of the death pen-

alty, the jury must be informed when the sentencing alternatives are limited to either death, or life without the possibility of parole. In response, the South Carolina Legislature amended its death-penalty sentencing statute to provide a third option to death or life without parole: if the jury failed to find an aggravating factor, the judge could sentence the defendant to life without parole or 30 years fixed.

In 1997, Shafer was tried and found guilty of capital murder. At sentencing, the prosecutor did not specifically argue "future dangerousness" as an aggravating factor, but did mention several post-arrest assaults by Shafer, the sort of thing typically used to show "future dangerousness." The trial judge then refused to inform the jury that a life sentence meant life without parole, instead telling them: "[L]ife means until the death of the offender." During

Writing for a 7-2 majority, Justice Ginsburg reversed the South Carolina Supreme Court and held that a jury instruction explaining that "life" means life without the possibility of parole is required by the Due Process Clause.

deliberations, the jury asked whether someone convicted of capital murder could be paroled, but the judge refused to clarify or explain that the only choices, if an aggravating factor was found, were death, or life without parole. The jury found the existence of an aggravating factor and recommended the death penalty. The South Carolina Supreme Court upheld the sentence on the ground that the existence of a third sentencing option made the *Simmons* rule inapplicable in this case.

Writing for a 7-2 majority, Justice Ginsburg reversed the South Carolina Supreme Court and held that a jury instruction explaining that "life" means life without the possibility of parole is required by the Due Process Clause. Justice Ginsburg noted that life without parole was a relatively new sentencing option, one that juries are likely to be unaware of; the jury's question in this case supported her point. Justice Ginsburg also said the presence of a third option did not relieve the trial court of the obligation of informing the jury that life means life without parole. Only when the jury finds aggravating circumstances must it choose between the death penalty or life without parole, so the third option is inapplicable in such circumstances. Furthermore, even before aggravating circumstances are established, any time future dangerousness is a potential issue, the jury must be informed of the meaning of life without parole. The dissent by Justice Scalia said no such instructions were required at common law, and that the jury was adequately informed by the trial judge.

Due Process

Seling v. Young, 69 USLW 4073 (2001)

Young, a convicted rapist, was confined in 1990 pursuant to a Washington statute permitting the civil confinement of individuals found to be sexually violent predators suffering from a mental abnormality or personality disorder. He filed a *habeas* action challenging his confinement as violative of the prohibition on double jeopardy. While Young's appeal was proceeding, the Supreme Court in *Kansas v. Hendricks* (1997) held that the civil commitment of sexual predators was permissible so long as the confinement was nonpunitive

in nature. The district court subsequently dismissed Young's *habeas* petition. The 9th Circuit Court of Appeals reversed, on the ground that while the Washington statute was nonpunitive on its face, as applied to Young it constituted punishment.

The Supreme Court, in an 8-1 decision authored by Justice O'Connor, reversed the 9th Circuit and refused to allow a civil commitment act to be deemed punitive "as applied" to a single individual. O'Connor noted that the court in *Hendricks* had expressly upheld the constitutionality of civil-commitment statutes. The "double jeopardy clause" bars successive punishments, but a commitment pursuant to a civil statute is by definition nonpunitive. Using an "as applied" analysis rather than focusing on the language of the statute would be unworkable, as confinement is not a fixed, unchanging event that can be measured at one point in time. Furthermore, such an analysis would remove the finality of the act and leave it open to repeated challenges. The civil-commitment act gives persons confined under it the right to treatment and rehabilitation. If a person is not receiving treatment and rehabilitation, then he or she may seek such in state court. Thus, there is an appropriate remedy other than holding the commitment unconstitutional.

The Racketeer Influenced and Corrupt Organizations Act (RICO) allows for both criminal prosecution and civil liability.

Federal Statutes

Cedric Kushner Promotions v. King, 69 USLW 4468 (2001)

The Racketeer Influenced and Corrupt Organizations Act (RICO) allows for both criminal prosecution and civil liability. Kushner sued King, a rival boxing promoter, alleging King violated RICO through acts of mail fraud and bribery. King was the president and sole shareholder of his corporation. 18 USC 1962(c) makes it unlawful for a corporate employee to engage in racketeering activities in the course of the corporation's affairs. King argued that RICO was inapplicable to him because he and the corporation were not sufficiently "distinct" entities — he was the corporation and its sole employee. The trial court and 2nd Circuit Court of Appeals agreed with King and dismissed the lawsuit.

On appeal, the Supreme Court unanimously reversed the lower courts and reinstated the lawsuit. The high court held, per Justice Breyer, that while RICO does require two distinct actors or entities, that requirement was met here. King, the president/employee, and King's corporation were separate legal entities, with distinct legal rights and responsibilities. King's activities as employee benefited King's corporation, and RICO was intended to apply to situations where one entity benefits from the criminal acts of another.

Cleveland v. United States, 69 USLW 4003 (2001)

The defendant, a lawyer, participated in a conspiracy to bribe Louisiana state legislators in an effort to obtain a license to operate video poker machines. The defendant was convicted of multiple violations of 18 USC 1341, the federal mail-fraud statute, which makes it a crime to use the mail to obtain money or property via false misrepresentations. On appeal, the defendant argued that the statute did not apply to the fraudulent obtaining of a license, as it

was neither "money" nor "property" as required by the statute. The 5th Circuit Court of Appeals rejected Cleveland's interpretation of the statute, and joined a number of other circuit courts in holding such licenses were "property."

The Supreme Court, in a unanimous opinion penned by Justice Ginsburg, reversed the 5th Circuit and held that a state license was not "property." Justice Ginsburg said the video poker licensing system was regulatory in nature, and did not convey a property interest. Since the state had no property interest in the regulatory scheme, it could not be defrauded of property by someone who violated the statute. The Supreme Court stated that to hold otherwise would depart from common concepts of what constitutes property, and result in a major expansion of federal criminal law. The Court was unwilling to so hold without a clear statement by Congress that such was its intent when it enacted the statute.

Immigration

INS v. St. Cyr, 69 USLW 4510 (2001); *Calcano-Martinez v. INS*, 69 USLW 4526 (2001)

The Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Immigration Reform Act (IIRIRA), both passed by Congress in 1996, contain provisions restricting the judicial review of deportation orders. In a pair of cases decided by a narrow 5-4 margin, the Supreme Court, per Justice Stevens, held that federal *habeas corpus* jurisdiction was not affected by the AEDPA and IIRIRA provisions.

St. Cyr was a Haitian alien who pled guilty to selling drugs prior to the enactment of the 1996 legislation. His conviction made him eligible for deportation, but under pre-AEDPA law he was eligible for a waiver of deportation. The United States argued that the AEDPA applied, and eliminated the authority of a judge to issue a deportation waiver. While in custody awaiting a decision on whether he would be deported, St. Cyr filed a *habeas corpus* petition, alleging the AEDPA's restriction of judicial authority to consider a waiver was not retroactive. The district court and the 2nd Circuit Court of Appeals found for St. Cyr, but other circuits had held otherwise. Calcano-Martinez was one of three permanent residents subject to deportation who challenged their removal via *habeas corpus*.

The Supreme Court, per Justice Stevens, held that the AEDPA did not eliminate *habeas* jurisdiction, so federal courts could examine the merits of the plaintiffs' claims. Language limiting "judicial review" in the AEDPA did not apply to "*habeas corpus* review," as these two items are historically distinct. Furthermore, Justice Stevens asserted that were Congress to attempt to limit *habeas corpus* via the passage of a statute, it would raise serious constitutional issues. Looking at the merits of petitioners' claims, the Supreme Court rejected the retroactive application of limiting discretion.

The dissent by Justice Scalia asserted that the IIRIRA was ambiguous in repealing *habeas corpus* jurisdiction, and that it did not violate the constitution.

Zadvydas v. Davis, 69 USLW 4626 (2001); *Ashcroft v. Ma*, 69 USLW 4626 (2001)

These two cases involved *habeas* petitions filed by resident aliens who were being detained indefinitely pursuant to 8 USC 1231(a)(6). Under this statute, aliens who are found eligible for deportation because they have been convicted of crimes may be detained indefinitely if removal is impossible. Zadvydas was convicted of drug

possession. After he finished his sentence, the INS detained him and attempted to have him deported, but no country would accept him. He filed a *habeas* petition, and the district court ordered him released under community supervision. The 5th Circuit reversed. Ma was convicted of manslaughter and ordered deported, but Cambodia refused to take him. He also filed a *habeas* petition, which resulted in the 9th Circuit ordering his release.

The Supreme Court, in a pair of 5-4 decisions by Justice Breyer, held that the statute should be construed to prevent indefinite detention, as such detention would raise Fifth Amendment due-process issues, since the only procedural protection provided these petitioners was an administrative hearing with the burden on the inmate to show he was not dangerous and therefore suitable for release under community supervision. Breyer conceded the statute's use of "may" permitted a reading that allowed indefinite detention, but given the severity of such, felt the ambiguity must be construed in the alien's favor. If Congress truly sought to allow indefinite detention, the statute must clearly so state. The majority further held that if removal was "not reasonably foreseeable," continued detention beyond six months is presumptively unreasonable. The dissent by Justice Kennedy argued the majority should read the statute literally and not substitute its judgment for that of Congress, particularly in the area of foreign policy.

Prisons

Alabama v. Bozeman, 69 USLW 4465 (2001)

Bozeman was serving time in a federal prison in Florida when Alabama state authorities filed a detainer against him, and sought temporary custody in order to arraign him and appoint counsel for him on a state charge. Bozeman was released into the custody of Alabama officials, who transported him to a county jail where he was housed for one night. The next day, he was arraigned, counsel was appointed, and he was returned to federal prison in Florida. A little over one month later he was tried and convicted in an Alabama state court. On appeal, Bozeman argued the day he spent in custody on the detainer violated the Interstate Agreement on Detainers (IAD).

The IAD is designed to minimize the amount of time already incarcerated persons spend being shipped to another jurisdiction for the resolution of outstanding criminal charges. There was a concern that such detainers could obstruct/interrupt the treatment and programming of the inmates. Thus, article IV(e) of the IAD contains an "anti-shuttling" provision that requires the state that receives an inmate on a detainer to try him within 120 days of his arrival in the receiving state, and that if the inmate is returned to the original jurisdiction before such trial, the indictment is void. It was a common practice for states to violate this language for a short period, as Alabama admittedly did in this instance. Alabama conceded the violation of the literal language of the IAD, but argued there was an implied exception since the purpose of the IAD was to protect rehabilitation, and a one-night stay was better than keeping Bozeman in an Alabama jail for 120 days until trial.

The Supreme Court, in a unanimous opinion per Justice Breyer, held that Bozeman's conviction was invalid because it was obtained in clear violation of the IAD's explicit prohibition on "shuttling." The Court held that there was no implied exception to the clear language of the IAD, nor, as the state argued, such a thing as *de*

minimis or "technical" violations. The language "shall" in the IAD is mandatory, and left no room for doubt.

***Booth v. Churner*, 69 USLW 4387 (2001)**
Booth, a Pennsylvania inmate, filed a Section 1983 action seeking money damages for an assault he alleged was committed by prison employees. The Prison Litigation Reform Act (PLRA) bars an inmate from bringing a Section 1983 action "until such administrative remedies as are available are exhausted." Administrative remedies available to Booth (not surprisingly) did not include money damages. Booth filed the Section 1983 action before exhausting his administrative remedies. The 3rd Circuit Court of Appeals dismissed the lawsuit as barred by the PLRA's exhaustion requirement. Other lower courts had allowed similar lawsuits to proceed if the administrative remedies did not include the relief sought by the inmate.

In a 9-0 decision written by Justice Souter, the Supreme Court affirmed the 3rd Circuit's interpretation of the PLRA and held there was no "futility exception" to the exhaustion requirement. The Supreme Court determined that "exhausted" in the PLRA referred to procedures, not remedies. Thus, the fact that the sought remedy is not available does not affect the PLRA's requirement that the administrative procedures be completed before going to the filing of a Section 1983 action. This interpretation is in keeping with the spirit of the PLRA, which was intended to reduce inmate litigation.

***Shaw v. Murphy*, 69 USLW 4231 (2001)**
Murphy, an inmate with training as an inmate law clerk, was denied permission to assist another inmate in a disciplinary hearing. He nonetheless sent a letter containing legal advice to the other inmate. Prison administrators then commenced disciplinary action against Murphy, for attempting to provide legal advice. Murphy filed a Section 1983 action alleging the denial of his efforts to provide legal assistance to a fellow inmate was a violation of his First Amendment rights. The 9th Circuit Court of Appeals agreed with Murphy, stating the four-part test for when an inmate's constitutional rights may be limited by prison officials enunciated in *Turner v. Safly* (1987) must be modified when a First Amendment claim is raised. Under *Turner*, a prison may limit an inmate's constitutional rights so long as the limitation is justified by a legitimate penological interest, such as institutional security.

The Supreme Court, in a 9-0 opinion by Justice Thomas (no friend to inmate plaintiffs generally), reversed the 9th Circuit and held that the *Turner* standard applied to all constitutional rights of inmates, including First Amendment claims. Instituting disciplinary proceedings for trying to provide legal assistance is acceptable if reasonably related to a legitimate penological interest. Carving out a special exception concerning the provision of legal advice to fellow inmates would unnecessarily complicate prison administration and draw courts into prison oversight. The case was remanded for application of the standard *Turner* analysis.

Summary
The Supreme Court's 2000 term was marked by some significant decisions involving criminal justice. While there was no case that had the immediate impact of *Apprendi v. New Jersey* (2000), which dealt with sentencing enhancements handed down by judges rather than juries, several cases have interesting implications.

The decision in *Seling v. Young* suggests the Court will look favorably on the use of indefinite civil confinement for sexual offenders who have completed their prison sentences. The decision in *Shaw v. Murphy* may dramatically reduce the ability of inmates to assist each other in the preparation of their appeals, which is made especially significant when coupled with the Court's recent decision eliminating the requirement that prisons have law libraries available to inmates.

The Supreme Court, in a 9-0 opinion by Justice Thomas (no friend to inmate plaintiffs generally), reversed the 9th Circuit and held that the Turner standard applied to all constitutional rights of inmates, including First Amendment claims.

In Part Two of this article I examine the Supreme Court decisions involving privacy, right to counsel, section 1983 liability, sentencing, and search and seizure. Several of these decisions will likely have a significant impact on the administration of criminal justice.

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Are Citations[1] on the Way Down?

The Case Against Footnotes[2]

by Helen A. Anderson

I don't usually obsess about citation form. I tend to think that the content of a legal argument is more important than, say, the proper abbreviation of words such as "Pacific" or "hospital" when they appear in case names. But one aspect of citation has caught my attention lately — whether to put citations in footnotes or in the main text.

It used to be that citations in briefs, opinions and legal memoranda would be in the main text, while citations in law review or other journal articles would appear in footnotes. Recently, however, a movement to put all citations in footnotes has claimed many converts among the judiciary and the bar — though there is significant opposition to this trend as well. On July 8, *The New York Times* featured a front-page article on the footnote controversy, noting that many state court judges now use only footnote citations, and spotlighting the role of legal writing guru Bryan Garner in the footnote movement.

Our state has been caught up in this movement. A significant number of Washington Court of Appeals' opinions now contain no citations, and very few case names, in the main text. Full citations are restricted to footnotes. Most Washington lawyers have probably shrugged off this development and continued to cite in the way they were taught years ago in law school. But each year I have a new crop of law students eager to evade page limits through creative use of footnotes, and resistant to the crusty old rules of citation. What do I tell these students? After a knee-jerk reaction, followed by reflection and rationalization, I have concluded that citations belong in the main text.

A significant number of Washington Court of Appeals' opinions now contain no citations, and very few case names, in the main text.

When citations are included within the main text, it is easier for the reader to see what authority supports the argument. The reader can then better assess the argument itself. Legal argument depends as much on authority as on logic. Rather than interrupting the flow of argument, citations show the premises. An argument with footnoted authorities, on the other hand, does not flow smoothly — the reader is forced to interrupt the reading of the main text to consult the notes. Finally, the banishment of legal authority to footnotes sends a strange message about the role of authority in the law.

First, several disclaimers. I see no relationship between quality of legal reasoning and the use of footnotes for citation. I have seen both brilliant and incomprehensible opinions in the law-review style, as well as the traditional style. Nor do I have a fanatical wish to banish all footnotes from opinions. Footnotes are properly used when dealing with a truly tangential matter, to explain why an issue will not be addressed, or to set forth a long quotation from the record or a

1. Citation: A reference book often cited as an authority; a quotation or citation from such a source.
2. Footnote: A mark or footnote used to direct a reader elsewhere for additional information.

statute. A footnote can also be the right place for a string cite (e.g., a list of cases or statutes from all 50 states) as long as you summarize the string in the text.[3]

Many appellate judges appear to have become converts to Garner's approach — banish the citations and let the argument proceed uninterrupted! Garner is the author of numerous articles and books, including *A Dictionary of Modern Legal Usage* (Oxford University Press, 2d ed. 1995) and *The Winning Brief* (Oxford University Press 1999). He recently argued in favor of footnotes in his otherwise excellent *Legal Writing in Plain English* 77-81 (University of Chicago Press 2001). Garner maintains that citations clutter up the text and make it practically unreadable. Although I usually agree with him on legal writing, we must part ways on the matter of footnotes.

The "Good Old" Style

The traditional style of including citations within the text often seems ridiculous to new law students, as do the obsessive-compulsive Bluebook rules of citation format. It is true that the citations clutter the text with strings of numbers and gibberish abbreviations, but lawyers quickly learn to skim over these cites and pull from them certain vital information: the year of the opinion, the particular court, and sometimes the kind of case (civil or criminal, in rem, etc.). This information tells the reader something about the authority for the argument — how recent are these cases, and from what court? The cite also tells the reader whether the authority is persuasive or binding. The cite conveys all this information in shorthand.

Certainly the traditional style can be abused with tedious string cites and excessive quotation. But the fault there is with the individual writer, not the style of citation.

Footnotes Interrupt the Argument

The law-review style requires that all citations be placed in a footnote. Case names can appear in the main text, but the name is then severed from the citation. It is true that with this style the text appears to flow free, unimpeded by the strings of citation code. But this free flow of text is an illusion; the serious legal reader will never simply glide through it to the end. Most lawyers will need to interrupt their reading to see what authority underpins the reasoning.

Footnote citations pose special difficulties in online research, where footnotes sometimes become endnotes online. It is a challenge to scroll to the end, find the appropriate endnote, and then return to the main text. In other databases, the full footnote appears as an interruption within the text rather than at the end of a page or document. There, the footnote text becomes more of an interruption than a mere textual citation ever could. Any free flow of argument the author sought through the law-review style is then lost.

It is ironic that footnoted citation, which is supposed to make reading easier, comes from academic legal writing. Law-review reading, where the meat of the analysis is often in the footnotes, is anything but unimpeded. Few lawyers strive to imitate the law-review article in their writing to a court. In fact, junior lawyers are often told, "We don't need a law-review article," meaning, don't address every tangent or exhaust every possibility when writing to a court. The law-review style may be appropriate for academic legal writing, but it does not do much for opinions (or briefs). When reviewing an argument in an opinion, we

want to know what authority the author relied on. If we have an intimate knowledge of the area of law, we will want to know how the court dealt with specific cases or statutes. Even if our knowledge is more general, we'll want to know whether the authority is recent, binding, etc. All of this information can be presented economically in textual citations.

Garner counters this objection by suggesting that the text can make general references to the authority cited in the footnotes. For example, the text might refer to "recent Washington cases" or "a 1978 Supreme Court opinion." These kinds of references are helpful, but they add words to the text — words that would not be needed if the citations were there. And often the legal reader will need to know more specifically what the authority is. Garner's suggestion seems to recognize that the legal reader has a need to know something about the authority for an argument. It also seems to show that the problem may not lie with the awkwardness of citations in the text, but rather in antiquated overwrought rules for citation form — rules that can cause the citations to sometimes overpower the text, especially with an unskilled or inexperienced writer. Perhaps streamlined rules that allow citing to opinion paragraphs, rather than to several sets of reporters, would alleviate this problem; however, Bluebook reform is another topic.

Textual Cites Show Respect for Authority

My final objection to footnoted citations is more fundamental than the writing and reading concerns expressed above. The trend toward footnoting citations is not only annoying for readers of opinions, it threatens to subtly undermine the rule of law. This objection may appear overstated, but the demoting of legal authority to a mere footnote seems to send a message that what really matters is not the cases or statutes but fluidity of the argument. Fluidity, logic and policy are all important to legal reasoning, but courts are supposed to tether their arguments to authority. In fact, fluidity, logic and policy are all supposed to take a back seat to binding authority. *The New York Times* article noted that others share my concern that footnoting citations may undermine the role of precedent. Does the move toward footnoting citation reflect a more general trend away from reliance on authority? This question could perhaps be a fruitful law-review topic.

Finally, even if the law-review style takes over our courts, lawyers should be hesitant to adopt it for briefs. What works in court opinions will not necessarily work for litigants. A court wants to persuade us of the rightness of its ruling, but it need not make it easy for us to read the opinion. We are stuck with it, and if we want to know the law, we will read it, footnotes and all. A litigant, however, needs to make the argument clear and accessible — the authority for the argument had better be evident to even a casual reader. So, even if the law-review style takes over the courts, lawyers will adopt it at their own peril.

Helen Anderson is a senior lecturer at the University of Washington School of Law, where she teaches legal research and writing. Before teaching, she practiced for nine years at the Washington Appellate Defender Association.

3. For a good discussion of the proper use of footnotes in appellate opinions, *see* Edward R. Becker, *In Praise of Footnotes*, 74 Wash.U.L.Q. 1 (1996) reprinted in 167 Fed. Rules Decisions 283.

The New "Access to Family Law Court Records" Court Rule

by J. Mark Weiss

On October 1, 2001, GR 22, "Access to Family Law Court Records," became effective. This new court rule not only affects the portions of family law court files that can be viewed, but also changes how family law cases are commenced and how some documents must be filed. The primary goal of the new rule — forged by the Washington State Supreme Court with input from many groups, including the WSBA Family Law Section, county clerks, and superior court and court of appeals judges — is to protect family law litigants from identity theft. New and revised mandatory forms have been developed, and new legislation (Ch. 42, Laws of 2001) works in tandem with the new rule.

Family Law Court Files: Magnets for Identity Theft

Family law court procedures are *sui generis* in several respects. For instance, family law pleadings must be on mandatory forms. Also, "temporary orders" are frequently obtained shortly after filing to provide for residential arrangements and support for children and spouses, and to preserve the peace and status quo. The issues decided at temporary motion hearings tend to be similar to many of the ultimate issues that are decided at trial, making these hearings significant for the parties. Temporary motion hearings are heard on affidavits in most, if not all, counties. Even after trial, family law cases continue to differ from other civil cases in that many orders tend to require future acts by ex-spouses, such as paying ongoing support or parenting children. Unlike other civil cases, some final orders remain modifiable.

Unique procedures have evolved to handle the special needs of family law cases. For instance, in order to make decisions involving support, courts need evidence of income and obligations. That evidence is normally attached to mandated financial affidavits, and consists of income-tax returns, paystubs, bank-account statements, credit-card statements, and similar documents. Once the court determines a party's support obligation, the Department of Social and Health Services Washington Division of Child Support usually provides support-enforcement services.

GR 22 provides safeguards by declaring litigants' personal-identifer information to be "restricted personal identifiers."

To provide effective administration of orders, parties are required to file detailed information about themselves and their children. This information includes social-security numbers, dates of birth, addresses and driver's-license numbers. Much of this information is statutorily required in the initial petition filed with the court, and is also set forth in various orders and other filings. The final decree often contains account numbers of credit cards and bank accounts. The reality is that there is no other category of civil case where so much personal-identifier information is routinely placed in the court file. When so much information can be found in the public file, it should be no surprise that family law court files can become magnets for identity theft. With plans to make documents from court files available on the Internet, concerns about identity theft have become greater. Indeed, there have already been several cases of identity theft linked to family law court files — and such documents are not yet available on the Internet.

Keeping Private Information Private

GR 22 provides safeguards by declaring litigants' personal-identifer information to be "restricted personal identifiers." The rule attempts to keep this information out of the public court file. The rule applies to all family law proceedings, including the parts of the parentage files that are sealed under RCW 26.26.200.

The new rule specifically provides that "[p]arties ... shall not be *required* to provide restricted personal identifiers *in any document filed with the court*...." (Emphasis added.) To comply with this prohibition, the mandatory forms have been modified to delete places where restricted personal identifiers were previously requested. For instance, the financial declaration form no longer requests the party's social-security number. By implication, this provision of GR 22 also makes it permissible to redact restricted personal identifiers from exhibits.

Because restricted personal identifiers are still needed to provide support-enforcement services, and because the court still needs documents that contain such information to determine financial issues, alternate means to supply the information had to be devised. The goal was to seal the restricted personal identifiers without sealing the entire file and without imposing undue burdens on practitioners, parties, clerks, courts, news media or the public.

Parties will now provide restricted personal identifiers in a confidential information form (CIF), a new form that will be sealed. The form serves as the single document that collects identification informa-

tion for support enforcement and court purposes. No longer will restricted personal identifiers appear in multiple documents throughout the court file. Court clerks will transmit the form to the Division of Child Support (DCS). To ensure that DCS has current data, parties are required to file an updated CIF if information changes.

Also sealed will be "financial source documents." Until now, these were attached to financial declarations (e.g., income-tax returns, bank statements and paystubs). To be automatically sealed, the financial source documents must be attached to a new mandatory cover sheet. The cover sheet itself (with the attachments removed) will remain in the public file, so anyone can ascertain that financial source documents were filed. If financial source documents are filed the old-fashioned way, by simply attaching them to the financial declaration in violation of GR 22 (or if they are attached to another declaration or to a motion), the source documents will end up in the publicly accessible file. It is the cover sheet that triggers the clerk to automatically seal the attached financial source documents.

Besides the CIF and the attachments to the cover sheet, no other document or information in a court file will be automatically sealed.

The New Legislation

To carry out the intent of the court rule, legislative changes were required. The new legislation makes statutes consistent with the new rule. For instance, RCW 26.09.020 had to be amended to no longer require parties to supply their social-security numbers and residence addresses in petitions.

Accessing Files

Parties and counsel of record will automatically have access to all records in their cases, except for filed CIFs. Only for good cause shown, with notice given to the parties, will the court provide access to nonparties for the sealed documents in the files. GR 22 contains specific protective language to limit access to personal information.

A Change in Practice

GR 22 makes it possible — indeed mandatory — to protect certain types of client information. Having the latest mandatory forms is perhaps the most important first step for practitioners, because the new forms will no longer elicit protected information. Court clerks will reject petitions unaccompanied by the new CIF. Attachments to financial declarations must now be filed under a separate cover sheet. The rule does not require any other changes in the way attorneys practice family law.

Despite the promulgation of GR 22, it remains possible that restricted personal identifiers and financial source documents will end up in the public court file. This could occur, for instance, if a practitioner or party disregards the rule or provides exhibits that contain restricted personal identifiers. Only the CIF and financial source documents that are attached to the cover sheet will be automatically sealed.

It is the cover sheet that triggers the clerk to automatically seal the attached financial source documents.

There are good reasons why practitioners may want to do more than the minimum to keep restricted personal identifiers out of the public court file. It does not take much imagination to envision the possibility that a former client (or opposing party) may seek redress from counsel who files exhibits that contain restricted personal identifiers that have been abused. Because electronic scanning of documents filed with the court is becoming routine (it is currently done in approximately 15 counties, with plans for all counties to eventually come online), and future electronic access to court-filed documents files is a near certainty, potential accessibility to personal-identifier information is of concern.

Once documents are available electronically on the Internet, anyone, anywhere in the world, with a computer programmed to scan for personal identifiers contained in digitized versions of public documents will be able to extract such information and use it as they see fit. It is therefore simply not prudent to allow restricted personal identifiers to get into the court file.

To protect clients, practitioners should

carefully consider what they file. It has become increasingly common to see information filed that could be invasive of privacy or that could compromise a client's financial security if abused. For example, it is not uncommon to see account numbers listed in dissolution decrees. A bank or credit-card account number can be valuable information to a criminal. Account numbers are placed in decrees solely to provide clarity and enforceability of the decree. If the same clarity and enforceability can be attained by truncating account numbers to just two or three digits — enough to avoid confusion in a subsequent court proceeding — why not truncate the numbers and simply state in the decree that the number has been truncated? Complete account numbers could be exchanged between counsel in confirming memoranda that are not filed with the court. This is just one example of how a simple change in practice can provide benefits to clients.

New Mandatory Forms

As of this writing, the following new mandatory forms were being adopted in response to the new legislation and court rule:

- **WPF DRPSCU 09.0200:** confidential information form
- **WPF DRPSCU 09.0210:** addendum to confidential information form for additional parties and children
- **WPF DRPSCU 09.0220:** sealed financial source documents cover sheet
- **WPF DRPSCU 09.0230:** stipulation and order to allow access to sealed records under GR 22(g)(2)
- **WPF DRPSCU 09.0240:** motion/declaration to allow access to records under GR 22(g)(3)
- **WPF DRPSCU 09.0250:** order re: access to records under GR 22(g)(3)

In addition to these new forms, a large number of mandatory forms are being revised to comply with this new legislation and rule, as well as the new Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

J. Mark Weiss is presently serving his second term as a member of the WSBA Family Law Section Executive Committee, and participated in the formulation of GR 22 and the accompanying legislation.

The Board's Work

by Mark A. Panitch
Bar News Editor

Vancouver, WA (Oct. 19-20) — Your Board of Governors finished a process of board expansion that began more than two years ago when former President **Richard Eymann** acted to bring "underrepresented" segments of the Bar onto the board. With the election of Young Lawyers Division nominee **Paul R. Lehto**, the Board of Governors has added three new members in the last three months. **Zulema Hinojos-Fall** (Seattle) and **David W. Savage** (Pullman), both at-large members, were elected at the last meeting. Lehto practices in Snohomish County.

After Lehto's election, Governor Savage moved to require the YLD to nominate at least two candidates, and Governor Hinojos-Fall seconded. Speaking for the YLD, YLD President **Sherri Jefferson** supported the motion. A lengthy debate followed. Although the bylaws specify that at-large governors are elected by the BOG, requiring the YLD to present multiple candidates would make it clear that the choice is the BOG's — not the YLD's. The vote on the Savage motion was 5-5. President **Dale Carlisle** broke the tie, supporting the motion. (President Carlisle noted that some presidents have to wait for months for a tie and the opportunity to vote.)

In a matter with potential for immediate effect on members, by a vote of 12-0, the board adopted revised guidelines for the WSBA fee-arbitration program. Fee arbitration is a program of the WSBA Lawyer Services Department, offered as a way for attorneys and dissatisfied clients to resolve differences voluntarily. Governors debated whether to allow attorneys' fees (no); whether to exclude witnesses (at the discretion of the arbitrator); and whether to assure that fees are reasonable (yes, by ensuring that the amount of time spent by the lawyer is "reasonable"). [Editor's note: A full description of the arbitration and mediation programs can be found in the Lawyer Services section of the WSBA Web site at www.wsba.org/adr.]

A delegation from the King County Bar Association (KCBA) headed by President **Ralph Maimon**, along with King County Presiding Judge **Brian Gain** and Clark County Judge **Robert Harris** (president of the Superior Court Judges' Association), urged the BOG to take notice of an impending "crisis" in court funding. They explained that the problem has both local and state ramifications, and they expressed special concern about the potential for cuts in statewide justice funding when the Legislature meets in January.

One of the issues facing King and other high-growth counties is that the load on the county-run justice system keeps growing, while incorporation of new cities and annexation of high-value property by existing municipalities steadily reduce the counties' available revenues. The judges voiced concern that revenue cuts could extend trial dates and push civil cases into the private justice system, leaving the courts to handle only criminal matters.

As the discussion proceeded, BOG members made clear that their concerns went beyond simply funding courts, and included the entire justice system, "including defense, access to justice, and essential programs and support services."

Governors, judges and KCBA officials agreed that the bar and bench should agree on a common message and strategy before approaching the Legislature. **Mary McQueen**, state court administrator at the Administrative Office of the Courts (AOC), noted that she has long campaigned for adequate financing for justice programs. She urged the BOG and judges alike to avoid "internecine battles" and "sacred cows." She noted that the Legislature could use disagreement within the legal community as a basis for ignoring the whole problem.

President Dale Carlisle, noting a general consensus on the BOG, asked the staff and others to meet and develop a short-term action plan that the BOG could consider at its November 30 meeting.

In the continuing process of developing multijurisdictional practice, the BOG heard from representatives of the Oregon, Idaho and Utah state bars. The Idaho and Oregon delegations predicted that a functioning reciprocal admission system among the three states could be in place by early next year. The Utah representatives said that the developing relationship among the Washington, Oregon and Idaho bars had created a lot of positive interest among lawyers in their state. The Utah lawyers also noted that there were indications that Nevada was following these developments and might be interested in joining or associating at some future time with the Northwest's developing multijurisdictional practice model.

The BOG and the three other state delegations agreed that there should be two to three joint meetings per year to assure as much conformity as possible in admissions, practice and ethics standards.

In other BOG business, WSBA Director of Technology **Maureen Sunn** reported that current WSBA hardware and software are almost outmoded and close to being unsupportable. She explained that as technology companies bring out new equipment and software, they stop supporting older equipment and programs. In addition, many new programs will not run on older operating systems, and older operating systems won't function on new equipment. Conclusion: The WSBA needs a substantial technology overhaul if the association is to provide the services members want.

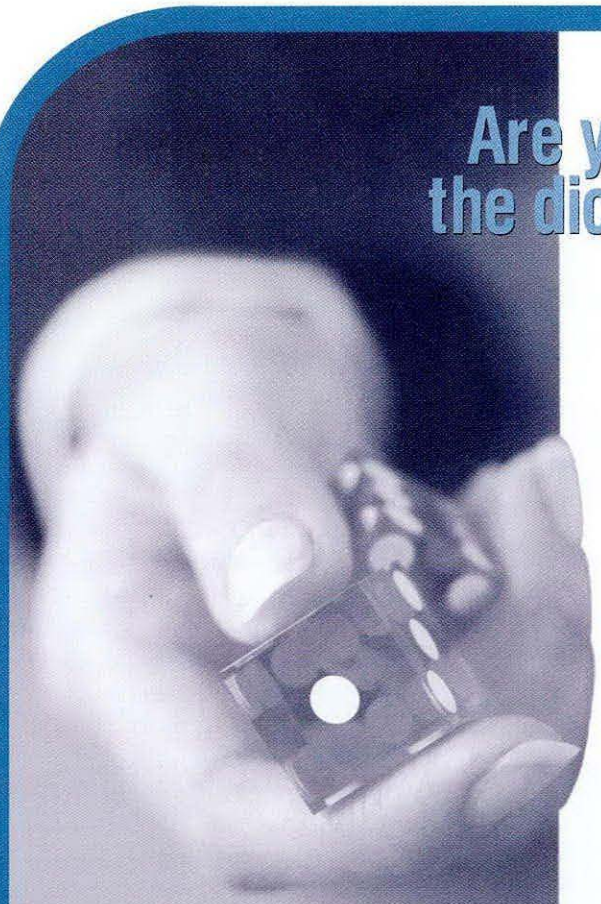
Board members voiced concerns that new equipment and software would also become outmoded by future developments. Ms. Sunn indicated that the commercial products she wanted to use generally included routine upgrades as part of the package. However, she agreed that even if the WSBA is able to achieve greater business efficiency with new equipment and software, there will still be a need for significant technology staff at the Association.

Ms. Sunn presented basic timelines,

Upcoming BOG Meetings

January 18-19, 2002 – Olympia, WA
April 5-6, 2002 – Walla Walla, WA
May 10-11, 2001 – Stevenson, 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.



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cost estimates, and possible alternatives for separating financial data and core membership data, and developing a separate system for each. She asked the BOG to allow her to develop a detailed presentation for the January 2002 meeting. By a vote of 12-0 the board agreed.

Local Heroes Honored

As the WSBA Board of Governors meets around the state, the Local Hero Award is presented to a lawyer in that area who has made noteworthy contributions to the community.

In September, **Laura L. Jaeger** was presented with the award. Ms. Jaeger, a sole practitioner in Federal Way, is well-known for her deep commitment to community service. When in high school, Ms. Jaeger began tutoring in the High Point Housing Project — something she continues to do to this day. She organized a Habitat for Humanity project for WSTLA, and took a family vacation to California to work on a Habitat house. For the past 15 years, Ms. Jaeger has supported three children through the Christian Children's Fund, exchanging letters and providing cash and gifts for them. She donates clothing to the YWCA and Dress for Success program to help low-income working women. Each Thanksgiving and Christmas, Ms. Jaeger and her children assist with food service at the Strand helpers in Seattle's Pioneer Square.

At October's meeting in Vancouver, **Richard A. Melnick** received the award. Mr. Melnick is a Clark County senior deputy prosecutor responsible for the drug unit. He was instrumental in creating a drug court for Clark County Superior Court in 1999. A youth soccer coach for the past eight years, Mr. Melnick is a board member for the Prairie Soccer Club and the T.O.D.A.Y. Foundation, a youth-sports scholarship foundation. He has chaired several Hockinson Public Schools bond and levy committees, and served as coach to the high-school mock-trial teams. Mr. Melnick is a long-time volunteer at St. Joseph's Sausagefest fundraiser for the St. Joseph's parish school. For the last 15 years, he has volunteered at the Vancouver restaurant Chronis's, serving Thanksgiving dinner to homeless families.

The Bright Side of Recovery:
Becoming Weller Than Well

by Mike Hoff • *WSBA LAP Counselor*

Consider the following from Goethe's *lex vitae*: "Until one is committed, there is hesitancy — the chance to draw back — always ineffectiveness.... The moment one definitely commits oneself, then Providence moves too.... Boldness has genius, power and magic in it. Begin it now!"

The prime source of addition recovery may be found in Goethe's maxim. Millions in recovery have found that once the absolute notions of our own invincibility are let go, recovery begins immediately. We become teachable — often for the first time in years. The weight of the unhealthy behavior that has kept us in bondage for years is lifted, and we begin to live anew. Alcoholics Anonymous (AA) and other 12-step programs recognize and honor this principle. Personal progress, strengths, weaknesses and dreams are shared at countless AA meetings. Laughter born of gratitude for freedom from the ravages of a deadly disease prevails. Real friendships emerge. We gradually become comfortable within our own skin. Envy, jealousy, toxic anger and shame slip away. As self-centeredness loosens its crippling grip, we become interested in new ideas. Fear of people, unknown places, and new things recedes.

Often, the instigator of change is a feeling of overwhelming pain — ultimately the best friend of an addict.

Those of us who struggle with addiction have made countless promises to ourselves to alter our behavior, while actually making no change at all. If experience is indeed the best teacher, how do we completely miss the reality that we simply cannot rid ourselves of the addiction on our own? Often, the instigator of change is a feeling of overwhelming pain — ultimately the best friend of an addict.

AA modalities are not rescue helicopters that instantly transport the afflicted to safety. Rather, their promise offers a simple roadmap out of the woods. What power there is in simply being able to be responsible! Freedom to make errors gives license to begin projects and adventures that once seemed daunting. Bottle in hand, in the clutches of a disease that tells us daily that next time it'll be different, it is impossible to have faith. The miracle is that once willingness to change occurs, accompanied by the Goethe Commitment, faith need not be a factor. The fortunate candidate then has experience. Thus begins the promise: "Boldness has genius, power and magic in it. Begin it now."

We have the power to become what, without our disease/tragedy/misfortune, we could never have become. We become weller than well!

The **Lawyers' Assistance Program (LAP)** offers confidential assistance to WSBA members with mental, emotional, drug, alcohol, family, health and other problems. Services include assessment, referral, short- or long-term counseling, group or individual therapy, treatment follow-up and training. For information, call 206-727- 8268.

The **Law Office Management Assistance Program** offers a wide range of services to assist lawyers, especially those in solo or small firms, with the challenges of managing a law office. For information, call 206-727-8237.

The **Alternative Dispute Resolution Program** consists of two components: a voluntary fee arbitration program, to settle fee disputes between clients and lawyers; and mediation, to help resolve all types of disputes between lawyers and other individuals (e.g., clients, other lawyers and other professionals). For information, call 206-733-5923.

The **Professional Responsibility/Ethics Program** provides information and assistance in the following areas: ethics assistance, where a WSBA lawyer assists callers in resolving ethical dilemmas; Informal Opinions issued by the RPC Committee in response to lawyers' written ethical inquiries; Formal Opinions and Published Informal Opinions approved by the Board of Governors; and Rules of Professional Conduct promulgated by the Washington Supreme Court. For information, call 206-727-8284.

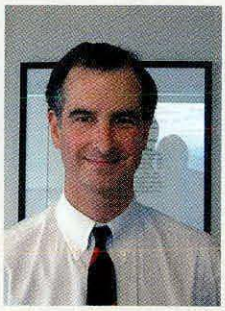
Changing Venues

Honors and Awards

Gary P. Tober has been appointed secretary of the San Francisco Congress of the International Fiscal Association on Taxation of Income Derived from Electronic Commerce. Mr. Tober maintains an international business practice in the Seattle office of Lane Powell Spears Lubersky.

Gonzaga University law professor **Rev. Robert J. Araujo, S.J.** has received the 2001 Silver Medal of the Pontificate and a letter of commendation from Vatican Secretary of State H. EM. Cardinal Angelo Sodano, at the behest of Pope John Paul II. Since 1996, Rev. Araujo has served as Vatican legal adviser at the United Nations and elsewhere. He has also been involved with the establishment of the International Criminal Court, a tribunal that will try individuals for violations of international law such as genocide and crimes against humanity.

IN MEMORIAM



Federal prosecutor **Thomas C. Wales** was tragically killed at his home on October 12. He was 49. Mr. Wales practiced in the U.S. Attorney's Seattle office for 18 years, primarily prosecuting banking and business crimes. Passionate about gun control and gun safety, he was board president of the Seattle-based gun-control group Washington Ceasefire. In 1997, he led a large effort to pass a law requiring trigger locks for guns, safety classes, and licenses for handgun owners.

Additionally, Mr. Wales served six years on the Seattle Planning Commission, and spent many years as a president and member of the Queen Anne Community Council. Memorials may be made to Ceasefire Foundation of Washington (PO Box 20216, Seattle, WA 98102) or the Thomas C. Wales Fund at Milton Academy (170 Centre St., Milton, MA 02186).

Be engaged. Be involved in what goes on around you. Be present in your own life. Find something you believe in passionately and get into it. Get outraged. Take a stand.

Tom Wales, June 15, 2001
Edmonds Community College Commencement Address

Movers and Shakers

C. Henry Heckendorn has joined the Seattle office of Miller Nash LLP, where he handles wills, trusts, taxation and business matters.


Tober


Cruz


Dunn


Willingham


King

Jason J. Cruz has joined the Seattle firm Burkett, Burdette & Van Kampen PLLP as an associate. He practices with the firm's litigation and intellectual property groups.

Randy F. Bolong, Kathleen M. Lovejoy and **Linda C. Petrie** have been appointed administrative law judges for the Office of Administrative Hearings. They are based in the Yakima, Seattle and Spokane offices, respectively.

R. Corbin Houchins has joined the Seattle office of Graham & Dunn as of counsel in the firm's hospitality, franchise and distribution industry team; he chairs the licensed beverage team.

David C. Reed has joined the Office of General Counsel for AFC Enterprises, the franchisor and operator of Popeye's Chicken & Biscuits, Church's Chicken, Cinnabon, Seattle's Best Coffee and Torrefazione Italia Coffee.

Reagan B. Dunn has been appointed to the U.S. Department of Justice by President George W. Bush, serving as counsel to Assistant U.S. Attorney General Deborah J. Daniels. Mr. Dunn is leading the implementation of Project Safe Neighborhoods, a national initiative to reduce gun violence.

Sherelle A. Willingham has joined Jay A. Goldstein Law Office in Olympia. Her practice emphasizes personal injury and insurance law.

Jeffrey J. King has joined Woodcock Washburn in Seattle as a partner. His practice includes biotechnology patent prosecution, due diligence counseling, and other matters pertaining to biotechnical and biomedical research, development and acquisitions.

Jack G. Johnson has been named chief of the state attorney general's University of Washington division. The UW division provides legal representation to the university on a broad range of issues including employment law, labor relations, student affairs, intercollegiate athletics, intellectual property matters, health care and real estate.

James T. Derrig has been named shareholder in the Seattle firm Eklund Rockey Stratton PS. His practice focuses on first-party insurance issues, including coverage, bad faith and insurance fraud.

In Memoriam

Longtime University of Washington law professor **Harry M. Cross** died October 10 at age 88 from complications following knee surgery. Widely regarded as an authority on community-property law, Mr. Cross was instrumental in the passage of

laws protecting the community-property rights of nonworking spouses in divorce cases. He was a two-term president of the National Collegiate Athletic Association (NCAA) and served as the UW representative to the NCAA for 21 years. Memorials may be made to the UW School of Law or the UW athletic department.

Payne Karr, founder of the Seattle firm Karr Tuttle Campbell, passed away on October 2 at age 92. Mr. Karr served as WSBA president from 1968 to 1969, and as president of the Seattle Chamber of Commerce and the International Association of Defense Counsel. He was a member of the Seattle Transit Commission and the American College of Trial Lawyers.

In addition to his WSBA membership, Mr. Karr was admitted to practice before the U.S. Supreme Court. Memorials may be made to the Bainbridge branch of Kitsap Regional Library (1270 Madison Ave. N., Bainbridge Island, WA 98110).


Karr


Schaller

Edward F. Schaller Jr. died May 21 at his home in Olympia. Mr. Schaller was a partner in the firm Foster, Foster and Schaller from 1980 until his death, practicing criminal defense and family law. Prior to entering private practice, he was a deputy prosecutor and chief deputy prosecutor in Thurston County.

Earlier this year, the WSBA Board of Governors honored him as a Local Hero for his service to the residents of Thurston County. He was also named 2001 Lawyer of the Year by the Thurston County Bar Association. Mr. Schaller served as a president and board member of the Saint Martin's College Alumni Association, and received the school's Outstanding Alumni Award.

The Practice of Law Board

by Robert D. Welden • *WSBA General Counsel*

The Practice of Law Board (PLB), created by GR 25, was adopted by the Washington Supreme Court on September 1, 2001. The Washington State Bar Association (WSBA) is working with the Supreme Court to implement the new rule. A committee, chaired by WSBA President Dale Carlisle, has been appointed to guide the implementation. One of the first steps the committee is undertaking is nominating persons for consideration for appointment to the PLB by the Supreme Court. Nominations may be made by the Board of Governors (BOG), and other people and organizations.

GR 25 provides that the purpose of the board is to:

- promote expanded access to affordable and reliable legal and law-related services;
- expand public confidence in the administration of justice;
- make recommendations regarding the circumstances under which nonlawyers may be involved in the delivery of certain types of legal and law-related services;
- enforce rules prohibiting individuals and organizations from engaging in unauthorized legal and law-related services that pose a threat to the general public; and
- ensure that those engaged in the delivery of legal services in the state of Washington have the requisite skills and competencies necessary to serve the public.

The board is composed of 13 members, at least four of whom shall be nonlawyers. The BOG believes that it is important that the board represent the broad public interest in the delivery of legal services. Who those persons should be, how many of them should be lawyers, and how many should be nonlawyers are issues the BOG is considering in proposing nominations to the Supreme Court. Also, the BOG is concerned that the board reflect the broad range of diversity of individuals who are part of or who use the legal system.

Persons interested in seeking nomination by the BOG for appointment to the board should submit a letter describing their background and qualifications to the address below. Applicants should have a demonstrated commitment to the board's purposes as set out in GR 25. Members of the board will not be compensated for their services, but will be reimbursed for necessary expenses consistent with the reimbursement policies of the WSBA. The board will set its own meeting schedule; and it is anticipated that it will meet several times a year, perhaps monthly. The term of appointment is three years.

The BOG will hold a public hearing on the composition and nomination process to the Practice of Law Board on December 17, 2001 at the WSBA office. The purpose of this hearing is not to consider specific individuals for nomination to the board, but rather to solicit views on how those nominations should be selected. Any written comments on board composition and the nomination process should also be submitted by that date to the address below. Persons wishing to speak at the hearing are encouraged to contact WSBA General Counsel Bob Welden in advance (bobw@wsba.org or 206-727-8232).

Please submit letters seeking nomination no later than February 15, 2002 to the WSBA, Practice of Law Board, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330. More information is available at www.wsba.org/practiceoflawboard.

Robert Welden is general counsel for the Washington State Bar Association.

Lawyers' Fund for Client Protection
2001 Annual Report

This is a summary of the Lawyers' Fund for Client Protection Annual Report filed with the Supreme Court. This year, the Lawyers' Fund for Client Protection Committee reviewed 62 applications concerning 22 lawyers. Forty-six applications were approved, totaling nearly $208,000. Of the denials, 12 were deemed fee disputes, malpractice claims, or that there was no evidence of a dishonest taking of funds; two received full restitution, and two were deferred. The following applications were approved:

Ronald O. Foster-Balloun (aka Roland O. Foster Balloun)
(WSBA No. 20884, Hillsboro, OR; disbarred)
Balloun represented the trustees and one co-beneficiary of a trust; the fund applicants were the other co-beneficiaries. During a partition action over real property, the property was sold. In the partition action, a jury found the applicants had a two-thirds interest in the property. A check for $46,113.92 was paid to the trust and deposited into Balloun's trust account. From the proceeds of that check, Balloun paid himself $6,461.30 in attorney fees and $5,000 to his client/beneficiary. The balance of $35,088.70 was retained in his trust account.

Balloun never provided any accounting for the $35,088.70 and never paid any of the balance to the applicants. They filed suit against the banks that honored the endorsement on the check, and against Whatcom County. In September 2000, a settlement was agreed to whereby the applicants received $10,000. Their share of the proceeds from the property sale was $26,435. After the settlement, $16,435 remained unaccounted for, which was approved for payment from the fund.

Charles W. Burns
(WSBA No. 12957, Colville; disbarred)
Burns abandoned his practice without notice to his clients and without any arrangement for anyone to take over his active cases. The Office of Disciplinary Counsel arranged for the appointment of a lawyer to protect Burns' clients' interests. In previous years, the fund considered 15 applications concerning Burns, and approved nine of them for payment.

In this matter, Burns was hired for representation on a personal injury claim on a one-third contingent-fee agreement. On October 16, 1997, Burns told the applicant he had settled the claim. After not receiving the money or any adequate explanation from Burns, the applicant contacted the WSBA in January 1998, and after investigation the WSBA learned that the insurer had issued a check payable to the applicant and Burns for $2,000 on October 14, 1997; however, the applicant never received any funds from Burns. The applicant sought recovery of the funds from the bank that honored the forged endorsement, but the bank denied payment because his application was not timely filed. The committee approved payment of $1,333 to the applicant.

Clayton C. Cochran
(WSBA No. 23102, Vancouver; disbarred)
Cochran abandoned his practice without notice to his clients, and without returning unearned fees in violation of RPC 1.15(d). In many of these cases, the Disciplinary Board ordered Cochran to pay restitution. The committee approved 14 applications totaling $13,120. They involved payment of fees ranging from $500 to $1,500 for representation in a variety of matters including marriage dissolution, child custody and support, paternity and criminal. In some instances, Cochran misrepresented to his clients that he had either filed court documents or had conducted negotiations with the adverse party.

William I. Freeman
(WSBA No. 17586, Vancouver; disbarred)
Freeman entered into a scheme with a hearing-aid business to engage in deceitful conduct in Department of Labor and Industries (L&I) hearing-loss claims, and to charge clients improper fees. In Freeman's arrangement with the hearing-aid company, the company would complete the L&I claims and file them in Freeman's name. When an award was made, Freeman would claim a percentage as a fee, which he split with the company owner. The "clients" never met Freeman. Eventually, they contacted L&I, which entered orders that Freeman had gained no additional benefits for his "clients," and that he was not entitled to attorney's fees. The committee approved two applications, for $941.24 and $450.

Charles Eugene Hunter
(WSBA No. 324, Everett; deceased)
Hunter was the attorney for the estate of the applicant's wife, and the applicant was appointed personal representative. The applicant and Hunter had been friends since both were 12 years old. While representing the estate, Hunter asked the applicant to loan him a total of $20,000 from estate funds. Contrary to the requirements of RLD 1.8(a), there was no documentation of these loans other than the checks, and Hunter made no payments on the loans. Hunter stated that the first $10,000 would be repaid within a few weeks, and the second $10,000 a few months later. The applicant says that between making the loans in 1995 and Hunter's death in 1998, he asked for repayments, "no matter how small." Hunter died in December 1998 without making any repayment. The applicant employed an attorney to attempt to recover these funds, but the estate had no assets. The committee approved payment of $20,000 to the applicant.

Mickie E. Jarvill
(WSBA No. 14049, Stanwood; disbarred)
There were two approved fund applica-

tions involving Jarvill. In the first, the applicant, who is Jarvill's cousin, was a beneficiary of her father's estate. The estate, which was in probate in Oklahoma, had commenced a lawsuit over some corporate issues. The applicant sought Jarvill's advice. Jarvill recommended that she be named as co-personal representative to better enable her to act on behalf of the estate. After Jarvill was appointed co-personal representative, the Oklahoma lawyers withdrew from the case, complaining about Jarvill's conduct.

The lawsuit brought by the estate was settled for $600,000. Jarvill recommended that all estate funds be paid to her to be held in trust. Jarvill received a total of $645,598 in estate funds, and disbursed $140,414.90 on behalf of the estate. She converted the balance of the estate funds to her own use. She eventually told the applicant that she lost the money "on a land deal," which involved a property-development project Jarvill and her husband were promoting. In August 1999, Jarvill sent the estate beneficiaries 22 unsecured promissory notes signed by her, totaling $632,543.21. Jarvill made no payments on the notes.

In the second matter, Jarvill had written the wills of the applicant and her husband. In 1993, the husband was diagnosed with cancer, and the applicant and her husband decided to sell some property, and travel. They asked Jarvill to handle the legal transaction, and signed a power of attorney naming Jarvill their attorney-in-fact. They sold the property and received about $70,000. Prior to leaving on their travels, the applicant and her husband purchased a $60,000 certificate of deposit (CD) to earn interest for their retirement.

When the applicant and her husband returned in February 1994, they found that Jarvill had cashed the $60,000 CD, converting the proceeds to her own use. Her explanation to the applicant and her husband was that an opportunity had come up whereby they could earn 10-12 percent interest, and to maximize their benefit, Jarvill had reinvested their funds. The applicant and her husband later learned that the funds were used to purchase Jarvill's office condominium. The applicant, whose husband died in February 1995, continued to press Jarvill for her money.

In January 1996, Jarvill and her husband executed an unsecured promissory note for $78,000 at 10 percent per annum, payable to the applicant in installments of $1,000 per month. Jarvill gave the applicant $1,000 at that time, and made monthly payments until December 1998. No additional payments have been made.

The committee approved payment of $30,000 to each of these applicants.

Hugh J. Kelly
(WSBA No. 14616, Spokane; suspended)
The committee approved three applications from Kelly's former clients. In two of these matters, Kelly stipulated to restitution.

In the first matter, Kelly was paid $750 plus costs to commence a child-support modification. After filing a petition, Kelly never served the petition or performed any other services for his client. Kelly stipulated to payment of $750, which is the amount approved by the committee.

In the second matter, Kelly was paid $3,000 to file a motion for reconsideration of the criminal sentence imposed on the appli-cant's son. Kelly told the applicant that he had filed a motion and it was set for hearing. He then told her that the hearing was continued, the last continuance to July 4. When the applicant noted that this was a holiday, she contacted the prosecutor and learned that Kelly had filed no motion and had never talked with the prosecutor about the matter. Kelly stipulated to payment of $3,000, which is the amount approved by the committee.

In the third matter, Kelly was paid a total of $7,000 by a Mexican citizen whose wife had moved to Washington with the parties' minor children. The wife obtained a default decree of dissolution in Washington. Kelly agreed to file a federal court proceeding under the Hague Convention.

Over the next three years, Kelly gave his client a series of excuses for delay, and provided no billings or accountings. Kelly arranged one visitation for his client with the children but performed no other services until he was confronted by his client, who had learned that nothing had been filed. Kelly then filed a motion to set aside the default decree, but the motion was denied. He never commenced any federal court action, which was what he had been hired to do. Kelly also did not tell his client that he was suspended from practice. The committee approved payment of $7,000 to the applicant.

Robert J. Lincoln
(WSBA No. 15170, Bellevue; deceased)
Lincoln was hired by the applicant for $1,000 to seek Social Security (SSI) benefits. On August 14, 2000, Lincoln filed a notice of appearance with the Social Security Administration. On September 24, he died. His probate was filed October 30, 2000. When Lincoln died, his trust account had a zero balance and his estate had no assets.

Jason James McCarty
(WSBA No. 15985, Lacey; suspended)
McCarty was convicted of drug-related criminal charges. His conviction is on appeal, and the disciplinary charges against him, including this grievance, are deferred pending the appeal. He is suspended pending the outcome of the deferred disciplinary matter. McCarty represented a friend of the applicant on criminal charges in Pierce County.

In 1995, the applicant posted $5,000 bail for McCarty's client. On July 28, 1995, an order was entered exonerating the client's bail. The order states that it was to be released to McCarty, "as $2,500 of the funds represent the attor-ney's fee and $2,500 will be given to [applicant] by Jason J. McCarty." This was done without the applicant's knowledge or consent. After McCarty failed to return the applicant's funds, she filed suit, and on March 14, 1997 a default judgment of $5,000 plus interest, fees and costs was awarded to her. McCarty repaid the applicant $4,000. The committee approved payment of $1,000 to the applicant.

Kenneth R. Mitchell
(WSBA No. 17401, Tacoma; disbarred)
The applicant hired Mitchell to obtain an emergency restraining order against his neighbor; he paid $750 in advanced fees and costs. The applicant contacted Mitchell at least daily, and on April 13, 2000 Mitchell told the applicant he would obtain the restraining order the next day; however, he did not do so. On April 14, Mitchell received an order from the Supreme Court notifying him that he was suspended from the practice of law for 60 days pursuant to a stipulation he knew was pending before the Supreme Court when he agreed to represent the applicant. He did not tell the applicant of the suspension. The applicant continued to leave

messages for Mitchell but received no response. On April 27, a lawyer who shared space with Mitchell told the applicant that Mitchell was suspended. On May 2, the applicant requested a refund of his fees. Mitchell has not repaid the $750. The stipulation provides for restitution of $750 to the applicant, to be paid before Mitchell may be reinstated to practice law.

Brad A. Plumb
(WSBA No. 20337, Spokane; disbarred)
Last year, the fund approved a payment to a former client of Plumb for $2,000. In the present matter, the applicant's 17-year-old son was involved in a vehicle accident with Burlington Northern Railroad. Passengers in the son's car were injured and reached settlements with Burlington Northern. In July 1998, Burlington Northern sued the applicant. The applicant paid Plumb a "flat fee" of $20,000 for representation in this matter. Plumb advised her to liquidate her assets and give them to him. He advised her that she could legally invest her funds out of state where her creditors could not locate them, and that he would invest them in Nevada. Acting on Plumb's advice, the applicant mortgaged her home, liquidated her retirement account, and paid Plumb $100,000; Plumb then stole the funds. The committee approved payment to the applicant of $30,000.

Kelly M. Seidlitz
(WSBA No. 17470, Tacoma; disbarred)
The committee approved three applications concerning Seidlitz, totaling $3,868, after Seidlitz abandoned his practice. In this matter, the applicant, who speaks little English, paid Seidlitz $1,250 to collect a loan debt owed by his daughter and son-in-law. Seidlitz wrote three one-page letters. The first letter was sent to the applicant's daughter and son-in-law; the other two were sent to the lawyers representing each of them in their divorce. The applicant says that Seidlitz advised him to take no action on collecting the debt until the divorce was final. After the divorce was final, the applicant could not get Seidlitz to respond to his calls or take any further action. Seidlitz was ordered to pay $1,250 restitution in the disciplinary proceeding.

Daniel S. Wilner
(WSBA No. 21690, Belfair; disbarred)
The committee approved 15 applications totaling $13,979.11. These applications all concern legal fees or advance costs paid to Wilner. He provided little or no services for his clients, and in each case provided no accounting for the funds. In many of these cases, the Disciplinary Board ordered Wilner to pay restitution. The applications involved payments ranging from $200 to $4,800 for representation in a variety of matters including contractor and zoning disputes, bankruptcy, wills, real estate, marriage dissolution, child custody and support, paternity and criminal. In one case, Wilner agreed to represent a client in a California court proceeding, even though he was not admitted to practice in that state. In some instances, after the clients demanded refunds, Wilner gave them checks drawn on accounts that had no funds.

Jonathan T. Zackey
(WSBA No. 21657, Bellevue; disbarred)
During the investigation of Zackey, the WSBA conducted an audit of his trust account. Among other things, it was discovered that his trust account had been garnished twice in 1998 and 1999 for his personal debts. On March 6, 2000, his trust account balance was $32.49. Restitution was ordered in both of these matters.

In the first, the applicant hired Zackey on a one-third contingent-fee basis to represent him in a personal injury claim. In May 1999, he received $50,000 in settlement funds and deposited them to his trust account. The audit of his trust account conducted by the WSBA showed that on that same day he wrote a check from that account to himself for $10,000 designated "partial fees." On September 7, he wrote a check for $1,000 from the trust account designated "cost reimbursement [applicant]." At some point, Zackey withdrew all funds from his trust account, including the applicant's. Zackey never provided the applicant with an accounting or paid any of the settlement funds to him. The committee approved payment to the applicant of $25,000.

In the second matter, the applicant also hired Zackey on a one-third contingent-fee basis to file a personal injury claim; the applicant agreed to settle his claim for $66,600. The defendant's insurer issued two settlement checks, one for $46,200, payable to the applicant and Zackey; another for $20,400, payable to the applicant, Zackey and the applicant's insurer, which had a subrogated interest from payment of medical expenses. The applicant's insurer was liable to the applicant for the portion of his fees and costs attributable to its subrogated claim. Under the fee contract with Zackey, that money belonged to the applicant. Zackey represented to the insurance company that their portion of the fees and costs was to be paid to Zackey. In support, he sent them a copy of a fee agreement different from the one signed by the applicant. He advised the applicant of his claim on these fees and costs (total-

ing $6,900.32), which the applicant disputed. The insurer endorsed the $20,400 settlement check which Zackey deposited into his trust account. He misappropriated those funds and used them for his own use or to pay funds owing to other clients. The committee approved payment to the applicant of $6,900.

The lawyers on whose behalf the fund committee makes payments are obligated to make restitution to the fund. In most cases, this only occurs as a condition of criminal sentencing with the cooperation of county prosecuting attorneys, or when a disbarred lawyer seeks reinstatement. During the last fiscal year, the fund received $7,160 in restitution.

The fund is administered by the Washington State Bar Association. Most investigations of application claims are conducted by the Office of Disciplinary Counsel in connection with investigation of disciplinary grievances. Direct and indirect costs of administering the fund are charged to the fund, and during the last fiscal year, totaled $17,485, or less than seven percent of revenue.

Finally, as reported in previous issues of *Bar News*, the fund receives thank-you notes to Washington lawyers. A recent note reads:

> I am in receipt of your gift check and want to thank you and the WSBA for your assistance, persistence and patience regarding my situation. I only regret that [this lawyer] caused hardship for many others as well. The gift will go a long way towards getting me out of the hole that resulted from the theft of my father's estate. Who knows? Perhaps I will attend law school after all, as it has always been a dream of mine.

For a copy of the 2001 Lawyers' Fund for Client Protection Annual Report, or for further information, see www.wsba.org/c/lfcp, call 206-727-5954, or e-mail your request with your mailing address to questions@wsba.org.

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

Disciplinary Notices

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

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

Disbarred

Connie R. Arenberg, also known as Connie Fernandez (WSBA No. 20482, admitted 1991), of Chicago, Illinois, was disbarred effective March 30, 2001, by order of the Supreme Court. The discipline is based upon her September 25, 2000 disbarment in the state of Illinois, on findings that she engaged in 96 acts of misconduct in violation of 13 disciplinary rules, affecting 23 clients over a three-year period. The violations included converting thousands of dollars and neglecting her clients' cases.

Matter 1: During 1994 through 1997, Ms. Arenberg agreed to represent eight clients in actions to recover their rental security deposits. Ms. Arenberg settled the cases and deposited the clients' settlement funds into her trust account. Ms. Arenberg did not inform the clients that she received the funds, or deliver the funds to the clients. By May 22, 1997, Ms. Arenberg's client trust account balance was $2.48.

Matter 2: In 1994, Ms. Arenberg represented the renter in a forcible entry and detainer action to collect unpaid rent. On January 31, 1995, the Circuit Court of Cook County granted summary judgment against Ms. Arenberg's client in the amount of $1,777.50. On March 2, 1995, Ms. Arenberg filed a notice of appeal from the judgment. At a hearing on March 13, the client appeared pro se and stated that Ms. Arenberg had filed the notice of appeal without his permission. The court continued the hearing because Ms. Arenberg was not present. On April 24, the parties filed settlement documents, and the client began making payments on the judgment.

Matter 3: In March 1994, Ms. Arenberg agreed to represent the defendant in a complaint for forcible entry and detainer, and collection of past-due rent. In November 1995, the court entered a $26,775 judgment in favor of Ms. Arenberg's client. The judgment stated that the award of attorney's fees was continued for presentation of an attorney's-fees petition. Ms. Arenberg did not file a fee petition or take any further action to collect the judgment.

Matter 4: In June 1994, Ms. Arenberg agreed to represent the defendant in a forcible detainer and collection of unpaid rent case. In October 1995, the court entered a judgment for Ms. Arenberg's client. The court's order allowed 14 days for an attorney's-fee petition to be filed and a date set for the fee hearing. Ms. Arenberg did not appear for the hearing and the case was stricken from the docket. As of December 1998, Ms. Arenberg had taken no further action on the case.

Matter 5: On October 6, 1995, Ms. Arenberg filed a motion to vacate a summary judgment entered against her client. She failed to appear in court on the date set and the court struck the motion. On October 25, 1995, Ms. Arenberg filed a motion to vacate the order striking her prior motion. Ms. Arenberg did not inform the client of the judgment against him. The client discovered the judgment and directed Ms. Arenberg to negotiate a payment plan. The client specifically stated that he did not want to appeal the decision.

On November 2, 1995, Ms. Arenberg filed a notice of appeal and deposited with the clerk a $5,000 check drawn on her client trust account. On November 8, Ms. Arenberg's check was returned for insufficient funds. In July 1996, the appeal was dismissed for lack of jurisdiction. Ms. Arenberg told the clerk's office that she would replace the check, but she did not. On November 18, 1996, the parties informed the judge that the matter had been settled and that the appeal should be dismissed. The clients agreed on a payment plan, and the client gave Ms. Arenberg his personal check payable to the plaintiff. In early November 1995, Ms. Arenberg had requested that her client give her two months' rent to hold in escrow pending the outcome of the appeal. The client gave Ms. Arenberg $560, which she deposited into her trust account. Ms. Arenberg did not pay rent with these funds, but on November 12, 1996, the client's balance was

$24.29. Ms. Arenberg used these funds for her own purposes.

Ms. Arenberg prepared the order dismissing the appeal and specified that the $5,000 bond be returned to her, knowing she had not paid the appeal bond. The judge signed the order, and on November 22, 1996, Ms. Arenberg received and deposited a $5,118.09 check from the clerk.

Matter 6: In January 1996, Ms. Arenberg agreed to represent a client in an action to recover her security deposit. On December 6, 1996, Ms. Arenberg filed a motion for an order of default. Between September 6, 1996 and December 19, 1996, the client informed Ms. Arenberg several times, both orally and in writing, that Ms. Arenberg was no longer the client's lawyer. Ms. Arenberg did not withdraw or return the client's file to her. The court denied the motion for order of default. Ms. Arenberg did not advise her client of this order.

Additionally, Ms. Arenberg failed to cooperate with the investigation of the Illinois discipline matters and gave false testimony during the proceedings.

Ms. Arenberg's conduct violated Illinois Rules of Professional Conduct 1.1(a), 1.2(a), 1.2(f)(1), 1.3, 1.4(a), 1.4(b), 1.15(b), 1.16(a)(4), 116(d), 3.2, 8.1(a)(2), 8.4(a)(5) and Illinois Supreme Court Rule 771.

Felice Congalton represented the Bar Association. Ms. Arenberg represented herself.

Disbarred

Richard S. Twiss (WSBA No. 3020, admitted 1970), of Seattle, was disbarred effective June 8, 2001, by order of the Supreme Court, following a stipulation. The discipline is based upon misrepresentations he made in 1991 and 1992 in a business deal.

Mr. Twiss and Mr. Wheeler were business partners in two boxing-promotion businesses named Wheeler and Associates, Inc. (W&A) and Wheeler China, Inc. In February 1991, a Chinese company (CX) contacted Mr. Wheeler to arrange a boxing competition in China. CX and W&A signed an agreement to put on a boxing competition in China. Mr. Wheeler conducted most of the business with CX. Mr. Twiss obtained most of his information from Mr. Wheeler. Mr. Wheeler read portions of the correspondence to Mr. Twiss. Over a three-month period, CX paid W&A $3.1 million, which Mr. Wheeler deposited into his personal checking account. On December 31, 1991, $700,000 of this money was wired to boxer George Foreman, but he did not sign to participate in the event.

In March 1992, Mr. Wheeler and Mr. Twiss traveled to China to meet with CX. W&A signed a new agreement with CX during this trip. Mr. Wheeler excluded Mr. Twiss from many of the meetings. During this time, Mr. Twiss was suffering from alcoholism and depression. Because Mr. Twiss did not have much to do, he was drinking more than usual. In March 1992, while still in China, Mr. Twiss, at Mr. Wheeler's direction, signed the names of two boxing managers to boxing service agreements. Mr. Twiss testified that, based on information he obtained from Mr. Wheeler, he believed that the life of Mr. G (the CX representative) would be in danger if Mr. Twiss did not sign the boxing managers' names to the contracts.

Also in 1992, Mr. Wheeler wrote a letter to CX stating that W&A had advanced $1.8 million to the two boxers involved in the above agreements. Mr. Twiss repeated this statement to representatives of the China Agricultural Bank, which was lending money to CX for the boxing event. In fact, there were no valid agreements and W&A had not paid any advances. In May 1992, Mr. Wheeler stated falsely that the two boxing services contracts were canceled and that the $2.4 million advanced to the fighters was forfeited, because W&A and CX had not rescheduled the boxing match. Mr. G testified that Mr. Twiss repeated these statements. Mr. Twiss testified that he believed that the misrepresentations were made to allow Mr. G to get money out of China, because his life was in danger.

In April and May 1992, CX wired W&A $3.1 million. On June 13, 1992, Mr. Wheeler transferred $98,000 to Mr. Twiss's personal bank account. In August 1992, Mr. Twiss drafted a letter of credit on Seafirst Bank Private Banking stationery using the fictitious name Martin A. Oakley in the signature block. Mr. Wheeler signed this letter and presented it to CX, indicating it was a sample.

On August 24, 1992, Mr. Wheeler and Mr. Twiss split the remaining funds received from CX. Mr. Wheeler arranged for a boxing promotion firm to handle the logistics of the October 17, 1992 fight. One of the boxers reported an injury several weeks before the fight, and the fight did not take place.

The boxing event never occurred, and W&A did not return any of the funds advanced by CX. CX filed a lawsuit against W&A, Mr. Twiss and Mr. Wheeler individually for return of the funds advanced. Following a jury verdict, the Honorable Thomas S. Zilly awarded CX $2,519,803 jointly and severally against Mr. Wheeler and Mr. Twiss.

In October 1997, Mr. Twiss began receiving treatment for his alcoholism and depression. Mr. Twiss has complied with all treatment recommendations since that time. During the hearing, Mr. Twiss's treatment provider testified that his alcoholism significantly contibuted to his error in judgment.

Mr. Twiss's conduct violated RPC 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation; and 8.4(a), prohibiting knowingly assisting another person in violating the RPCs.

Linda Eide represented the Bar Association. Louis D. Peterson and Michael S. Wampold represented Mr. Twiss.

Suspended

Michael K. Tasker (WSBA No.12426, admitted 1982), of Bellingham, was suspended for six months effective December 21, 2000, by order of the Supreme Court following a hearing. This discipline is based on his misuse of client funds in his trust account in 1993 and 1994. For additional information, see the Supreme Court opinion published at 141 Wn.2d 557, 9 P.3d 822 (2000).

In June 1992, Mr. Tasker's ex-wife obtained a $41,063.24 judgment against him for back-due child-support payments. The amount due increased later in 1992 to between $50,000 and $70,000. Mr. Tasker's business and personal accounts were garnished to pay his support obligation. From May 1993 through May 1994, Mr. Tasker allowed earned income to accumulate in his trust account. He paid all of his business and personal bills from this commingled account. Mr. Tasker admitted that

the purpose of the commingling was to avoid garnishment of his personal and business funds by the Office of Support Enforcement. The hearing officer found that Mr. Tasker did not intend to permanently deprive his clients of any funds. The balance of the trust account sometimes fell below that attributable to client funds, but no client permanently lost funds. During this year, the trust account balance was up to $30,000 below what it should have been. On several occasions, the trust account was overdrawn, although no checks were returned. The hearing officer found that Mr. Tasker knew that he was using his clients' funds to meet his personal financial obligations.

The Court noted that during this time, Mr. Tasker suffered dramatic personal "woes," including the dissolution of his law partnership and his marriage, loss of his mother, placement of his father in a nursing home, two automobile accidents with severe personal injuries, trial and retrial of a financially and emotionally draining murder case, and a change in primary residential placement of his children. The Court also noted that during the delay in prosecuting this case, Mr. Tasker remedied the problems with his trust account.

Mr. Tasker's conduct violated RPCs 1.14, requiring lawyers to protect and account for client's funds; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; 1.5, requiring lawyers to provide accurate billings to clients; 1.4, requiring lawyers to keep clients reasonably informed of the status of the matters; 1.7, requiring lawyers to avoid representing clients whose interests are directly adverse; 1.3, requiring lawyers to diligently represent their clients; 3.3(a), prohibiting lawyers from knowingly making false statements of material fact to a tribunal; and 5.3, requiring lawyers to make reasonable efforts to supervise nonlawyer assistants.

Joanne Abelson and Jean McElroy represented the Bar Association. Rita L. Bender represented Mr. Tasker. The hearing officer was Timothy H. Esser.

Suspended

Stephen R. Powell (WSBA No. 7727, admitted 1977), of Mill Creek, has been suspended for one year, effective March 27, 2001, by order of the Supreme Court, following a default hearing. This discipline is based on his failure to diligently represent three clients from 1993 through 1998.

Matter 1: In 1981, Mr. Powell agreed to represent a two-year-old minor in a personal-injury claim. The child fell through a stairway railing at an apartment complex. In 1986, Mr. Powell filed a lawsuit in King County Superior Court. On May 10, 1993, the court entered an order directing the plaintiff to move for default or note the matter for trial within 60 days, or the matter would be dismissed with prejudice. Mr. Powell did not file anything in response to the court's order. On October 26, 1993, the clerk entered a dismissal in the case. Mr. Powell did not advise the client or her mother that the case had been dismissed. In 1997, the clients learned from the court file that the case had been dismissed. By this time, the child had turned 18 and the statute of limitations of her own claim was running.

Matter 2: In November 1997, Mr. Powell filed a notice of appeal of the Board of Industrial Appeals denial of his client's Labor and Industries claim. The court issued a scheduling order at the time the case was filed. Mr. Powell requested a continuance of the trial date, which the court granted. Mr. Powell did not obtain a new trial date, and the clerk dismissed the case on December 1, 1998, with prejudice. In October 1999, the client learned that his case had been dismissed. The client requested that Mr. Powell return his file. As of the date of the hearing, Mr. Powell had not returned the client's file.

Matter 3: In 1998, Mr. Powell agreed to look over a client's workers' compensation and employment claims. Mr. Powell told the client he would review her file and let her know in a week if he would take her case. He also told her that the statue of limitations was about to run out on her employment-discrimination claim. Mr. Powell never contacted the client again. The client left several messages for Mr. Powell over the next four weeks, but he did not return her calls. In August 1998, the client requested that Mr. Powell return her file. Mr. Powell returned the file in February 1999, when he delivered it to the Bar Association.

Matter 4: Mr. Powell did not respond to Disciplinary Counsel's requests for information regarding these matters.

Mr. Powell's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 3.2, requiring lawyers to expedite a client's litigation; 1.4, requiring lawyers to keep clients reasonably informed of the status of their matters; 1.15(d), requiring lawyers to take steps to the extent reasonably practicable to protect a client's interests upon withdrawal; and RLD 2.8, requiring lawyers to promptly comply with requests for information from disciplinary counsel.

Lawrence R. Schwerin represented the Bar Association. Mr. Powell represented himself. The hearing officer was Kimberly A. Boyce.

Suspended

Robert G. Maslan (WSBA No.1213, admitted 1966), of Seattle, was suspended for six months, effective February 5, 2001,by order of the Court following a default hearing. This discipline is based on his failure to diligently represent and communicate with a client.

In early 1993, the Pierce County Superior Court admitted Mr. H's will to probate and appointed MH as personal representative (PR) of the estate. On July 26, 1993, counsel for the estate appointed Mr. Maslan as co-counsel and indicated that counsel was beginning a sabbatical effective August 1, 1993. Mr. Maslan and the client did not have an agreement regarding Mr. Maslan's fees. At the time Mr. Maslan took over this estate, several creditor claims were pending. In June 1993, the PR sold two parcels of real estate. The purchaser defaulted on the payments for one parcel. The purchaser and the PR were not able to resolve the default, so Mr. Maslan took steps to initiate foreclosure. Mr. Maslan twice directed the escrow agent to send him fees for his role in the forfeiture. Mr. Maslan did no further work on the estate until July 1995, when he filed a notice of withdrawal. Mr. Maslan indicated that until he was paid for his work, he had no obligation to complete the estate or communicate with the client. Mr. Maslan's conduct did not harm any creditors, the client or the beneficiary. Mr. Maslan also failed to respond to requests for information from disciplinary counsel.

Mr. Maslan's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4(a), requiring lawyers to keep client's reasonably informed of the status of their matters; and RLD 2.8(a), requiring lawyers to promptly comply with requests for information from disciplinary counsel.

William J. Rush represented the Bar Association. Mr. Maslan represented himself. The hearing officer was Preston L. Johnson.

Suspended

LeAnne L. Koliha (WSBA No.18366, admitted 1988), of Bothell, was suspended for one year, pursuant to RLD 12.6, by order of the Supreme Court dated March 12, 2001. The discipline is based upon discipline imposed by the Supreme Court of Oregon for practicing law while her license was suspended.

On July 6, 1993, Ms. Koliha was suspended from the practice of law in Oregon. In 1995, while she was suspended, Ms. Koliha represented a client in a guardianship petition. She filed a petition to block accounts with the Oregon Circuit Court in Grant County. Ms. Koliha also corresponded with opposing counsel on this issue, representing herself as an active member of the Oregon State Bar.

On September 20, 1996, the Oregon Disciplinary Counsel's office requested a response from Ms. Koliha. She failed to respond to their request.

Ms. Koliha's conduct violated ORS 9.160, prohibiting practicing law without a valid license; and DR 1103, requiring lawyers to cooperate with the Bar's investigation.

Leslie Allen represented the Bar Association. Ms. Koliha represented herself.

Suspended

Michael E. Jones (WSBA No. 331, admitted 1971), of Mountlake Terrace, has been suspended for 60 days, following a stipulation approved by order of the Supreme Court dated April 30, 2001. The suspension began May 10, 2001. This discipline is based on his failure to respond to a request for response from disciplinary counsel in 2000. *(Note: Michael E. Jones is to be distinguished from Michael R. Jones of Boise, Idaho.)*

In April 2000, a client filed a grievance against Mr. Jones. In May 2000, disciplinary counsel mailed Mr. Jones a request for response to the grievance. Mr. Jones did not respond or contact the Bar Association. In July 2000, disciplinary counsel served a subpoena for Mr. Jones to appear for a deposition and requested that he bring documents related to the grievance. Mr. Jones failed to appear for his deposition or provide the documents. In September, disciplinary counsel notified Mr. Jones that he would seek review committee authority to file a petition for interim suspension. Mr. Jones did not respond. The review committee authorized disciplinary counsel to seek interim suspension.

On November 8, 2000, disciplinary counsel filed a petition for interim suspension. After the Supreme Court issued an order to show cause, requiring Mr. Jones to appear and show cause why he should not be suspended, Mr. Jones retained counsel, Kurt Bulmer. Mr. Bulmer filed a response to the show-cause order, filed a response to the grievance, and paid all outstanding costs on Mr. Jones's behalf. Disciplinary counsel moved to withdraw its petition for interim suspension. In February 2001, Mr. Jones stipulated to a suspension for his failure to respond to the Bar Association.

Douglas Ende represented the Bar Association. Kurt Bulmer represented Mr. Jones.

Admonished

Michael E. Jones (WSBA No. 331, admitted 1971), of Mountlake Terrace, has been ordered admonished by a review committee of the Disciplinary Board. The disciplinary action is based on his failure to diligently represent a client in 1997. *(Note: Michael E. Jones is to be distinguished from Michael R. Jones of Boise, Idaho.)*

In 1997, Mr. Jones agreed to represent a client before the State Nursing Care Quality Assurance Commission. Mr. Jones told the client he had no experience in this area and agreed to accept no fee for the representation. Mr. Jones promptly appeared and answered the complaint. The commission amended the charges twice. Mr. Jones answered the first amendment, but not the second. Mr. Jones mistakenly believed that his prior answers were sufficient. The commission issued an order of default and findings and conclusions establishing the allegations in the complaint. Mr. Jones received the findings with a notice of the client's right to petition for reconsideration or to seek judicial review. Mr. Jones took no action to overturn the order of default.

By failing to answer the second amended complaint and failing to take any action to overturn the default, Mr. Jones's conduct violated RPC 1.3, requiring lawyers to diligently represent their clients.

Douglas Ende represented the Bar Association. Mr. Jones represented himself.

Admonished

Laura A. Lavi (WSBA No. 17561, admitted 1988), of Lake Forest Park, has been ordered admonished by a review committee of the Disciplinary Board. The disciplinary action is based on her failure to avoid a conflict of interest in 1999.

Ms. Lavi is a lawyer and marriage counselor. While Ms. Lavi was counseling a couple, Mr. L was charged with domestic violence. Ms. Lavi then represented the husband in district court. Ms. Lavi told the prosecutor that based on her knowledge of both parties, the charges should be dismissed. Ms. Lavi also told the prosecutor that the girlfriend had a quick temper and wanted the charges dropped. Ms. Lavi also called the victim advocate and explained that the advocate's attempts to contact the girlfriend were pressuring her, and that the girlfriend wanted the charges dropped.

Ms. Lavi's conduct violated RPC 1.7, prohibiting lawyers from representing clients whose interests are directly adverse.

Sachia Stonefeld represented the Bar Association. Ms. Lavi represented herself.

Censured

Roger A. Castelda (WSBA No. 5571, admitted 1974), of Tonasket, received a censure pursuant to a stipulation approved by the Disciplinary Board on March 27, 2001. This discipline is based on his 1999 conflict of interest and advice violating a court order in one client matter.

In 1993, Mr. Castelda represented Ms. A, the wife in a marriage dissolution. During the dissolution, he defended Ms. A against accusations of alcohol abuse. Ms. A had two alcohol evaluations, with results

reported to Mr. Castelda. Later, Ms. A remarried.

In November 1999, Mr. Castelda's firm agreed to represent Ms. A's husband in a civil protection matter filed by Ms. A, and in a related criminal matter. The husband was charged with fourth-degree assault, obstruction of a law enforcement officer and interference with reporting of a domestic-violence matter. On November 10, 1999, the district court entered a no-contact order in the criminal case, preventing the husband from going to the family home. On the same day, Ms. A obtained a temporary civil protection order also preventing the husband from going to the family home. The civil order was set for hearing on November 22, 1999.

On November 18, 1999, at the Castelda firm's request, the court entered an agreed order modifying the criminal no contact order to allow the husband to go to the family home, so long as the wife was not home. On the same day, Mr. Castelda gave the husband a copy of the modified order in the criminal case and advised him to return home and change the locks. The client spent the night at the family home and changed the locks, in violation of the civil-protection order. The next day, Mr. Castelda filed a declaration regarding Ms. A's alcohol abuse in the civil-protection matter.

Mr. Castelda's conduct violated RPCs 8.4(d), prohibiting conduct prejudicial to the administration of justice; and 1.9, prohibiting using confidences or secrets relating to representation to the disadvantage of a former client.

Becky Neal represented the Bar Association. R. John Sloan represented Mr. Castelda.

Censured

Denise C. George (WSBA No. 10749, admitted 1980), of Bellingham, received a censure following a hearing. This discipline is based on Ms. George's failure to diligently represent and communicate with a client from 1995 through 1997.

In January 1995, Ms. George agreed to represent the mother in a parenting plan and child-support modification. The client had primary residential placement of her two daughters. In December 1994, the 16-year-old daughter had temporarily gone to live with the father. The father filed a petition to modify the parenting plan to award him primary residential placement of the daughter and to terminate his child-support obligation. Ms. George appeared in the case in February 1995, met with her client in March, and accepted one telephone call in June. In September 1995, the client wrote Ms. George asking about the status of her case, and indicating she was in financial distress because she had not received child support. Ms. George did not respond to this letter.

In October 1995, Ms. George filed a note for the motion docket, scheduling a hearing on support arrearages for November 1, 1995. She did not file a motion with the notice, so there was no hearing. On January 5, 1996, Ms. George did file a motion to determine support arrearages and the court set a fact-finding hearing. On January 16, the client spoke to another lawyer in Ms. George's office, Mr. R. Mr. R's notes of the conversation indicate that the client said she did not want primary residential placement of the child, but needed the child support.

On March 5, 1996, the court entered an order signed by Mr. R indicating that the parties agreed to change the child's residential placement to the father, and to reserve the child-support arrearage issue for a later date. The client did not receive a copy of this order. On April 1, the client wrote another letter to Ms. George indicating she would not agree to give up primary residential placement for the child and needed the back-due child support. Ms. George did not respond to this letter or take any action to resolve the child-support issue. On April 15, 1996, the child turned 18. The client wrote another letter on March 13, 1997. On June 14, 1997, after receiving no response to her letter, the client filed a grievance.

Ms. George's conduct violated RPCs 1.4(a), requiring lawyers to keep clients reasonably informed of the status of their cases; 1.3, requiring lawyers to diligently represent their clients; and 1.2(a), requiring lawyers to abide by their clients' decisions concerning the objectives of the representation.

C. Elizabeth Williams represented the Bar Association. Ms. George represented herself.

Non-Disciplinary Notice

Interim Suspension

John M. Cooper (WSBA No. 22977, admitted 1993), of College Place, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered June 8, 2001. *(Note: Mr. Cooper is to be distinguished from John Gordon Cooper of Seattle.)*

Opportunities for Service

Bench-Bar-Press Committee of Washington

Application deadline: December 31, 2001

The WSBA Board of Governors is accepting letters of interest from members interested in serving a three-year term on the Bench-Bar-Press Committee of Washington (two positions). A written expression of interest is also required for any incumbent seeking re-appointment. The three-year term will commence on February 1, 2002.

The Bench-Bar-Press Committee was formed in 1963 to foster better understanding and working relationships between judges, lawyers and journalists. Its mission is to seek to accommodate, as much as possible, the tension between the constitutional values of free press and fair trial through educational events and relationship-building. The committee is chaired by the chief justice of the Washington State Supreme Court and includes representatives from the legal profession, judiciary, law enforcement and news media. The committee meets as a whole once or twice each year. Subcommittees of volunteers are organized on an *ad hoc* basis to plan and execute events. Further information about member responsibilities is available upon request by e-mailing wendy.ferrell@ courts.wa.gov.

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 the State Board of Continuing Legal Education

The WSBA is seeking member referrals of nonlawyer citizen members for the State Board of Continuing Legal Education. 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 this board 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.

The board is 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.

YMCA Mock Trial Seeks Volunteers

District competitions for the YMCA Mock Trial Program will be held February 8-March 3, 2002, and the state competition will be held March 22-23. Volunteer raters are needed for all competitions. For specific county information, contact Jason Leggett at 360-534-0155 or jmleggett@earthlink.net.

Welcome New Governor Paul Lehto

Snohomish County lawyer Paul R. Lehto has been elected to the recently created at-large position, representing the Washington Young Lawyers Division (WYLD) on the WSBA Board of Governors. He was nominated by the WYLD board of trustees, and his term expires in September 2003. Mr. Lehto is an active member of the Washington State Trial Lawyers Association, and served as chair of the Snohomish County chapter. He is a mentor to younger lawyers, and is working with the Snohomish County Bar Association to establish a program for young lawyers to work with at-risk middle-school students who are interested in exploring the legal profession. Mr. Lehto's Everett-based practice emphasizes business law, civil litigation and consumer law. Mr. Lehto recently opened CopyCare, a copying service that donates all profits to charity. He is also developing a model for a nonprofit law firm designed to better meet the social obligations of the community in which it is based. Mr. Lehto was instrumental in planning a retreat last summer for lawyers and scholars interested in better approaches to conflict resolution and the study of the role of law in a democratic society.

Judicial Recommendation Committee

The WSBA Judicial Recommendation Committee is currently accepting applications from attorneys and judges seeking consideration for appointment to fill potential appellate-court vacancies. Interested candidates will be interviewed by the committee at its February 8, 2002 meeting. The deadline for receipt of questionnaires by the WSBA is 5:00 p.m., Friday, January 4, 2002.

The committee's recommendations are reviewed by the WSBA Board of Governors and then referred to Governor Locke for review when appointments are made to fill vacancies on the Washington Court of Appeals and Supreme Court. If you are interested in scheduling an interview, please contact the WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330; 206-727-8239; or jerrin@wsba.org to obtain a questionnaire. Please specify whether you need the questionnaire designed for a judge or an attorney.

General Rule 22 Takes Effect in King County Superior Court

Pursuant to GR22, family law cases (any case filed under RCW chapters 26.09, 26.10, 26.12, 26.18, 26.21, 26.23, 26.26, 26.27, 26.50 and 26.52) will be required to submit a completed confidential information form (CIF) at the time of the initial filing. The CIF and confidential financial source documents cover sheet are available at no charge at the King County Superior Court Clerk's office Web site (http://www.metrokc.gov/kcsc), in the clerk's office, or on the Washington State Courts' Web site (http://www.courts.wa.gov). Other family law forms are available on the court's Web site, or may be purchased from the clerk's office.

Legal Help for September 11th Victims

ABA President Robert Hirshon has called upon America's lawyers to unite during this difficult time. Lawyers are working with the ABA to provide legal services to victims of the recent disasters. Areas of help include legal assistance for victims, military personnel, and lawyers whose practices were affected; and ABA programs that can provide legal information or referrals and information on how lawyers can volunteer to help or make a donation. More information is available at http://www.abanet.org.

License Fee Reminder to WSBA Members

Licensing Packets

Licensing packets, which include license fee, trust account and MCLE reporting (C-2 Compliance Affidavit) forms, will be mailed in early December. If you have not received your licensing packet by the first week in January 2002, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org to request a duplicate.

Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the licensing packet.

Address Changes

Now is the ideal time to check that the WSBA has your correct address in its database. You can check by going to the online lawyer directory on the WSBA Web site at www.wsba.org/directory. If your address has changed, please notify the WSBA Service Center as soon as possible by e-mailing questions@wsba.org or faxing the change to 206-727-8319.

Fees

In addition to your license fee, per APR 15, the Supreme Court has ordered that all active members must pay a $13 assessment to the Lawyers' Fund for Client Protection (LFCP). We encourage you to pay your license fee (and active members the LFCP fee) promptly to avoid penalties. A 20 percent late-payment penalty is imposed if the annual license fee is not paid by March 1, 2002. After April 1, 2002, a 50 percent late-payment penalty is imposed. If your license fee, penalty assessment or LFCP fee remain unpaid after May 1, 2002, the delinquency will be certified to the Supreme Court, which will enter an order of suspension from the practice of law. In order to be reinstated to your former status after suspension for nonpayment, you must pay *double* the amount of the combined fee and penalty (*triple* the original fee). For active members, nonpayment of the LFCP fee is also cause for suspension.

More Information

For more information, please see the WSBA Web site at www.wsba.org/licensing, or contact the WSBA Service Center at 800-945-WSBA (9722), 206-443-WSBA (9722) or questions@wsba.org.

MCLE Reporting Time

Group 1

Active WSBA members who are in Reporting Group 1 (active members admitted through 1975; or in 1991, 1994, 1997 or 2000*) will report CLE credits for activities undertaken in 1999, 2000 and 2001.

**Newly Admitted Members*

Newly admitted members are exempt from reporting CLE credits during their year of admission and the following calendar year. Thus, if you were admitted in 2000 you will not report this reporting period even though you are in Group 1. You will first report at the end of 2004. (New admittees may earn CLE credits, however, starting from their admission date, and those credits may be applied toward their first reporting period.)

CLE Compliance

If you are in Reporting Group 1, please do the following to meet your CLE requirements:

1) Complete approved CLE credits totaling at least 39 general and six ethics for the three-year period (1999 through 2001);
2) Submit these credits and attendance to the WSBA either through the sponsor or directly to the WSBA;
3) Sign the C-2 Compliance Affidavit certifying attendance of the listed courses; and
4) Send the C-2 Compliance Affidavit to the WSBA by February 1, 2002.

Reporting Forms

Your C-2 Compliance Affidavit contains all courses and credits to your record for 2001 CLE activities submitted by sponsors. Please review it carefully and make any necessary changes or additions to this credit information. If you have CLE credits for activities in 2001 that were not earned through live courses, you must enter this information. You must also enter course/credit information for activities undertaken in 1999 and 2000. You must then sign, under penalty of perjury, that the credit information you submit is true and correct.

The New MCLE Credit-Tracking System

In the near future, through a confidential password you will be able to go to your individual record in the MCLE database and make changes to your personal information, add approved CLE activities, apply for course approval, and make corrections to your credit amounts.

Sponsor Attendance Reports

Remember that although sponsors are now responsible for reporting credits from live seminars, each individual attorney attending such seminars is responsible for informing the sponsor of the amount earned for that seminar. If you do not attend the entire seminar, please inform the sponsor, so the sponsor can submit the correct number of CLE credits you earned.

Senior Lawyers' Discussion Group

A Senior Lawyers' Discussion Group meets Thursdays at 6:00 p.m. in the Lawyers' Assistance Program office (WSBA, 2101 Fourth Ave., Third Fl., Seattle). If you are a senior lawyer and would like to talk with other retired or soon-to-be-retired lawyers about issues of interest, please contact Mike Hoff at 206-733-5988 or mikeh@wsba.org.

Estate Tax News

Washington estate tax will be experiencing some major changes resulting from the federal Economic Growth and Tax Relief Reconciliation Act of 2001. The state death-tax credit will be phased out between now and January 1, 2005. To phase out the credit, the reporting thresholds will increase while the percent of current state credit allowable will be reduced. For instance, 2002 deaths will have a reporting threshold of $1 million, and the percent of the current state credit will be 75 percent (versus $675,000 and 100 percent for 2001). For July 1, 2000 due dates and after, there is no longer a voluntary filing penalty, but late-payment interest will still apply. The interest rate for 2002 will be seven percent. For more information, contact the Department of Revenue Estate Tax Section at 360-753-5547 or 360-753-7518.

The WSBA thanks Gensler, an architecture, design and planning firm with offices throughout the United States and overseas, for their donation of time and services to analyze the WSBA's office-space utilization, traffic flow, and aesthetics as we examine our future office space and facility needs. Gensler has recently established a Seattle regional office and may be contacted at 206-262-9909.

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.

Glass-Ceiling Report Due Soon

In the spring of 2001, a 30-page survey was sent to all private law firms in Washington with five or more attorneys. The glass-ceiling survey was designed to answer the following question: Based on objective data, what is the status of women and minority lawyers in private law firms in the state of Washington? After years of pondering the question, sharing anecdotes, and reviewing the results of studies conducted in other states and nationally, a coalition of organizations determined it was time to get an accurate answer to that question.

The Glass-Ceiling Task Force, composed of representatives from the King County Bar Association; Washington Women Lawyers, state and King County chapters; the Supreme Court Commission on Gender and Justice; the Washington State Bar Association; Northwest Women's Law Center; and Washington Women Defenders, worked for more than two years to devise a plan for conducting the survey; design a survey instrument; raise money to administer the survey; and employ a research firm with the expertise to ensure valid and reliable results.

The survey was mailed in May 2001. A firm administrator or designee was asked to respond on behalf of the firm, providing information based on the firm's circumstances during 2000. Questions covered recruitment and hiring, promotion and retention, compensation, professional growth, work life and firm culture, and anti-discrimination and sexual harassment practices. Over the summer, the results were tabulated and analyzed. A final report is now being prepared.

Survey findings will be reported in *Bar News*, with full survey findings available upon request. Stay tuned for more information.

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 Trust
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.

CLE Bookstore Open for WSBA Members

The WSBA CLE bookstore will be open at the WSBA office at 2101 Fourth Ave., Fourth Fl., from December 3 to December 31. Hours of operation will be from 9:00 a.m. to 4:30 p.m., Monday through Friday, with the exception of December 25 and January 1, when the bookstore will be closed. Monday, December 24 and Monday, December 31, the bookstore

will be open from 9:00 a.m. to noon. Available MCLE A/V credit-approved material will include a limited supply of selected taped seminars with coursebooks. Payment may be made by cash, check, MasterCard or Visa. (You may claim up to 15 total A/V credits for the current reporting period. All ethics credits can be acquired using approved A/V self-study.)

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.

ALI-ABA Invites Rawle Award Nominations

The American Law Institute-American Bar Association Committee on Continuing Professional Education (ALI-ABA) is accepting nominations for the 2002 Francis Rawle Award for outstanding contributions to the field of post-admission legal education. The award committee will review all nominations for evidence of exceptional service in post-admission legal education, including publications, lectures, and the creation or administration of programs. Nominations are due by March 1, 2002, and should be mailed to Rawle Award Committee, ALI-ABA, 4025 Chestnut St., Philadelphia, PA 19104.

For more information, contact Donna Maropis at 800-253-6397, ext. 1612.

East King County Bar Association Holiday Party

The East King County Bar Association (EKCBA) will host a holiday party December 6 from 5:30 p.m. to 8:30 p.m. at the Hyatt Regency Hotel in Bellevue. The party includes a buffet dinner, no-host bar and silent auction, and will feature Joe Koplin's Jazz Quintet. For more information, contact the EKCBA at 425-637-3097.

Law Week 2002

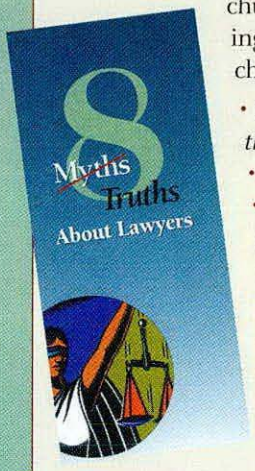
Law Week 2002 is an exciting opportunity for lawyers and judges to bring public legal education into the classroom. Each year, Law Week provides an enriching experience to youth through positive interactions with lawyers and judges. Law Week 2002 will take place the week of May 1. To learn more about the program or to participate, visit www.lawweek.org or contact Lisa KauzLoric at 206-733-5944 or lisak@wsba.org.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in November 2001 is 1.966 percent. The maximum allowable interest rate for December 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.

8 ~~Myths~~ Truths About Lawyers

Help us stamp out some of those myths about lawyers! The new *8 ~~Myths~~ Truths About Lawyers* brochure, developed by the President's Initiative Task Force, is now available for purchase. Think about displaying the brochures in your reception area, or enclosing them with your invoices. The brochure tackles the following myths:



- *The United States has more lawyers than any other country.*
- *Lawyers are selfish and greedy.*
- *Lawyers stir up litigation for their own personal profit.*
- *Huge punitive damage awards are frequent and on the rise.*
- *The McDonald's verdict shows how foolish juries are.*
- *Lawyers who defend criminals are just promoting crime.*
- *When there's an accident, lawyers are among the first on the scene, soliciting business.*
- *The jury system is not worth keeping.*

The cost is $35 per 100 (price includes shipping and handling).

Yes! I would like to order ____ packets @ $35 per packet (100)

$ _____

If in Washington, please add WA state sales tax @8.8% $ _____

Total $ _____

❑ check enclosed (payable to WSBA)

❑ MasterCard ❑ Visa

No. _____ Exp. date _____

Name as it appears on card _____

Signature _____

Please send to:

Washington State Bar Association
2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330

MasterCard and Visa orders may also be placed over the phone by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Name _____

Address _____

City _____ State ____ ZIP _____

WSBA office use only: 1-59202-210

date _____ check no. _____ amount _____

Congratulations to the following individuals who passed the July 2001 Bar Examination.

Note: Individuals listed are from Washington unless indicated otherwise.

Cabrelle Abel, Seattle
Aimee Adams, Seattle
Constance Adams, Kirkland
Matthew Hauser Adams, Seattle
Timothy Adams, Tacoma
Matthew Thomas Adamson, Sammamish
Kenneth Alan, Federal Way
Cory Albright, Seattle
Asser Aldana, Redmond
Christopher Joshua Alex, Seattle
Heather Alhadeff, Seattle
Mani Aliabadi, Bellevue
Peter John Allen, Tacoma
Georgiene Alsdorf, Redmond
Larry Altenbrun, Suquamish
Arlene Anderson, Everett
Brett Anderson, Harrisonburg, VA
Wendy Kay Anderson, Seattle
Magnus Rune Andersson, Lacey
Lance Andree, Seattle
Heidi Elizabeth Appel, Spokane
Samantha Marion Arango, Lake Oswego, OR
Matthew Argue, San Diego, CA
Joanna Elizabeth Arlow, Bellevue
Brian Clifford Armstrong, Seattle
Jennifer Atwood, Seattle
Stephani Lynne Ayers, Seattle
David Babcock, Seattle
Philip Andrew Bacus, Seattle
John Paul Bagley, Seattle
Jack Bajorek, Arvada, CO
Eric Scott Baker, Bellevue
Adolfo Banda Jr, Zillah
C. Geoffrey Baragar, North Vancouver, BC
Wendy Jane Batchelor, Seattle
Patricia Eileen Baugher, Bothell
Anne Elizabeth Beardsley, Seattle
Heather Beasley, Portland, OR
Jennifer Elaine Bell, Pittsburgh, PA
James Glen Bennett, Kent
Rhonda Bershok, Lake Oswego, OR
Charles Best, Vancouver
David Carl Beyersdorf, Seattle
Mario August Bianchi, Vashon Island
Eleanor Broerick Bibb, Wichita Falls, TX
Brett Billingsley, Liberty Lake
Michael Bindas, Jackson, MS
Ian Birk, Seattle
Amanda Jean Bjur, Spokane
Christopher Robert Black, Seattle
Jacob Black, Seattle
Karen Blochlinger, Seattle
Robert Blue, Kirkland
Andrea Boitano, Tacoma
Jacqueline Bolden, Renton
Michelle Hayden Bomberger, Newcastle
Joan Beatrice Akers Booms, Seattle
Kristin Johanna Boraas, Seattle
Annette Borell, Seattle

(continued on next page)

Goldmark Award Luncheon

The Legal Foundation of Washington will host the 16th Annual Goldmark Award Luncheon on Thursday, February 21, 2002 at the Washington State Convention & Trade Center from noon to1:30 pm. The Legal Foundation is a not-for-profit organization that has distributed over $51,000,000 for legal services to the poor since 1985.

The Honorable William L. Dwyer, Senior U.S. District Court Judge for the Western District of Washington, will receive the Goldmark Award for Distinguished Service in recognition of a lifetime of exceptional leadership, both as an attorney and as a federal district court judge. Justice Rosalie Abella of the Court of Appeals for Ontario, Canada, will give the keynote address.

The Goldmark Award honors the memory of Charles A. Goldmark, a Seattle attorney, community leader and ardent supporter of access to justice. Please clip out and return the coupon below with your check payable to the Legal Foundation of Washington.

- ❑ Yes, I would like to honor the work of legal services by attending the luncheon. I will bring ____ additional guests. ($35/person enclosed).
- ❑ My firm would like to be an Equal Justice Sponsor ($1000 enclosed). Eight members of our firm will attend. *(A charitable contribution of $720 will help cover luncheon expenses.)*
- ❑ My firm would like to be an Equal Justice Supporter ($500 enclosed). Four members of our firm will attend. *(A charitable contribution of $360 will help cover luncheon expenses.)*
- ❑ I would like to be a Goldmark Donor ($100 enclosed). Two lunches will be provided and a charitable contribution of $30 will help cover luncheon expenses.
- ❑ No, I cannot attend the luncheon, but I would like to support the luncheon with a donation of $ ____ .

Names (s): _____

Please indicate if a vegetarian meal is preferred.

Legal Foundation of Washington, 500 Union Street, Suite 545, Seattle, WA 98101
Telephone: 206-624-2536, ext. 10; fax: 206-382-3396

The Legal Foundation of Washington is a 501(c) (3) status institution.

The WSBA Store is Open

WSBA logo merchandise is now available. The WSBA Store includes Cutter & Buck polo shirts, twill baseball caps, ball-point pens, and brass luggage tags emblazoned with the WSBA logo. To order, contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. For more information and to view products, see the WSBA Web site at www.wsba.org/store.

Polo shirt (pewter or white) - $56
Baseball cap (stone) - $24
Ball-point pen - $12
Luggage tag - $7

Prices include shipping and handling.

Arlys Bosselmann, Gig Harbor
Christopher Michael Boyd, Vancouver
Heather Lea Brechbill, Santa Clara, CA
Isak Daniel Bressler, Seattle
Herman Brewer IV, Spanaway
Kelli Bringolf, Rochester
David James Britton, Auburn
Merry Elizabeth Broberg, Kent
Alisa Brodkowitz, Seattle
Hillary Anne Brooks, Beaverton, OR
Jeffrey Browder, Idaho Falls, ID
Erin Angela Brower, Spokane
Kimberly Brown, Renton
Shawn C. Olson Brown, Seattle
Charles James Bruen III, Issaquah
Eric Elgin Brunstrom, Seattle
Lynne Margaret Buchanan, Mead
Mark William Buchthal, Duvall
Suzanne Burke, Renton
Joseph Burrowes, Spokane
Kelly Cadigan-McGee, Normandy Park
Jennifer Lynn Campbell, Seattle
Timothy Cardwell, Tualatin, OR
James Eric Carlson, Seattle
Janelle Carman, Walla Walla
Paul Edward Cartee, Kirkland
Cameron Cassidy, Yarrow Point
Joeana Catarata, Seattle
Neil Alan Caulkins, Seattle
Tara Cathleen Causland, Kirkland
Philip Prescott Chandler II, Seattle
Huei Ching Chao, Normandy Park
Teresa Jeanne Chen, Seattle
Larry Chin, Seattle
Eun-Young Choi, Marysville
Siu Kuen Annie Choi, Sammamish
Leigh Christie, Seattle
Paul Lawrence Clark, Moscow, ID
Jamie Corrine Tedford Clausen, Seattle
Peter Clemens, Yorktown, VA
Cameron Jacob Cohen, Seattle
Janelle Amy Collier, Seattle
Vanessa Vanderbrug Colson, Spokane
Joel Comfort, Des Moines
Mikal Jenna Condon, Washington, DC
Annette Elena Cook, Renton
Dale Ray Cook, Seattle
Matthew Cooper, Fairbanks, AK
Kevin Joe Copp, Renton
Dana Copstead, Edmonds
Jared Thomas Cordts, Lynnwood
Michelle Estioco Corsilles, Seattle
Charles Cottrell, Seattle
Pamela Crane, Seattle
Mary Eileen Crego, Kenmore
Ian Frederick Crossland, Kirkland
Kevin Crowe, Mercer Island
Ann Marie Cummins, Philadelphia, PA
Greggory Curry, Vashon
Dean D'Mellow, Seattle
Rachel Bernis Da Silva, Kennewick
David Glen Davenport, Snohomish
Christine Davio, Seattle
Louise Deng Davis, Bellevue
Jason Harris Daywitt, Portland, OR
Rommel De Las Alas, Federal Way
Deborah Dean, Seattle
Thomas Jesse Degan Jr., Spokane
Rodrick Joseph Dembowski, Seattle
John Paul Desjardien, Seattle
Brian David Desoto, Seattle
Scott Thomas Deutsch, Spokane
Michael Lee Dewitt, Auburn
Jeffrey Dickerman, Seattle
Audra Dineen, Kent
Bruce Emery Disenhouse, Riverside, CA
Christopher John Dodd, Spokane
Vade Spencer Donaldson, Seattle
Michael Dorcy, Shelton
Rachel Drake, Seattle
Jennifer Droz, Bothell
Herbinder Singh Dulay, Vancouver, BC
Michael Dustin, Tigard, OR
David Thomas Dutcher, Issaquah
Julie Dutton, Portland, OR
Gerald Parker Dwyer Jr., Wethersfield, CT
Kenneth Jude Dyer, Seattle
Sommer Baldwin Dykema, Bellevue
David Roy East, Seattle
Emelie East, Washington, DC
Heidi Eckel, Seattle
Elizabeth Evelyn Ehrhart, Seattle
Heidi Marie Ellerd, Pasco
Farah Lillian Emeka, Seattle
Scott Thomas Engan, Seattle
Jason Garrett Epstein, Kirkland
Justin Ericksen, Gig Harbor
Deanna Lyn Erickson, Seattle
Michael Evans, Federal Way
Jerry Nelson Evans, Seattle
Mitchell Gene Faber, Lynden
Christina Fabie, South San Francisco, CA
Nathan Fahrer, Seattle
Stephen Richard Fallquist, Mercer Island
Ross Farr, Seattle
Stacie Lynn Farris, East Wenatchee
Raymond John Farrow, Seattle
Melanie Fergus, Portland, OR
Natalee Ruth Fillinger, Tukwila
Michael Fisher, Spokane
Lance Duncan Fitzjarrald, Seattle
Matthew L.M. Fletcher, Seattle
Claire Foley, Lakewood
Michele Christine Forrar, San Francisco, CA
Jeffrey Erich Foster, Mukilteo
Theda Braddock Fowler, Steilacoom
Sandra Fowler, Richland
Kristen-Marie Freund, Shelton
Traci Joy Friedl, Seattle
Mark John Friendshuh, Boise, ID
Kimberly Diane Frinell, Roy
Daniel Frohlich, Gig Harbor
Taryn Fuchs, Salem, OR
Jason David Gaber, Kent
Benton J. Gaffney, Seattle
Lawrence Gail, Seattle
Kraig Robert Gardner, Ellensburg
Ryan Michael Garvey, Seattle
Nina Sant Gat, Pasco
Suanne Marie Gay, Lynnwood
James Devlan Geddes, Eugene, OR
Shelley Renee George, Normandy Park
Marion Gerhardt, Pullman
Timothy Guido Giacometti, Seattle
Devon Vanessa Gibbs, Seattle
Tracy Elizabeth Gibbs, Renton
Danica Dawn Gibson, Tacoma
Lucy Gilbert, Seattle
Brook Andrew Goddard, Medina
Cascadia Goddard, Seattle
Abigail Adao Goldy, Seattle
Hayes David Gori, Seattle
Michelle Gorton, Tacoma
Jan Gossing, Fife
Jennifer Tamiko Gotanda, Seattle
Eugene Graff, Vancouver
Wayne Morse Graham, Seattle
Louis Gray, Kirkland
Cecelia Youngberg Gregson, Seattle
Kerry Brian Gress, Seattle
Anthea Despina Grivas, Kenmore
Thomas Joseph Guilfoil, Seattle
Jeffrey Thomas Gutierrez, Sammamish
Colby Peter Haase, Seattle
Paige Diana Haley, Kirkland
Michael Brian Hallinan, Wilsonville, OR
Michelle Renee Hamel, Seattle
Chellie Hammack, Bothell
Patrick Michael Hanis, Kent
Joan Bellant Hanten, Poulsbo
Thomas Ray Hargan Jr., Renton
Mark James Harris, Spokane
Michael Eugene Harris, Seattle
Jodi Harrison, Seattle
Yolanda Harrison, Yelm
Lisa Hasselman, Seattle
Jason Hatch, Seattle
Michael Hatch, Seattle
Stephanie Ruth Haug, Post Falls, ID
Alexis Ann Hawker, Chicago, IL
Jeffrey Hawkinson, Seattle
William Haynes, Olympia
Sheila Heidmiller, North Bend
Tia Brotherton Heim, Seattle
Karen Helland, Olympia
Donald Henslee, Austin, TX
Tara Herivel, Seattle
Andres Ivan Hermosilla, Seattle
Joaquin Hernandez, Seattle
Brett Herron, Issaquah
Dubs Ari Tanner Herschlip, Seattle
Mitchell W. Herzog, Deer Harbor
Kerena Alessandra Higgins, Auburn
Deanna Highbarger, Spokane
James Vincent Hill, Snohomish
Rachel Shinobu Hill, Seattle
Meredith Jill Hillman, Mercer Island
Patrick Hinton, Bainbridge Island
Brian Trevor Hodges, Seattle
Matthew Hoff, Seattle
Julia M. I. Holden, Seattle
Eric Hollis, Fall City

Mark Eldon Howard, Puyallup
Michael Howard, Seattle
Jason Howell, Eugene, OR
Jeffrey Hunt, Seattle
Ramona Noel Hunter, Seattle
Jonathan B. Huntington, Wayne, ME
Marni Hussong, Seattle
Burke Jackowich, Seattle
Mary Catherine Jackson, Seattle
Pam Kohli Jacobson, Seattle
Kyong Il Jang, Seattle
Nicholas Jenkins, Lynnwood
Bryce Allen Jensen, Bremerton
George Jay Jensen Jr., Edmonds
Richard Jerabek Jr., Seattle
Anna Eva Johansson, Seattle
Michael Johnson, Seattle
Timothy Donn Johnson, Kirkland
Jason Lafe Johnson, Portland, OR
Grant Johnstone, Portland, OR
Allyson Grace Jones, Bellevue
Corey Cardel Jones, Seattle
Justin Robert Jones, Bellevue
Paul August Kampmeier, Seattle
Alice Jin Mi Kang, Federal Way
Melissa Beth Karlen, San Francisco, CA
Jennifer L. Treadwell Karol, Tumwater
Rachelle Kavner, Sammamish
Kristen Keeffe, Seattle
Brian Keith Keeley, San Jose, CA
Claire Louise Keeley, San Jose, CA
Debra Sullivan Kelley, Kirkland
Michael John Kelly, Seattle
Michelle Kemp, Bothell
James Edward Kennedy, Kirkland
Christopher Kerkering, Seattle
Steven Frederick Kerr, Seattle
David Kerr, Seattle
Craig Gordon Kibbe, Seattle
Stacy Lynn Kihlstrom, Seattle
Carla Kiiskila, Vashon Island
Carolyn Hyun-Kyung Kim, Alameda, CA
Miry Kim, Seattle
Stephen Kim, Lynnwood
Matthew Ryan King, Redmond
Michael Eugene Kinney, Tallahassee, FL
Thomas Klein, Kenmore
Gabrielle Christine Kocsis, Spokane
Robert Kondrat, Tacoma
Lisa Korchinski, Seattle
Mark Koslicki, Mount Vernon
Amy Koziak, Bellevue
Robert Krabill, Tacoma
William Mickel Krause, Seattle
Judith Krebs, Seattle
Denisa Krejsl, Seattle
Melissa Carlton Krueger, Redmond
Christopher James Krupp, Seattle
Kathryn Kunkler, Seattle
Tony Kuo, Seattle
Jason Thomas Kuzma, Seattle
Patrick Terrance Lackie, Spokane
Carol Denise Laherty, Edmonds
John Lane, Seattle
Stacey Cano Lara, Seattle
Luke Michael Lariviere, Yakima
Ingrid Patricia Larson, Seattle
Jean-David H.P. Larson, Mercer Island
Ronda Denise Larson, Seattle
Michael Laska, South Royalton, VT
Megan Flynn Lawrence, Seattle
Kimberly Layton, Redmond
Andre Leblanc, Springfield, OR
Charles Lee, Tacoma
Stephanie Lee, Seattle
Thuy Bich Nguyen Leeper, Seattle
Cameron Leonard, Fairbanks, AK
Linell Ami Letendre, Renton
Grady Leupold, Shoreline
Barbara Level, Seattle
Douglas Paul Levinson, Kent
Yolanda A.R. Lewis, Bremerton
Heather Lewis-Lechner, Tacoma
Emily Lieberman, Seattle
David Lin, Salt Lake City, UT
Sage Andrew Linn, Seattle
Dacai Liu, Vienna, VA
Lucius Lavoisier Lockwood, Rolling Bay
Brendan Thomas Lund, Seattle
Jesse S.T. Maanao, Seattle
Sofia D'almeida Mabee, Bellevue
Amanda Lynne Maddox, Kent
Michelle Maddox, Seattle
Barbara Mahoney, Oakland, CA
Athena Makratzakis, Seattle
Molly Aneesa Malouf, Eugene, OR
Megan Manlove, Spokane
Melanie June Mann, Florence, OR
Leslie Louise Marshall, Mercer Island
Jennifer Marston, Madras, OR
Christine Angelle Martin, Seattle
Raul Robert Martinez, Seattle
Samuel Jason Marx, Kirkland
Bella Maslyak, Seattle
Justin Mason, Seattle
David Mason, Los Angeles, CA
Elizabeth Drahold Mathews, Seattle
Jesse Matt, Mercer Island
Michael Maverick, Fife
Stanley Mayhew, Fairplay, CO
Andrea Beth Mayner, Issaquah
Stephen Patrick McCleary, Cold Spring, NJ
Hillary McClure, Bellevue
Jemima McCullum, Seattle
Douglas McDermott, Newcastle
Erin McDougal, Seattle
Jason T. McGill, Renton
Mark McGowan, La Quinta, CA
Alina Ann McLauchlan, West Lafayette, IN
Michael Allen McNab, Enumclaw
Kol Medina, Bainbridge Island
Helen Meissner, Seattle
Lisa Melenyzer, Seattle
Amy Winona Meyer, Seattle
Brandy Marshelle Meyer, Bellevue
Michelle Crosby Michaud, Scottsdale, AZ
Delaney Miller, Seattle
Jennifer Miller, Salem, OR
Jordan-Lee Miller, Renton
Deborah Miller-Tornabene, Wenatchee
Sarah Millington, Yelm
Kristen Kay Mitchell, Seattle
Leo Elias Mitsiadis, Seattle
Yoko Miyashita, Seattle
Timothy Mizrahi, Seattle
Catherine Mee Moen, Seattle
Alisha Molyneux, Seattle
Christopher Shannon Moore, Yelm
Kathleen Moore, Olympia
Jennifer Mora, Bellevue
Kimberly More, Kalispell, MT
Shawn Daniel Morgan, Sacramento, CA
Michael Moyer, Seattle
Robert Mrofka, Gilbert, AZ
Brian Michael Muchinsky, Kirkland
Herbert Matthew Munson, Seattle
Mie Murazumi, Bellevue
Laura Murphy, Olympia
Megan Murphy, Yakima
Therese Murphy, Bothell
Amy Irene Muth, Marysville, OH
Shankar Narayan, Seattle
Desmond Naughton, Mountlake Terrace
Phillip Navarro, Renton
Eric Jay Neal, Kirkland
Eric Christopher Nelsen, Seattle
Justin Adatto Nelson, New York, NY
David Arthur Nesbett, Anchorage, AK
Eric Newman, Kent
Mike Khoa Anh Nguyen, Seattle
Michael Andrew Nicholson, Woodinville
Ann Nielsen, Mercer Island
Paul William Jay Nielsen, Seattle
Stephen North, Seattle
Aileen Marie Novess, Spanaway
Patricia Tierney O'Brien, Seattle
Sean Patrick O'Donnell, Seattle
Michele Maureen O'Loane, Seattle
Kari Lee O'Neill, Seattle
Stephen F.X. O'Neill, Vancouver, BC
Aaron Olsen, Somerville, MA
John Charles Olson, Seattle
Nathaniel Olsson, Bellingham
Jan Patrick Oppermann, Seattle
Thomas Orvald, Yakima
Alice Ostdiek, Seattle
Bryan Otake, Seattle
Edward Louis Ouellette, Seattle
Garrett Douglas Page, Seattle
Meena Pauline Pallipamu, Seattle
Jesse Miles Pannoni, Bellevue
William Gerard Pardee, Ferndale
Jangho Park, Bellevue
Larissa Payne, Seattle
Amber Leigh Pearce, Kent
Amy Jo Pearsall, Tukwila
Mark Stephen Peloquin, Sunnyvale, CA
Gregory Pereyra, Seattle
Brian John Perron, Washington, D.C.
Ronald Allen Peters, San Francisco, CA
Gary Earle Peterson, Lewiston, ID
Arissa Marie Peterson, Issaquah

Dorry Ann Leilani Peterson, Des Moines
Elizabeth Peterson, Seattle
Matthew Petrich, Sammamish
Nguyen-Vu Pham, Missoula, MT
Matthew Philbrook, Vancouver
Janean Vee Phillips, Spokane
Stuart Treat Platt, Seattle
Elizabeth Poh, Seattle
Mary Katherine Porter, Seattle
Todd Porter, Spokane
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has joined the firm as an associate.

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Mr. Hight counsels and represents insurers and insureds on issues of insurance coverage and offers mediation services for insurance disputes. He graduated from Duke University and received his J.D. degree in 1974 from the University of California, Davis.

* The CPCU professional designation is awarded by the American Institute for Chartered Property Casualty Underwriters. The Supreme Court of Washington does not recognize certification of specialties in the practice of law, and the designation is not a requirement to practice law in the state of Washington.

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is pleased to announce that

Jami K. Elison,
former judicial clerk for the
10th Circuit Federal Court of Appeals,
and
T. Dean Moody,
former judicial clerk for the
Washington State Court of Appeals, Division II,
have joined the firm as associates.

Marston & Heffernan, PLLC
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Alexander S. Wylie
have become associates of the firm.

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Mr. Wylie focuses on general litigation, with an emphasis in construction defect litigation, product liability defense, and health care law.

The firm's litigation practice emphasizes the defense of professional, employment, product, medical, drug and medical device cases. Its business practice involves corporate, cooperative, real property, environmental, tax and estate planning work.

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Beth E. Terrell
has become a member of the firm;

David D. Hoff
and
Janissa A. Strabuk
have joined the firm as members; and

Chase C. Alvord
has become associated with the firm.

Ms. Terrell's practice will continue to emphasize commercial litigation and class actions involving defective products, consumer and securities fraud, and employment law.

Mr. Hoff, formerly a principal of Riddell Williams, PS, will continue his practice in securities and complex civil litigation, including class action and environmental damage litigation.

Ms. Strabuk, formerly a principal of Riddell Williams, PS, will continue her practice in complex civil litigation, including class action and environmental damage litigation.

Mr. Alvord, formerly an associate at Schwabe, Williamson & Wyatt, focuses his practice on real estate and business litigation, including intellectual property and construction disputes.

The firm's litigation practice emphasizes complex commercial disputes; real property matters; and class actions involving consumer fraud, defective products, securities fraud, environmental damage and employment law.

Under the leadership of Russell F. Tousley, the firm's real estate and business transaction department provides a broad range of legal services to real estate developers and investors including development, purchase, sale and leasing matters, master-planned communities, land use and zoning.

Calendar

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

WSBA *Bar News* Calendar
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330
fax: 206-727-8319
e-mail: comm@wsba.org

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

CRIMINAL DEFENSE

Fine Tuning the Defense 2001: New Laws, New Techniques, New Strategies
December 7 – Seattle. 6.25 CLE credits, including 1 ethics pending. By WACDL; 206-623-1302.

EMPLOYMENT LAW

Sexual Harassment & Discrimination Issues
December 14 – Seattle. 7 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Video Roundup: Privacy in the Workplace
December 20 – Olympia; December 21 – Seattle. 3.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ENVIRONMENTAL

Water Law
December 14 – Seattle. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

Estate Planning for Entrepreneurs
December 5 – Seattle; December 12 – Spokane. 3 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Power of Attorney
December 13 – Spokane. 7 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Video Roundup: Power of Attorney
December 19 – Seattle. 3.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ETHICS

9th Annual Professional Responsibility Institute
December 1 – Seattle. 7.5 ethics credits pending. UW-CLE; 206-543-0059.

Ethics for Estate Planners
December 14 – TeleCLE. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics & Civility
December 14 – Spokane. 6.75 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Video Roundup: Ethics & Civility
December 19, 27 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

Family Law Update: Revisiting the Old and Confronting the New
December 5 – Port Orchard. 6 CLE credits, including 2 ethics pending. By Dispute Resolution Center of Kitsap County, Kitsap County Clerk and Kitsap County Bar Association; 360-698-0968.

GENERAL

Internet Legal Research Series
December 3-6, 11, 13-14, 26-28 – Seattle. 3.5 CLE credits each day. By UW-CLE; 206-543-0059.

A Practical Guide to Commercial Leasing, Negotiation, Documentation and Enforcement
December 4-5 – Portland. CLE credits TBD. By The Seminar Group; 800-574-4852.

The Creation of the U.S. Constitution
December 7 – Seattle. 3.5 CLE credits pending. By UW-CLE; 206-543-0059.

Depositions: Moving Your Case to Resolution
December 12 – Seattle. 6.5 CLE credits, including .5 ethics. By WSTLA; 206-464-1011.

Computer Camp for Counselors
December 12-13, January 22-23 – Seattle. 4 CLE credits each day. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Key to Practice Development
December 12-13 – Seattle. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Video Roundup: The New Tax Act
December 14 – Spokane. 4.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Collection of Judgments
December 14 – Spokane. 6.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Best of CLE
December 14 – Seattle. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Video Roundup: UCC Article 9
December 20 – Seattle. 7.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

IMMIGRATION LAW

Video Roundup: Immigrants in the Legal System
December 13 – Spokane; December 20 – Olympia; December 27 – Seattle. 3.5 CLE credits, including 2.25 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LAND USE LAW

Land Use Law
December 6-7 – Portland. CLE credits TBD. By The Seminar Group; 800-574-4852.

Advance Training for the Experienced Land Use Lawyer
December 12 – Seattle. 5 CLE credits, including 1 ethics pending. By UW-CLE; 206-543-0059.

LITIGATION

Litigation with Pozner & Dodd
December 7 – Seattle. 7 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Trial Stars
December 7 – Seattle. 6.25 CLE credits, including .5 ethics. By WSTLA; 206-464-1011.

Retirement Plan Administrator Liability
January 30 – Seattle. 5.75 CLE 345 credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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Small Seattle firm is seeking a litigation associate with excellent research, writing and analytical skills. Minimum two years' experience in a law firm is preferred. All responses are confidential. Submit letter, résumé and reference list via facsimile to Managing Partner at 206-623-0234.

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Corporate counsel: Wizards of the Coast, Inc., the premier trading-card game company with games like Harry Potter, Pokémon, Magic: The Gathering, and MLB Showdown is seeking a smart and experienced attorney. The ideal candidate will have at least five years' experience including substantial in-house practice. Experience should include an array of transactional work and litigation management. This individual will have extensive interaction with many clients within the company as well as with the company's key business partners. In addition to having excellent credibility in the areas of legal expertise, the successful candidate will be able to balance legal and business issues. Send résumé to lgb@wizards.com. EOE/AA.

Attorney: Wenatchee AV-firm seeks attorney to do civil litigation, legal research and writing. Contact Dale Foreman at 509-662-9602 or dalef@fadv.com.

Transactions attorney: Large AV-rated Eugene business law firm invites applications from established attorneys who are interested in joining our business transactions practice group. Applicants should have at least five years' experience in complex real estate, business acquisitions and other commercial transactions. The successful candidate will be highly motivated; have a demonstrated commitment to developing a successful business practice; and possess excellent legal, technical and interpersonal skills. We are a 25-lawyer firm with a sophisticated business practice and an emphasis on interdisciplinary cooperation and exceptional client service. Partnership, of counsel and other arrangements will be considered. Please send résumé with references to: Andrew G. Lewis, Hiring Partner; Hershner, Hunter, Andrews, Neill & Smith LLP; 180 E. 11th Ave., Eugene, OR 97401.

City of Auburn – prosecuting attorney: $3,890-4,781/mo., plus benefits. Duties include prosecution of criminal misdemeanor violations and traffic infractions in Auburn municipal court, and representing the city at civil drug forfeiture hearings. Requires law-school graduation (ABA certified), license to practice law in Washington, and valid driver's license. Prefer criminal misdemeanor prosecution exp. Applications available at City Hall, 25 W. Main, Auburn, WA 98001 or 253-931-3077, TTY 253-288-3139. See http://www.ci.auburn.wa.us for further details. Open until filled. EOE.

Associate attorney opening: Small AV-rated, lifestyle-conscious downtown Seattle law firm with sophisticated commercial, construction, and real estate litigation practice seeks associate with superior academic credentials and minimum one year's experience in litigation, for immediate opening. Please send cover letter, résumé and writing sample to: Administrator; Groff & Murphy PLLC; 2nd Ave., Ste. 1900, Seattle, WA. Please, no telephone inquiries.

Small IP and commercial litigation firm in downtown Seattle seeks one to four lawyers with partner-level practices. We are a collegial, well-organized and forward-looking firm with excellent resources, an unusually interesting practice, and elegantly furnished spaces in a class-A building. Send inquiries, which will be kept strictly confidential, to PO Box 1297, Seattle, WA 98111.

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Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP are 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.

Peterson Russell Kelly, a downtown Bellevue AV-rated law firm, seeks an associate with a minimum of five years' experience with emphasis on litigation and trial experience. Please send résumé and cover letter to: Administrator, PO Box 1800, Bellevue, WA 98009-1800.

The Ada County Prosecutor's Office in Boise, Idaho, seeks full-time applicants for deputy prosecuting attorney positions. Applicant must be capable of licensure without examination in Idaho or possess Idaho license. Prosecution experience preferred. Entry-level position with salary at $45,100. Practice involves rotation through misdemeanor, juvenile and felony caseloads. Send résumé to: Lynne Goicoechea, 602 W. Idaho, Boise, ID 83702.

Contract attorney opening: Small complex litigation firm in Pioneer Square seeks contract attorney with potential for full-time associate position for brief writing, trial preparation and related projects. Excellent academic and professional credentials required with minimum of three years' experience. Please send cover letter, résumé and writing sample to: Office Manager; Smith & Hennessey PLLC; 316 Occidental Ave. S., Ste. 500, Seattle, WA 98104. Please, no telephone inquiries.

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Jameson Babbitt Stites & Lombard PLLC, an AV-rated firm, seeks litigation associate. Must be member of WSBA. Opportunity to develop career in commercial litigation. No calls, please. Send résumé to: Anne Lawler at alawler@jbsl.com; or 999 3rd Ave., Ste. 1900, Seattle, WA 98104.

Associate needed for Miller, Mertens & Spanner PLLC law firm in Kennewick, WA. Applicant must have passed the bar. Miller, Mertens & Spanner PLLC is a general-practice law firm with an emphasis on civil litigation, corporate and business planning, medical/dental malpractice defense, personal injury, employment-related disputes, real estate and estate planning. Salary DOQ. Send résumé to: Christopher J. Mertens; Miller, Mertens & Spanner PLLC; 1020 N. Center Pkwy, Ste. B., Kennewick, WA 99336. Application deadline: December 31, 2001.

Business attorney: Auburn, WA. Almost exclusively business and professional clientele; no criminal law or domestics. Candidates must have a minimum of two years' experience in business law matters, including litigation, corporations, LLCs, real estate, wills and probate. Send résumé, cover letter and salary requirements to: Law Offices, 329 E. Main St., Auburn, WA 98002.

Tousley Brain Stephens PLLC, an AV-rated 11-attorney law firm in Seattle, continues to expand its commercial and class-action litigation practice. The firm is seeking a junior litigation associate. Qualified applicant will have excel-

lent academic credentials, superior writing and analytical skills, and the demonstrated ability to excel in a fast-paced, client-focused environment. Tousley Brain Stephens offers a competitive salary and exceptional bonus program. Please send cover letter, résumé, transcript and writing sample to: Julie Livengood, HR/Operations Manager; Tousley Brain Stephens PLLC; 700 5th Ave., Ste. 5600, Seattle, WA 98104, or e-mail jlivengood@tousley.com.

Puyallup firm seeking associate for general practice law office with small-firm environment. Applicant should have an interest in family and employment law. Attorney may also be involved in other areas of law including real estate, estate planning, bankruptcy and personal injury. Salary DOQ. Send résumé, references and writing sample to: Law Offices of Greene & Lloyd PLLC, PO Box 731063, Puyallup, WA 98373.

Foster, Foster & Schaller LLC has an opening for an associate attorney. Candidates should be aggressive and self-motivated with experience in domestic, criminal, probate and personal injury law. Good research and writing skills required. Position provides an opportunity for growth and chance to build own law practice within a well-established law firm. Benefits package available. Salary negotiable. Submit résumé and writing sample to: Foster, Foster & Schaller LLC, 711 S. Capital Way, Ste. 701, Olympia, WA 98501.

General counsel: Under the direction of the executive director, plan, organize, control and direct legal services to the Tacoma Housing Authority; provide advice regarding real property development, labor relations, proposed legislation, federal, state and local regulations, risk control, government contracts and procurement and other matters; manage litigation and defend the authority in various lawsuits; supervise and evaluate the performance of assigned personnel. May act on behalf of the executive director as directed. Juris Doctor degree from an accredited law school. At least five years' experience as an attorney with related legal housing experience. Salary commensurate with experience. To apply, submit résumé and cover letter with salary requirements to: Denise Booth, HR Specialist; Tacoma Housing Authority; 902 S. L St., Tacoma, WA 98405, or e-mail dbooth@tacomahousing.org (MS Word format). No fax or telephone applications will be accepted. Tacoma Housing Authority is an equal opportunity employer. Position open until filled.

WILL SEARCH

Administration of the estate of Charlotte Margaret Foubert of Shelton, WA, Mason County; died July 11, 2001. Anyone who has information concerning a will which Ms. Foubert may have executed is asked to contact the administrator of the estate. Please respond to: WSBA, *Bar News* Box 614, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330.

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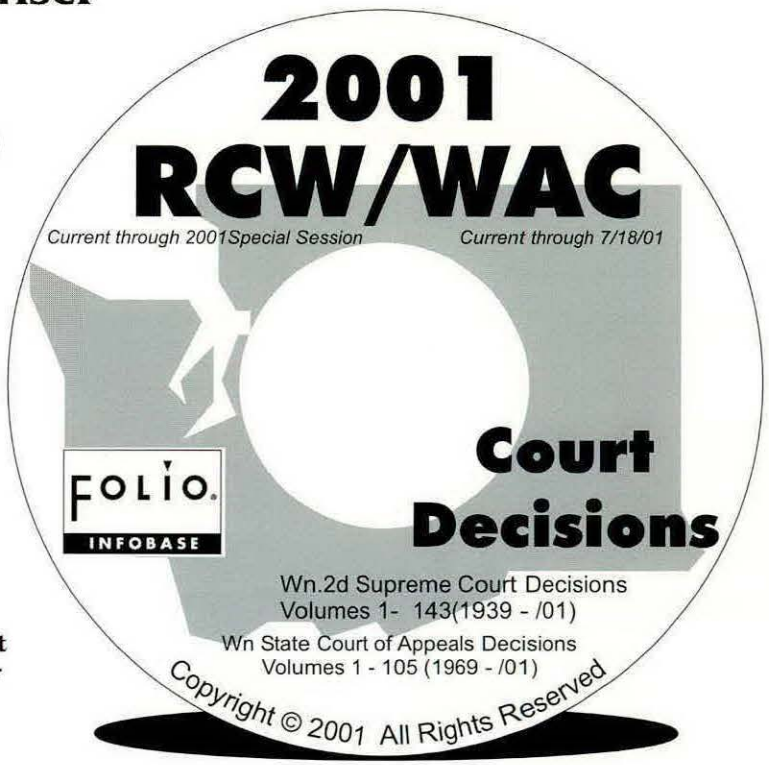

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