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Law Week 2001
P. 13

Washington State

BarNews

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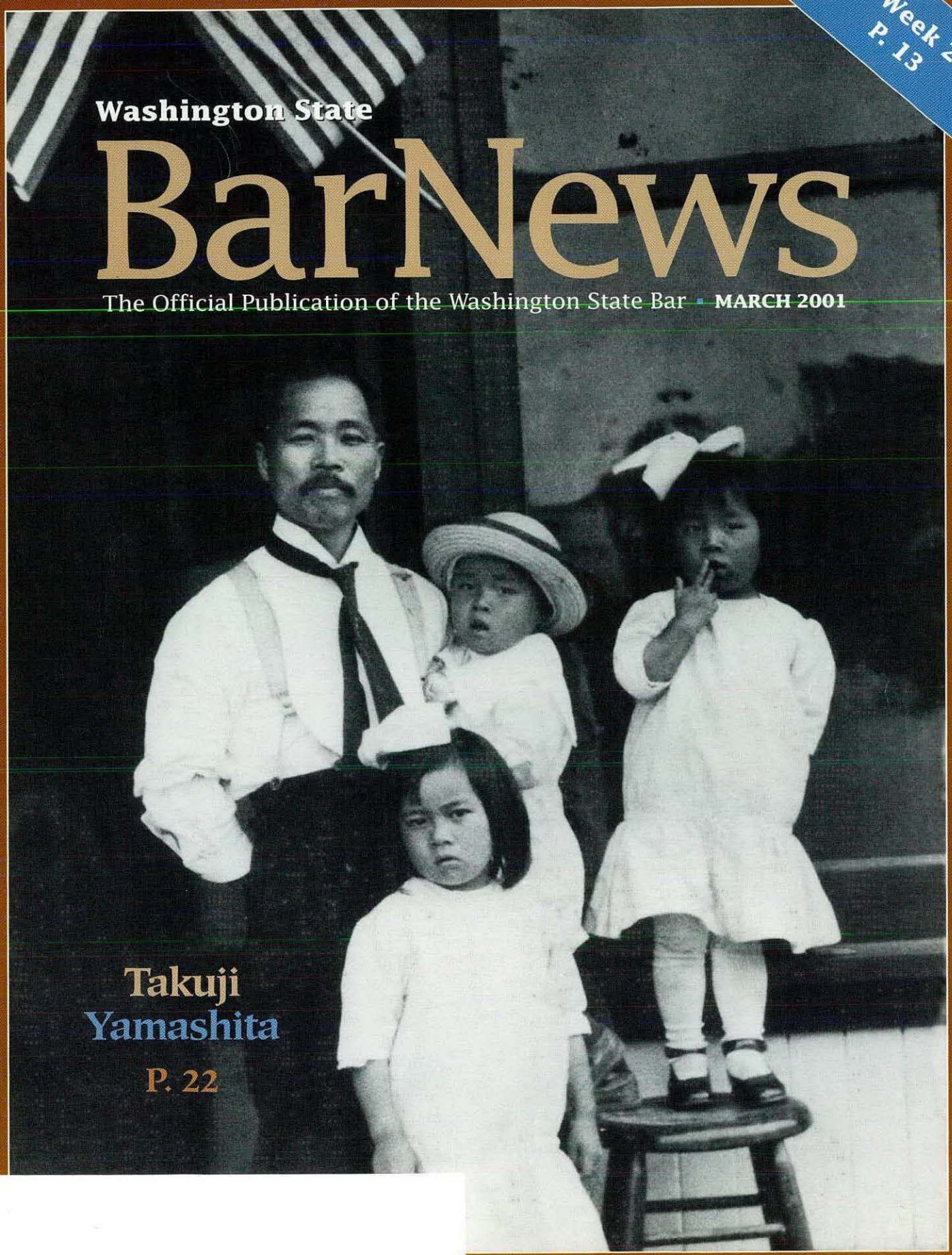

Takuji Yamashita

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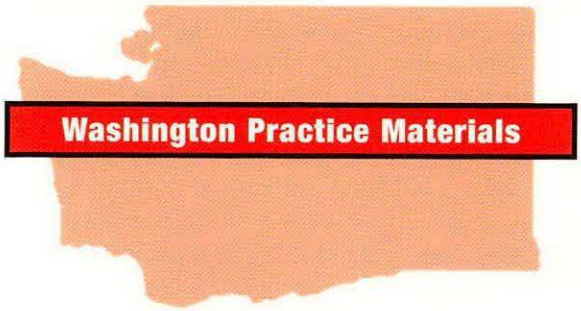

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March 2001

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On the cover: Takuji Yamashita stands in front of a Bremerton storefront with three of his children in this photo probably taken on the Fourth of July. The children are Joe (hat), Martha (on stool) and Aya (standing).

Photo courtesy of UW Library, with permission of the Imaizumi-Yamashita families

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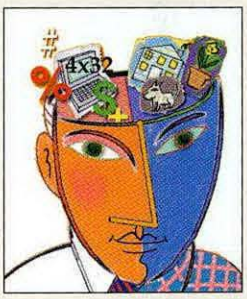

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Working together to champion justice.

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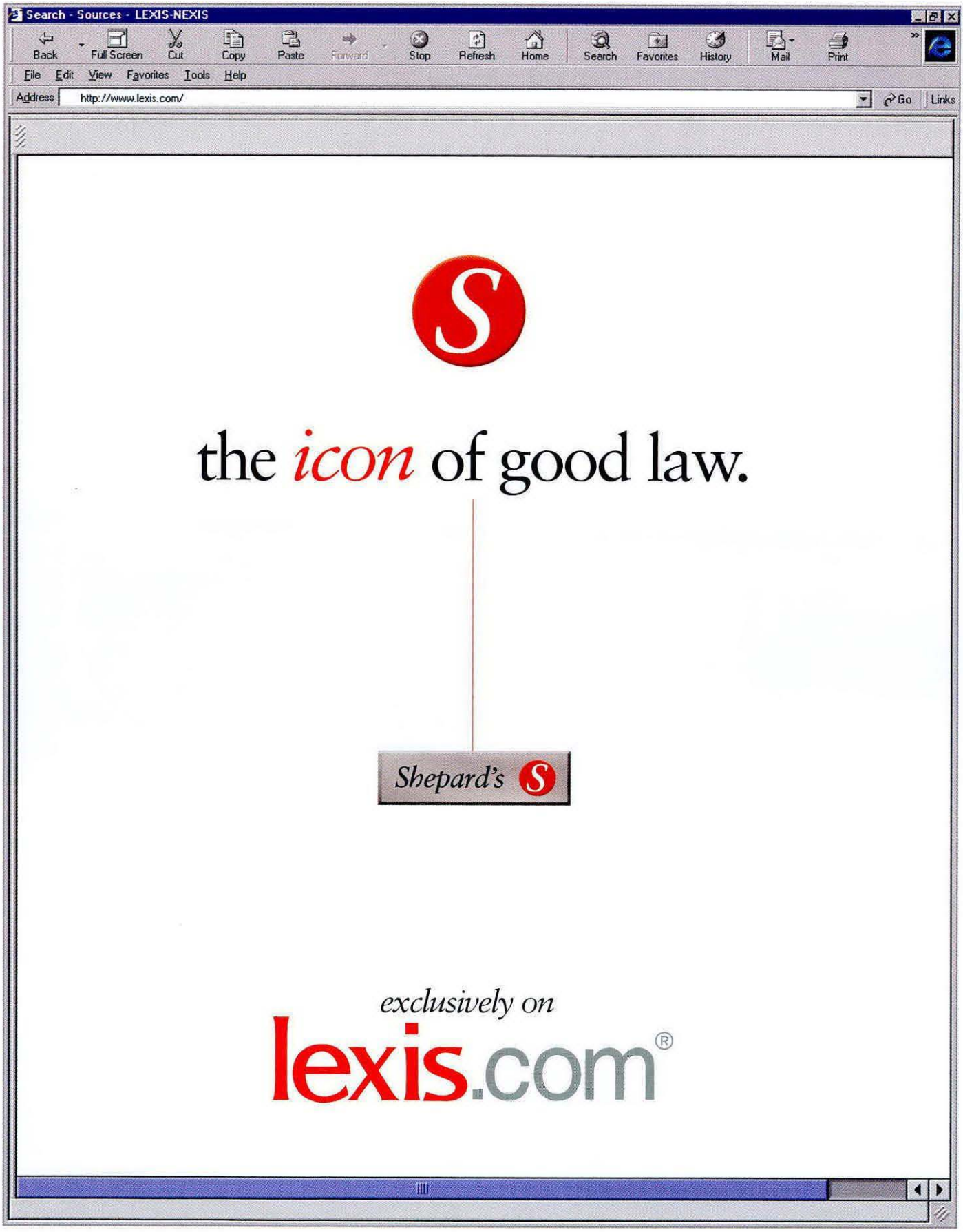
Readers are invited to submit correspondence and articles. They may be sent via e-mail to comm@wsba.org or provided on disk in any conventional format with accompanying hard copy and sent to *Bar News* Editor, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330. Article submissions should run approximately 1,500 to 4,000 words. Graphics and photographs are welcome. The editor reserves the right to edit articles as deemed appropriate.



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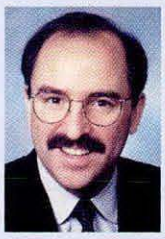

Jon Fox

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Letters

Serving on the "D-Board"

Editor:

I want to let you know that Kimberly Goetz's article relating her experiences and impressions of serving on the "D-Board" in the December issue of *Bar News* gave a most accurate description of service on the D-Board. Everything she related, I would "Amen." Further, the members of the board and the Bar staff during her term achieved a milestone which will be long remembered for their dedication to achieving control of the grievance backlog.

Her outstanding article clearly brought the D-Board activities to the attention of the Bar membership and the public. Her effort is greatly appreciated by another former member of the D-Board who lacks the ability to describe the assignment as vividly.

C. Robert Ford
Seattle

More on Unpublished Decisions as Precedent

Editor:

After an opponent threatened to cite in federal court an unpublished 9th Circuit decision which he claimed was controlling, and to justify violation of 9th Circuit rules by constitutional arguments of the type elaborated by Mr. Berg (*Bar News*, December 2000, p. 28), I was relieved to find the "watershed" 8th Circuit precedent on which many of these arguments would have been based has been vacated.

Anastasoff v. U.S., 223 F.3d 898 (8 Cir. 2000)[*Anastasoff* 1], affirmed an IRS denial of tax refund due to untimely application, based on an unreported in-circuit decision interpreting the relevant tax regulations in favor of the government. Although there was an 8th Circuit rule which prohibited use of unreported decisions as precedent, the court held that rule unconstitutional in adhering to the unreported decision as precedent, and in so doing brought into play another rule under which the court's power to overrule controlling in-circuit precedent was limited to en banc decisions. Therefore, even though there was a recent out-of-circuit precedent, *Wiesbart*, under which the refund application would have been timely, the three-judge panel deemed itself bound by the unpublished decision and precluded from examining the merits of the rule in *Wiesbart*.

Subsequent to *Anastasoff* 1, the IRS decided as a matter of policy to follow the *Wiesbart* rule regarding refund applications, and paid the full refund plus interest to Ms. Anastasoff. By en banc decision in *Anastasoff v. U.S.*,___F.3d___(8 Cir. 2000) [*Anastasoff* 2], filed 12/18/00, the court vacated *Anastasoff* 1 as moot, and remanded solely for a decision on attorneys' fees.

Wanting no mistake about the effect of *Anastasoff* 2 on *Anastasoff* 1's holding concerning unpublished opinions, the court announced: "The constitutionality of [the court's rule] which says that unpublished opinions have no precedential effect remains an open question in this Circuit." *Anastasoff* 2 at p 4 of opinion.

It was *Anastasoff* 1 which was discussed in the Berg article, and cited, but not followed, *Dwyer v. Kislak*, __Wn. App.__ (Lexis 2408, 2000 WL 1737833) (mentioned in a January 2001 letter, p. 7). *Anastasoff* 1 was also cited in *Weyerhaeuser Co. v. Commercial Union Insurance Co.*, __Wn.2d __(12/20/2000), in support of our court's citation of unpublished 9th Circuit decisions which contained Washington law-based

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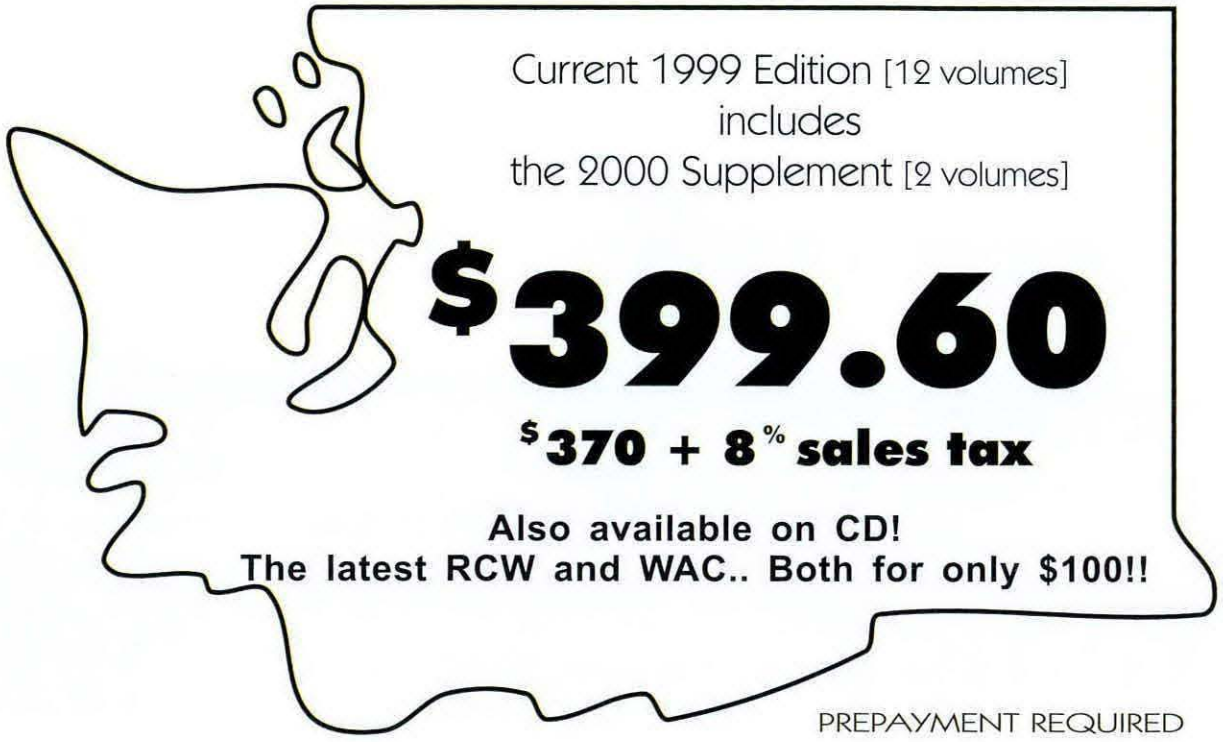

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analyses of a similar insurance clause to that before our court. Obviously, the citation in *Weyerhaeuser* was incorrect, since *Anastasoff* 1 had been vacated two days earlier.

George H. Luhrs
Seattle

Editor:

In regard to the letter about *Dwyer v. Kislak* and a $500 sanction for citing an unpublished decision, I don't think Division I would be ignoring RAP 10.4(h) and RCW 2.06.040 if it had not imposed the $500 sanction on counsel for Kislak. I read nothing in either the statute or rule mandating such a sanction. It appears from the Bar letter (*Bar News*, January 2001, p. 7) that counsel for Kislak did not try to sneak in the unpublished case and unethically disguise it as published authority. Rather, counsel bravely brought the 8th Circuit decision to the attention of the Division I court; showed that the 8th Circuit found that a court rule that said "unpublished opinions are not precedent" was unconstitutional because it expanded the courts' authority beyond the bounds of Article III; and then proceeded to extrapolate reasoning and argument from an unpublished opinion that all knew was unpublished. Note that the 8th Circuit decision has since been vacated by the en banc 8th Circuit due to mootness because the IRS decided to issue a full refund to the taxpayer, plus interest, and announced that it would abandon its opposition to similar claims.

The 8th Circuit stated: "The controversy over the status of unpublished opinions is, to be sure, of great interest and importance, but this sort of factor will not save a case from becoming moot. We sit to decide cases, not issues, and whether unpublished opinions have precedential effect no longer has any relevance for the decision of this case."

Sanctioning the attorney for "citing and discussing" an unpublished decision that all knew was unpublished is just another "brick in the wall" for chilling an attorney's participation in the judicial process of presenting complete arguments that others may have also considered. After all, unpublished opinions may not be proper authority on appeal, but couldn't the arguments therein have some persuasive value, especially since the attorneys spent months briefing and the appellate court spent months deciding the unpublished case? Would it not be considered plagiaristic to learn of an argument from an unpublished opinion, but cast it as our own because of the fear of being sanctioned for citing the case? Why is it okay to cite magazine articles and journals in our briefs to support our arguments, but not okay to cite supporting unpublished opinions — opinions that all participants know are unpublished — out of fear of sanctions?

Glen Prior
Tacoma

Writer Urges Decriminalization of Social Problems

Editor:

It seems that our criminal justice system is being used improperly to handle particular social problems. The criminal justice system handles individuals with problems that society cannot specifically cope with by placing criminal sanctions upon those particular activities. If you take a look at the individuals presently being processed through a number of our minor courts, you will find that individuals with mental, social and physical problems are handled

pursuant to the criminal justice system.

We do not have the resources to handle these mental, social and physical problems. We then push these individuals through the criminal justice system. A second, growing situation concerns individuals sitting out fines in jail for minor offenses. Minor courts fine individuals for behavior that is a violation of laws. These are individuals primarily of low income. When they cannot pay for the fines given to them by the minor courts, the court system has them sit out the fines.

Society is handling the problems that we face by making them criminal offenses. The poor are being penalized by sitting out monetary fines which have been set forth by the court. This growing trend of handling problems in our society does not seem to be of concern, unless you are involved in it.

The legal system, and especially the Washington State Bar Association, has a responsibility to take a look at these trends. The real danger is that no one seems to be concerned.

John L. Farra
Ocean Shores

Appreciation for MCLE Changes

Editor:

I'm currently living in France and have to worry about obtaining CLEs since I've elected not to go inactive at this point. I just got my *Bar News* and was delighted to see a real rarity — a rule change of any kind that actually makes life a lot more convenient for those regulated by it. Thank you for the great changes to the reporting requirements, which have been unreasonably cumbersome for years. More great work by the Bar. I appreciate it.

Trish Johnson
Mountlake Terrace

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., March 10 for publication in the May 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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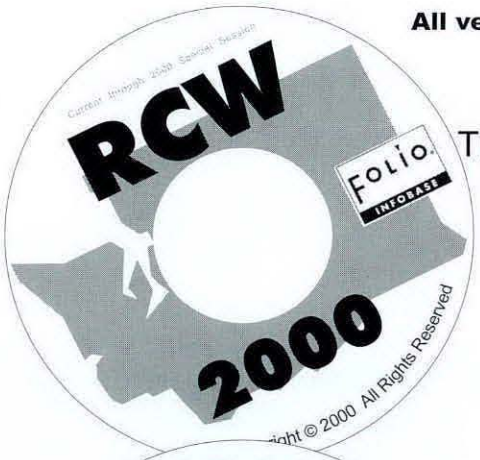

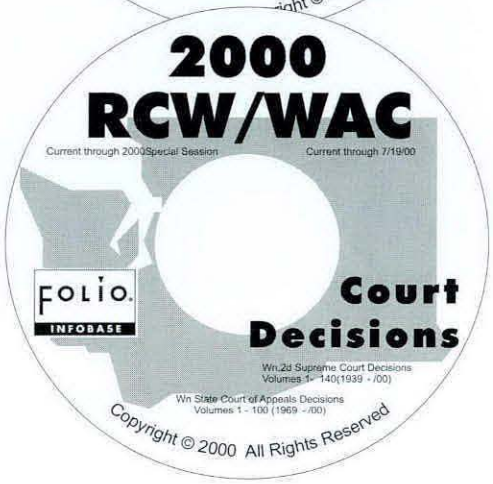

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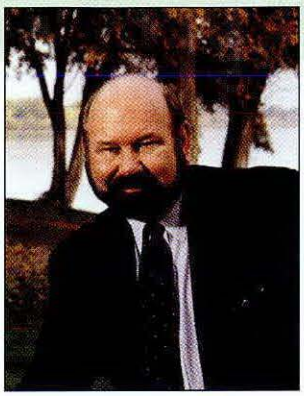


School Days, School Days:

Public Education, the Teaching Lawyer and Law Week 2001

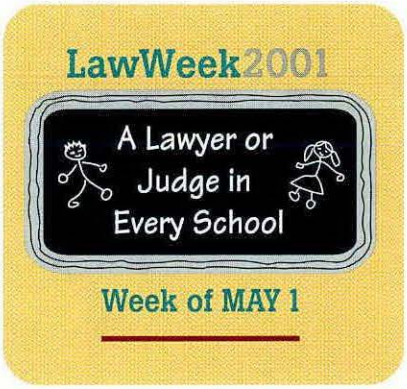
by Jan Eric Peterson • *WSBA President*
Ron Bemis • *Law Week 2001 Committee Chair*

Today, education is perhaps the most important function of state and local governments.... It is the very foundation of good citizenship. Earl Warren, *Brown v. Board of Education*, 347 U.S. 483 (1954)

A teacher affects eternity; he can never tell where his influence stops. Henry Adams, *The Education of Henry Adams*, 20, 1907

Lawyers and judges in our state have a unique and exciting opportunity to bring public legal education into the classroom during Law Week, April 30-May 4.

With the goal of placing "a lawyer or judge in every school," Law Week is coordinated statewide by the WSBA. Local and specialty bar associations, attorney groups, and individual attorneys and judges arrange visits to schools during the first week of May. They meet with students to discuss our justice system, the importance of everyone's role in it, current legal issues, specific areas of the law, or to hold mock trials in which students play courtroom roles.



A Growing Success Story

Last May, in the first year of statewide coordination, more than 12,000 Washington students, 400 classrooms, 49 judges, and over 400 lawyers participated in Law Week. The program expanded from five counties in 1999 to 14 counties in 2000. It is one of the most successful programs of its kind in the nation.

Rewarding and Exciting for Both Kids and Volunteer Lawyers

Many volunteers say that it is their most rewarding professional day of the year. In just one day, every lawyer and judge in Washington has an opportunity to give back to their local communities, to enrich the lives of students, to personally contribute to better public legal education, and to enhance public appreciation of lawyers. WSBA Governor Victoria Vreeland recounted: "Putting on a mock trial with a class of fourth graders was by far the most fun and heartwarming of all the things I have done as a lawyer over the past 25 years."

How to Participate

An abundance of information, including sample lesson plans and sign-up information, is ready for you on the WSBA Law Week Web site. It's easy to participate. Law Week is quickly approaching, so please sign up today.

- **Visit the Web site** (www.lawweek.org) to sign up with your local organizer, or contact the statewide coordinator, Lisa KauzLoric, at 206-733-5944 or lisak@wsba.org.
- **Contact a teacher** you know and schedule a date and time to speak in his classroom. Your local organizer may be able to assist you with coordinating your schedule. Ask the teacher(s) to spread the word to colleagues and invite them to sign up on the Law Week Web site.
- **Help recruit other attorneys and judges** by referring them to the Web site or to this column. Ask them to sign up with their local organizers and to contact teachers in their area.
- **The Web site provides** lesson plans, quick links, teaching tips, and other useful information to minimize your preparation time and maximize your experience.

Law Week is one of many Washington State Bar Association programs designed to increase citizen understanding of the important role that law plays in our lives. Washington's Law Week coincides with the American Bar Association's Law Day, celebrated on May 1 across the country. Law Day was established in 1958 by President Dwight D. Eisenhower to strengthen the United States' heritage of liberty, justice and equality under the law.

Participation in Law Week 2001 will be an invaluable way to help the youth of your community and be a visible role model. Be part of the solution, and demonstrate your pride in being a lawyer.

The WSBA Presidency

by Jan Michels
WSBA Executive Director

At the January 8, 2001 swearing-in of Chief Justice Gerry Alexander and the newly elected justices, WSBA President Jan Eric Peterson presented Tom Chambers to the Supreme Court for his oath of office.

Jan Eric Peterson's presentation included the fact that Tom Chambers is a past president of the WSBA (1996-1997). Chief Justice Alexander, a historian by nature and interest, then gave his first "factoid" of the ceremony — that only one other Washington Supreme Court justice was a past president of the Bar Association. Justice Thomas Grady served as WSBA president from 1939 to 1940.

In a recent show of solidarity, the past presidents since the creation of the Access to Justice Board (except those prohibited by judicial cannons from political activity) jointly signed a letter to Governor Locke asking his support for increased access to justice funding.

Since 1888 there have been 110 WSBA presidents. Twenty-seven are still living. David Huff, the oldest living past president, joined us for a celebration of Richard Eymann's presidency at the Arbor Crest Winery in Spokane. At Celebration 2000, the Spokane law firm of Delay, Curran, Thompson, Pontarolo and Walker hosted a past presidents' dinner. We enjoyed an evening of reminiscing with 16 presidents and guests. (Joseph Delay was the WSBA president from 1991 to 1992.) These "living legends" each shared a few highlights of their presidential years. Many acknowledged that the WSBA presidency represented a career epitome parallel to taking a judicial position.

Many of our emeritus members know these past presidents in much more depth than I do, and each president deserves a detailed profile for newer members to appreciate. Unfortunately, this space allows for only a brief description of the WSBA presidency and acknowledgment of the gifts past presidents have left.

At the past presidents' dinner, emcee Don Curran commented that "the WSBA presidency seems to require the constitution of an Olympic athlete, the patience of a mother, and the endurance of a marathoner." He added, "Presidents give 60 percent of their time for their year of office." Curran mused that some may see the WSBA presidency as nothing more than dealing with inflammatory issues such as budgets, mandatory liability insurance, unauthorized practice of law, pro bono reporting, dues increases and rollbacks, executive director turnover, discipline reform, governance revisions, mandatory arbitration, diversity, access to justice and long-range planning. Curran told the past presidents that with the benefit of hindsight they could now view the presidency as involving only two issues: social and political ones, which are often insoluble; and economic ones, which are sometimes bewildering. For their dignity, brilliance and fortitude in navigating these issues, past presidents are repaid with appreciation, legends and colorful anecdotes.

On the lighter side, Curran quoted one past president who stated that his goal upon taking office was to be a "former." As a former, he said, "faults are forgiven, eccentricities are looked upon as evidence of sturdy individualism, and one's accomplishments are generously magnified." Curran never allowed the board to confer the privilege of presidential service on him!

Many past presidents continue to serve the Bar. In a recent show of solidarity, the past presidents since the creation of the Access to Justice Board (except those prohibited by judicial cannons from political activity) jointly signed a letter to Governor Locke asking his support for increased access to justice funding. The immediate past president is a de facto member of the Board for Judicial Administration, and many past presidents are called on for special service on boards, commissions and task forces.

The WSBA has begun the selection process for the 2002-2003 president. According to the WSBA Bylaws, the president for this term must work in King County. Governor Victoria Vreeland is chair of the Presidential Search Committee and welcomes letters or calls of interest. (A full description of the process appears on page 52 of this issue.)

Two Cents' Worth

by Mark A. Panitch
Bar News Editor

The phrase "get a life" has become a common response to those of us who are routinely to be found in our offices late at night and on weekends. In fact, for many attorneys (and other professionals) our work does become our life. We use up so much emotional energy counseling clients, meeting deadlines — both court-imposed and self-imposed — that there is little left for our families and friends. Its not for nothing that our professional ancestors referred to the law as their "jealous mistress."

For many young — and even older — lawyers, the world of the 75-hour work week is alive and well. Attorneys in big firms are under constant pressure to bill more hours. Attorneys in small firms and solo practice are often under pressure just to make the next payroll and take home enough for the next mortgage payment. In many families there is a constant battle between time and money. Often there doesn't seem to be enough of either.

For many lawyers, the pressure, the adversarial relationships, and constant second-guessing by clients and bosses leads to "burn out." One legal Web site promotes its advertising for non-legal jobs by asking: "Are you tired of lawyer jokes?" I am personally acquainted with at least three former lawyers who now make good livings counseling lawyers on alternative career strategies.

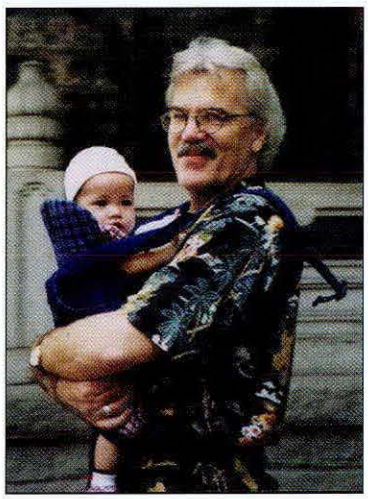
But what about those of us who like being lawyers, but want to balance our professional lives with something else? One of my office mates coaches little league baseball, runs marathons and sings doo-wap.

Another friend is active in the Second Harvest program. Others simply hang out with their spouses, treasuring the down-time. The point is that these people have made a conscious decision to bring variety into their lives. They see and mingle with people who are not lawyers. They recharge, and they find that their time off is not time lost — if anything, they are more efficient, more energetic and more creative during their working hours.

In the case of Spokane attorney George Critchlow, adopting a baby daughter provided a brand-new perspective on life.

His story follows.

Middle-Aged Lawyer Goes Through Change of Life



I am a fifty-one-year-old lawyer, professor and office administrator. I direct a legal services clinic at a medium-sized law school. I am proud to be a lawyer involved in providing access to justice for poor people. But for many years my days and nights have been partly suffused with anxiety and guilt. This usually stems from not being as productive, prepared, disciplined, generous, sensitive, understanding, effective and multi-talented as I think I should be. Some suspicion of inadequacy always lies submerged just below the confident professional veneer. I should have returned that phone call; I shouldn't have been so adversarial with opposing counsel; I should read more law review articles in preparing to teach a class; I should be more empathetic with students and clients; I should work this weekend to get caught up; I should learn French, volunteer for more boards or committees, be nicer to support staff; and, for sure, I should figure out how to research investment opportunities so my wife and I don't go on welfare when they find out I really am inadequate and I lose my job.

Other lawyers may know this feeling. Over time we come to believe that what we do professionally, socially and economically are the only things that count. We are driven by the knowledge that there is always something more we could be doing. We work hard. We problem solve. We keep up with the pace of cultural change. We are pro-active. The notion of doing nothing may seem nice in some abstract, utopian, Buddhist sort of way, but really it's subversive to how we define ourselves. Thanks to digital technology, espresso bars, political scandal, fast food, junk TV, thrill seeking, endless clients, controver-

sies, famous people and volatile stock funds, we are constantly engaged, moving forward, afraid we will fall behind.

Billy, the diminutive character of conscience played by Linda Hunt in the film *The Year of Living Dangerously*, observes: "We make a fetish of our careers. All else becomes secondary. Where is there space for us to learn to love?"

So let me tell you about my recent change of life by describing, more graphically perhaps than necessary, my morning on a recent Saturday. I laid the beautiful, perfect, loving, 11-month-old Charlotte Isabella on her changing pad, stripped off her diaper and was relieved to find no smelly mess. I left the room for a moment leaving Charlotte unattended but content. When I returned, she had crawled off the changing pad, onto the expensive, imported Chinese carpet, and delivered herself of the well-digested residue of several recent meals. The stuff was all over baby and carpet.

Since my wife and I returned from China in December with our newly adopted first child, every day has been an opportunity for me to reflect on what's important. In particular, I'm learning to appreciate the relative value of giggling, quiet time and naps, funny noises, gentle touches, and modern leak-proof diapers. And dancing. On the Saturday morning of Charlotte's untimely mess, after the cleanup and bath, the apples and mango breakfast, the walk in the snow with the dogs, Charlotte and I danced to Bob Dylan, Toni Braxton, Miles Davis, and a recent release by Eric Clapton and B. B. King. She loved it all, but I think the Clapton-King collaboration was her favorite.

I loved it all, too. Not for a moment did I feel guilty or anxious about neglecting my career or the rest of the world. If I felt inadequate at all, it had to do with not understanding how an imperfect guy could be blessed with such a perfect little treasure.

This story comes full circle. There is an unbroken thread that connects the wonder and responsibility of having a baby and the work we do as lawyers. We lawyers are shepherds of justice and human rights. How do these principles evolve and grow? There is a colorful illustration hanging on my office wall depicting mother and child. It is accompanied by the inspirational words of Eleanor Roosevelt. I did not fully apprehend their truth until Charlotte came into our lives:

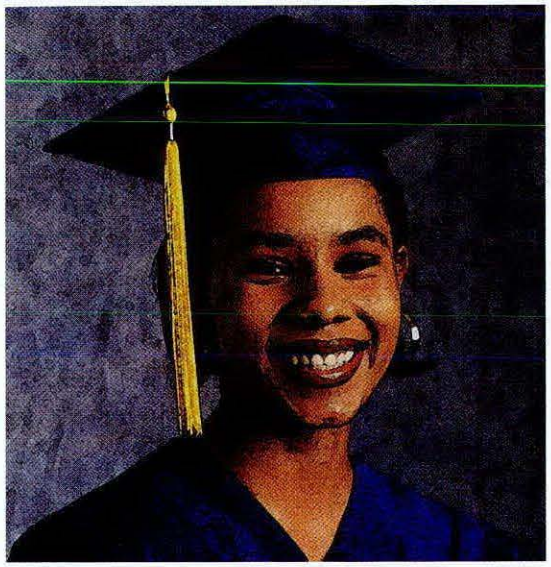
Where, after all,
do universal human rights begin?
In small places close to home,
so close and so small
that they cannot be seen on
any maps of the world...
Unless these rights have meaning there,
they have little meaning anywhere.

George Critchlow received his J.D. from Gonzaga University School of Law in 1977. After three years of private practice he joined the faculty at Gonzaga University School of Law, where he is director of clinical law programs and director of the Gonzaga Institute for Action Against Hate.

by Randolph I. Gordon

Proud to Be a Lawyer

You are already among the most powerful people on the planet — if you have a pair of shoes, a roof over your head, clothing; if you have eaten in the last day and have the prospect of another meal.



The following text is taken from the commencement address to the graduating class of Seattle University School of Law, December 16, 2000.

When you climb in deep snow, the leader kicks steps up the mountain. Anyone who leads knows that this is exhausting work, so turns are taken. You trudge up the mountain, committed to the task, head down, and most of the time you are looking at the ground in front of you or just ahead of you — mostly at your boots. And then, when you pause for a moment, you find yourself in a high, open clearing, and you look back and gaze down through the low-lying clouds at the world you left behind. In this rare moment you take inventory before you begin to climb again. Sometimes you can see forever. More often you can make out some of the trail ahead along the ridge, but the summit itself is hidden in mist and cloud.

This is such a moment.

Many of you have worked and saved and aspired to this moment. You have stretched and sacrificed; you have genuflected and reflected in churches, synagogues and libraries; you have overcome adversity and self-doubt. As the San tribesmen in their treks hide caches of water in hollowed-out ostrich eggs hidden in the trackless wasteland of the Kalahari, it is time to gather your *self* from what you have hidden away during your years of study, and in leaking hands, drink until you are restored. One place to start is to acknowledge the essential connectedness you have with people and communities. You have not done this alone — you have done it with the love and support of family, friends, colleagues and teachers.

You are now on a high clearing and you have a moment to look about you. Drink it in. But this is a commencement exercise, so we know that it is a beginning. What do you need to take with you for the summit? Where are you going? Why are we here?

The answer is not cruciferous vegetables. Broccoli, cauliflower, collard greens, cabbage. When I turned 40 I had a revelation of mortality. I turned to broccoli. After six months, I decided it wasn't that you live longer, it just seems longer. The true key to immortality lies in this open secret: service to others.

You are at a rare moment of reflection and high achievement. I honor you. At the same time, you are at one of those rare life moments — a point of inflection where your freedom of choice is somewhat greater than at other times. I am aware of the responsibilities to family, friends, life partners, banks, mortgage companies, student loans. As the Pardoner in Chaucer's *Canterbury Tales* said: "My speche is one and evere was: Radix Malorum Est Cupiditas." My speech is one and ever was: The root of all evil is avarice. What is avarice? It is cleaving too closely to the things of this world. Recall the words of Pierre Teilhard de Chardin: "We are not human beings having a spiritual experience. We are spiritual beings having a human experience."

You are already among the most powerful people on the planet — if you have a pair of shoes, a roof over your head, clothing; if you have eaten in the last day and have the prospect of another meal. The essential element of all ethics is this: Ought must be preceded by can. Before you can be morally obliged to do a thing, it must be something you *can* do. As the most powerful people in the world, you have the most *cans* and therefore the most *oughts*.

You are clothed and fed; you are living in one of the most prosperous regions of the world's one remaining superpower — the wealthiest, most powerful country in the history of the planet earth; for the most part you speak English, and now you have added to this incredible treasure trove of good fortune a legal education in a country invented by lawyers. How do I know this? Simple: 31 of 56 members of the Constitutional Convention were lawyers. Of the three great branches of government, half of the presidents, the majority of the Senate, and a huge proportion of the House have been lawyers. Virtually every member of the Supreme Court throughout its history has been a lawyer. Alexis de Toqueville said of America: "All political problems become legal problems." Reflecting on this past year, we can state that of this

there can be little doubt. Lawyers invented America, and in recent weeks it sometimes appeared that we were about to take it back.

In truth, the rule of law requires lawyers to act as counselors, pilots and guides. The Constitution is not self-enforcing. Lawyers are needed to give it effect. Our Bill of Rights is a fragile raft of legal "technicalities." So is Leviticus. So, by the way, are the Ten Commandments. What does "*honor* your father and mother" mean, exactly?

You are educated in the switches and levers of power. You have worked hard and credit must be accepted. But more than that, you are blessed. The answer to the question of how to have a happy life cannot be "to raise myself from the 90th to the 95th percentile in terms of earnings." That cannot be it.

You may remember Charles Dickens and *A Christmas Carol*, where Jacob Marley is told by Scrooge, "Jacob, you were always a good man of business." Do you remember Marley's reply?

"Business! Mankind was my business. The common welfare was my business; Charity, Mercy, Forbearance, Benevolence, were all my business. The dealings of my trade were but a drop of water in the ocean of my business."

As we reflect on this high, clear place in your life, it is natural to wonder what to do now. Joseph Campbell, in his *Hero with a Thousand Faces*, wrote: "The hero's journey in the modern world is helping to bring men and women to full human maturity within the conditions of contemporary life." You are lawyers; you are heroes, perfectly situated to fulfill this hero's journey. That is what lawyers do.

The question of how to live has been addressed by the greatest minds of the ages. That is why I turn to the words of others. And since I am citing authority, I might as well start at the top.

Aristotle, in *Rhetoric*, spoke of three forms of artistic persuasion: ethos, logos and pathos. Law school teaches logos — reasoning through words; the public expects pathos — evoking emotion from others; I urge you to consider ethos — persuasion by character and personality. Make being a lawyer part of who you are; bring who you are into your service as a lawyer. This unity of self and purpose, of personal and professional integrity, will enrich your life and the lives of those around you. We are proud of you. We thank you for undertaking the hero's journey. We thank you for choosing a profession committed to service.

I have heard: "Lawyers' idea of listening is waiting for their turn to speak." I claim no exception for myself.

Theodore Roosevelt, who dropped out of Columbia Law School to enter politics, said:

> It is not the critic who counts, not the one who points out how the strong man stumbled, or where the doer of deeds could have done better. The credit belongs to those who are actually in the arena; whose faces are marred by the dust and sweat and blood; who strive valiantly; who err and fall short again and again; who know the great enthusiasms, the great devotions and spend themselves in a worthy cause; who at the best, know in the end the triumph of high achievement, and who, at worst, if they fail, at least fail while daring greatly; so that their place shall never be with those cold and timid souls who know neither victory or defeat.

Let me return you to the mountains once again with these words of W.H. Murray from *The Scottish Himalayan Expedition*:

> Until one is committed there is hesistancy, the chance to draw back — always ineffectiveness. Concerning all acts of initiative (and creation), there is one elementary truth the ignorance of which kills countless ideas and splendid plans: that the moment one definitely commits oneself, then providence moves too. All sorts of things occur to help one that would never otherwise have occurred. A whole stream of events issues form the decision, raising in one's favor all manner of unforeseen incidents and meetings and material assistance, which no man could have dreamt would have come his way. I have learned a deep respect for one of Goethe's couplets: "Whatever you can do, or dream you can, begin it. Boldness has genius, power and magic in it."

Randolph I. Gordon is adjunct professor of law at Seattle University School of Law.

by Lucy Isaki • *WSBA Governor*

IOLTA: *Is It a Taking? Is That Really the Issue?*

On February 9, 2001 the 9th Circuit issued an opinion in *Washington Legal Foundation v. Legal Foundation of Washington*. In what has been described as a case of national importance to the funding of legal services for the poor, a three-judge panel found a per se taking of property in the regulation of the investment of funds that clients entrust to Limited Practice Officers (LPOs). Court rules subject LPOs to the IOLTA rules. It is these rules that the 9th Circuit panel addressed. But don't plan on closing that IOLTA account anytime soon. While the decision is a blow to the IOLTA program, the program is not yet history.

Some Background

In 1984, the Supreme Court of Washington created a program by which interest on lawyers' pooled trust accounts is paid to the Legal Foundation of Washington (LFW) (not to be confused with the Washington Legal Foundation, the plaintiff in the case in question). Fundamental to the IOLTA program is the obligation of all those who are subject to the Court's rules to determine whether funds received from a client can be invested for net positive return for the client. If they cannot, and only if they cannot, then the funds are deposited into an IOLTA account. Interest on the IOLTA account — a pooled account — is given to the LFW for granting to statewide programs that provide legal services to the poor.

In its original IOLTA Adoption Order, the Washington State Supreme Court rejected the argument that the operation of the IOLTA rules amounted to an unconstitutional taking of private property. Other state courts around the country reached similar conclusions, reasoning that because deposits could not earn a positive net return for a client, the client had no property interest in the fund.

Then came the Washington Legal Foundation (WLF). Headquartered in Washington, D.C., this group advocates free enterprise, limited government and property rights. The history of its many federal court challenges to IOLTA programs is chronicled in "Interest or Principles: The Legal Challenge to IOLTA in Washington State," by Jay Carlson, *Wash. Law Rev.* Vol. 74, No. 4 119, at 1132-1137.

In January 1997, WLF descended upon Washington, filing a challenge to the Washington IOLTA program. Attacking the recent expansion of the IOLTA program to include LPOs, the WLF asserted that the IOLTA program, as applied to the LPOs, violated both the First and Fifth Amendments to the U.S. Constitution.

The WLF lawsuit was filed in the Western District of Washington and assigned to Judge John C. Coughenour. Judge Coughenour granted Summary Judgment of Dismissal to the defendants, ruling that no cognizable interest existed and that plaintiffs had lost nothing as a result of the IOLTA program. The WLF appealed to the 9th Circuit.

Before the 9th Circuit could hear oral argument on the Washington case, the U.S. Supreme Court weighed in with a decision in a case called *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998). In *Phillips*, the U.S. Supreme Court held that under Texas law the proceeds from the Texas program were "property" for purposes of Fifth Amendment analysis. The U.S. Supreme Court did not decide that there had been a taking. Instead, the Texas case was remanded for further proceedings related to whether there was in fact a taking.

The 9th Circuit argument in *WLF v. LFW* was held on February 9, 2000. Perkins Coie lawyers Katie O'Sullivan, Nick Gellert and Dave Burman did (and continue to do) a great job, pro bono, on behalf of the LFW. The justices also are well-represented by senior appellate lawyer Maureen Hart of the Attorney General's Office.

Nearly a year after the argument, Judges Trott, Kleinfeld and Silverman joined in a unanimous opinion reversing Judge Coughenour. The panel ruled that in light of *Phillips*, the interest generated by the IOLTA pooled trust accounts was indeed property, and that there was a *per se* taking which entitled clients to "just compensation." But, the panel went on to say that just compensation could be "nothing," depending on the circumstances. So, the panel remanded the case to Judge Coughenour for further proceedings.

In its original IOLTA Adoption Order, the Washington State Supreme Court rejected the argument that the operation of the IOLTA rules amounted to an unconstitutional taking of private property.

What Does It Mean?

The 9th Circuit opinion is anything but a model of clarity. Thus, a joint petition for rehearing en banc was filed by the LFW and the justices of our Supreme Court (with the exception of Justice Sanders). The petitioners point out three major flaws in the opinion of the 9th Circuit panel. First, the decision contradicts precedent both from the Supreme Court and the 9th Circuit because it applies a per se takings analy-

sis that is applicable only to real property taking. Second, the panel erroneously focused on the *interest*, rather than the *principal* funds that are in fact regulated by our court rules. Third, the panel ignored the state action requirement, instead ruling that a "taking" was likely caused by private individuals who violated IOLTA rules.

In the petition for rehearing en banc, petitioners argue that Washington's program is not subject to the per se takings analysis that the 9th Circuit employed in reaching its decision. The per se analysis is inapplicable because it applies only to regulation of real property, and "not to regulation of who will benefit from the use of money where it is not practical for the client to do so" (Petition, p.6). The petitioners point out to the 9th Circuit that "[t]he per se takings doctrine is rooted in evidentiary assumptions that apply only when physical property is at issue." (Petition, p. 7.) The 9th Circuit panel's attempt to distinguish cases that restrict per se analysis to real property simply is not supported by cases or the record, according to the petition.

Moreover, the 9th Circuit seems to have reached the conclusion that the U.S. Supreme Court, in *Phillips,* actually ruled that a taking had occurred by virtue of the operation of the Texas program. This is not the holding in *Phillips*; indeed, the *Phillips* Court never even reached the taking issue. Worse, the 9th Circuit panel labeled as "absurd" an argument that was never even made by defendants. The panel wrote:

> Defendants seem to be arguing that the government can confiscate people's money without it being a taking compensable under the Fifth Amendment. Slip Op at 320.

No such argument appears in the LFW briefs, nor was this theory advanced in oral argument. One is left to wonder why the panel would need to conjure up an argument never made, and then label it as "absurd" if it had solid legal grounds for the opinion rendered.

The second major flaw in the 9th Circuit opinion is that the panel concluded that the "economic impact" test of *Penn. Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978), was inapplicable because the IOLTA regulation "entirely appropriates" the interest. The panel pointed out that "[t]he economic impact test would have relevance if the IOLTA rule merely regulated how the client used his interest, or where the interest was kept, or for how long." Slip Op. at 322.

As the petition for rehearing correctly notes, by simply replacing the word *interest* with the word *principal* in this sentence, the panel would have reached the correct result in this case. Thus, had the panel said: "The economic impact test would have relevance if the IOLTA rule merely regulated how the client used his principal, or where the principal was kept, or for how long," then the panel would have been forced to face the relevance of the economic impact test, and also apply the test. Had it done so, the outcome of the case would

have been different. The IOLTA rules regulate where the LPOs can place the clients' principal.[1] Regulatory measures such as Washington's IOLTA rules consistently have been analyzed under the balancing of public and private interests implicated by the regulation. The panel undertook no such balancing because it confused interest with the IOLTA regulated principal.

It is confusion such as this — confusion over the operation of the rule itself — that makes the opinion of the panel less than a model of clarity. In reading the opinion, it almost appears that the panel failed to recognize that IOLTA rules do not, in any case, appropriate principal.

The third flaw in the opinion is the fact that the panel's decision that a per se taking occurred rests on an unsupported assumption that private lawyers and LPOs operate in violation of the state IOLTA rules. Thus, the 9th Circuit panel muses that a transaction could be delayed, resulting in money being held longer than initially anticipated and presumably generating a net positive return which is collected by IOLTA rather than paid to the client. The panel ignores the fact that once the possibility of earning a net return becomes apparent, the attorney or LPO is *required* under the IOLTA rules to open a separate interest-bearing account for those funds so they can, in fact, be paid to the client. There was no evidence in the record before the court that this situation ever arose for the parties who filed this case.

... it almost appears that the panel failed to recognize that IOLTA rules do not, in any case, appropriate principal.

The panel also suggested that lazy or perhaps unethical lawyers and LPOs do not comply with their obligation to invest their clients' principal funds when a net benefit is available because "lawyers and closing officers have a substantial incentive not to be bothered with crediting clients with their interest." Slip Op. at 324. Again, as the petition for rehearing makes clear this proves too much.

Indeed, it proves why a regulatory approach was necessary to protect clients in situations where the amount/time calculus results in net positive returns. Further, the IOLTA regulations eliminate the incentive for self-dealing by applying any interest resulting from mistakes or amounts truly too small to earn net positive returns individually to public uses rather than abandoning it to the LPOs and banks. And, as a constitutional matter, if lawyers or LPOs do not comply with their obligations under the rules, any resulting taking, if it can be called that, is not caused by the rules but by private parties. (Petition, p.15.)

This sort of "taking," one done by private parties and not by state action, does not implicate the Fifth Amendment.

Where To Now?

So, where do we go from here? If rehearing is granted, as it should be, the parties will make further arguments to the 9th Circuit in an attempt to clarify matters and secure a ruling that the program meets constitutional muster. If there is no rehearing, the case will presumably return to District Court in Seattle for trial on the "just compensation" issue. What would that trial involve? If you follow the panel's guidance, every individual IOLTA transaction might have to be examined to determine whether there is net positive return. If so, and if this net positive return was taken by IOLTA, then some sort of compensation may be owed. It is difficult to imagine that the Federal District Court will want to examine thousands of IOLTA transactions to make this determination.

The obligation of the lawyer and LPO to maintain an IOLTA account is clear, and one who fails to establish such an account or fails to follow the rules does so at peril of his or her license. Until there are further court proceedings, it is business as usual. If there is no possibility of a net positive return on clients' funds, these funds belong, for now, in an IOLTA account.

Lucy Isaki, governor from the Seventh-West district, is a senior assistant attorney general. She is past president of the King County Bar Association, past president of the Legal Foundation Board, and past chair of the Equal Justice Coalition.

NOTE

1 The IOLTA rules do not appropriate the principal. The principal is still available for the client to utilize for whatever purpose he or she deposited it with the LPO or attorney.

Takuji Yamashita

by Steven Goldsmith

A young Yamashita poses for this formal portrait, perhaps taken at the time he attended the UW.

Washington required its attorneys to be U.S. citizens, and according to the prevailing interpretation of federal law, citizenship was available only to those of Caucasian or African decent — not Asians.

Photos courtesy of UW Library, with permission of the Imaizumi-Yamashita families

Takuji Yamashita is about to become a member of the Washington State Bar Association — 99 years after graduating from law school and passing the bar exam.

The Washington Supreme Court will induct Yamashita on March 1 as an honorary member of the Bar. This admission will be honorary because it is posthumous; Yamashita died four decades ago. A dozen of his very proud descendants from Japan will mingle at the Temple of Justice with Governor Gary Locke, Attorney General Christine Gregoire, several legislators, international news media, and numerous dignitaries from both sides of the Pacific. One by one, the Supreme Court justices will sign the order of admission.

Back in 1902, a different state attorney general and roster of Supreme Court justices rejected, in this very same court, Yamashita's application to practice law. This was despite his excellent academic record at the University of Washington School of Law. The grounds for rejection: he was born in Japan.

At the time, Washington required its attorneys to be U.S. citizens, and according to the prevailing interpretation of federal law, citizenship was available only to those of Caucasian or African decent — not Asians.

But Yamashita, a fresh law graduate from a rural Japanese town, boldly argued in Washington's highest court that this denial of citizenship was an affront to the values of "the most enlightened and liberty-loving nation of them all." The state's attorneys responded by mocking Yamashita's "worn out Star Spangled Banner orations." The state won.

So Yamashita went into business instead of law. He became a moderately successful hotelkeeper and strawberry farmer in Kitsap County. But even as a middle-aged businessman, he continued to press for equal rights. In 1922, Yamashita challenged in the U.S. Supreme Court the state's Alien Land Law, which barred "ineligible aliens" — again, in effect, Asians — from owning land. The U.S. ruling was much the same as the Olympia decision of 1902: Congress simply had not seen fit to specifically make Asians eligible for naturalization.

Yamashita's problem, say legal scholars, was in being so far ahead of his time. Not until 1952 could Japanese immigrants become U.S. citizens; not until 1965 did Congress put Asian immigrants on par with Europeans; not until 1966 did Washington voters (on the fourth try) repeal the Alien Land Law; and not until 1973 did the U.S. Supreme Court finally grant aliens the right to practice law in all states.

Though they failed to bring about immediate change, Yamashita's early 20th century challenges established a record of ob-

Yamashita poses in a traditional Japanese robe for this photo, probably taken just before he left for America.

When UW law students were asked to pick a yearbook epigram, Yamashita wrote "Amicus Alienus" (Friendly Foreigner) one year, and "Stranger in a Strange Land" the next.

jection to racial exclusion. His cases are cited in a growing number of publications on naturalization and civil rights.

"In the act of challenging the positive law," said Walter Walsh, UW assistant professor of law, "Yamashita asked us to look for the more fundamental rights that lie underneath."

Walsh's legal-history students are among those who helped save Yamashita from remaining just a footnote in civil rights texts. Moving forward after his courtroom defeats, Yamashita had pursued a quiet and convivial family life in Kitsap County. Then, joining the 110,000 Japanese-Americans interned during World War II, the Yamashitas lost their income and holdings and retreated into even quieter old age. In 1957, Yamashita went to live out what came to be his last two years in his Japanese hometown of Yawatahama, Ehime Prefecture, Shikoku Island.

There he rested until some of his descendants in the 1990s began to reconstruct his record of pioneering defiance. Tacoma historian Ronald Magden added more pieces to the story in researching a 1998 book on the early Puget Sound Japanese community.

As the 20th century ended, meanwhile, the UW School of Law was preparing to mark its own centennial. The two-year celebration will culminate this summer with the 100th anniversary of the first law school graduation. Yamashita's record fit perfectly with the spirit of the state's public law school, one offering boundless opportunity. Founding Dean John T. Condon welcomed women, Jews, and an immigrant from Barbados, but he did not recruit wallflowers. From Condon's first class, Walter Beals would one day preside over the Nuremburg trials in Germany, and Adella May Parker would make her name as a feminist journalist and legislator. Like Yamashita, they viewed the law as a means to improve the world.

Yamashita's contribution at the new law school — which met downtown until 1903 — was described in a year-end school wrap-up as "commendable." But Japanese faces still were exotic to many Americans. When UW law students were asked to pick a yearbook epigram, Yamashita wrote "Amicus Alienus" (Friendly Foreigner) one year, and "Stranger in a Strange Land" the next.

Four days before receiving his law degree, Yamashita picked up his naturalization papers from the Pierce County Superior Court. The following week, Yamashita rode the train to Olympia with eight classmates to take what was in those days an oral bar exam.

All of them passed. Only Yamashita was denied the chance to become a lawyer. The opportunity to symbolically reverse this injustice has given the University of Washington School of Law an especially meaningful way to celebrate its birthday, and the state an opportunity to look back on the progress it has made in a century.

"It's impossible to undo what happened to Mr. Yamashita," said current state Supreme Court Chief Justice Gerry Alexander. "But it's important for us to make a statement that these things were wrong. It's a step toward healing."

Officially, the court will induct Yamashita in response to a petition from the Asian Bar Association of Washington, the University of Washington School of Law, and the Washington State Bar Association.

Seattle Municipal Judge Ron Mamiya, representing the Asian Bar Association of Washington, said Yamashita's saga of immigrant obstacles mirrors that of his own family and of millions of others who had to contend with anti-Asian laws.

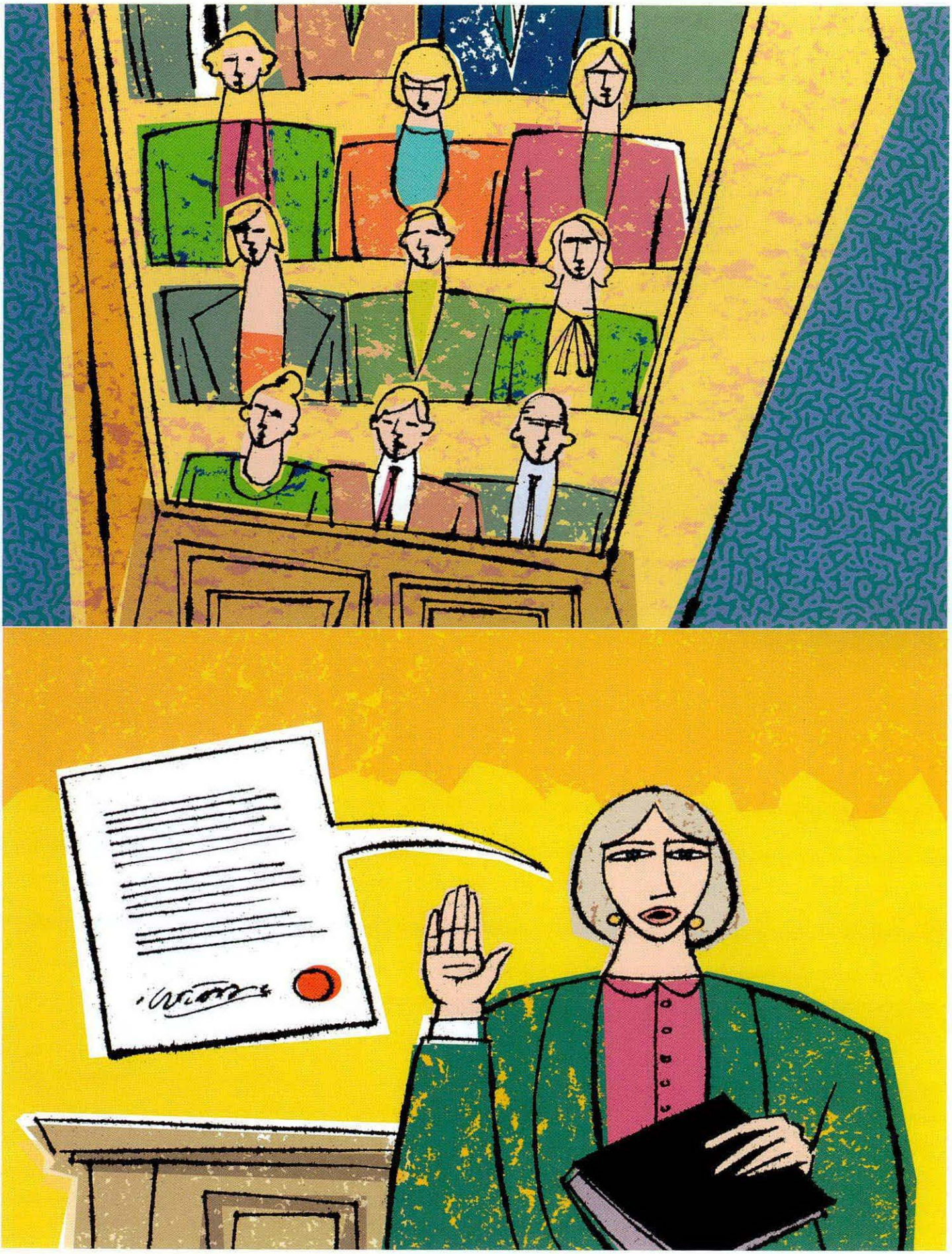
A review of state files from the 1920s shows that then-state Attorney General Lindsey L. Thompson sought to defend the anti-Asian Alien Land Act by networking with local and national exclusionist politicians who made their careers whipping up fears of a "Yellow Peril."

Current Attorney General Christine Gregoire will have a very different role at the March 1 event. She will describe the attorney general's role in the safeguarding of human rights.

The court hearing will begin in the Temple of Justice in Olympia starting at 4:00 p.m., with a live TV feed to the lobby for the anticipated audience overflow. The event is taking place the same day as an annual Olympia visit by Asian-Pacific Islander groups. A reception will be held in the lobby after the hearing.

The 21st century has finally caught up with Takuji Yamashita. The same forum in which the 20th century turned its back on him will honor his memory with the one thing he could not achieve during his lifetime — membership in the Washington State Bar Association.

Steven Goldsmith, a longtime reporter with the Seattle Post-Intelligencer, *now writes for the University of Washington Office of News and Information. He is researching a book on Takuji Yamashita.*



Psychology, Expert Testimony *and* the Law

by Dr. Gordon Cochrane

Lawyers and judges are regularly called on to evaluate expert scientific and medical testimony. In many cases the information — once presented — speaks for itself. The laws of physics generally inform accident reconstructions. But when it comes to the science of the mind and human behavior — psychology — the range of "expert" opinions expands, and the ability of most attorneys to really understand, much less analyze, what they hear contracts. In the following article, Vancouver, B.C., clinical psychologist and consultant Dr. Gordon Cochrane offers basic analytical tools that attorneys can use to separate valid psychological testimony from "junk science." Ed.

Most lawyers and legal decision-makers have had limited exposure to the research methods and analysis-of-variance used in psychology.[1] They also have little or no experience with the application of research outcomes to practical clinical situations. Sometimes, for example, psychology research is based on statistically sound methods, but the generalizability of the outcome data is limited, because the studies were conducted in an academic setting rather than a clinical setting. Sometimes too, the research methods of studies are sound, but key factors such as each person's unique perspectives and an individual's faith in himself to do what is required are not included in the design. For example, over the last 30 years volumes of cognitive-behavioral research have been published on coping strategies[2] and on treatments for obesity,[3] but this research has not resulted in the development of effective treatments in either of these realms.

Purveyors of psychological pseudo-science often follow this pathway. It is true that the cognitive behavioral model is the treatment model used in most psychology research, that emotion and self-efficacy are important factors in well-being, and that these variables need to be more effectively incorporated into psychological research. It is also true that results from longitudinal studies and meta-analyses of existing studies are conducted too infrequently. "Therefore, it is true that the limitations of mainstream research make it appropriate and praiseworthy to promote pseudo-science in the guise of creative innovation." The logic is flawed, and therefore so is the conclusion.

The acknowledged limitations of mainstream research are being addressed by researchers who are exploring more effective ways to meld research design with the subjectivity of human experience.

The acknowledged limitations of mainstream research are being addressed by researchers who are exploring more effective ways to meld research design with the subjectivity of human experience. These limitations do not diminish the value of most scientific research in psychology, and they definitely do not justify the use of unproven or

disproven treatments or expert testimony arising from these treatments.

But attorneys are not psychologists, and they need practical tools and guidelines for ascertaining the validity and reliability of the expert testimony that is provided by professionals in psychology.[4] The following information and concepts offer a preliminary yet reliable framework for assessing the "expertness" of expert testimony in psychology.

What Constitutes Mainstream Research?

An expert witness is usually asked to provide understanding of a relevant issue that is outside the ordinary knowledge of a judge or jurors, and in so doing, most experts draw upon mainstream research. Mainstream research adheres to scientific standards of research and is published in peer-reviewed journals approved by the psychology or psychiatry associations of a given country (for example, the American Psychiatric Association or the Canadian Psychology Association). Books on psychology subjects may also be reliable if original research is appropriately cited to support the theories presented in the book.

However, some authors of psychology books do not cite mainstream research to support their theories, and instead frequently cite parapsychology sources that are usually accepted without question by the unsophisticated segment of the public for whom these books are written. Unless one knows what to ask, parapsychology journals can seem as valid as mainstream journals. However, the editors of parapsychology journals rarely expect or require authors to adhere to sound research principles.

It is helpful for lawyers and judges to have a simple but reliable framework that they can call upon to assess whether expert testimony in psychology rests upon a firm foundation of science, or upon myth, bias and magical thinking.

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The Rainmaker

Throughout history, many cultures in arid parts of the world have relied upon the mystical rituals of a rainmaker to bring on much-needed rain. The rainmaker was usually a charismatic and mysterious person who fostered the belief that he or she had knowledge and influence in realms unavailable to the average person. The pomp and circumstance surrounding the rainmaker and the raindance were so impressive that many important questions were never asked. When it appears that an expert witness might be a psychological rainmaker, the following questions may be helpful.

- After the raindance, did it rain?
- Does it always, or even usually, rain after each raindance?
- Are the raindances held on all types of days or just on dark cloudy days?
- If it rained, could there be other reasons or was it because of the raindance?
- If it rained because of the raindance, is the whole dance needed or just some of it?
- If only key parts are necessary, which parts are they?
- Can anyone perform this raindance and get comparable results?
- Will the rainmaker answer questions about the raindance?
- If yes, are the answers sprinkled with specialized terminology?
- Can the raindance and its (supposed) results be explained in everyday English?

This simple example illustrates the key principles of analysis-of-variance[5] (ANOVA) and provides a framework for questioning the reliability and relevance of expert testimony. ANOVA is the primary reason for doing mainstream research. Researchers seek to determine, by comparing outcomes from the treatment in question to a control group, to other valid and established treatment groups or to a pharmaceutical product, whether there is a statistically significant difference in the treatment outcomes. The variation among the outcomes from the treatments tested indicates whether the treatment in question reliably brings about positive results (after the raindance, does it rain?). Specific aspects of a treatment model can be isolated, and

their significance can also be tested in this manner.

When a particular treatment or psychological concept is presented as part of expert testimony, the expert should be asked to cite the research that supports the authenticity of this treatment or concept. Without the backing of mainstream research, the testimony can easily be challenged. If research is cited, the expert should be asked whether the journal in which it was published is an APA- or CPA-approved journal. If it isn't a sanctioned journal, the testimony can again be challenged. Of course, the research cited may be credible, but it also has to be relevant to the situation in question.

The second question (does it rain after each dance?) is about reliability. Is this treatment reliable across populations over time? One study with short-term follow-up data does not provide sufficient information to determine whether a treatment is reliable. The research design used in mainstream research controls for extraneous variables that could influence the treatment outcome[6] (does the raindance work on all types of days or just on cloudy days?).

By "dismantling" studies, we seek to clarify which aspects of a treatment are necessary and which are not. For example, eye movement desensitization and reprocessing (EMDR) has been a very popular treatment for trauma since 1989. However, current type-A research indicates that the patient's directed eye movement, which was originally presented as the fundamental aspect of the treatment, is not a factor in the treatment outcome.[7] If eye movement is the distinguishing feature of EMDR and eye movement is not a statistical predictor of outcome, what is EMDR?

A psychological treatment, concept or strategy should be usable by other properly trained therapists. If it is exclusive to a particular therapist, the outcomes are a factor of the therapist rather than a factor of a treatment. Claims of unique and exclusive therapeutic success, frequently attributed to vaguely worded concepts and processes, cannot be verified by mainstream research and therefore can only be supported by unreliable anecdotal evidence.[8]

Research design and ANOVA permit researchers to make probability statements about outcomes arising from treatments or specific aspects of treatments. ANOVA does not generate proof. Rather, it generates probability statements such as: There is a 95 percent probability that this positive outcome occurred because of a specific treatment.[9] While other influences remain possible, sound research design and ANOVA allow researchers to determine whether a treatment is valid and reliable. Without scientific research we have no reliable means to assess whether a treatment is effective, whether the outcome is influenced by factors other than those that are supposedly part of the treatment. It is true that psychotherapy is an art, but it is an art conducted within the context of science. Without the science, it is junk psychology.

The questions posed in the raindance analogy can be used by lawyers and judges to determine whether the psychological treatments or concepts that are presented in expert testimony are supported by mainstream research. The answers to these basic research questions will help the court determine whether expert testimony in psychology is acceptable and helpful in the case at hand.

Commonly Misunderstood Psychology Concepts

Psychotherapy takes place between two or more people in an office setting with the

relative security of confidentiality and mutual trust. The patient usually clarifies the initial goals of his therapy, though these goals may be refined or altered as the therapy progresses. The psychologist or psychiatrist employs a variety of research-validated tools and strategies to help the patient reach his therapy goals. The therapy process does not always require the same search for truth that the legal process demands. A therapeutic outcome can often be achieved from the perceived realities of the patient. The psychotherapist needs to be well-informed about the research pertaining to the issues at hand, but also needs to respect and respond to the unique circumstances of each patient. The need for flexibility and the creative art of therapy make it appropriate for the therapist to experiment with creative interventions within the context of researched principles.

However, when psychology concepts, theories, intervention strategies, and patient behaviors become part of evidence in law, there is less room for unverified perception and theoretical flexibility and a greater need for accuracy, research credibility, and an expanded professional responsibility.

The following psychology concepts, treatments and theories are frequently involved in the expert testimony provided by psychologists and psychiatrists, and therefore lawyers should be familiar with them.

Memory and Truth

Memories generally, and recovered memories in particular, have generated considerable controversy in court proceedings throughout the 1990s. Many people, including some ill-informed health professionals, felt that memory could be compared to a stack of chronologically arranged photographs stored in the vault of the human mind. Subsequently, memory was considered by some to be synonymous with fact. Actually, memory is more like a stack of paintings that may or may not be stored chronologically, and they are altered each time the artist retrieves them. A consensus now exists among memory researchers that memory is a dynamic medium of experience shaped by expectancies, needs and beliefs. It is interwoven with emotion and is enriched by the exquisite human capacity for creative thought.[10] People tend to remember by reconstructing events according to their life experiences and their emotion-laden conscious and unconscious needs at the time of recall.[11]

The accuracy of a memory is not determined by the amount of detail present, the intensity of emotion that accompanies it, or by interventions with hypnosis or with barbiturates such as sodium amytal.[12] In a therapy setting it is not always necessary to corroborate subjective memory, but in a legal setting, corroboration of memory is obviously essential. Mental health professionals have no special ability to tell whether a memory is factual, the product of creative imagination, socially influenced, or a complete fabrication.[13] Corroboration is the only reliable way to confirm or disconfirm a memory.

Unique Realities

Human beings are creative, active information-processing beings for whom reality is unique. Everyone experiences life personally, and everyone, at one time or another, especially in highly charged emotional situations, feels certain that his perception of reality is absolute reality. Once a person has formed a conclusion about a particular perceived reality, he selectively attends to the factors that seemingly confirm this reality while ignoring factors that challenge it. In an adversarial situation, differing perceived

realities are the norm and corroboration of these perceived realities is essential.

In a therapy setting it is not always necessary to corroborate subjective memory, but in a legal setting, corroboration of memory is obviously essential.

Meaning Attribution

There are two sources of meaning attribution that warrant the attention of lawyers and judges. The first and by far the most common source consists of most members of the general public. Everyone periodically forgets, or chooses to ignore, the principle of unique realities, and projects his version of reality onto other people, often with considerable fervor. This form of mind-reading often creates considerable unresolved misunderstanding in personal relationships, but in a legal setting, meaning attribution should not go unchallenged.

Various forms of bias, assumption and a misplaced sense of certitude can cause an expert witness or a lay person to attribute meaning to and make uncorroborated allegations about the behavior, thoughts and intent of another person. Nonverbal cues, for example, are sometimes used as proof of a person's intent. Mainstream research repeatedly shows, however, that nonverbal cues play an important role in communication, but it is not possible to attribute meaning to specific nonverbal cues with reliable accuracy.[14]

Sometimes meaning attribution arises from a form of professional arrogance. The history of psychology and psychiatry has been greatly influenced by Sigmund Freud and his psychoanalytic model of treatment. This treatment model, and the theory from which it was developed, rests on the assumption that a highly trained analyst is able to reliably interpret the real and often unconscious meaning of a patient's thoughts, dreams and behaviors. In this model, the authoritative analyst provides meaning for the patient. It is not surprising that this model has fallen out of favor with most psychologists and psychiatrists in North America, but the Freudian influence remains. The power and the prestige that are part of this authoritative "rainmaker" model can be very appealing to some health professionals even though mainstream research fails to validate many of the theoretical constructs of this model.

A small minority of health professionals can sometimes become overconfident about their ability to know the realities of another person when they conduct psychological and risk assessments.[15] It is not a good idea to accept anything as fact simply because an expert says it's so. The ghost of Freud still causes many people in the general public to view psychiatrists and psychologists as people who "read" and generally analyze others. Popular television shows such as *Frazier* help to perpetuate this image of the expert who can accurately attribute meaning to the thoughts, actions and intent of others. Uncorroborated meaning attribution has no place in our courts.

Hypnosis and the Legal System

The recovered memory and false memory controversies of the 1990s have contributed to the development of a negative per-

ception of hypnosis among many lawyers and judges. This perception is understandable but unfortunate, since it is based on the misuse of hypnosis by a small segment of health professionals. This group consists of a number of minimally qualified practitioners and a few qualified practitioners who seem to have forgotten their training in research design and outcomes. These health professionals have displayed an astonishing lack of awareness about the nature of memory and about suggestibility. They held that hypnosis, employed by the therapist, can uncover the truth that is "recorded" in the "unconscious" mind of the patient.[16,17,18] Yet they flourished until recent court challenges initiated greater caution among some of them. Their view of memory is simply not supported by mainstream literature.

One of the consequences of blatant and irresponsible misuse of hypnosis has been an over-emphasis on hypnosis as a cause of memory distortion. The research shows that memory distortion is neither unique nor specific to hypnosis.[19] Memory distortion can occur during all forms of recall. Suggestions and leading questions can contribute to the distortion of a person's memory, with or without the use of hypnosis.

Hypnosis is a term whose meaning has defied continuous efforts by health professionals to reach a consensus. Even the American Psychological Association definition is less than clear. Therefore, when expert testimony is provided on the role of hypnosis in a court case, lawyers and judges should ask the expert to clarify what he or she means when using the term hypnosis. Without clarification, the door is open to confusion, meaning attribution, and judgment errors. When the expert has provided a working definition of hypnosis, lawyers are then able to ask the questions from the rainmaker analogy to determine whether the hypnosis component of the expert's testimony is valid.

Until relatively recently, many members of the general public and a surprising number of health professionals have held the view that hypnosis is a special and altered state of consciousness induced in the patient by the "hypnotist." In this state, the person "hypnotized" is given suggestions by the "hypnotist." Theoretically these suggestions somehow bypass the recipient's conscious mind and are accepted by his or her unconscious mind.

The implication of this view is that hypnosis is a form of treatment administered by a health practitioner to treat a variety of physical and psychological issues. From this perspective, the burden of effort and responsibility is removed from the patient and placed with the "hypnotherapist." When the raindance analogy is applied to this model of hypnosis, it becomes evident that mainstream research simply does not validate this concept of "suggestion-given-suggestion-received." If mainstream research supported this simplistic model, hypnosis would be hailed as the primary treatment for most psychological problems.

In an effort to minimize the misunderstandings arising from the use of one term to represent many phenomenon, the APA has defined hypnosis as "a procedure during which a health professional or researcher suggests that a client, patient, or subject experience changes in sensations, perceptions, thought or behavior. The hypnotic context is generally established by an induction procedure."[20] There is no claim that the suggestions given are reliably accepted and acted upon. There is no attempt to define "hypnotic context," nor does the APA comment on whether this context is a necessary part of the procedure or a pre-

dictor of therapy outcome.

The APA does go on to say, however, that "hypnosis is not a type of therapy." Instead, it is a procedure that can be used to facilitate therapy, but clinical hypnosis should be used exclusively by properly trained and credentialed health care professionals who have, in addition to their mainstream training, received training and supervision in the clinical use of hypnosis. Those providing the training and supervision should know and respect the mainstream research and present hypnosis as a valuable adjunct to psychotherapy.

It is important to question the scientific validity of hypnosis in its various forms, but there is no reason to discredit hypnosis completely because it is used irresponsibly by some health professionals. Considerable research has been published to confirm a valuable adjunctive role for hypnosis in a number of psychotherapy situations. A meta-analysis of 18 studies showed that the addition of hypnosis strategies to the mainstream cognitive-behavioral treatment programs significantly improved the outcomes for 70 percent of patients.[21] Additional research supports the use of hypnosis as an adjunct to mainstream treatments for anxiety and pain control.[22] It is also used extensively to facilitate rehearsal imagery in sports and the creative arts.

Therapies from the Fringe and Beyond

Each decade seems to generate a new batch of syndromes and fringe therapies in North America. These new cures are usually packaged in pseudo-scientific terminology and wellness metaphors such as "re-programming the unconscious," "healing traditions," "energy therapies," "past lives therapy" and "flushing one's emotional toxins." The therapies usually promise immediate and miraculous results for even the most challenging of human situations. The syndromes consist of a wide-ranging array of symptoms that are presented as validation of an unverified trauma. A familiar example from the 1990s: "If you have some or all of the following symptoms, you were undoubtedly sexually abused." The list of symptoms offered is astonishingly wide-ranging.

As Canadian Supreme Court Justice John "Jack" Major stated recently,[23] expert testimony can be "dressed up" in such impressive scientific terms that jurors can find it to be infallible. Fortunately, lawyers and judges can use the ANOVA questions from the raindance analogy to challenge any testimony that appears to be based upon a fringe therapy or a symptom-laden syndrome.

When the expert has provided a working definition of hypnosis, lawyers are then able to ask the questions from the rainmaker analogy to determine whether the hypnosis component of the expert's testimony is valid.

Health professionals who continue to embrace unsubstantiated therapies and syndromes may find that instead of offering expert testimony, they are in court defending the validity of their particular form of raindance. For example, in April 2000, a 10-year-old girl suffocated to death in the midst of a "rebirthing" activity conducted by three therapists in Colorado. The three therapists have been charged with child abuse causing death.[24]

Conclusion

Lawyers and judges need to know what questions to ask when they have reason to doubt the validity of an expert's testimony in psychology. The majority of health professionals who give expert testimony are clinically experienced and aware of the research in their field of expertise. They understand that their testimony can have considerable impact on the lives of the people involved in the court proceedings, and they are therefore very conscientious about the professional credibility of their testimony. However, a few health professionals seem to have forgotten their training in research design and some seem to have little regard for efficacy-supported treatments. Therefore, lawyers and judges need a conceptual awareness of research design and ANOVA, so they can ask the basic questions that will quickly determine whether they are listening to impressive sounding pseudo-psychology or to valid efficacy-based psychology. The raindance analogy and the questions arising from it illustrate the fundamentals of psychology research and offer a simple but effective framework for lawyers and judges to call upon when questioning the validity of an expert's testimony.

Dr. Gordon Cochrane is a member of the Canadian Registry of Health Service Providers in Psychology and has been in private practice for 20 years. He has provided expert testimony on psychotherapy, on the nature and reliability of memory, and on the uses and misuses of hypnosis.

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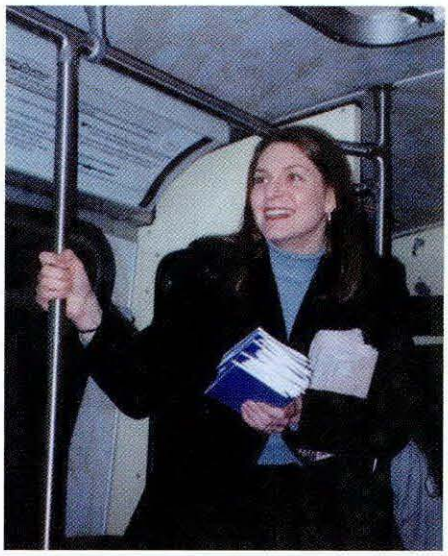
The Board's Work

by Mark A. Panitch
Bar News Editor

CORRECTION
Our January Board's Work column reported that Governor Victoria Vreeland seconded the motion to support the posthumous admission of Takuji Yamashita to the Washington State Bar. In fact, Governor Vreeland made the motion, and has been among the most active supporters of the Yamashita admission. We regret the error. Readers can find more about Takuji Yamashita on page 22 of this issue.



In addition to her duties as WSBA Board of Governors liaison, Lisa KauzLoric acts as "tour guide" in Port Townsend.

Diversity Seat Debated

The Board of Governors (BOG) met February 9 and 10 in Gig Harbor. After months of discussion and debate over adding a "minority" seat to the board, the governors have agreed to create two new at-large seats for "underrepresented" groups. Several BOG members voiced uncertainty about who constitutes a member of an underrepresented group. Nominees for the seats will be considered from ethnic minorities and other underrepresented groups that have fought for years for representation on the BOG.

Over the past months, BOG members have debated the need for a dedicated minority seat, and last September voted to create one. However, at the December and January meetings, WSBA General Counsel **Robert Welden** opined that dedicated "racial minority" seats would violate several constitutional requirements.

Governor **William Hyslop** (Spokane) urged the Board to put the matter over to allow members to review it. Governor **S. Brooke Taylor** (Port Angeles) agreed that the matter was unripe, suggesting that the BOG should hear from the minority bars. "This may be the most significant thing I deal with on the board, and I don't think that putting it off will cause any harm." However, several others, including Governors **Lucy Isaki** (Seattle) and **Jenny Durkan** (Seattle), argued that the BOG has been debating the issue for over a year and was ready to vote for a minority seat at the last meeting. "The longer we wait, the longer it will take us to diversify," Governor Durkan warned.

A motion to create the two new seats was made by Governor **Lindsay Thompson** (Seattle), who told the BOG that "circumstances allow us to do something really remarkable." The vote in favor of adding the new seats was 8-0, with Governors Hyslop and Osborne abstaining. *Bar News* will carry an extended article on this important event next month.

County Public Defense Standards

Robert Boruchowitz, president of the Washington Defender Association, updated the board on the status of the public defense system in Washington. He referred to his presentation as a "report from the trenches." He reported that since every county is responsible for establishing its own public defender program at the trial court level, there are as many systems as there are counties. Despite the fact that public defense standards were written in 1984 and counties were required to adopt standards in 1989 (RCW 10.10.030), there are still counties without clear standards. He noted that Chelan County had only adopted standards in early February. Part of the problem is lack of funds, with state dollars going to support the appellate defense program, and counties required to support public defense at the trial level. Nevertheless, "standards have made an enormous difference."

He also noted that:

- With three-strikes and two-strikes cases now coming before the courts, "we are chock full of status offenses."
- Many courts around the state routinely deny counsel to defendants "by asking defendants to waive counsel and plead guilty." Most of these cases are in district and municipal courts, and most defendants are among those least able to withstand pressure from the bench.
- The biggest problem is simply that public defenders' caseloads are too high and pay is too low. Flat-fee contracts — which are favored by local government — are a disincentive to try cases and hire needed experts and investigators.
- Recent proposals in King County and elsewhere to reduce standard-range sentences for many drug offenses and divert many cases from jail to treatment would be far less expensive, possibly saving millions of dollars. He cited two examples of harsh sentences — 21 months for a first-offense sale with an additional 24-month "enhancement" if the sale occurred within 1,000 feet of a school.

Other Matters

In other business, President **Jan Eric Peterson** reported that the discipline backlog has finally been conquered, but at the price of having a record number of formal cases open. He anticipates that the Oregon and Idaho Bars will have reciprocity programs in place by late summer.

Governor **Ken Davidson** (Kirkland), BOG liaison to the King County Drug Law Study Group, urged the board to take a more formal role in the process. Governor Thompson, reporting his own experience as a deputy prosecutor, said: "The system rewards a high body count. There's no time to build cases against people doing really serious damage." Governor Isaki moved that the BOG go on record as supporting "King County Bar Association efforts to explore treatment alternatives to confinement for [minor] drug crimes." The vote in favor was unanimous.

By unanimous voice vote, the BOG agreed to support HR 4570, a bill that would repeal tax treatment of emotional damage awards in employment cases as gross income. Governor Davidson urged the BOG to write to Representative Jennifer Dunn (R-Bellevue), asking her to cosponsor the bill. He noted that it is supported by both plaintiffs and defense bars because the current law makes it overly difficult to settle cases.

By unanimous voice vote, the BOG went on record in opposition to plans by the state Department of Corrections to close prison law libraries.

WSBA legislative advocates **John Fattorini** and **Gail Stone** reported that amendments to the Trust and Estate Dispute Resolution Act (TEDRA), supported by the WSBA, passed the Senate Judiciary Committee and are now on the floor awaiting a vote, but may be in trouble due to sudden opposition by King County Commissioner Stephen Gaddis.

They also reported that the Board for Judicial Administration is still supporting legislation to allow elected judges from any court in the state to sit as judges *pro tem* in any other court in the state. WSBA Court Improvement Committee Chair Kirk Johns is working with the Board for Judicial Administration to craft legislation that the WSBA can support.

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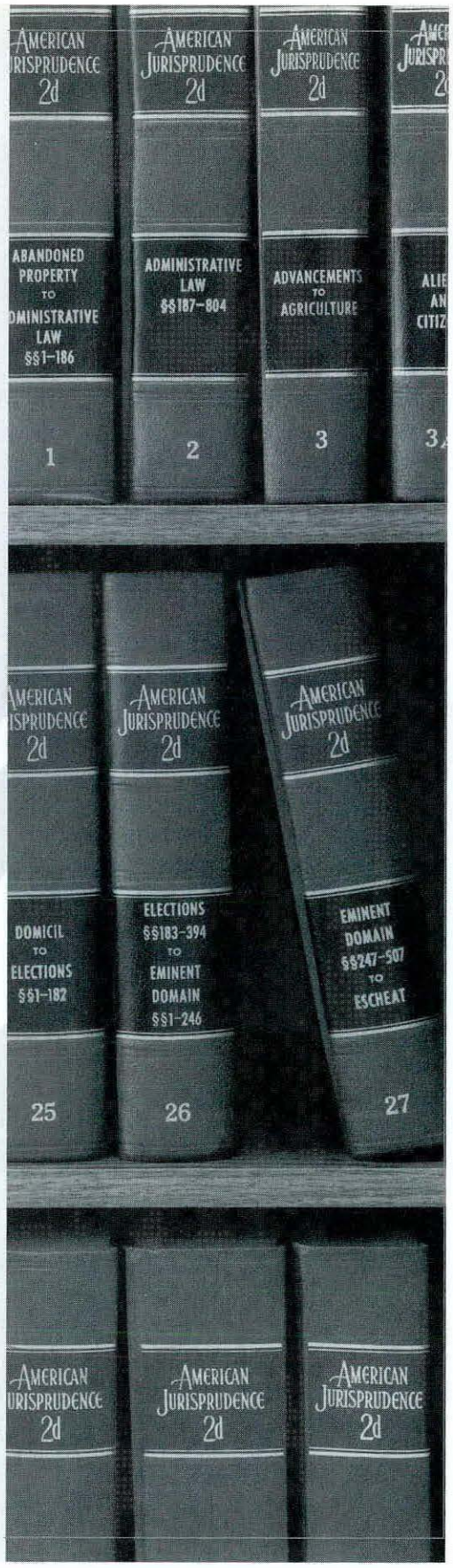


Third-Party Intervention: What, When, How

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

I pick up the ringing telephone. "Judge Bench here. We have a situation that concerns me. An attorney who seems to be in trouble appeared in my courtroom today. He's usually prompt, prepared, and does a good job for his clients, but today he was 30 minutes late, completely unprepared, and very disorganized. I could tell his client was upset with him. This happened last month, too, but at the time I thought it was an isolated incident. What can you do?"

This hypothetical report is characteristic of the phone calls the WSBA Lawyers' Assistance Program (LAP) receives from third parties — judges, colleagues, spouses, employees or even clients. When the LAP receives a third-party call, we explain to the caller that their identity will be kept confidential unless they give us permission to disclose it. We then explain to the caller the procedure that will be used to process the information being passed along.

Our response to the call depends on our assessment of the severity of the situation. Typically, the referred attorney is not a danger to himself or others. However, when it's clear there is something troubling in his life that is having a negative effect on his practice, we like to help the referred attorney before his problems become severe.

In many cases, we send the attorney a letter that lets him know that his behavior is drawing attention. We suggest resources that are available to help him cope with his problems, including the LAP. We also explain that the LAP is not connected to the WSBA Office of Disciplinary Counsel (ODC), that we do not "report" the referred attorney to ODC, and that any participation on his part is voluntary and confidential.

Sometimes the situation calls for a personal touch. In these cases, we ask a peer counselor to intervene. Peer counselors are lawyers who are trained to help other lawyers in troubling situations. The LAP provides training to assist peer counselors in being effective. The peer counselor attempts to contact the referred attorney, and invites him to avail himself of the peer counselor's support. It is the prerogative of the referred attorney to respond or not.

Peer counselors are required to follow the same rules of confidentiality as the LAP staff, understanding that without respecting lawyers' privacy, our services could do more harm than good. Peer counselors, who do not receive remuneration for their work, provide invaluable support and assistance to their fellow attorneys.

For more information on this important LAP service or the programs listed below, contact Zella Ozretich at 206-727-8268 or zellao@wsba.org.

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

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

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

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

Lawyers' AA meetings or assistance with an alcohol/drug problem: contact Mike Hoff at 206-733-5988 or mikeh@wsba.org.

The LAP/LaSD 4th Annual Statewide Conference will be April 6-8, 2001 at Campbell's Resort on Lake Chelan. The theme of this year's conference is *civility and ethics in the legal profession*. CLE credit is approved for 4.5 general and 3.0 ethics credits.

Presentations offered at the conference include:

- ***A Working Session on Improving Civility in the Legal Profession*** — a panel presentation given by lawyers and mental health professionals from the U.S. and Canada, where attendees will be invited to create their own criteria for civil behavior, and agree to honor and promote these values among their colleagues;
- ***A Framework for Interacting Effectively with Clients and Colleagues*** — a useful presentation to improve communication, a crucial skill for civility;
- ***Stages of Change in Recovery: How to Encourage Accountability and Responsibility Through Social Support*** — a topic of particular interest to lawyers working with people in recovery from alcohol or drug dependence; however, useful to lawyers who may encounter this type of problem in their professional lives;
- ***Model ADR Rules: Ethical Issues*** — a presentation about the ethical concerns which abound in the field of alternate dispute resolution; and
- ***Stress – Taming Law Office Management Techniques and Tools: 25 Tips for Axing Anxiety*** — valuable to any lawyer interested in effective law office management, particularly those in solo or small-firm practice.

The conference is open to all lawyers licensed in Washington. We hope any lawyer interested in our programs will take advantage of this opportunity to earn 7.5 credits in this important subject area, interact with presenters and colleagues, and enjoy beautiful Lake Chelan. For more information or to register for the conference, please contact Zella Ozretich at 206-727-8268 or zellao@wsba.org.

WSBA Emeritus Training Programs in La Conner and Vancouver

by Sharlene Steele • *WSBA Access to Justice Programs Liaison*

Regional Emeritus training programs are being planned in conjunction with two access to justice conferences. The Northwest Washington Access to Justice Conference will be held at Maple Hall in LaConner on Saturday, April 28 and will involve Clallam, Island, Jefferson, San Juan, Skagit, Snohomish and Whatcom counties. The Southwest Washington Access to Justice Conference will be held at the Heathman Lodge in Vancouver on Friday, May 4 and Saturday, May 5 and will involve Clark, Cowlitz, Grays Harbor, Lewis, Mason, Thurston and Wahkiakum counties. These regional training programs offer an excellent opportunity for potential volunteers to meet members of the legal services provider network and learn about the many volunteer opportunities in their communities. The conferences will also feature substantive law workshops relevant to lawyers providing pro bono legal services for low-income residents of Washington.

In September 1998, the Washington Supreme Court approved the adoption of APR 8(e), which creates a limited license status of Emeritus for attorneys otherwise retired from the practice of law. The goal of this rule is to encourage pro bono participation by highly skilled and experienced attorneys and judges who wish to make a contribution in the wake of dramatically reduced funding for legal services programs. Emeritus member participation will foster the development of new and creative ways to enhance and support the delivery of legal services (e.g., serving as part-time volunteer staff; supervising law students and volunteers; developing and teaching continuing legal education programs; referring cases to pro bono attorneys; providing advice, brief service and direct representation; and serving on volunteer boards).

To qualify for Emeritus status, you must be in good standing as a lawyer and meet minimum active practice requirements (five of the 10 years preceding application for Washington lawyers, 10 of 15 years for non-Washington lawyers). Washington lawyers will pay the annual inactive membership fee of $100.

Emeritus members are exempt from mandatory continuing legal education requirements, however, completion of the training program is required before assuming Emeritus status. Attorneys attending the training will receive a conference registration discount. For more information, contact Sharlene Steele at 206-727-8262 or sharlene@wsba.org.

Changing Venues

Honors and Awards

Dwight Wheaton has been elected treasurer of the board of the King County Sexual Assault Resource Center. Mr. Wheaton is a lawyer with the Seattle firm Caincross & Hempelmann.

The newly formed Washington Appellate Lawyers Association has elected the following officers: **Catherine Smith**, president; **Michael King**, first vice president; **Phil Buri**, second vice president; **Jim Lobsenz**, secretary; **Bill Collins**, treasurer.

Federal Way lawyer **Preston L. Johnson** has joined the Tacoma-Pierce County Red Cross Community Service Advisory Council. The council advises and assists in matters relating to service delivery of the chapter's community service programs.

Thomas M. Culbertson, a principal in the Spokane firm of Lukins & Annis PS, has been elected a fellow of the American College of Trust and Estate Counsel. The College is a national association of lawyers who have made outstanding contributions to the field of trust and estate law in their communities.

Bellevue lawyer **Troy Romero** has been elected mayor of the city of Sammamish.

Movers and Shakers

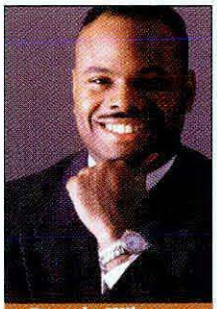
Miller Nash has added **Liam A. McCann** to the litigation department at the firm's Seattle office. Mr. McCann is an associate focusing on general litigation and intellectual property.

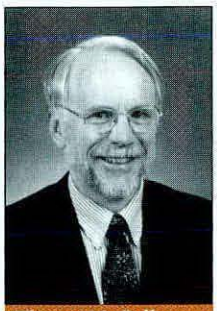
Michael B. Love and **Michael J. Paukert** have become partners in the Spokane firm Paine, Hamblen, Coffin, Brooke & Miller LLP. Mr. Love concentrates on labor and employment law, and general civil litigation. Mr. Paukert's practice emphasizes commercial and bankruptcy law.

Daniel E. Stowe has joined the Law Office of Bohrnsen & Stowe in Spokane. Mr. Stowe is a principal shareholder focusing on insurance law and civil litigation.

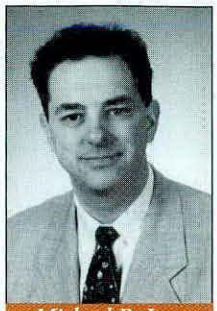
Robert S. Magnuson and **William M. Symmes** have become principals in the Spokane firm Witherspoon, Kelley, Davenport & Toole. Mr. Magnuson practices business litigation and medical malpractice defense. Mr. Symmes concentrates on commercial litigation, insurance defense and labor employment law.

Jeffrey M. Sakoi has been elected to his second term as chairman of the management committee at Christiansen O'Connor Johnson Kindness in Seattle. His practice encompasses all aspects of intellectual property law, with particular emphasis in patent and trademark matters.


Dwight Wheaton


Thomas M. Culbertson


Liam A. McCann


Michael B. Love

Claudia Crawford Kilbreath and **John D. Sullivan** have been elected members of Short Cressman & Burgess PLLC. Ms. Kilbreath joined the Seattle firm in 1993 and provides legal advice to both employers and employees in employment-related matters. Mr. Sullivan is co-chair of the firm's real estate section. His practice emphasizes real estate transactions and land use.

Jessica Stone Levy has been appointed of counsel to the technology and intellectual property department at the Seattle firm Preston Gates & Ellis LLP. She focuses on trademark prosecution and intellectual property business transactions. The firm has also added 14 new associates to the Seattle office. **Theodore J. Angelis**, **Mathew Segal** and **Lior Jacob Strahilevitz** concentrate on litigation. **Peter Berger**, **Alan W. Bruggeman** and **Rick L. Leitner** are part of the firm's technology and intellectual property department. **Won-Han Cheng** focuses on tax law; **Catherine Drews** concentrates on natural resources law; and **Claire M. Jackson** focuses on environmental and land use law and litigation. **Ryan R. Montecucco** and **Kristopher R. Pattison** (first-year associate) focus on corporate law. **Michael P. Moyer** practices business law. He is a member of the New York State Bar. **Tracey M. Trepess** is applying her experience in political science teaching and research to her law practice. **Tamara Watts** focuses on municipal and health law.

Sarah K. Johnson has joined the Seattle office of Foster Pepper & Shefelmann PLLC as of counsel. She concentrates on litigation and intellectual property. **Ivy D. Arai**, **Joseph A. Brogan**, **Andrew M. Carter**, **Sharon E. Cates**, **W. Alexa Chiang** (a member of the Colorado State Bar),

IN MEMORIAM

Bellevue lawyer **John M. Baker II** died January 15 at age 55, after fighting non-Hodgkins lymphoma for six years. A retired real estate lawyer, Mr. Baker was passionate about hiking and world traveling. He went on six African safaris, where he enjoyed watching the gorillas of Rwanda. Mr. Baker earned his law degree from the University of Iowa College of Law in 1970, and served as a judge advocate general in the Navy. He then joined the Bellevue firm that eventually bore his name, Hanson Baker Ludlow & Drumheller.

Kermit P. Owens, of Spokane, died December 25. A 1946 graduate of Gonzaga University School of Law, Mr. Owens served the Spokane area as a lawyer and an active member of Rotary for more than 50 years.

Former King County Superior Court Judge **Raymond Royal** died January 11, at age 84, after a lengthy battle with Alzheimer's disease. Judge Royal, a lifelong Seattle resident, received his undergraduate and law degrees from the University of Washington. Active in civic groups, Judge Royal was president of the Northend Clubs of Seattle, served on the first board of trustees of Northwest Hospital, and enjoyed a lifelong affiliation with the Boy Scouts.


Michael J. Paukert


Todd R. Startzel


Monica Reisner


Ronald Beard

Susan Elizabeth Drummond, **W. Gregory Guedel** and **Thomas J. Parkes** have joined the firm as associates. Ms. Arai focuses on employment and health care law. Mr. Brogan's practice emphasizes land use, environmental and natural resources law. Ms. Cates and Mr. Carter concentrate on litigation and alternative dispute resolution. Ms. Chiang practices in corporate finance, private securities offerings, and general corporate matters. Ms. Drummond focuses on land use. Mr. Guedel's civil litigation practice emphasizes complex construction, government contracting, and business law. Mr. Parkes concentrates on commercial and residential real estate transactions and development, including acquisitions and sales, leasing, financing, and general real estate matters.

Todd R. Startzel has become a principal in the Spokane firm Leveque & Kirkpatrick PS. His primary focus is civil litigation, with an emphasis on insurance defense and appellate practice.

Mary K. Fleck has become a partner in the Law Offices of James S. Rogers, which is now known as Rogers & Fleck PLLC.

D. William Toone has joined Dorsey & Whitney LLP as a partner in the Seattle technology group, practicing in the area of intellectual property litigation. **Mark S. Carlson** has joined the Seattle technology group as of counsel. He also focuses on intellectual property litigation.

Riddell Williams PS, in Seattle, has named **Diana Dearmin**, **Robert Howie** and **Michael Robinson** principals. Ms. Dearmin's practice focuses on technology performance and commercial litigation. Mr. Howie is a member of the labor and employment law, and litigation practice groups. Mr. Robinson is a member of the litigation, and environment and land use practice groups.

Russell D. Garrett and **José Dino Vasquez** have become shareholders of Bullivant Houser Bailey PC. Mr. Garrett, who works in the Vancouver office, focuses on bankruptcy and creditors' rights, business transactions, commercial litigation, and real estate and land use. Mr. Vasquez is based in Seattle and concentrates on commercial litigation and insurance. **Kimberly S. Burroughs**, **Vivien K. Chang** and **Randall J. Cornwall** have joined the firm's Seattle office as associates. Ms. Burroughs advises clients on a choice of entity, corporate and partnership formation, transferring of wealth, and protection of minor children. Ms. Chang concentrates on estate planning and business. Mr. Cornwall is a member of the firm's insurance practice group.

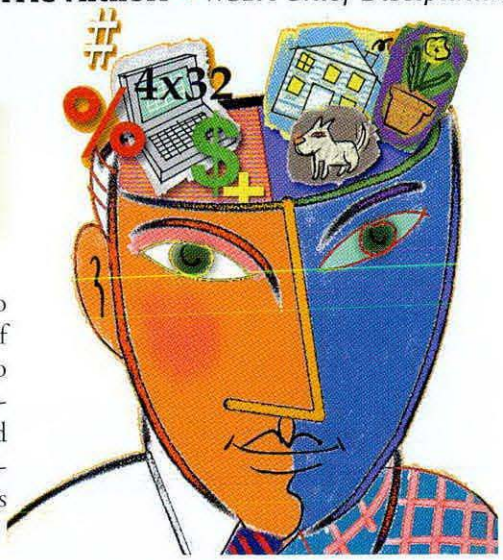
Alaska Airlines has appointed **Cathryn Vergobbi Dammel** to staff vice president of labor and employment law, and **Thomas R. O'Grady** to the new post of staff vice president of general litigation and regulatory law. Ms. Dammel is responsible for the airline's labor contract negotiations, administration of grievances, supervision of arbitration proceedings, and all legal issues related to the company's employment policies and practices. Mr. O'Grady oversees all commercial litigation and regulatory proceedings.

Monica Reisner has joined KCTS Television as general counsel and director of human resources. She prepares and negotiates all contracts with outside producers and distributors, advises station staff on various legal issues related to television production, and is responsible for human resources functions at KCTS and its subsidiaries.

Ronald Beard has been elected partner in the Seattle office of Lane Powell Spears Lubersky LLP. He is a trial lawyer concentrating on commercial litigation.

Ethics and the Real Estate Lawyer

by Barrie Althoff • *WSBA Chief Disciplinary Counsel*



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

Real estate lawyers, while subject to all of the provisions of the Rules of Professional Conduct, are likely to find that some of the RPCs arise more frequently in their practices than others, and that some RPCs are both difficult to comply with and perplexing. This article looks at some of the likely areas of concern.

Competence

Practicing law ethically is neither easy nor intuitive. Washington's RPCs set out the minimum ethical standards of conduct required of lawyers. Conduct below those standards is subject to discipline. While by their terms the RPCs do not establish standards for malpractice, they are often used as practical guides to good practice with a view to serving a client well and reducing the likelihood of malpractice suits.

The first of the RPCs, RPC 1.1, is simple and direct: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Lawyers who have never handled real estate transactions or litigation, particularly complex ones, should either spend the resources to become skilled in the area, associate with another lawyer who has the requisite knowledge and skills, or decline the representation. Failing to do so, they will likely fail their clients and subject themselves to malpractice and disciplinary proceedings.

While many lawyers may be able to competently handle the legal aspects of the purchase or sale of a single-family house, lawyers should not assume competence. At a minimum, the lawyer needs to understand the responsibilities of buyers, sellers, real estate brokers, buyers' and sellers' agents, escrow agents, title insurance companies, lenders, building inspectors, and so on. The lawyer needs to understand the appropriate documents and know what is usual and customary in such transactions. The lawyer needs to understand the different types of title insurance and a report's reservations, exceptions and exclusions, and to know which matters are significant and which are not.

If the buyer or seller is other than an individual, the lawyer needs to know who is authorized to sign for the party, how the buyer or seller can hold the property, and how that can vary, for example, depending on whether the party is or is not married.

The lawyer should also be able to follow a title report's legal description of the relevant property and verify that the report and other documents do in fact properly describe the property in question. The lawyer must understand a building inspector's report, and know which items are red flags and which are merely routine maintenance items. The lawyer should know the types of financing available, and their advantages and disadvantages. If the buyer or seller is other than an individual, the lawyer should know who is authorized to sign for the party, how the buyer or seller can hold the property, and how that can vary, for example, depending on whether the party is or is not married. If there are adverse material facts about the property being sold (for example, a death or notorious crime occurred there) or material latent defects, the lawyer needs to be able to advise the client about what needs to be disclosed to potential buyers. Likewise, the lawyer should be able to advise a client, for example, whether the Fair Housing Act or other laws prohibit any disclosure about a property's current or prior occupant having AIDS or other health conditions, on the basis that such persons are considered handicapped.

Lawyers handling condominiums, covenanted communities or commercial developments need more extensive knowledge and skill than required for a single-family house transaction. The lawyer should know federal, state and local laws applicable to complex real estate developments and financings, and be thoroughly familiar with the types of documentation needed for common-owned and commercial projects, and how participants therein interact. But basic knowledge is not enough. For example, does the lawyer know how to handle a property rezone? Does the lawyer know how to draft ground leases and understand that they are significantly different from commercial space leases? Does the lawyer know Federal Communications Commission regulations on antennae, and how federal and state regulations interact and apply to condominium or planned commu-

nity restrictions on the size, appearance and location of satellite dishes?

Can the lawyer competently advise a client on application of hazardous waste or environmental laws and regulations to a proposed commercial or industrial real estate development? Does the lawyer sufficiently know the accessibility provisions of the Americans with Disabilities Act to intelligently interpret them for a developer or owners' association? Can the lawyer capably counsel a client under the Fair Housing Administration Act on how to avoid discriminating in the sale or rental of dwellings? Does the lawyer know what to say to a condominium owners' association when told that a resident claims another resident is sexually or racially harassing her, and demands the association intervene to stop the harassment? In drafting or reviewing residential or commercial condominium documentation, or the typical covenants, conditions and restrictions for a residential community, does the lawyer understand the effect of the restrictions or the limitations on warranties, and can the lawyer explain what is routine, what is unusual, and what might inhibit the client's ability to use or dispose of the property as wished? And, can the lawyer draft, for example, condominium documentation that both fully complies with federal and state laws, and yet is livable and understandable by nonlawyers who will have to, literally, live for decades, and perhaps a lifetime, with the lawyer's work product?

Conflicts of Interest

Conflicts of interest can be difficult to catch and painful to cure. A lawyer who initially misses a later-discovered conflict will likely have to terminate representation on the matter for all conflicted clients, and may also be denied legal fees for all representations, particularly where the conflicts are ones that likely could or should have been recognized by the lawyer at inception. While some conflicts under the RPCs cannot be waived by clients, others can. When conflict rules are applied after there is a problem, however, they are usually construed narrowly against the lawyer and in favor of the clients, with proven strict compliance with the RPCs required of the lawyer.

The principal RPC conflicts-of-interest provisions are RPC 1.7 through 1.10. RPC 1.7 generally prohibits a lawyer from representing a client if the representation will be materially adverse to another client, or if the representation may be materially limited by the lawyer's responsibilities to another client or a third person, or by the lawyer's own interests. RPC 1.8, among other things, generally prohibits business transactions with clients and using client information to the disadvantage of the client. RPC 1.9 limits a lawyer's ability to represent a person "in the same or a substantially related matter" in which that person's interests are materially adverse to the interests of a former client, and prohibits a lawyer from using confidences or secrets relating to a prior representation to the disadvantage of a former client. For illustrative cases see *State v. Hunsaker*, 74 Wn. App. 38 (1994), and *Oxford Systems, Inc. v. Cellpro, Inc.*, 45 F.Supp. 2d 1055 (W.D.WA, 1999). In addition, RPC 1.10 imputes conflicts of other persons in a firm to the firm as a whole and to all of its lawyers, but generally allows "screening" of the directly disqualified person to remedy the imputation. RPC 2.2, permitting a lawyer to act as an intermediary between two or more

of the lawyer's clients and requiring withdrawal from all representations on any client's request, is dangerous to rely on. Because it has led to so many misunderstandings, the ABA Commission on the Evaluation of the RPCs has recently recommended its deletion.

In routine single-family house transactions, a lawyer practicing in an urban area will not usually encounter many conflicts unless such transactions are a substantial part of the lawyer's practice, or the lawyer represents a broker or a lender. Lawyers practicing in smaller communities or rural areas, however, may frequently find conflicts due to their prior representations.

In more complex real estate transactions, such as condominiums, covenanted communities and commercial projects, a lawyer's risk of conflicts can increase significantly. Not infrequently the lawyer is asked to take on, formally or informally, multiple roles and clients, changing hats, as it were, during the course of the representation. As a real estate project progresses from a gleam in the developer's eye to a set of plans and permits, to a hole in the ground, to a project under construction, to a finished project, to space to be sold or leased, the lawyer may represent, or be asked to represent, numerous parties with actual or potential conflicting interests. This can particularly happen if the nonlawyer participants are not sophisticated and experienced in such projects, and sometimes it may not be recognized as a formal representation but merely a casual question about the law tossed at the lawyer. Where the participants have affiliates involved in planning, designing, financing, developing, constructing, selling or leasing, the blurring of the lines may become more complex and more subtle since the multiple affiliated clients will often perceive themselves as "one big family" and may not appreciate the awkward position the lawyer is placed in when trying to act independently for a client.

When a member of the board of directors of an owners' association or its manager consults a lawyer, does the lawyer represent the association, the individual (perhaps dissident) director, the manager, or just an owner?

Before undertaking any representation, a lawyer should ask the most basic questions: who do I represent; who is my client? The answer is sometimes far from simple. Unless the lawyer has never had more than one client, conflicts may well arise which need resolution. For example, in real estate development or litigation, the lawyer's potential clients might include one or more of the land owner, developer, lessor, lessee, buyer, seller, bonding company, title insurer, construction lender, permanent lender, architect, engineer, general contractor, subcontractors, real estate brokers or agents, owners' association, officers of such an association, escrow agents, trustee in a real property foreclosure, and so on. Where a lawyer acts as a closing agent for the sale of condominium units, for example, the lawyer must take care to make clear his role and whom he represents.

While some conflicts are apparent, ob-

vious and nonwaivable — for example, representing both buyer and seller — others may not be so obvious. In commercial transactions where both sides are represented by counsel, sometimes one lawyer will also act as escrow agent in closing the transaction. In such a case, the lawyer has a duty to advise the participants to seek independent counsel. *Bowers v. Transamerica Title Insurance*, 100 Wn.2d 581 (1983). More generally, see *Stroud v. Beck*, 49 Wn.App 279 (1987); *Bennett v. Maloney*, 63 Wn.App. 180 (1991); *Hurlbert v. Gordon*, 64 Wn.App. 386, review denied 119 Wn.2d 1015 (1992) for a discussion of claims against lawyers acting as escrow agents, and *Bohn v. Cody*, 119 Wn.2d 357 (1992), for a real estate malpractice case carefully analyzing who was a lawyer's client and listing various relevant factors.

A lawyer's attempt to identify clients may be complicated by the client's form. For example, many real estate projects involve joint ventures or partnerships. Does the lawyer represent the entity, or one or more of the partners? Larger players in real estate ventures are often national or regional in scope and may have complicated interlinked affiliates which may give rise to further conflicts. What entity is involved? Does the lawyer represent the entity, an affiliate, or the controlling shareholder? When a member of the board of directors of an owners' association or its manager consults a lawyer, does the lawyer represent the association, the individual (perhaps dissident) director, the manager, or just an owner? Unless the lawyer knows the answer, the lawyer cannot ethically represent the client because, for example, the lawyer will be unable to identify potential conflicts of interest and to whom the lawyer owes a duty of loyalty, or whose confidences and secrets the lawyer is to preserve.

Whenever a lawyer is dealing with a corporate or other business entity, the lawyer must take the time to understand the structure of the entity and determine where in that structure the proposed client is situated. Only then can the lawyer make an informed decision as to whether there are conflicts of interest present.

During the course of a complicated real estate transaction or litigation, actual or potential conflicts not apparent at the start may develop. Lawyers must regularly check

for conflicts not just when taking on a new client, but also throughout the course of the representation to assure that conflicts are recognized and resolved.

If a lawyer practices in a law firm, the lawyer must remember that conflicts of others in the firm may be imputed to the lawyer under the imputation rules set forth in RPC 1.10. Further, when hiring laterally, care should be taken whether the hire be of a lawyer, paralegal, secretary, or other staff member, since conflicts may arise from each of those relationships which could lead to disqualification of the firm, loss of legal fees, and possible disciplinary action. While prompt screening of the personally disqualified lawyer may resolve the conflict, failure to do so may disqualify the entire firm and lead to loss of legal fees.

Lawyers acting as trustees in real estate foreclosure actions should be aware that under *Cox v. Helenius*, 103 Wn.2d 383 (1985), they act as fiduciary for both grantor and beneficiary. Thus they may well have a conflict if they also represent one of the parties. If a conflict arises where the same lawyer has been both the named trustee in foreclosure and a representative of the beneficiary, the lawyer should transfer one of the roles to another person, being careful for the RPC 1.10 imputation rules.

A special danger for lawyers undertaking representations in real estate ventures is the common invitation by one or more of the players for the lawyer to invest in the venture either in lieu of all or a part of legal fees, or as a wholly separate cash investment. A lawyer considering doing so should be cautious, since the ethical dangers are great. In Washington, pursuant to a series of Supreme Court decisions, business transactions with clients are presumed fraudulent. To overcome this presumption, the lawyer must carefully comply with the complex provisions of the RPCs. For further discussion on investing in clients and their ventures, see Barrie Althoff, "Investing in Your Client's Business" (*Bar News*, March 2000, p. 45) and the July 7, 2000 American Bar Association *Formal Ethics Opinion 00-418*, "Acquiring Ownership in a Client In Connection with Performing Legal Services."

Dealing with Represented Persons

RPC 4.2 prohibits a lawyer from communicating about the subject of the representation with a person the lawyer knows is represented by another lawyer in the matter, unless the other lawyer consents.

A real estate lawyer may often come into contact with represented persons. As a lawyer's reputation and expertise grow, the lawyer will likely come to know many repeat participants in real estate developments and ventures, and in the course of many real estate developments the lawyer and such persons will often casually encounter one another. Care must be taken not to communicate with them about matters the lawyer knows they are represented on. Similarly, a municipal lawyer knowing a landowner is represented by counsel must communicate only with the counsel and may not communicate directly with the landowner. Particularly vexatious are situations where opposing counsel does not respond to the lawyer and the transaction becomes stalled. Even in these cases, the lawyer may not bypass nonresponsive opposing counsel. Instead, the lawyer should urge his or

her client to contact the opposing client to pressure the nonresponsive lawyer to take action.

RPC 4.2 problems also arise routinely in disputes between condominium developers and owners' associations, and between condominium unit owners and their associations. For example, if a lawyer represents the association in a dispute with unit owners, or represents the developer in a dispute with the association, and knows that the owners or association are represented by counsel in the dispute, the lawyer may not communicate with the represented person. It is not unusual for a lawyer representing an association or the developer to attend owners' association meetings to advise the client. The lawyer will often be asked questions by others, but where the person asking a question is represented by counsel, the lawyer risks violating RPC 4.2 if the lawyer responds. Similarly, if a lawyer representing an owner knows the association is represented by counsel, the lawyer may not deal directly with the officers of the association as to the dispute, but must instead only deal with the association's lawyer.

Similarly, a municipal lawyer knowing a landowner is represented by counsel must communicate only with the counsel and may not communicate directly with the landowner.

Very good lawyers with the best of intentions can and do violate RPC 4.2, usually simply by inadvertence and desire to complete a transaction for a client. Thus, great care should be taken whenever dealing with a person whom the lawyer knows is represented by counsel. For recent examples of real estate lawyers being disciplined for such communications, see the disciplinary notices in the May 1999 and December 2000 issues of *Bar News*.

Dealing with Unrepresented Persons

RPC 4.3 seeks to protect unrepresented persons from mistakenly believing another

person's lawyer is representing them and from being taken advantage of by overreaching lawyers. It generally prohibits a lawyer from stating or implying to an unrepresented person that the lawyer is disinterested. It also requires that when the lawyer knows, or reasonably should know, that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer must make reasonable efforts to correct the misunderstanding.

The most significant ethical danger for lawyers in dealing with unrepresented persons is not violation of RPC 4.3. Rather, it is bearing the consequences of the unrepresented person's mistaken, but reasonable, belief that the lawyer is in fact representing him. The existence of a lawyer-client relationship does not depend on the existence of a fee agreement or the payment or lack thereof of any legal fees. Rather, a lawyer client relationship exists if the "client" reasonably believes it exists. See *Bohn v. Cody*, 119 Wn.2d 357, 363 (1992). Thus, lawyers need to beware of responding to questions of an unrepresented person in such a way as to give a mistaken impression that the lawyer is giving legal advice or is looking out for the other person. Such mistaken beliefs of representation likely may arise among unsophisticated persons not used to dealing with lawyers, but it can also happen where any potential client consults a lawyer, with the lawyer believing he or she made it clear that there was no representation, and the potential client equally believing that the lawyer was going to provide some legal services. Where a lawyer represents one or more entities or affiliates, care should be taken to clarify exactly who the lawyer represents so that others do not form a mistaken belief of representation.

When dealing with persons the lawyer knows are not represented, the lawyer has a positive duty not to mislead the person as to the lawyer's role, and, if the lawyer believes the person has a mistaken notion of the lawyer's role, to make a reasonable effort to correct that mistake. The only advice a lawyer should give to unrepresented persons is that the lawyer cannot give legal advice and that they should consult independent counsel.

The existence of a lawyer-client relationship does not depend on the existence of a fee agreement or the payment or lack thereof of any legal fees. Rather, a lawyer client relationship exists if the "client" reasonably believes it exists.

For example, if the lawyer is acting as a closing agent in a real estate transaction, the lawyer must appropriately advise the parties of the lawyer's function. A lawyer handling a closing may well be asked by an unrepresented person for legal advice which the lawyer may not provide. Further, when acting as a closing agent, the lawyer may have conflicting duties between the one person he may also represent as a lawyer, and other persons whom he may be representing only as closing agent. See, for example, *Hurlbert v. Gordon*, 64 Wa.App.386 (1992).

Lawyer as Independent Advisor

RPC 2.1 requires independence and candid advice of lawyers, and empowers them to be more than mere technical legal consultants. It states that "in representing a client, the lawyer shall exercise independent professional judgment and render candid advice." The lawyer cannot be merely a "yes" person to the client. Sometimes the lawyer will have to tell the client hard truths that the client may not want to hear.

The rule also provides that: "In rendering advice, the lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation." The lawyer is not a mere legal vending machine. When a lawyer is foreclosing a property, the lawyer's actions for the client will profoundly affect the dispossessed. The lawyer should not hesitate to discuss the real-life impacts with his client.

In drafting or interpreting covenants, conditions and restrictions for a condominium or planned community, the lawyer should not hesitate to remind the client that the provisions can impact the everyday quality of life of those living in the condominiums. The lawyer should feel free to discuss with the client and explain, both when drafting and enforcing such provisions, the practical consequences of enforcement which might include not only the usual legal risks and costs, but also bad publicity which may lower both the quality of life for those living in the residences and the resale value of their units.

Other RPCs

There are numerous other areas of practice where a real estate lawyer can find ethical perils that involve the same ethical principles applicable to the rest of the lawyer's practice.

RPC 1.2 requires a lawyer to keep a client reasonably informed about the status of the matter of representation, to reasonably comply with requests for information, and to explain matters to a client so the client can make informed decisions regarding the representation. This requires the lawyer to be able to translate complex legal concepts into everyday language for the client to understand, making due allowance for the sophistication of the client. Where a lawyer represents a condominium owners' association, for example, the lawyer must take care to assure that the board of directors, often made up of volunteers of widely differing sophistication, understands the legal advice provided by the lawyer. The lawyer should be able to explain the concept of due process, so that the association treats members fairly and avoids significant liability for failing to do so. In *Riss v. Angel*, 131 Wn.2d 612 (1997), an association incurred significant damages for failing to observe due process in dealing with a member's request for construction approval.

RPC 1.6 requires a lawyer to maintain client confidences and secrets. If a client has submitted a loan application, and the lawyer later discovers the client intentionally and materially misstated the client's assets or liabilities such that the application is false and misleading — in short, it is fraudulent — what is the lawyer to do? If the lawyer learns that in constructing a multiple-story condominium or apartment house, the client knowingly used inferior products to save money and bribed a building inspector to look the other way, what is

the lawyer to do? If the client tells the lawyer the client intends to discriminate against a particular racial or other group, or has in fact done so on prior projects, what is the lawyer to do? Can the lawyer blow the whistle on the client, or is the lawyer bound to maintain a client's confidences and secrets? The lawyer needs to know RPC 1.6 and other RPCs to answer such questions.

RPC 1.14 requires a lawyer to preserve the identity of client funds. A real estate lawyer often handles substantial amounts of client funds. These funds must be kept in a trust account and may be withdrawn only in accordance with client instructions. The lawyer needs to properly document all trust account transactions and notify the client thereof, to deposit funds in separate interest-bearing accounts if a positive net return on funds can be reasonably expected, or if not, to a pooled IOLTA trust account. Further, RPC 1.14(d) specifically provides that: "Escrow and other funds held by a lawyer incident to the closing of any real estate or personal property transaction are client funds subject to this rule regardless of whether the lawyer, the law firm, or the parties view the funds as belonging to clients or non-clients." For a curious case of one lawyer misusing another lawyer's trust account, see *Hetzel v. Parks*, 93 Wn. App. 929 (1999).

A real estate lawyer, like any lawyer, is expected to be honest, and the RPCs repeatedly require it. RPC 3.3 requires candor to the tribunal; RPC 3.4 requires fairness to opposing parties and counsel; RPC 3.9 requires a lawyer representing a client in a legislative or administrative tribunal in a nonadjudicative proceeding to disclose the lawyer's representative capacity; RPC 4.1 requires truthfulness in statements to third parties; and RPC 8.4 prohibits conduct involving dishonesty, fraud, deceit or misrepresentation. The more difficult situations arise, of course, where a lawyer's duties of honesty and candor collide with the lawyer's duties under RPC 1.6 to maintain client confidences and secrets.

RPCs 5.1 through 5.3 generally require a lawyer to maintain proper supervision over other lawyers and nonlawyers in the office, and set up procedures to assure compliance with the RPCs. Many lawyers extensively use "subordinate" lawyers (associates and contract lawyers) and paralegals. Has the lawyer set up appropriate procedures to assure their conduct complies with the RPCs? Does the lawyer in fact adequately supervise and review their work product? Can the lawyer prove it? RPC 5.5 prohibits a lawyer from assisting a nonlawyer to practice law.

Recent Washington Supreme Court decisions such as *Perkins v. CTX Mortgage Company*, 137 Wn.2d 93 (1999), and the recent recommendation of the Washington State Bar Association to define the practice of law explore what practicing law means. What is less clear is how this may impact the roles of the various players in real estate transactions. Lawyers need to carefully supervise their nonlawyer staff, and be vigilant as to whether their nonlawyer clients may be engaged in the unauthorized practice of law and whether they as lawyers might be viewed as assisting in it.

Of considerable interest nationally has been the concept of multidisciplinary practice under which lawyers would join with nonlawyers to render to clients through one

firm multiple professional services. Washington's RPCs, like those of most other United States jurisdictions, currently prohibit such a practice. RPC 5.4(a) prohibits a lawyer from sharing legal fees with nonlawyers, while RPC 5.4 (b) prohibits a lawyer from forming a partnership with a nonlawyer if any of the activities of that partnership include practicing law. If such multidisciplinary practices were permitted, however, a lawyer might, for example, form a real estate development firm which includes the lawyer providing legal services, along with a surveyor, environmentalist, architect, banker, construction company, etc. to provide all-in-one complete concept-to-finished-project services. Very considerable opposition has been expressed nationwide, however, over the concept of such multidisciplinary practice, with some fearing that such practice would erode, if not destroy, certain core values of the legal profession, such as independence, maintaining client confidences and secrets, avoiding conflicts of interest, and so on. On the other hand, others have supported the concept as providing fully integrated professional services to a client. The Washington State Bar Association Committee on the Future of the Profession is currently evaluating the concept of multidisciplinary practice.

Conclusion

To practice law ethically in the area of real estate requires not only legal competence, but also significant awareness of numerous ethical obligations. Lawyers dealing with condominiums, covenanted communities, and commercial developments have an even more daunting task of maintaining competence, avoiding the entanglement of conflicts of interest, dealing with both represented and unrepresented persons, acting as a candid and independent legal advisor, and also satisfying all of their other ethical obligations under the Rules of Professional Conduct. At the same time, they also have the satisfaction of knowing that they play a vital role in providing housing and workplaces for our society. In doing so, they need to imitate their clients' construction practice. Just as the client builds a firm foundation before constructing a building, lawyers need to build a firm foundation of competence and ethical practice before undertaking a client representation.

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.

Suspended

F. McNamara Jardine (WSBA No. 21677, admitted 1992), of Tacoma, was suspended for 90 days following a hearing, by order of the Supreme Court dated May 5, 2000. The discipline is based upon her failure to disclose potentially exculpatory evidence to the defense in a felony vehicular homicide prosecution in 1996. The suspension became effective May 13, 2000.

In December 1995, Ms. Jardine, who had handled three or four adult felony trials prior to this one, was assigned to prosecute Mr. D. He was charged with vehicular homicide after hitting and killing the victim as she walked across the street. Both the defense and the prosecution had been told that the victim had a briefcase, but the police did not recover it at the scene. One defense theory was that the victim wore a dark jacket and carried a dark briefcase, obscuring her brightly colored dress from Mr. D's view.

In November 1995, the defense specifically requested production and identification of the briefcase. The trial was set for January 22, 1996. On January 18, 1996, Ms. Jardine received a photographic reconstruction of the crime scene by a defense expert, showing a mannequin in a red dress wearing a dark jacket and carrying a large dark-colored briefcase. On this same day, the prosecutor's office located the person who removed the briefcase from the scene, Mr. S.

On January 19, 1996, Mr. S brought the briefcase to a meeting with Ms. Jardine. Ms. Jardine told Mr. S that she would not need him as a witness, and he left with the briefcase. Ms. Jardine did not mention the briefcase to defense counsel, but discussed the briefcase with her supervisor. The supervisor instructed Ms. Jardine to disclose the briefcase information to defense counsel, but Ms. Jardine did not do so. During the trial, Ms. Jardine objected to the admission of the defense reconstruction photographs, stating that the briefcase was not accurately portrayed and the depiction was not supported by the evidence. In her closing argument, Ms. Jardine told the jury, "we don't even have the briefcase to determine its color." On January 29, 1996, Mr. D was acquitted by jury verdict. On February 6, 1996, defense counsel learned that Ms. Jardine had the briefcase during the trial.

By failing to disclose potentially exculpatory evidence to the defense in a felony prosecution, Ms. Jardine's conduct violated RPCs 3.4(a) and 3.8(d).

Sachia Stonefeld represented the Bar Association. Kurt Bulmer represented Ms. Jardine. The hearing officer was Stephen Bean.

Suspended

Gregory S. Wilson (WSBA No. 12012, admitted 1981), of Tacoma, was suspended for 30 days following a stipulation by order of the Supreme Court dated May 5, 2000. The suspension began June 15, 2000, and Mr. Wilson has been returned to active status. The discipline is based upon his failure to diligently represent and communicate adequately and truthfully with a client.

On February 10, 1992, Ms. T retained Mr. Wilson to represent her in a personal injury claim. On December 7, 1992, Ms. T wrote Mr. Wilson a letter complaining about the lack of progress in her case and that he did not return her phone calls. On August 2, 1993, Ms. T wrote Mr. Wilson another letter asking him to provide an accounting of the work he had performed and to explain whether a lawsuit had been filed. Mr. Wilson met with her and promised to work on the case.

On August 31, 1993, Mr. Wilson filed a lawsuit against the driver of a car that hit Ms. T. Mr. Wilson's nonlawyer assistant told Ms. T that the driver had been served with the lawsuit and that he had hired a lawyer in Seattle. A few days later, Mr. Wilson filed a confirmation of service indicating that the driver had not been served because he had moved to England and had not left an address. The weekend before the statute of limitations ran out, Mr. Wilson realized that the complaint had not been served. He dictated pleadings to serve

the secretary of state, but these were not prepared because of computer problems in his office. Because Mr. Wilson served the complaint two days after the statute of limitations expired, the driver successfully moved to have the lawsuit dismissed.

Ms. T retained another lawyer to represent her. Mr. Wilson told the new lawyer that he was responsible for the loss of Ms. T's case and that he wanted to settle her malpractice claim, but he did not have malpractice insurance. In June 1994, Mr. Wilson filed bankruptcy and did not list Ms. T as a creditor. In March 1999, Mr. Wilson agreed to pay Ms. T $125,000 over four years, and agreed that the debt would be nondischargeable. Mr. Wilson has made some payments to Ms. T.

Mr. Wilson's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to keep their clients reasonably informed about the status of their matters; 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 8.4(a), prohibiting violating the RPCs through the acts of another; 5.3, requiring lawyers to make reasonable efforts to ensure that nonlawyer assistants' conduct is compatible with the RPCs; and 3.3, prohibiting a lawyer from making a false statement of material fact or law to a tribunal.

Anne Seidel represented the Bar Association. Brett A. Purtzer represented Mr. Wilson.

Censured

LeAnne Koliha (WSBA No. 18366, admitted 1988), of Bothell, was ordered censured pursuant to a stipulation approved by the Disciplinary Board on May 15, 2000. This discipline is based on her practicing law while her license was suspended.

Matter 1: On June 18, 1996, a client went to Ms. Koliha's home office and requested that she appear at a hearing for her the next day. Ms. Koliha prepared pleadings that evening and appeared in court the next day to represent the client. In August 1996, opposing counsel filed a motion requesting an order requiring Ms. Koliha's client to produce discovery. Ms. Koliha delivered the discovery answers and documents to opposing counsel's office before the date of the hearing. Opposing counsel did not strike the hearing, because counsel believed that the discovery was incomplete, nor did she tell Ms. Koliha that she had not stricken the motion.

The arbitrator entered an order finding Ms. Koliha's absence "unexcused," imposing sanctions of $150 each against Ms. Koliha and the client, and rescheduling the arbitration. Opposing counsel filed a motion in superior court to have Ms. Koliha and her client held in contempt for failing to provide complete discovery and failing to appear at the prior hearing. Ms. Koliha did not inform her client of this motion. Between September 16 and September 24, 1996, the client was not able to reach Ms. Koliha. On September 26, 1996, the client asked Ms. Koliha to return the client's original financial documents. Ms. Koliha told the client that she had produced the original documents to opposing counsel.

Matter 2: Client X divorced two abusive husbands and then changed her name and the names of her children to prevent her former husbands from locating her. Although the client's Office of Support Enforcement (OSE) file was marked confidential, the office twice disclosed her new identity to her former husbands.

The Northwest Women's Law Center referred client X to Ms. Koliha regarding her claim that OSE wrongfully revealed her identity. In April 1995, Ms. Koliha agreed to investigate the case, pro bono, and possibly file a negligence action. On August 30, 1995, the client signed a contingent fee agreement with Ms. Koliha. From June through November 1996, the client was not able to reach Ms. Koliha. In November or December 1996, shortly after discovering that Ms. Koliha had never filed suit against OSE, client X retained another lawyer.

Ms. Koliha's conduct violated RPC 1.3, requiring lawyers to diligently represent their clients; and 1.4, requiring lawyers to keep their clients informed about the status of their cases and promptly comply with reasonable requests for information.

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

Censured

Grace Wagner (WSBA No. 16129, admitted 1986), of Snohomish County, was ordered censured following a hearing. This discipline is based on Ms. Wagner's failure to perform and communicate with a client, and failure to disclose a material fact to a third party.

In 1990, Ms. Wagner finalized a client's (Mr. T) dissolution action. In December 1991, she entered a real estate transaction with this client. On December 24, 1991, Ms. Wagner signed a real estate purchase and sale agreement for a house (the Lombard house). She paid the $1,000 earnest money deposit with a promissory note signed "for Mr. T." Mr. T was denied the bank loan for the purchase.

In February 1992, a second dissolution client (Mr. S) invested in the Lombard house with Mr. T. Together the two clients obtained a HUD loan and signed closing papers on April 14, 1992. Just prior to the transfer of funds, Mr. S. had second thoughts, and Ms. Wagner advised him of several ways to get out of the deal. Mr. T also spoke to Ms. Wagner about getting out of the deal.

Upon Ms. Wagner's suggestion, Mr. T donated the house to an Everett charity. Ms. Wagner paid the bank $7,444.69 to close the transaction and considered this a donation to the charity. Mr. T and Mr. S signed quit-claim deeds transferring their interests to the charity. Ms. Wagner did not advise either client of their continuing liability for the mortgage, and took no steps to advise the bank of the transfer. HUD, which allows acceleration of the mortgage if the debtor transfers the property without prior HUD approval, will not normally approve a transfer if the successor will not occupy the property as a primary or secondary residence.

On June 4, 1992, Mr. T's former spouse filed a petition for modification of spousal support. Ms. Wagner represented Mr. T in this matter. At his deposition on September 23, 1992, Mr. T testified about his real property in Gold Bar. Opposing counsel asked him if he owned other property or had purchased and sold any real estate since July 1990. Mr. T responded that he had not, because he did not believe he had sold the Lombard house. Ms. Wagner took no steps to correct Mr. T's deposition testimony. In early December 1992, the former spouse learned of Mr. T's involvement in the Lombard house. The arbitrator increased the spousal maintenance,

CONFERENCE ON RESOURCES LAW:
21st Century Challenges to Access of Public Lands and Resources
Section of Environment, Energy and Resources
American Bar Association

The American Bar Association (ABA) Section of Environment, Energy and Resources is sponsoring a conference on resources law April 5-6 in Las Vegas. The two-day conference, *21st Century Challenges to Access of Public Lands and Resources*, will focus on western communities and public land managers attempting to balance population growth while maintaining quality of life, protecting resources, and accommodating commodity users. The conference is aimed at attorneys as well as public officials, corporate environmental managers, environmentalists and community activists.

Tom Sansonetti, the U.S. Department of Interior transition team coordinator, will kick off the conference by discussing the new resources agenda of the Bush administration. The luncheon speaker will be Patricia Mulroy, the executive director of the Southern Nevada Water Authority. George Miller, a nationally recognized constitutional lawyer, will discuss the recent designation of national monuments and related "takings" issues.

Alternatives to litigation will be explored in a session on resource conflict resolution. Mediation and other innovative dispute-resolution techniques will be discussed in a panel moderated by Ann MacNaughton, an experienced mediator and author. Of special interest to lawyers will be an ethics session involving multidisciplinary and multijurisdictional practice.

Continuing legal education credits are available for this program. For more information, visit http://www.abanet.org/environ/programs/resourcelaw.html, or call the ABA at 312-988-5724.

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based in part on Mr. T's failure to disclose the Lombard house transaction.

Ms. Wagner's conduct violated RPC 1.1, requiring lawyers to competently represent their clients; RPC 1.4(b), requiring lawyers to explain matters to clients to the extent necessary to allow the client to make an informed decision; RPC 3.4(c), requiring lawyers to comply with lawful discovery requests; and RPC 4.1(b), requiring lawyers to disclose material facts to third parties.

Joanne Abelson represented the Bar Association. Kurt Bulmer represented Ms. Wagner.

Admonished

Arthur A. Blauvelt III (WSBA No. 8260, admitted 1978), of Aberdeen, and Richard E. Vroman (WSBA No. 7971, admitted 1997), of Aberdeen, were admonished following an order of a review committee of the Disciplinary Board. The disciplinary action is based upon their failure to avoid a conflict of interest in 1997.

In September 1997, a married couple, the wife's sister, and her fiancé were killed in an automobile accident. On September 30, 1997, Mr. Blauvelt and Mr. Vroman, who had previously represented the wife's family, met with the couple's parents and stepparents. Based on discussions and actions at this meeting, the parties believed that Mr. Blauvelt and Mr. Vroman represented them.

Shortly after this meeting, Mr. Blauvelt and Mr. Vroman discovered that the husband predeceased the wife, and that this created a potential or actual conflict of interest. On October 6, 1997, Mr. Blauvelt and Mr. Vroman met with the parties and explained that they could not represent all of them. Mr. Blauvelt and Mr. Vroman continued to represent the mother of the wife and sister, but none of the other parties.

By failing to withdraw from representation of all parties after discovering the conflict, Mr. Blauvelt and Mr. Vroman represented clients with interests contrary to former clients in the same matter. This conduct violated RPC 1.9.

Kevin Bank represented the Bar Association. Kurt Bulmer represented Mr. Blauvelt and Mr. Vroman.

Admonished

Stephen J. Hyde (WSBA No. 5204, admitted 1973), of King County, has been ordered admonished based on a stipulation approved by the Disciplinary Board. The disciplinary action is based upon his failure to diligently represent a client.

On September 18, 1997, the wife in a dissolution action paid Mr. Hyde a flat fee to represent her. In October 1997, the husband withdrew all of the retirement funds and $383 from the joint checking account. The husband was employed in September 1997, but by January 1998 he was incarcerated. My Hyde did not file the dissolution petition or request that the court enter temporary orders in this case. In spring 1999, after the grievance was filed, he returned the client's $1,500 payment.

Mr. Hyde's conduct violated RPC1.4, requiring lawyers to diligently represent their clients.

Maria Regimbal represented the Bar Association. Mr. Hyde represented himself.

Opportunities for Service

WSBA Presidential Search

Application deadline: May 15, 2001

The Board of Governors of the WSBA is seeking applicants to serve as WSBA president for 2002-2003. Pursuant to Article IV(A)(2) of the WSBA Bylaws, the president's primary place of business must be in King County. The member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

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

Confidential interviews with the Presidential Search Committee will be conducted May 16-31, 2001 at the WSBA office. Direct contact with the governors is also encouraged. All candidates will have an interview with the full Board of Governors in open session at the June meeting. Selection of the president will be made by the board following the interviews.

Although prior experience on the Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

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

The duties and responsibilities of the president are set forth in the WSBA Bylaws. For more detailed examples, please see the WSBA Web site (www.wsba.org/bylaws).

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

2001 Notice of Board of Governors Election

Petition deadline: March 15, 2001

Four positions — those representing the 2nd, 4th, 7th-Central and 9th Congressional Districts on the WSBA Board of Governors — will be up for election this year. These positions are currently held by James Deno (2nd District), Stephen Osborne (4th District), Lindsay Thompson (7th District; the position up for election is 7th-Central*) and Daryl Graves (9th District).

The WSBA Bylaws provide that any member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of governor from the congressional district in which such member is entitled to vote. Nominations are made by filing a petition signed by at least 20 active members of the WSBA entitled to vote in that district. All active out-of-state WSBA members are now eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 5(e), or, if specifically designated to the executive director, within the district of their primary Washington practice.

Nominating petitions are available from the Office of the Executive Director, WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330; 206-727-8244; oed@wsba.org. The Board of Governors determines the official dates of the election. Ballots are usually mailed around the first of June and counted approximately the first of July.

Note: The May issue of *Bar News* will include a section carrying biographical statements of 100 words or less from all the nominated candidates. Those statements should accompany the nominating petitions.

*Per a bylaw change, the 7th Congressional District has been subdivided into three sub-districts: East, Central and West. These sub-districts are distinguished by ZIP codes and each has one elected governor. For the coming year, the Central sub-district (ZIP codes 98101, 98102, 98103, 98104, 98108, 98109, 98112, 98134, 98168) will elect a new governor.

Applications for Appointment to the Legislative Committee

Application deadline: March 15, 2001

The WSBA Legislative Committee is seeking new members. The committee meets once in October and once in November, usually for a full day. Depending on work load, the committee may also meet in December and January. The committee deals with proposals for legislation that relate to the improvement of justice. It also reviews proposed legislation of interest to the Bar and the judiciary, and makes recommendations to the Board of Governors on positions to be taken by the WSBA. Additionally, the committee maintains liaisons with sections and other committees to coordinate the legislative activities of the WSBA.

Those interested in being considered for an appointment to this committee should submit a letter of interest and résumé to the Office of the Executive Director, WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330; e-mail oed@wsba.org.

Applicants should include the following information in their submissions:

- Name
- Office address
- Nature of practice (including years in practice, size of firm, and areas of expertise)
- Experience in legislative process
- Experience in state and local bar activities
- Reason for interest in Legislative Committee

For more information, contact John Fattorini or Gail Stone at 360-943-9977, or e-mail legis@wsba.org.

Positions Available on ABA House of Delegates

Application deadline: April 15, 2001

Three positions are available on the American Bar Association House of Delegates. The control and administration of the ABA is vested in the House of Delegates, the policymaking body of the ABA. The House, which has approximately 500 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required. The WSBA's allowance is $500 per year per delegate. Members appointed to the House of Delegates serve two-year terms which begin at the close of the annual meeting (August 2001). Incumbents may be eligible for reappointment and must reapply.

Members interested in this appointment should submit a letter of interest and résumé to the Office of the Executive Director, WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330; e-mail oed@wsba.org.

Washington Defender Association Board of Directors

Application deadline: March 16, 2001

The WSBA Board of Governors is accepting letters of interest from members interested in serving a three-year term on the Board of Directors of the Washington Defender Association. The three-year term, which commenced on January 1, 2000, is currently vacant. The incumbent is eligible for reappointment and must also submit a letter of interest.

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

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

Nominations Sought

2001 WSBA Awards Nominations Sought

Nomination deadline: May 1, 2001

Each year, members of the Washington State Bar Association are asked to identify those individuals who deserve the legal profession's recognition and thanks. Nominations are sought for the following awards:

Award of Merit

This is the WSBA's highest honor. It was first given in 1957. In general, the Award of Merit is given for long-term service to the Bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is given to individuals only — both lawyers and nonlawyers.

President's Award

As the name implies, this award is given for special accomplishment or service to the WSBA during the term of the current president.

Board of Governors' Award for Professionalism

This honor is awarded to a WSBA member who exemplifies the spirit of professionalism in the practice of law. "Professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

Angelo Petruss Award for Lawyers in Public Service

This award is named in honor of the late Angelo R. Petruss, a senior assistant attorney general, who passed away during his term of service on the WSBA Board of Governors. The selection criterion is a significant contribution by a lawyer in government service to the legal profession, the justice system and the public.

Outstanding Judge Award

This award may be presented to a judge from any level of court. It is presented for outstanding service to the bench and for special contribution to the legal profession.

(continued on next page)

Preference Forms Available for 2001-2002 Committees, Boards and Volunteer Panels

The WSBA Committee, Board and Volunteer Panel preference form has been mailed to all active members. Replies are due no later than March 15, 2001. The Board of Governors makes its appointments based on these forms. Since appointments are reviewed and renewed annually, current members of committees, boards and panels who are interested in reappointment must submit a preference form each year. If you didn't receive the preference form, please visit the WSBA Web site at www.wsba.org/c/preference.htm to complete and submit the form online. You may also contact the Office of the Executive Director at 206-727-8252 or oed@wsba.org.

WSBA Pro Bono Award

This award is presented to a lawyer, nonlawyer, law firm or local bar association for outstanding efforts in providing pro bono services to the poor. This award is based on cumulative efforts, as opposed to a lawyer's or law firm's pro bono hours or financial contribution.

WSBA Courageous Award

This award is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession.

Affirmative Action Award

This award is made to a lawyer or law firm making a significant contribution to affirmative action in the employment of ethnic minorities, women and the disabled in the legal profession within the state of Washington.

Outstanding Elected Official in the Legislative Branch Award

This award is presented to an elected official for outstanding service to Washington citizens, with special contributions to the legal profession. The recipient has demonstrated a commitment to justice beyond the usual call of duty.

Excellence in Legal Journalism Award

This award recognizes that describing the context, facts and players involved in our legal system with fairness and sensitivity requires intelligence, knowledge, dedication and high skill levels. This award is given to the journalist and their organization who set the standard for relevance, clarity, accuracy and understanding in their reporting.

Lifetime Service Award

This is a special award given for a lifetime of service to the WSBA and the public. It is given only when there is someone especially deserving of this recognition.

It is important to note that presentation of any WSBA awards is made only when there are truly deserving recipients. Some years, no award is given in some categories. Awards will be presented at the WSBA annual business meeting and awards dinner.

Send nominations to the Office of the Executive Director, WSBA, Attn: Awards, 2101 Fourth Ave., Fourth Fl. Seattle, WA 98121-2330; fax 206-727-8319; e-mail oed@wsba.org.

ABA Seeks Nominations for Harrison Tweed Award

Nominations are now being accepted for the 2001 Harrison Tweed Award, to be presented at the ABA annual meeting in August. The award was created in 1956 to recognize the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services or provide criminal defense services to the poor. Any local or state bar association that has developed or significantly expanded a project or program for providing those services may be nominated. Nominations must be postmarked by March 31, 2001. For more information, contact Patricia Wagner at 312-988-5757, or visit the ABA Web site at http://www.abanet.org.

ABA Seeks Nominations for Jefferson Fordham Awards

Nominations are now being accepted for the Jefferson Fordham Awards, to be presented at the ABA annual meeting in August. These awards, which honor outstanding lawyers and law firms that have achieved professional excellence within their areas of practice, are presented in four categories: Law Office Accomplishments, Lifetime Achievement, Advocacy, and Up and Comers. Nominations must be received by April 15, 2001. For more information, contact Jackie Baker at 312-988-5652 or jlbaker@staff.abanet.org.

Discipline 2000 Task Force to Meet

The Discipline 2000 Task Force will meet Wednesday, March 14 from noon to 3:00 p.m. at the WSBA office. For more information, contact Randy Beitel at 206-727-8257 or randyb@wsba.org.

WestCoast Hotels Contribute to LAW Fund

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

Women of Color Invited to Reception

The Washington State Gender and Justice Commission is sponsoring a reception and networking forum for women of color working in law. The event will be held at the Temple of Justice on March 22, 2001, and will include a tour of the Temple of Justice and an awards ceremony. Please RSVP by March 8, 2001. For more information or to RSVP, contact Gloria Hemmen at 360-705-5290 or gloria.hemmen@courts.wa.gov.

King County Superior Court Adopts New Fees

As a result of the 2001 adopted budget, the King County Superior Court clerk's office has implemented several new fees and expanded the application of some existing fees. The fees represent charges for work that the clerk's office does on behalf of parties in certain cases, either at the court's request or at the parties' request. For information about specific fee changes, contact the clerk's office at 206-296-9300.

Free Trust Account Information

The WSBA publication *Managing Client Trust Accounts: Rules, Regulations and Common Sense* is available to members free of charge. To order a copy, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Please note that this publication is also available on the WSBA Web site (www.wsba.org/publications/managing.htm), and is printed in the 1999-2000 *Resources* (p. 478). The WSBA audit department is also available to answer your questions about trust accounts. Call Julie Mass at 206-727-8242 or Tim Dobler at 206-733-5937.

WSTLA Law Day Dinner

The annual Law Day dinner sponsored by the Washington State Trial Lawyers Association (WSTLA) will be held Tuesday, May 1 at the Seattle Crowne Plaza Hotel. Robert F. Kennedy Jr. will be the keynote speaker, and the WSTLA civil justice system awards will be presented. Dinner begins at 7:00 p.m. For more information, contact WSTLA at 206-464-1011.

Law Week

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

Resources on Sale for Half Price

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

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

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

Upcoming BOG Meetings

The Board of Governors meeting schedule is as follows:

April 6-7 — LaConner Country Inn, LaConner
May 4-5 — Coeur d'Alene Resort, Coeur d'Alene, ID
June 8 — WestCoast Wenatchee Center, Wenatchee
July 27-28 — Sun Mountain Lodge, Winthrop

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 e-mail oed@wsba.org.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in February 2001 is 4.94 percent. The maximum allowable interest rate for March is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988-June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date appears at www.wsba.org/barnews/.

Proud to Be a Lawyer

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

Department of Licensing Addresses

To facilitate timely receipt and processing of mail, the Department of Licensing (DOL) requests that all mail be addressed to the appropriate post office box, rather than street or building address. For addresses of specific units, refer to the DOL Web site at http://www.wa.gov/dol.

ABA to Host Alternative Dispute Resolution Conference

The ABA Dispute Resolution Section will host a program on Alternative Dispute Resolution (ADR), April 26-28, at the Crystal Gateway Marriott in Arlington, Virginia. *Collaboration in the Capital* will explore how, why and when peer mediation works in schools, and how to deal with difficult circumstances affecting children. The program will also feature a special ceremony at the U.S. Supreme Court. For more information, contact Regina Ashmon at 202-662-1686, or visit the ABA Web site at http://www.abanet.org/dispute.

Lawyers Create Appellate Association

A group of 30 Washington appellate practitioners have formed the Washington Appellate Lawyers Association (WALA). Membership is limited to lawyers with at least 10 years' experience who have been lead counsel in at least 25 appeals. As set out in the WALA constitution, one of the group's goals is to support the integrity of the appellate process and principles of ethical appellate advocacy. Plans include providing a liaison to Washington appellate courts, and commenting on changes to the Rules of Appellate Procedure and other rules affecting appellate practice, seminars, and continuing legal education on appeals. For more information, contact Michael King at 206-223-7000.

Law School for Legislators

On January 5, 2001, the Council on Public Legal Education held a Law School for Legislators. As part of the Washington Legislature's freshman orientation, the law school included three panels — constitutions, statutory interpretation, and levels of court. Approximately 25 legislators attended the event, which was followed by a luncheon at the Temple of Justice. Because most state legislators are not lawyers, and therefore may not be familiar with legal terms and processes, the event was an important learning opportunity. The Council on Public Legal Education appreciates the help of the following "teachers": Jim Bond, Steve Jones, Michele Radosevich, Hugh Spitzer and Justice Philip Talmadge.

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We are pleased to announce the expansion of our firm with the addition of

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Joseph M. Diaz
have become shareholders with the firm.

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Washington Arbitration & Mediation Service (WAMS)

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Mr. Duffy will focus his practice on the resolution of personal injury and employment matters.

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The Washington State Bar Association

is pleased to offer advertising services in the Announcements section of *Bar News*.

For more information, please contact Jack Young, Advertising Manager, *Bar News*, at 206-727-8260 or e-mail jacky@wsba.org.

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

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

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

ADR

10th Annual Alternative Dispute Resolution Conference
April 6-7 – Shoreline. 11 CLE credits, including 3 ethics. By UW-CLE; 206-543-0059.

BUSINESS

Cross-Border Venture Transactions
March 9 – Seattle. 7.25 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Negotiation Strategies for Business & Transactional Lawyers *with Martin E. Latz* (morning)
March 15 – Seattle. 3 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Agricultural Law
April 20 – Yakima. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

COMPUTER SKILLS

Internet Legal Research Series
March 6, 7, 8, 13, 14, 15, 16 – Seattle. 3.5 CLE credits. By UW-CLE; 206-543-0059.

Computer Camp for Counselors *(Basic & Intermediate)*
April 11 – Seattle. 4 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Computer Camp for Counselors *(Advanced & PowerPoint)*
April 12 – Seattle. 4 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CREDITOR/DEBTOR

14th Annual Northwest Bankruptcy Institute
March 30-31 – Seattle. 10.5 CLE credits, including 1 ethics pending. By Oregon State Bar; 503-684-7413.

CRIMINAL LAW

Forensic Criminal Evidence
March 29 – Seattle. 6 CLE credits estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ELDER LAW

Annual Inter-County Guardian Ad Litem Workshop Forum
March 15 – Spokane. 7 CLE credits, including 1 ethics estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

8th Annual Employment Law Institute
March 2 – Seattle. 6.75 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

Estate Planning for the Small to Medium-Sized Estate
March 2 – Seattle. 7.75 CLE credits, including 1 ethics estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Estate Planning for the Small to Medium-Sized Estate
April 12 – Vancouver. 7.75 CLE credits, including 1 ethics estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Qualified Plans
April 26 – Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

Sex Offense Defense: Practical Skills and Strategies for Child and Adult Sex Cases
March 30 – Seattle. 6.75 CLE credits. By WACDL; 206-623-1302.

GENERAL PRACTICE

Section 1983 Civil Rights Cases in Oregon
March 9 – Portland. 6 CLE credits pending. By Oregon State Bar; 503-684-7413.

Keys to Practice Development
March 12-14 – Seattle. 18 CLE credits estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Updating the Administrative Law Practice Manual
March 22 – location TBA. 4.5 CLE credits pending. By WSBA-CLE and Administrative Law Section; 800-945-WSBA or 206-443-WSBA.

The Mighty Columbia: Stakeholders' Rights and Responsibilities
March 22-23 – Seattle. 11.75 CLE credits. By The Seminar Group; 206-463-4400.

INTELLECTUAL PROPERTY

6th Annual Intellectual Property Institute
March 30 – Seattle. 7.25 CLE credits estimated. By WSBA-CLE and Intellectual Property Section; 800-945-WSBA or 206-443-WSBA.

LAW PRACTICE MANAGEMENT

Time Management
March 1 – Spokane; March 2 – Seattle. 7 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Law Office EXPO, Management & Technology Institute
March 2 – Seattle. 6.5 CLE credits, including up to 4.5 ethics pending. By WSBA-CLE, WSBA Law Practice Management & Technology Section, and the Association of Legal Administrators – Puget Sound Chapter; 800-945-WSBA or 206-443-WSBA.

The Lawyer's Guide to Effective Legal Writing
March 7 – Seattle. 6.75 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Starting Your Own Law Practice
March 24 – Seattle. 7 CLE credits. By UW-CLE; 206-543-0059.

LITIGATION

District Court or MAR: Which Way to Go?
March 1 – Seattle. 6 CLE credits. By WSTLA; 206-464-1011.

Litigators' Negotiation Strategies
with Martin E. Latz (afternoon)
March 15 – Seattle. 3 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Evidence for the Trial Lawyer
March 23 – Portland. 6.5 CLE credits, including .5 ethics pending. By Oregon State Bar; 503-684-7413.

What Successful Civil Litigators Want (to Do) – 7th Annual Civil Litigation Institute
April 5 – Seattle. 7.5 CLE credits, including 1.5 ethics estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

REAL ESTATE

Real Estate Financing: The Forms & Formulas for Successful Transactions
March 8 – Spokane; March 9 – Seattle. 7 CLE credits estimated. By WSBA-CLE and Real Property, Probate & Trust Section; 800-945-WSBA or 206-443-WSBA.

Professionals

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

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Positions available are also posted by telephone at:
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and online at www.wsba.org

FOR SALE

Books for sale: Washington Practice (Vol. 1-21), $1,600 or best offer. Call David at 206-292-9354.

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

Island County law library moving and must sell. Make an offer. Contact Lee McFarland, 360-679-7378.

Washington law practices for sale. General/Redmond: probate, etc.; West Seattle: estate planning. For information: Louis M. Millman, Coldwell Banker Commercial, Bain Associates, 425-519-8003 or mobile 425-591-4530; fax 425-646-5979.

SPACE AVAILABLE

Share reception/secretarial with two other attorneys in Shoreline, near City Hall. Friendly environment. Call Paul at 206-542-1840.

Office space: Office sharing available in very unique and attractive space located in the historic Burke Building in Pioneer Square. Up to five offices available in the penthouse suite with amenities that include conference rooms, staff space, library, deck surrounding perimeter of floor, kitchenette and more. Receptionist, word processing, copying, and other services are possible. Additional 2,195 square feet of self-contained and attractive office space also available on a different floor in the same building. For more information or a tour of either space, call Joe Cornett at 206-357-2021.

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

Sublease: 1,500 square feet available March 1. Downtown Seattle. Seven exterior view offices, two interior offices, large workroom. Amenities include shared receptionist, furniture, conference rooms, kitchen, and parking in building. Sublease terms negotiable. Call Sarah Mann at 206-695-4585 or e-mail smann@rwbeck.com.

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

Class-A downtown Seattle office space: 38th floor, Bank of America Building, 5th and Columbia. Newly built suite will include conference rooms, secretarial space, DSL lines, and three large window-view offices. Please call Jennifer or Christine at 206-515-0640 for further information.

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

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

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

Enjoy large-firm ambience with small-firm freedom. Share professional camaraderie with attorneys and CPAs. Large professional upscale offices. Downtown Bellevue. Receptionists, administrative staff, conference rooms, library, kitchen, copiers, fax, parking, phone system, mail/messenger service. Call Mike at 425 637-3017.

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

Downtown office, unobstructed view of Elliott Bay, Olympics and city. 1000 2nd Ave., Ste. 3310. Full amenities, reception, telephone, fax, computer network, high-speed Internet, library, kitchen, photocopier, mailroom. Approx. 14x16. Available May 1. Contact Laurie Colman at 206-621-0600.

Seattle office space: Two eastern view offices and secretarial station available for sublease in six-attorney firm on the 27th floor of One Union Square. New space. All of the usual amenities are included. Call James Schermer at 206-624-7600.

POSITIONS WANTED

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

POSITIONS AVAILABLE

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

Spokane AV-rated firm is seeking an attorney with a minimum of three years' experience to

To Place a Classified Ad:

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

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

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

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

work in the areas of commercial litigation and transactions, banking, UCC and related matters. Send résumé in confidence to: Feltman, Gebhardt, Greer & Zeimantz PS, Attn: Office Manager, W. 421 Riverside, Ste. 1400, Spokane, WA 99201-0495.

Nine-person AV-rated Seattle law firm seeking partner-level attorney with at least five years' experience in business, labor law, antitrust, securities or estate planning. Submit résumé to: W.E. Skidmore; Aiken, St. Louis & Siljeg; 801 2nd Ave., Ste. 1200, Seattle WA 98104.

Gardner Bond Trabolsi St. Louis & Clement PLLC, an AV-rated firm located in downtown Seattle, is seeking to hire an attorney with at least two years' litigation experience. We are a growing law firm wanting to add another attorney to our busy insurance defense practice. We are seeking an attorney who can handle all aspects of civil litigation including discovery, depositions, arbitrations and trials. Excellent oral and written advocacy skills necessary. We offer competitive salary and benefits, as well as a friendly, supportive work environment. Please send cover letter and résumé to: W. Scott Clement, 2200 6th Ave., Ste. 600, Seattle, WA 98121.

Sr. patent attorney, Cell Therapeutics, Inc. Responsible for the management and strategic development of the company's patent portfolio. Responsibilities include preparing and prosecuting domestic, international, and foreign national patent applications. Works with the company's outside domestic and foreign intellectual property counsel, conducts technical and legal subject matter searches, and prepares memoranda addressing specific legal issues. Requires a J.D. and registration to practice before the U.S. Patent and Trademark Office, and at least five years' experience managing an intellectual property portfolio for a biotech or pharmaceutical company, or equivalent law firm experience. Must have excellent business and communication skills. Competitive compensation and benefits including attractive stock-option plan. See http://www.cticseattle.com. Reply to resume@ctiseattle.com; fax 206-378-4232.

Tousley Brain Stephens PLLC, an AV-rated, 15-attorney law firm in Seattle, is expanding its commercial and class-action litigation practice. The firm is seeking a junior litigation associate. Qualified applicants will have excellent 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 and writing sample to: Julie Livengood, HR/Operation Manager, Tousley Brain Stephens PLLC, 700 5th Ave., Ste. 5600, Seattle, WA 98104 or e-mail jlivengood@tousley.com.

Two attorneys for Wenatchee AV firm. One to do civil and criminal litigation. One with at least two years' experience in transactional work. Call Dale Foreman, 509-662-9602, or e-mail dalef@fadv.com.

Real estate, land use, and environmental law firm seeks experienced litigator. Send résumé and writing sample to: Business Manager; Mark A. Erikson, Attorney at Law PLLC; 1111 Main St., Ste. 402, Vancouver, WA 98660; 360-696-1012.

ERISA/employee benefits attorney: Song Oswald & Mondress PLLC seeks an ERISA/employee benefits attorney for partnership-track position in its tax, fiduciary counseling and litigation practice. ERISA expertise is desirable but not essential – we will mentor the right candidate who has outstanding academic credentials and work references. We enjoy the challenge of a large-firm practice in a small-firm environment. All inquiries will be kept confidential. Please submit cover letter and résumé to: Hiring Committee, Song Oswald & Mondress PLCC, 720 3rd Ave., Ste. 1500, Seattle, WA 98104; som@somerisa.com.

The Wenatchee office of Ogden Murphy Wallace PLLC has openings for the following positions: Litigation associate – minimum one year's experience in general litigation. General business associate – minimum one year's experience in general business/tax/estate planning and probate. The Wenatchee office has six attorneys with a general practice emphasizing the areas of litigation, business, employment, real estate, municipal, estate planning, and wills and probate. Each successful candidate will have excellent written and oral communication skills, and a strong desire to live and practice in Wenatchee. Please send cover letter and résumé to: Hiring Coordinator, Ogden Murphy Wallace PLLC, One 5th St., Ste. 200, Wenatchee, WA 98801.

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

Associate – civil litigator: Medium-sized Seattle firm seeks associate with a minimum of two years' litigation experience. Firm practice areas include maritime, health care, securities, banking and employment law. For more information about the firm and its practice areas, see Web site at http://www.kyl.com. Competitive salary DOE. Send résumé, writing sample and references to: Philip Lempriere; Keesal, Young & Logan, 1301 5th Ave., Ste. 1515, Seattle, WA 98101. No phone calls, faxes or e-mails, please.

Paralegal instructor: Highline Community College in Des Moines, WA, is seeking candidates for tenure-track paralegal instructor for the 2001-2002 academic year to teach and develop curriculum for core and specialty courses in the American Bar Association-approved paralegal program. Minimum qualifications include, but are not limited to, J.D. and membership in a state bar in good standing, or graduate of approved paralegal program. To ensure full consideration, all materials need to be received by 3/23/01. For detailed description and application materials, e-mail personnel@ hcc.ctc.edu, call 206-870-3751, visit our Web site at http://www.highline.ctc.edu, or fax 206-870-3773. AA/EOE.

Associate position: Firm with energetic law practice emphasizing representation of public-sector labor organizations seeks a self-motivated individual with experience in labor or employment law, and with litigation skills. Looking for individual with solid academic credentials, as well as strong work ethic and a good sense of humor. Applicants should send cover letter, résumé and writing sample to: Hiring Attorney, Cline & Associates, 6800 East Green Lake Way N., Ste. 250, Seattle, WA 98115, or e-mail clinelawfirm@clinelawfirm.com.

Transactional lawyer: We are a medium-sized, AV-rated Pacific Northwest law firm seeking an experienced corporate and transactional lawyer to join our business practice in our Seattle office. The candidate must have excellent academic credentials, solid business practice experience, and some existing client base. Concurrent experience in securities, real estate, corporate tax or international business will be a plus. Our firm is unusual in many ways. If you possess the qualifications and are interested in a dynamic new practice environment, please send/fax a résumé and letter to: Attorney Search Committee; Weiss, Jensen, Ellis & Howard; 520 Pike St., Ste 2600, Seattle, WA 98101; fax 206-623-4363. E-mail submissions welcome at ljw@weiss-law.com.

ERISA attorney: Part-time or full-time. Employee Benefits Institute of America LLC,

Shoreline, WA (www.ebia.com). Legal research, writing, editing, speaking at seminars, etc. At least five years' current law firm experience as an ERISA attorney representing employers is required. Must have extensive cafeteria plan and 401(k) experience, and superior writing and presentation skills. Law Review and top academic credentials desired. Wear blue jeans to work, as do our two full-time and three part-time ERISA attorneys. Experience life without billable hours. Send e-mail with résumé to tmccormick@ebia.com.

Staff attorney: Court of Appeals, Division I. Duties include assisting judges and commissioners in preparing rulings, orders and opinions in all types of cases, including civil and criminal cases heard on the no oral argument calendar, motions on the merits, personal restraint petitions, motions for discretionary review from the superior, district and municipal courts, and Anders appeals. Visit our Web site, http:\\www.courts.wa.gov\employ, for a copy of the full job description. WSBA membership, at least four years' experience, and excellent research and writing skills are required. Salary range is $45,312-58,032. To apply, please submit seven copies of each of the following by April 10, 2001: cover letter with reasons for seeking the position, résumé, writing sample, and a list of at least three references. Send packet to: Elfie Shorts, Administrative Assistant, Court of Appeals, Division I, 600 University St., Seattle, WA 98101. The Washington State Court of Appeals is an equal opportunity employer.

Portland: Medium-sized insurance defense firm seeks associate with a minimum of three years' experience in civil litigation work. Oregon Bar required, with Washington Bar preferred. Send cover letter and résumé to: Charles Harms; Mitchell, Lang & Smith; 101 SW Main, Ste. 2000, Portland, OR 97204. No telephone inquiries.

Inslee, Best, Doezie & Ryder PS, a well-established, medium-sized downtown Bellevue law firm seeks attorney with at least one year's experience in litigation and general business for contract work, with potential to become full-time associate. Candidates must have good analytical, drafting and interpersonal skills, with evidence of strong academic performance. All responses will be treated confidentially. Please send résumé, list of professional references, and law school transcript to: Hiring Coordinator; Inslee, Best, Doezie & Ryder PS; PO Box C-90016, Bellevue, WA 98009.

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Attorney: AV-rated Seattle insurance defense firm seeks associate with minimum two years' experience as judicial clerk or in practice. All responses confidential. Submit résumé and references to: Hiring Partner, Johnson Christie Andrews & Skinner, 701 5th Ave., Ste. 7400, Seattle, WA 98104; fax 206-623-9050.

Stoel Rives LLP, one of the largest law firms in the Pacific Northwest, seeks an environmental associate for its Portland, OR, office. Primary focus on regulatory and transactional work with some litigation. Requires at least two years' environmental law practice, strong law school transcript and Oregon State Bar membership. WSBA membership a plus. Send résumé and law transcript to: Michelle Baird-Johnson, Lawyer Recruiting Manager, Stoel Rives LLP, 900 SW 5th Ave., Ste. 2600, Portland, OR 97204; http://www.stoel.com. Equal opportunity employer.

Bring your skills at managing complex transactions and your interest in technology to Microsoft. The office responsible for managing third-party transactions for the Windows group is looking for experienced deal managers. Must have a minimum of four years' experience in managing complex litigation or transactions. Software technology interest and experience preferred. Must be able to multitask and work independently with a high level of energy and precision. Strong communication skills are a must. Please contact Craig Schuman, CraigES@microsoft.com, call 425-705-3208, or fax résumé to 425-936-7329.

Litigation associate: Downtown litigation firm with regional practice involving professional liability defense, complex litigation, coverage, and general liability defense seeks litigation associate with at least three years' experience for its Seattle office. Good working environment and interesting cases. Strong academic credentials required. Mail résumé to: Abbott, Davis Rothwell, Mullin & Earle PC, 601 Union St., Ste. 1601, Seattle, WA 98101.

Contract attorney: Karr Tuttle Campbell seeks a contract attorney with experience in foreclosure and bankruptcy. Candidates must have superior academic credentials and excellent writing and communication skills. Current WSBA membership required. Qualified individuals should submit a cover letter, résumé outlining their qualifications, and a writing sample to: Carol Anne Nitsche, Director of Human Resources, Karr Tuttle Campbell, 1201 3rd Ave., Ste. 2900, Seattle, WA 98101. Competitive salary DOE, comprehensive benefits. All inquiries confidential.

Part-time legal researcher wanted. Seattle area. Corporate-business issues. Excellent skills required. License unimportant. Send résumé to: Joe Bowen, 27210 N. 70th Pl., Cave Creek, AZ 85331.

Associate attorney: Seattle family law firm seeks quality litigator with superior oral and written advocacy skills. Experience with family law matters in Western Washington preferred. A successful candidate must be a self-starter, have a desire to work directly with clients, and be computer literate. Compensation is competitive with a base salary and bonus based on productivity. Send confidential résumé to: Hiring Attorney, 2200 6th Ave., Ste. 1200, Seattle, WA 98121.

Prominent AV-rated downtown Bellevue patent firm seeks EE/CS/physics patent associates with at least three years' prosecution experience, and lateral partners with at least six years' prosecution experience. Serve Fortune 500 and startup companies in a friendly, small-firm environment with the opportunity to participate in the growth of a top-notch patent firm. Compensation DOE. Send résumé to: Graybeal Jackson Haley LLP, 155 108th Ave. NE, Ste. 350, Bellevue, WA 98004-5901; fax 425-455-5575; e-mail query@graybeal.com.

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

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Litigation attorney: Romero Montague PS, a boutique firm focused on serving businesses with their intellectual property, business and litigation needs, seeks an associate with a minimum of three years' litigation experience. Great opportunity for creative, high-energy attorney with strong analytic and writing skills to develop a practice. Candidates should be dedicated to superior client service and possess excellent interpersonal skills. Please send your résumé in confidence to: Romero Montague PS, 155 108th Ave. NE, Ste. 202, Bellevue, WA

98004, Attn: Kelly Sholberg, or e-mail ksholberg @romeromontague.com.

The Office of the Benton County Prosecuting Attorney has an opening for a full-time civil deputy prosecuting attorney. Duties include litigation and providing legal advice to county officials. Starting salary is $4,085-5,349 per month, plus good benefits. Membership in the WSBA, with a minimum of three years' legal experience and a valid Washington state driver's license is required. Send résumé to: Andy Miller, Benton County Prosecutor, 7320 W. Quinault Ave., Kennewick, WA 99336.

Land use and environmental attorney: Helsell Fetterman seeks an associate with at least three years' experience to join our land use group. Clients include individual property owners, community organizations and government entities. Requires knowledge of federal statutes, SEPA, GMA, SMA and administrative agency procedures. Candidates must have excellent writing and advocacy skills. Please fax 206-340-0902 or e-mail statement of interest, résumé and references in confidence to Susan Alford: salford@helsell.com. Visit our Web site at http://www.helsell.com. Helsell Fetterman LLP, 1325 4th Ave., Ste. 1500, Seattle, WA 98101.

Attorney position available in Moses Lake law firm. Telecommuting available; 50 percent of the time is very viable. Position is strictly PI work but no active trial work. We are looking for someone who is primarily interested in focusing on pleadings, discovery, motion work, briefing, arbitration package preparation and some discovery depositions. Flexible hours/schedule, 401(k) plan, paid four-month sabbatical every six years, and paid vacation time and medical. Experience preferred but not required. Spanish speaking preferred but not required. Computer literacy required. Salary negotiable. Please send résumé and salary sought to: gjs@calbomschwab.com (see firm at http://www.calbomschwab.com).

Northwest Farm Credit Services is a multistate agricultural lender. It seeks to fill an in-house counsel position to document, close and service complex agricultural loans, leases and credit facilities. Responsibilities may include providing legal support in a variety of other areas of bank operations. The successful candidate must be a skilled, energetic and committed team player, with exceptional document preparation and communication skills. The successful candidate must be able to handle multiple and conflicting priorities, and should expect to carry out responsibilities with minimal supervision. Bachelors' degree (business or finance preferred) and a Juris Doctorate degree with admission to practice law in any state. Three years' relevant experience, with particular emphasis in commercial lending, real estate, UCC and related areas of law. EOE. Competitive salary commensurate with experience. Excellent benefits. Send résumé and cover letter with salary expectations to: Northwest Farm Credit Services, Attn: Human Resources, PO Box 2515, Spokane, WA 99220-2515; fax 509-340-5400; e-mail: hrdept@farm-credit.com.

Prominent AV-rated downtown Bellevue patent firm seeks EE/CS/physics patent associates with at least three years' prosecution experience, and lateral partners with at least six years' prosecution experience. Serve Fortune 500 and startup companies in a friendly, small-firm environment with the opportunity to participate in the growth of a top-notch patent firm. Compensation DOE. Send résumé to: Graybeal Jackson Haley LLP, 155 108th Ave. NE, Ste. 350, Bellevue, WA 98004-5901; fax 425-455-5575; e-mail query@graybeal.com.

Litigation attorney: The law firm of D'Amore & Associates, an established AV-rated Portland firm, is seeking an experienced litigation attorney (minimum three years' experience). Personal injury and insurance experience a plus. Salary negotiable plus benefits package. Challenging, fast-paced and fast-growing firm in a friendly work environment. Please send your résumé with references and academic transcripts to: Thomas D'Amore, D'Amore & Associates PC, 506 SW 6th Ave., Ste. 700, Portland, OR 97204; telephone 503-222-6333; fax 503-224-1895; e-mail tom@damorelaw.com.

Litigation associate: Scheer & Sotirhos LLP seeks an associate attorney with litigation experience. Insurance coverage, construction defect, appellate and/or personal injury experience is preferred. The successful candidate must be interested in complex and challenging litigation, and able to work independently. Alternative work schedules/arrangements considered. Scheer & Sotirhos LLP is a small downtown firm with a broad and rapidly growing litigation and appellate practice, offering competitive salary and benefits. Contact Hiring Partner Maria Sotirhos, 206-262-1200; e-mail msotirhos@scheerlaw.com.

Law clerk/bailiff for Snohomish County Superior Court judge. Must be a graduate of accredited law school. Salary $2702.49/month. Send résumé to: Val Stone, Superior Court Assistant Administrator, M/S 502, 3000 Rockefeller, Everett, WA 98201.

Great career opportunity: Small, well-run real estate, business and estate planning firm is seeking an associate. Primary duties will focus on business and real estate matters; some litigation. Will consider only candidates with a positive, outgoing personality who wish to practice and reside in the Gig Harbor area and grow with the firm. LLM or other tax background a plus. We are willing to train the right person, even if he or she has no prior experience. Please send résumé and introductory letter to: steve@bdrlaw.com or Brown Davis & Roberts PLLC, 7525 Pioneer Way, Ste. 202, Gig Harbor, WA 98335.

The Seattle office of Ogden Murphy Wallace PLLC has openings for the following positions: General business/real estate associate: successful candidate should have a minimum of three years' experience in general business, mergers and acquisitions, transactional. Real estate experience a plus. Health care associate: excellent opportunity to work with health care attorneys in providing services to hospitals, physicians' groups and health care associations. Nature of the practice includes mergers and acquisitions, joint venture agreements, purchase and sales agreements, regulatory compliance, accreditation and licensing. Successful applicants should have a minimum of one year's general business practice experience, and have excellent writing and oral presentation skills. Send cover letter and résumé to: Tracy Umphrey, Ogden Murphy Wallace PLLC, 1601 5th Ave., Ste. 2100, Seattle, WA 98101.

Public defense associate: Tucker & Stein seeks an associate for misdemeanor criminal defense. Please send résumé to: Donna Tucker, 1404 140th Pl. NE, Ste. 100, Bellevue, WA 98007; dtucker@tuckerandstein.com.

Associate: Tired of solo practice? Want colleagues and a better life style? Would you like some time off and backup? Want to just practice law? Enjoy working in a comfortable, friendly, and growing AV-rated firm in downtown Seattle with a collegial atmosphere and excellent benefits. Candidates are expected to have an established clientele, at least three years' experience, excellent client references, and a good work ethic. If you are ready for the advantages of a small firm with dedicated colleagues, send your résumé to: Hiring Committee, 2201 6th Ave., Ste. 1300, Seattle, WA 98121-1825. DOE/EOE.

Associate – complex commercial litigation: AV-rated, 14-lawyer, complex commercial litigation firm, seeks associate with a minimum of two years' experience. Plenty of interesting work for motivated individual who desires challenging but rewarding practice. Candidates should possess excellent interpersonal, writing and research skills, and academic credentials. Send résumé to: WSBA *Bar News* Box 610, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330.

Corporate litigation counsel: Large financial institution located in Seattle seeks an experienced commercial litigation attorney for its corporate legal department. This position requires excellent written and oral communication skills,

references, and at least six years' civil trial experience. Experience in handling retail banking, lending, securities and real estate litigation a plus. Washington Mutual offers competitive salaries, excellent benefits, professional growth, and a team-oriented environment. Please submit résumé and salary requirements to: Washington Mutual, Attn: HR Dept., Attn: Position #160837, 1191 2nd Ave, SAS0108, Seattle, WA 98111; http://www.wamu.com. Equal opportunity employer.

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WILL SEARCH

Will sought for Elizabeth (Betty) Lueckenotte of Seattle, King County, WA. Please contact Neal Gutekunst at 425-489-5875 or 206-363-5329. Passed away January 31, 2001.

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