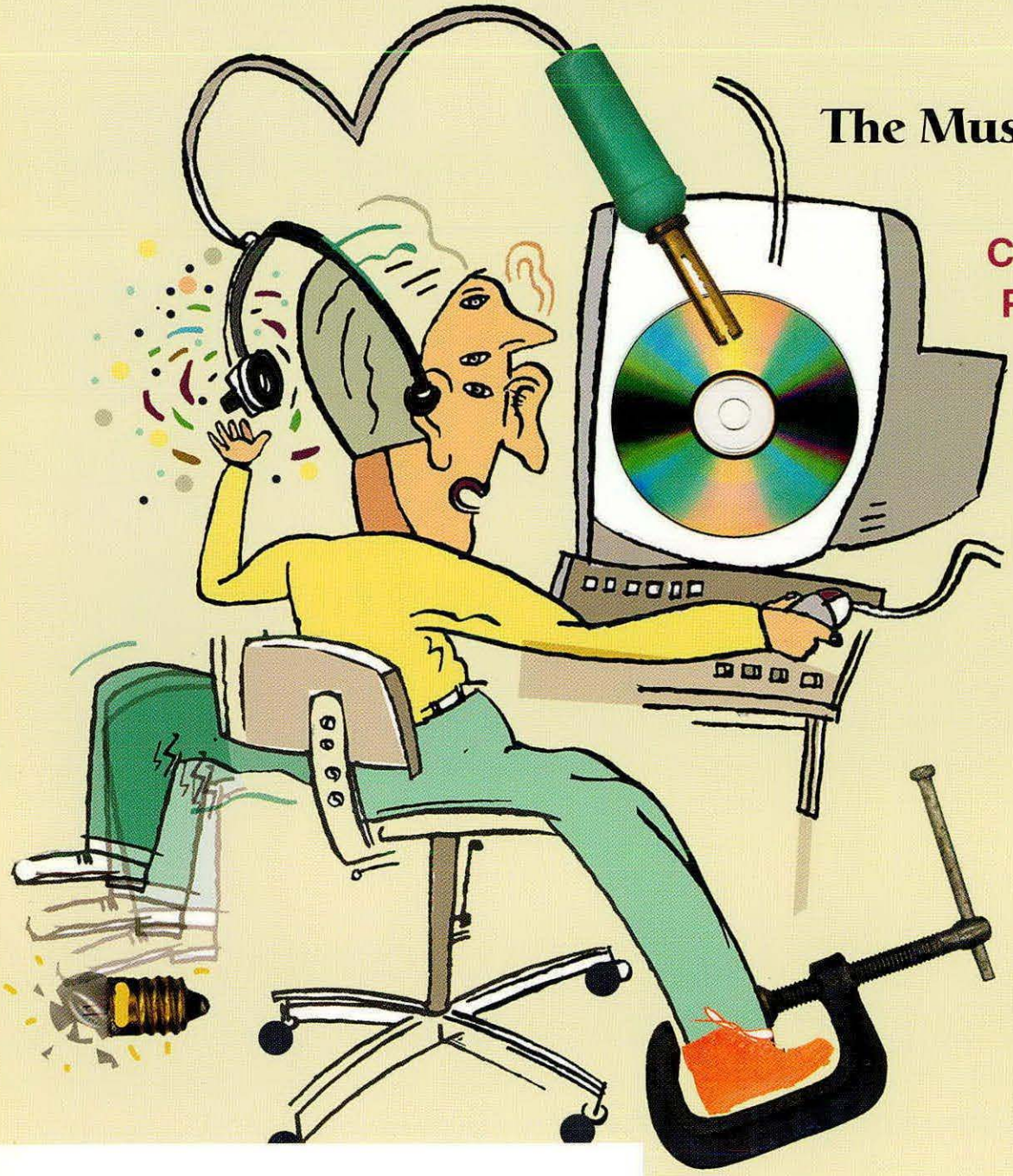
Washington State

BarNews

The Official Publication of the Washington State Bar ▪ APRIL 2001



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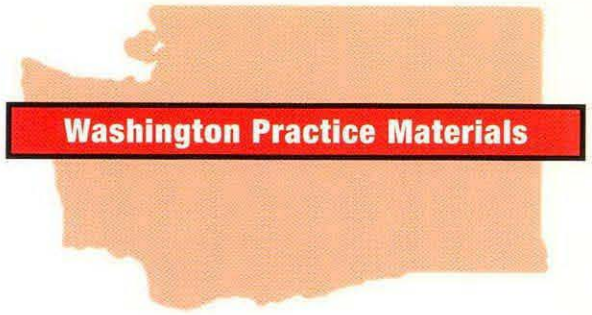

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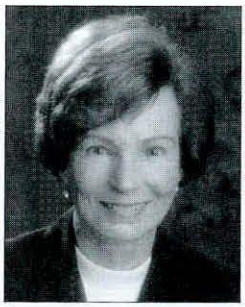

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Working together to champion justice.

Submission Guidelines

Readers are invited to submit correspondence and articles. They may be sent via e-mail to comm@wsba.org or provided on disk in any conventional format with accompanying hard copy and sent to *Bar News* Editor, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330. 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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Pictured clockwise from left: Dale Carlisle, Donald Thompson, Elizabeth Martin, Thomas Greenan and Albert Malanca.

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Letters

Minority Position on BOG

Editor:

I attended the annual meeting in Spokane and was surprised to understand that apparently the Board of Governors had received a report from Mr. Welden (general counsel of the WSBA), and had agreed to create an additional "minority" seat on the board.

It was interesting to me, since I forgot for a moment that organizational directorships frequently have the power to increase or decrease their number on motion, dependent upon the authorities contained in initial governing documents (articles and bylaws).

As a result, I asked my local board representative how this happened and if he could send me a copy of the organizational authorities of the WSBA outlining this process.

He advised me of Mr. Welden's oral opinion and suggested I contact him. I did so.

Mr. Welden promptly and courteously responded that the organizational authorities for the WSBA are the State Bar Act, RCW 2.48, and General Rule 12 of the Washington Court Rules. He further advised that the Bylaws could be found at www.wsba.org/bylaws/default.htm.

Mr. Welden also disclosed that the required formal amendment to the Bylaws to carry out the decision to establish a minority representation seat on the board had not yet been implemented, but that such an amendment did not require the vote of the membership.

He advised that the nomination and selection procedures were not determined, and to keep in touch with the governor from my district.

After reviewing the organizational authorities and Bylaws, I discovered that Mr. Welden's oral opinion was apparently correct, although the members can petition for a vote pursuant to Bylaw Article III and RCW 2.48.050(7).

In a letter to my governor, I also commented that if the Bar Association is a state agency (RCW 2.48.010) with the powers and purposes granted by RCW 2.48 and GR 12, it may appear that the provisions of RCW 49.60-400 could preclude this proposal. I asked my governor to keep me advised, and I am sure he will.

Ironically, at the bar convention (Celebration 2000) Mr. David Hall was a keynote speaker, and his presentation was reprinted in the December 2000 issue of the *Bar News*. Was I somehow missing something? Was the decision to create a minority seat responsive to Mr. Hall's plea? If so, was it a meaningful response?

After reading and rereading Mr. Hall's presentation, I concluded that the Board of Governors' decision was not relevant, nor did it in reality contribute to Mr. Hall's goals.

Is this decision in response to some actual discrimination on the part of the Bar in the past concerning nomination and election of governors? Is there any evidence that minorities (however you define that category) have been discouraged, much less prevented, from applying or running for these geographical seats? If so, I would be interested in the details, and perhaps then I would support this notion. Until then, however, it smacks of tokenism and meaningless "feel good" accomplishment. Would any self-respecting "minority" really feel good about occupying this undefined seat?

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(left to right)

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- $12 million - food contamination (E. coli)
- $2.8 million - railroad injury
- $948,000 - verdict for wrongful firing of an employee
- $1.3 million - aviation injury
- $2.5 million - maritime injury case
- $2.4 million - verdict for improper highway design auto injury
- $6.3 million - verdict for brain injury in auto pedestrian case
- $3.5 million - verdict in commercial litigation for trust mismanagement
- $7.4 million - tort claim against pharmaceutical company

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I think the board's decision should be rethought, and if they pursue this idea, that it has some meaningful consequences, duties and responsibilities, not only for the Bar as a whole, but also for the groups intended to be franchised.

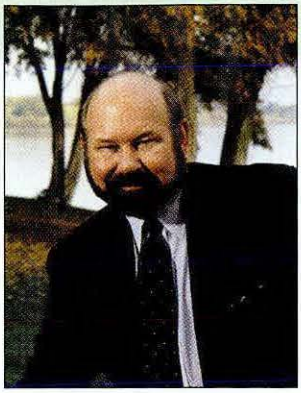
I now understand that because of 14th Amendment issues the Board of Governors has abandoned the "minority seat" undertaking, but has decided to pursue Bylaw amendments for two "underrepresented group" seats, to be defined, identified and selected by the board. Isn't semantics wonderful? Isn't it wonderful that our bar dues will now be used to support these two additional seats? I am not aware of how the current demographics of the present Board of Governors fit into this "under-represented" grouping, but I suppose that the list could include young lawyers, gays, lesbians, bald men, elder attorneys, King County lawyers, judges, students, law school professors, and just about any other arbitrary and capricious characterization you could think of. My, what great work our board is doing, and how financially responsible they are. I must admit they have exceeded even my meager expectations.

Craig M. Liebler
Kennewick

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., April 10 for publication in the June 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.*

New GR 14 Format Requirements

Effective April 1, 2001, all pleadings, motions and other papers filed with King County Superior Court must be on letter-sized (8½ x 11-inch) paper, and must be single sided. The top margin of the first page must be at least three inches; the bottom margin at least one inch; and the side margins at least one inch. All subsequent pages must have at least one-inch margins. Papers filed may not include colored pages, highlighting or toner-colored markings. This rule is not mandatory for exhibits, but the use of exhibits that comply with this rule is encouraged if it does not impair legibility. Nonsubstantive print may appear within the designated margins. Such information includes, but is not limited to, letterhead information, line numbering or page numbering. For more information, contact Joel McAllister at 206-296-7855 or joel.mcallister@metrokc.gov.



An April Fool

by Jan Eric Peterson
WSBA President

Stop! Commit 12 minutes to reading this now, or save it for later when you can spare the 12 minutes. If you don't have time, then you *really* need to read this. If you are at the office, on an airplane, at home, on "vacation" catching up on your professional reading, wherever — stop. Take a deep breath. Reserve 11 minutes now and slow down.

This article will come out on April Fool's Day, which calls for humor, but my point will be no joke. At a recent ABA meeting of the National Council of Bar Presidents, I heard a truly wonderful speaker from the California Court of Appeals. First, he noted some of the real foolishness in the law, mostly legislative, that we have to deal with. In Orange County, California, for example, there are 73 laws, some creating crimes involving kiwi fruit! There are only six regarding murder. Spousal abuse in the fourth degree results in only a $250 fine. Doing harm to a bird (except swallows) in a cemetery is a felony. Obviously, the swallows have a lousy lobbyist.

I love lawyers and I'm proud to be one, but it isn't everything. Be a person, too — a whole person, a parent and a spouse first — a coach, a player, a painter, a teammate, a friend.

Not long ago in Seattle it was a crime to "hoot" so as to disturb others. I'm not even sure what that means. I discovered this crime while defending Hare Krishnas charged with chanting, but I don't really give a hoot (shhh, not too loud). There is much foolishness on the books, but I suppose one man's foolishness is another's religion. It just shouldn't be a statute.

The judge went on to observe that our profession subjects us to a great deal of stress. Heavy caseloads, deadlines, billable-hour quotas, overhead and financial pressure. Don't make a mistake — someone is depending on your perfection. Rules, rules, rules. Winning, promotions, partnership, success! More, more, more. Faster, faster, faster at the warp speed of the cellular cyber information age. Many years down the road, too many of us will be asking, "What's it all about, Alfie? Is this all there is?"

My 44-year-old friend, big, strong John — athlete, high-profile education administrator, family man, father of two great kids — was suddenly felled by a massive coronary. Dead! And my doctor said, "I don't like the size of your thyroid." Ultrasound, biopsy, cancer scare. Pow, wow! It can all be over just like that. And fate is indiscriminate, no matter how great you are or how undeserving. I'd be a fool to put real life off any longer.

So what's important? Sure, your clients and cases are important. Are they more important than your family? You've got five minutes left of the time you committed to me. Stop, no matter where you are now or what you have to do next. It can wait. *You* can't. So right now, pick up the phone and call your spouse just to say "I love you." Call your mother. Go get your kids and take them for ice cream today. Go outside and walk without a destination. Look around you. Smile at someone.

I love lawyers and I'm proud to be one, but it isn't everything. Be a person, too — a whole person, a parent and a spouse first — a coach, a player, a painter, a teammate, a friend. It is spring, a time of new life. Get one. Don't be another April fool.

P.S. Time's up. You're free to do what you want, even if it's going back to work.

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.

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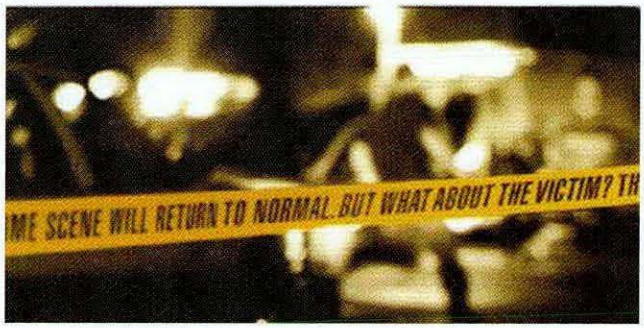
Two Cents' Worth

by Mark A. Panitch
Bar News Editor

National Crime Victim Awareness Week is April 22-28. The first week of May is National Law Week. This is the first of two columns on crime victims and the law. This month: "Being a Crime Victim"; next month: "Crime Victims and the Law."

The experts say write about what you know. But sometimes that's a tough assignment. What I know most intensely and most intimately is the meaning of the phrases "homicide survivor" and "crime victim." In a very real way my life is divided into two parts: everything before 10:00 a.m. on February 21, 1989, and everything since. Before that time I had one sibling, my sister Robbyn. At 10:15 a.m. she was fighting desperately for her life. By 11:00 a.m. she was dead.



Courtesy of U.S. Department of Justice Office for Victims of Crime

Robbyn was a psychiatric social worker with the Los Angeles County Department of Mental Health. Her job was to provide counseling and "case management" services to the hundreds of mentally ill homeless people who gravitate to the beach communities in the Santa Monica area. She was an advocate, a counselor, a one-woman social support network, and a friend to dozens of people who had few other advocates, counselors, supporters or friends.

David Scott Smith was a young man with a good past, but no future. He was an Air Force veteran with an honorable discharge and had been a security officer at Hughes Aircraft. But then he started attacking women, including his mother. When he was arrested for that assault, it was clear to mental health workers at the jail that he was schizophrenic. As part of his sentence he was ordered to participate in a community mental health program. He was started on a regimen of drugs and therapy that kept his illness in check as long as he faithfully took his medication. But there was virtually no supervision either from his probation officer or the mental health program. So, like so many seriously mentally ill people, he stopped taking his "meds" and surrendered control of his life to voices only he could hear.

He became homeless and joined the ragged, unwashed men who congregated on the bluffs overlooking the beach, self-medicating with bottles of fortified wine they passed around while listening to their own inner voices. As one of the homeless mentally ill, David Smith automatically became part of Robbyn's caseload. During the next few months she found him several places to live and tried to get him back into a community mental health program. He responded by showing up at her office unannounced and screaming at her, stalking her on the street, and threatening her for failing to provide the peace that he could find only by taking his medication.

Robbyn reported her concerns to her superiors. She asked for more security at her office, even something as simple as an intercom so she would know who was outside before opening the door. The answer was always, "We don't have the money." On the other hand, she repeatedly declined the offer of a gun from her deputy sheriff fiancé. That wasn't her.

Finally, she tried to have David Smith committed for observation. On February 18, David Smith was taken by police for a psychiatric evaluation at a UCLA hospital. The resident on duty examined him and wrote in the chart that David Scott Smith posed no danger to himself or anyone else. He received no therapy, no counseling and no medication. Within a few hours David Smith was back on the streets, angrier than ever.

We don't know what he did between Saturday night and Tuesday morning, but at about 10:00 a.m. on Tuesday, David Scott Smith barged into Robbyn's office with a knife in his hand. Robbyn was on the phone with her back to the door when David Smith stabbed her in the back. Her screams brought several patients who tried to distract Smith. Instead he threatened them with the bloody knife, shouted that he was "killing the antichrist," and continued stabbing until several of Robbyn's male colleagues subdued him. He stabbed Robbyn more than 30 times.

I was at work, and my wife, Martha, was literally walking out the door for a 24-hour shift as emergency-room doctor at a rural hospital when the phone rang. Fortunately she decided to answer it. It was my father calling to tell us of Robbyn's death. Martha called me. That is how I learned that my sister had been murdered. It is the way that most "homicide survivors" learn about the death of their loved one. Naturally, we rushed to the airport and flew from Yakima to Los Angeles, where we joined family and friends gathered at my parents' home. We were all in shock, consumed with anger, and completely helpless.

As the family expert on criminal law, I tried to explain what would happen to David Smith. But in the face of the event my explanations seemed hollow and meaningless. The fact was that nothing could bring Robbyn back or reduce the horror of her death.

The next week was surreal. We discovered many things about Robbyn's life that we never imagined. More than 500 people attended her funeral. There were homeless people. There were police officers. There were former inmates of the Los Angeles County jail where she had once worked as a mental health professional. There were faculty from the USC School of Social Work where she received her MSW, and a delegation from Mills College in Oakland, her undergraduate college. There were dozens of social workers and union representatives, and dozens more friends and family members. We were stunned at the outpouring of good will.

Robbyn's death became the "poster event" for problems with the mental health system. Her murder was front-page news for days, and it even made national radio and TV broadcasts. We were asked by reporters to comment on the meaning of Robbyn's death. The most common question was: "Do you think something good will come from this?" People who barely knew Robbyn were turning her into a martyr for their causes.

In fact, Robbyn didn't "sacrifice" herself for anything. She didn't sacrifice herself at all. She was murdered by someone who had given all the signs of his intent, but was ignored.

On television, this is where a good-hearted clergyman says something like, "She's in a better place now." Or a well-meaning friend says, cheerfully, "Well, life goes on. She wouldn't want you to be morose. She would want you to celebrate her life." In fact, such saccharine homilies are like rubbing salt in a wound. There are times and places when words fail, and the graveside of a murder victim is one of those places in time.

(Ironically, when I returned to Yakima there were no words or cards of condolence from my friends in the defense bar, but I was treated with true kindness by prosecutors, and received a personal card from Prosecutor Jeff Sullivan. Go figure.)

The crowd disperses and you are alone with your closest family members and a huge pile of unanswered — and unanswerable — questions, and an even larger pile of guilt.

In reality, the weeks after the funeral were just the beginning of the journey into a personal hell that most victims of violent assaults and virtually all homicide survivors experience. The crowd disperses and you are alone with your closest family members and a huge pile of unanswered — and unanswerable — questions, and an even larger pile of guilt.

Every person's experience is different, there are no real "stages" of grief, and anyone who tries to force your grief into a box should be ignored. The bleakness and anxiety come in waves that overwhelm and then recede, making you think things are getting better while leaving you just as vulnerable as before. But within a few weeks your boss will be asking, "Haven't you gotten over that yet?" And your coworkers will start avoiding you. Depression and grief become the core of your life. For about three years I didn't see color. My world was dominated by shades of grey.

A murder is like a hole in the social fabric. At first the hole has discrete edges, but soon the edges start to fray and tears radiate out in every direction. First there is only the victim, but soon others are terribly affected by the death. Marriages that have lasted through decades break up as the partners trade guilt and recrimination over the death of a child — even an adult child. Teenage siblings become more likely to commit suicide. Long-lasting friendships shred because even the best of friends cannot deal with your pervasive depression and almost obsessive need to talk about the lost loved one. Grief depresses immune systems, and the terrible grief left by murder does even more so. Healthy people become ill, and sick people die. Less than three years after Robbyn was murdered, my mother died of cancer, only diagnosed after Robbyn's death. A friend of mine, a former police officer, says that a killer gets the rest of the family on the installment plan.

Two years after the murder, David Smith came to trial. Although I had tried more than 100 felony cases to verdict, I was seeing the trial with new eyes. The players were the prosecutor, the defendant and the defense attorney. Although her death was the reason we were all there, Robbyn was hardly mentioned. She was "the deceased" or "the victim." For the prosecutor, her entire life was compressed into its last 10 minutes.

But for the defense her life was virtually irrelevant and her death was her own fault. Unbelievably, David Smith's attorney asserted that he had killed in self-defense. He argued that in David Smith's hallucinatory state he reasonably believed that Robbyn posed a real threat to him, so he had a right to kill her. Even more amazingly, the judge allowed the defense. My family I and sat in stunned horror as reality was turned on its head. The murderer was portrayed as the victim, while the victim was accused of causing her own death by somehow causing David Smith's murderous hallucinations.

After months of trial and less than two days of deliberations, the jury returned its verdict — guilty of first-degree murder. Although, as in Washington, we were allowed to address the court before sentencing, the sentence was really foregone. Afterward, the judge advised us to go home and "get over it." Like most clichés, that's easier said than done.

Rather than being the end of grief, a trial and conviction is really just the start. It signals "closure" only in the sense that the killer's fate is determined. Only then do many victims and survivors start trying to cope.

Council on Public Legal Education

Proud to Be a Teacher:

How Lawyers Can Educate the Public about the Law

by Judith Billings and the Honorable Marlin Appelwick
Co-chairs, Public Legal Education Committee

Americans are excellent consumers of the law. Television ratings, book sales and video rentals consistently show that a conflict waged in a courtroom or Senate hearing has as great a claim on the public's attention as one fought in a stadium. Although, when offered a chance to participate in the legal system by serving on a jury, leading a petition drive, challenging an unfair business practice, or even voting — most Americans decline. When they need practical advice, as people inevitably do, they discover that John Grisham novels and *The West Wing* offer little guidance about our everyday rights and responsibilities, or how the system actually works.

When people are unaware of their responsibilities they will likely violate them, just as those who are unaware of their rights are vulnerable to being victimized.

This is disturbing for several reasons. When people are unaware of their responsibilities they will likely violate them, just as those who are unaware of their rights are vulnerable to being victimized. Just as troubling is the public's declining sense of ownership in the rules and systems that shape our lives. Government and the law are often seen not as tools that can be used to address problems, but as distant and arbitrary forces. Lawyers, judges and politicians are thus seen as agents of questionable authority rather than custodians of equal justice.

The Council on Public Legal Education

The solution, of course, is education — not only of schoolchildren, but of the public as a whole. The Washington State Bar Association recognizes this need in its current Long-Range Strategic Plan, which calls for programs to "broaden public knowledge about the law, the rule of law, and the role of lawyers and judges in the justice system." One way the WSBA is achieving this goal is by housing and staffing the Council on Public Legal Education (CPLE). Just over one year old, the CPLE is a partnership of educators, lawyers, journalists, judges, community leaders and others concerned about legal illiteracy in Washington.

While many excellent public legal education programs do exist, they reach only a fraction of the population. The CPLE's mission is to coordinate and expand successful programs, and create new opportunities to connect the public with government and the justice system. Our ambitious long-term plan relies on three strategies:

- "Educating the educators," including teachers, journalists and public officials, so they can better educate students and the public about government and the law.
- Assisting community groups, government agencies, courts, libraries and other places that the public turns to for information by developing materials on specific legal topics.
- Providing information directly to the public via a "gateway" legal Web site that will bring together existing self-help, referral, educational and other resources, as well as create new ones.

Although most of the CPLE's work is done by volunteers, we are making great progress. When we recently celebrated our one-year anniversary, we had already conducted a legal workshop for new state legislators, held a civics conference for K-12 teachers, located funding for a program that will create 10 new youth courts throughout the state, and successfully lobbied for civics education to be included in the new high-school graduation requirements.

What You Can Do

There are many opportunities for WSBA members throughout the state to help educate the public about the law. The CPLE committees need help with the following projects:

- The **Community Committee** is researching and developing content for the legal Web site, assisting organizations with creating informational materials for the public, and or-

CORRECTION: In last month's issue, David Hoff was identified as the WSBA's oldest living past president. John Huneke, who served as president from 1969-1970, holds that distinction. Additionally, Mr. Hoff was referred to as David Huff. Our apologies to Mr. Huneke and to Mr. Hoff for these errors.

ganizing legal education workshops for local public officials.

- The **Education Committee** is promoting legal education in both K-12 classrooms and higher education by developing and publicizing curriculum materials, and sponsoring training sessions and conferences.
- The **Media Committee** is producing a legal resource guide and planning legal workshops for journalists.
- The **Formal Legal Process Committee** is seeking to improve information provided to users of the legal system by surveying them about their experiences.

The CPLE would also appreciate assistance with publicizing and funding these projects, as well as with building partnerships with groups already working in these areas.

Statewide Volunteer Opportunities

Volunteers are needed for the following programs:

- Join hundreds of lawyers, judges and teachers across the state to educate students about the law during **Law Week 2001** (April 30-May 4). For more information, visit the Law Week Web site (www.lawweek.org) or contact the statewide coordinator, Lisa KauzLoric, at 206-733-5944 or lisak@wsba.org.
- Many legal organizations maintain **speakers bureaus** to fill requests from classrooms and community groups. To join the WSBA speakers bureau, contact Amy O'Donnell at 206-727-8213 or amyo@wsba.org. To join the Washington State Trial Lawyers Association (WSTLA) speakers bureau, contact Rebecca Sommermeyer at 206-464-1011 or rps@wstla.org. The American Civil Liberties Union (ACLU) is also recruiting speakers; contact Doug Honig or Chris Mayhall at 206-624-2184.
- The **Judges in the Classroom** program gives judges the opportunity to teach students about the legal system. For more information, visit the Office of the Administrator for the Courts' Web site at http://www.courts.wa.gov/education or call 360-753-3365.
- The **Lawyers and Students Engaged in Resolution (LASER)** program pairs lawyers with schools to teach peer mediation techniques to students. For more information, contact Barbara Peterson at 206-389-2794 or barbp@atg.wa.gov.
- The **People's Law School**, a WSTLA project, educates members of the general public about their rights as consumers and citizens. New classes are being planned for fall 2001. To volunteer, contact Rebecca Sommermeyer at 206-464-1011 or rps@wstla.org.
- **We the People**, a classroom-based program that helps students develop critical thinking skills while learning about their rights and responsibilities under the Constitution, seeks volunteers to work with teachers and assist with its state competition in mid-May. For more information, visit http://www.civiced.org/wethepeople.html, or contact Kathy Hand at 206-244-3463 or k.hand@gte.net.
- The **WSBA Young Lawyers Division** sponsors a wide range of public-education programs, including the Aspiring Youth Program, the YMCA Mock Trial Competition and the Pre-Law Student Leadership Conference. For more information visit www.wsba.org/wyld/public, or contact Lisa KauzLoric at 206-733-5944 or lisak@wsba.org.
- The **Street Law** program pairs law-student teachers with high-school classrooms. Volunteer attorneys are needed in Seattle and Tacoma to assist with late-April mock trials. For more information, see the Street Law Web site (http://www.streetlaw.org), or contact Margaret Fisher at 206-329-2690.
- The **Council on Public Legal Education** is recruiting volunteers to develop educational materials and programs for the general public and specific groups. To volunteer, contact Pam Inglesby at 206-727-8226 or pami@wsba.org.
- The **Equal Justice Coalition** seeks team captains to educate their communities and elected officials about the need to support legal aid and pro bono programs. To volunteer, contact Erin Hyppa at 206-447-8168 or equalj@ejc.org.

Additional information about the CPLE (including minutes of our meetings) is located on the WSBA Web site at www.wsba.org/ple. If you are interested in working with the Council on Public Legal Education, or know of other statewide PLE volunteer opportunities not listed here, contact Pam Inglesby, WSBA public legal education manager, at 206-727-8226 or pami@wsba.org.

Former Superintendent of Public Instruction Judith Billings is executive director of the Washington Council on Economic Education, and a WSBA member.

The Honorable Marlin Appelwick is a judge on the Washington State Court of Appeals, and a former member of the Washington State Legislature.

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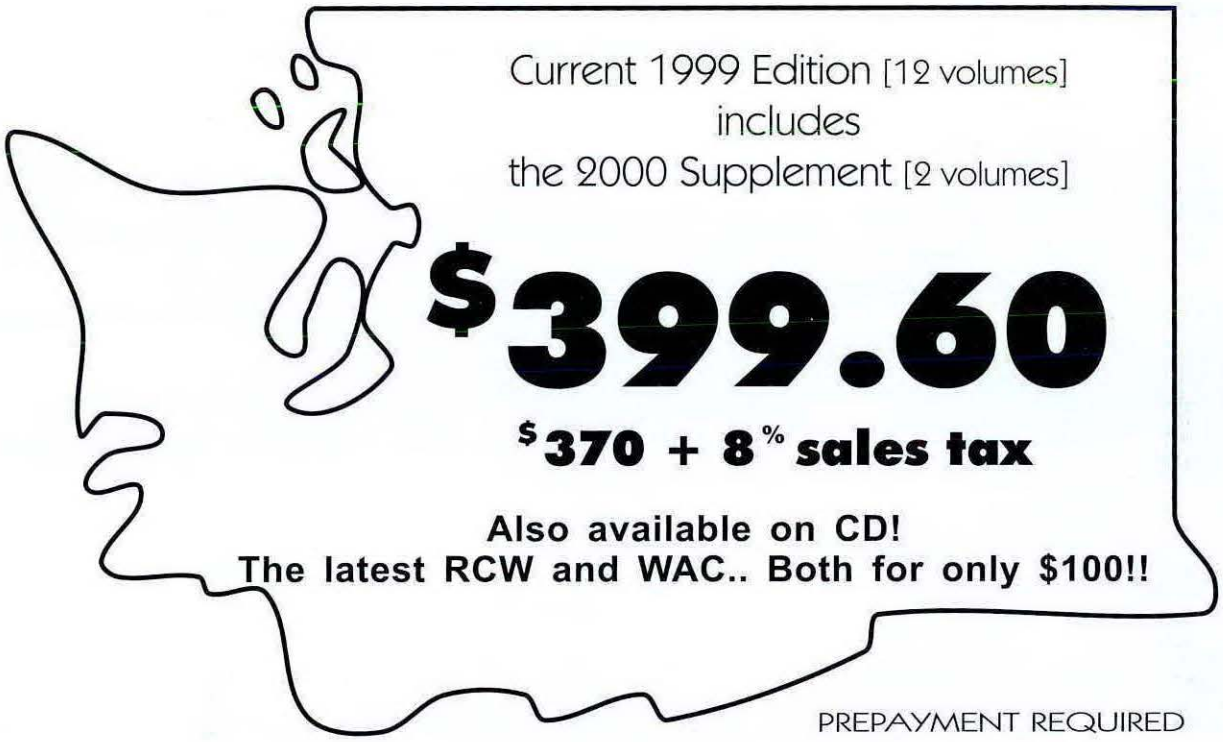

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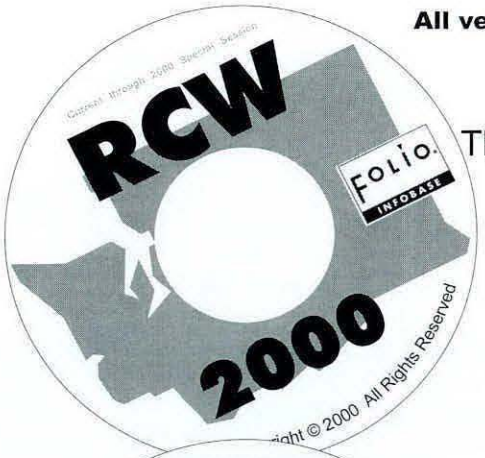

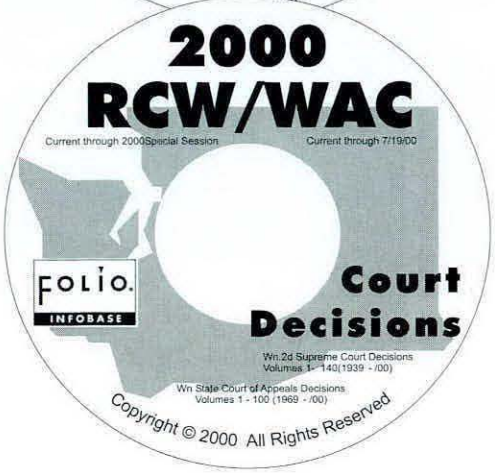

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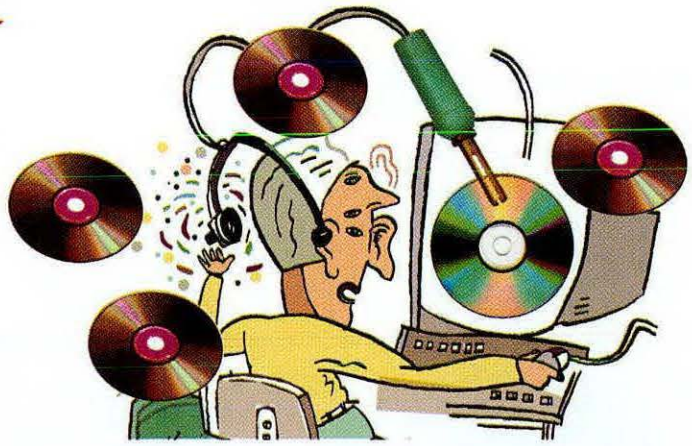
The Music Industry v. Napster

Copyright Law Peers into the Networking World



by Sheila M. Heidmiller

In the first case involving peer-to-peer (P2P) networking technology in the context of copyright infringement, A&M Records and 17 other record companies brought suit in December 1999 against Napster.[1] The complaint alleges direct infringement on the part of Napster users and contributory and vicarious federal copyright infringement on the part of Napster.[2] Ultimately, a preliminary injunction was issued ordering Napster to remove all copyrighted works from its site within three days of receiving notice from plaintiffs of specific files containing infringing works. The trial court holdings at the summary judgment and preliminary injunction stages are problematic in their application of copyright law to P2P file sharing, and there is an important issue of first impression concerning the safe-harbor provisions of the Digital Millenium Copyright Act (DMCA) that the appellate court did not address.

Napster Technology

Although the parties dispute the precise nature of the service Napster provides, they agree that using Napster for P2P file sharing involves the following basic steps: Napster's MusicShare software can be downloaded free of charge from its Web site onto a user's personal computer.[3] MusicShare can then interact with Napster's server-side software when a user logs on, and the user is automatically connected to one of Napster's servers.[4] If a user wishes to upload music to make it available for sharing, MusicShare reads the list of MP3 files the user has prepared, and the list is then temporarily added to a directory and index of MP3 files on a Napster server.[5] These user directories/indexes are transient; they change based upon who is logged on and off at any given time.[6]

If a user wishes to locate a song to download, he must enter its name or the name of the recording artist on the search page of the MusicShare software, then click the "Find It" button.[7] The Napster application software does not have the ability to search for a particular song or recording artist per se, or the ability to organize MP3 files based on content.[8] Instead, the Napster server-side software merely performs a text search of the file names requested by a user on his or her search form to determine whether any of the names match file names indexed on a particular temporary cluster server at the time the user is logged on.[9]

Upon receiving the search results, the requesting user can then click on the file he wishes to download, at which time a Napster server routes the request to the host user's MusicShare browser, which responds to the server that it either can or cannot supply the file.[10] If it can, the Napster server communicates the host's address and routing information to the requesting user's MusicShare browser, enabling the requesting user to make a connection with the host user and download the file(s).[11] This is commonly called "peer-to-peer networking" (P2P), because the file sharing occurs between two "peers" (personal computers).

A user may also perform a search using the "hotlist" function by viewing a list of files on another user's hard drive (if he is logged on) and selecting a file to download from that list.[12] In either case, the Napster server enables the communication between the requesting user's and host user's MusicShare browsers.[13]

The Music Industry v. Napster, Part I: Napster's Motion for Summary Judgment

Napster first moved for summary judgment on grounds that it was protected by

the safe-harbor provisions of the DMCA.[14] Section 512 of the DMCA exempts qualifying Internet Service Providers (ISPs) from monetary liability for direct, vicarious and contributory infringement, and limits injunctive relief.[15] The trial court noted that interpretation of the safe-harbor provisions is an issue of first impression.[16]

Napster's Theory

Napster argued that its services fall within the safe harbor provided by Section 512(a), which limits liability "for infringement of copyright by reason of the [service] provider's transmitting, routing, or providing connections for material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections" if five conditions are satisfied:

(1) the transmission of the material was initiated by or at the direction of a person other than the service provider; (2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider; (3) the service provider does not select the recipients of the material except as an automatic response to the request of another person; (4) no copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than the anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing or provision of connections; and (5) the material is transmitted through the system or network without modification of its content.[17]

Plaintiffs' Theories

Plaintiffs argued that (1) Napster provides information location tools and is therefore subject to the more stringent eligibility requirements of 512(d) rather than 512(a), and Napster does not perform the function protected by 512(a) because the infringing material is not transmitted "through" the Napster system; (2) alternatively, if infringing material is transmitted "through" the Napster system, copies of MP3 files are stored on the system longer than reasonably necessary for transmission; and (3) under the general eligibility requirements established in Section 512(i), an ISP must have adopted, reasonably implemented, and informed its users of a policy for terminating repeat infringers, and Napster, argued plaintiffs, only adopted its copyright compliance policy after the onset of this litigation and, even now, does not discipline infringers in any meaningful way.[18]

The Court's Analysis of 512(d)

Section 512(d) applies to service providers "referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link...."[19] The court found that Napster does perform some information location functions. However, the court did not rule on the applicability of 512(d) to these functions, noting that Napster was relying on 512(a) and not 512(d) as grounds for its motion for summary judgment.[20]

The Court's Analysis of 512(a)

Napster argued that the MP3 files are transmitted "through" its system, because the files are transmitted from the host user's MusicShare browser and hard drive to the recipient's MusicShare browser and hard drive.[21] And, argued Napster, obviously the Internet cannot be considered "a system or network controlled or operated by or for the service provider" (section 512(a) limits liability for infringement of copyright by reason of the ISP's transmitting, routing, or providing connections for material through a system or network controlled or operated by or for the ISP).[22]

The trial court found that, even if the Napster system includes the MusicShare browser on each user's computer (which the court did not rule on), the MP3 files are not transmitted "through" the system within the meaning of 512(a).[23] The court reasoned that the transmission goes from one part of the system to another, or between parts of the system rather than "through" the system, because, although the Napster server conveys address information to establish a connection between the requesting and host users, the connection itself occurs "through" the Internet.[24]

The court's finding on whether the transmissions go "through" the Napster system is strained, and seems to be based purely on a matter of semantics. Serving as a conduit for the address information that makes the connection possible necessarily includes serving as a conduit for the connection itself. Furthermore, to say that the transmission goes from one part of the system to another or between parts of the system is to say that it goes through the system. *Through* is defined as "passage or course within the limits of, or between or among the individual members or parts of."[25]

The court's reasoning is comparable to suggesting that a telephone call goes from one part of the telephone system to another, or between parts of the telephone system, but not "through" the telephone system, and that the telephone system serves as a conduit for the address information (the phone numbers) that makes the connection between two telephones possible, but not as a conduit for the connection itself.

The Court's Holding

Because the trial court found that Napster does not transmit, route or provide connections "through" its system, the court held that Napster had failed to demonstrate that it qualified for the 512(a) safe harbor and therefore denied Napster's motion for summary judgment.[26]

The 9th Circuit Court of Appeals unfortunately did not directly speak to this important issue of first impression. The Court did, however, state that it expected the issue of whether Napster is an ISP and, if so, whether it has the ability to obtain shelter under Section 512 of the DMCA to be further developed at trial.[27]

The Music Industry v. Napster, Part II: Plaintiffs' Motion for Preliminary Injunction

After the trial court's denial of Napster's motion for summary judgment, plaintiffs sought a preliminary injunction enjoining Napster from engaging in or facilitating others in copying, downloading, uploading, transmitting or distributing plaintiffs' copyrighted musical compositions and sound recordings without ex-

press permission.[28] Napster sought to oppose plaintiffs' motion for a preliminary injunction primarily by invoking the *Sony*[29] defense.

Direct Infringement

To prevail on a contributory or vicarious copyright infringement claim, a plaintiff must first show direct infringement by a third party.[30] The court summarily held that plaintiffs had established a prima facie case of direct copyright infringement by Napster users, because it found that Napster users engage in widespread unauthorized downloading and uploading of copyrighted music, and that such use does not qualify as fair use.[31] The 9th Circuit Court of Appeals affirmed this finding, reasoning that Napster users who upload file names to a search index for others to copy violate plaintiffs' distribution rights, and that Napster users who download files containing copyrighted music violate plaintiffs' reproduction rights.[32] The appellate court found no error in the trial court's determination that plaintiffs will likely succeed in establishing that Napster users do not have a fair-use defense.[33]

Contributory Infringement

The trial court found that plaintiffs had presented convincing evidence that Napster executives knew about and sought to protect allegedly infringing use of its service.[34] Napster argued that it could not distinguish between infringing and noninfringing files in the temporary file directories, since this data comes from users logged on at any given time.[35] The court, however, found this argument unpersuasive and irrelevant, because the law does not require actual knowledge of specific acts of infringement, and because it found that it was likely that Napster had constructive knowledge of its users' infringement.[36]

The Sony *Defense*

Napster then argued that it was not liable for contributory copyright infringement, because it was protected under the *Sony* holding. The U.S. Supreme Court held in *Sony* that a manufacturer is not liable for contributory copyright infringement resulting from the sale of a device that is capable of commercially significant noninfringing uses.[37] Napster argued that its service falls under *Sony*, because of noninfringing Napster uses such as sampling (where users make a temporary copy of a work to determine whether they wish to purchase it) and space shifting (where users access a work through Napster in MP3 format that they already own in hard-copy CD format).[38]

The trial court found that *Sony* does not apply, reasoning that (1) sampling is not a noninfringing use, because it amounts to obtaining copies of songs that users would otherwise have to purchase, and because plaintiffs had demonstrated a likelihood that sampling would adversely affect their entry into the digital music market if it became widespread; (2) space shifting is not a noninfringing use, because, unlike the time shifting (recording a work on tape to view later) of television broadcasts in *Sony*, space shifting displaces sales and is an occasional use of Napster rather than the principal use; and (3) Napster exercises ongoing control over its service, whereas in *Sony* the defendant's participation did not extend past manufacturing and selling the VCRs.[39]

The trial court also found that its finding of knowledge on the part of Napster put an end to Napster's attempts to invoke the protection of the 512(d) safe harbor, because that section expressly ex-

The U.S. Supreme Court held in *Sony* that a manufacturer is not liable for contributory copyright infringement resulting from the sale of a device that is capable of commercially significant noninfringing uses.[37]

cludes from protection any defendant who has "actual knowledge that the material or activity is infringing," or "is aware of facts or circumstances from which infringing activity is apparent."[40] Therefore, the court completely shut the door on the safe-harbor protection Napster had sought at the summary judgment stage, and tied up the loose end left dangling in that opinion (whether Napster's activities fall under the safe harbor of 512(d) — having found that they do not fall under 512(a)).

Importantly, the 9th Circuit Court of Appeals did not agree with the trial court's *Sony* analysis. "We depart from the reasoning of the district court that Napster failed to demonstrate that its system is capable of commercially significant noninfringing uses."[41] The Court found that the district court improperly confined its *Sony* analysis to current uses, as opposed to current and future noninfringing uses and capabilities.[42] However, the Court noted that "whether we might arrive at a different result is not the issue here."[43]

The appellate court also disagreed with the trial court's analysis of whether Napster had the requisite knowledge for contributory infringement, holding that "[w]e are bound to follow *Sony*, and will not impute the requisite level of knowledge to Napster merely because peer-to-peer file sharing technology may be used to infringe plaintiffs' copyrights."[44] However, distinguishing between the architecture of the Napster system and Napster's conduct in relation to the operational capacity of its system, the Court went on to find that the evidentiary record supported the trial court's finding that plaintiffs would likely prevail in establishing that Napster knew or had reason to know of its users' infringement.[45] The 9th Circuit implied, however, that a more fully developed factual record might yield a different result.[46]

The trial court also found that plaintiffs had shown that Napster materially contributes to the infringing activity of its users (the other element of contributory infringement) by providing the support services necessary for users to share files, and that plaintiffs had therefore established a reasonable likelihood of success on their contributory infringement claim.[47] The appellate court summarily affirmed this holding, agreeing that, under *Fonovisa*, Napster provides "the site and facilities" for direct infringement.[48]

Vicarious Infringement

With regard to the vicarious infringement claim, Napster argued that it does not have the ability to supervise the allegedly infringing activity, because the temporary user indexes are created and maintained by users.[49] Plaintiffs, however, convinced the trial court that Napster can and sometimes does supervise and police its service.[50]

The trial court also found that plaintiffs had shown a reasonable likelihood that Napster has a direct financial interest in the infringing activity, because direct financial benefit does not require earned revenue so long as the defendant has economic incentives for tolerating unlawful behavior.[51] The court reasoned that, although Napster currently generates no revenue, its internal documents indicate that it plans to eventually derive revenues.[52] The court therefore held that plaintiffs had shown a reasonable likelihood of success on their vicarious infringement claim.[53]

The appellate court affirmed this holding, but agreed only in part with the trial court's determination that Napster has the right and ability to supervise its users' conduct. The 9th Circuit found that the trial court correctly determined that Napster has the right and ability to police its system and failed to exercise that right to prevent the exchange of copyrighted material, but that the trial court failed to recognize limitations on the boundaries of the premises that Napster has the ability to control and patrol.[54] The Court stated that one such limitation is Napster's

inability to access its users' MP3 files.[55] Another limitation found by the 9th Circuit is that the Napster system does not read the content of the indexed user files.[56] However, the Court went on to find that Napster has the ability to locate infringing material listed on the indexes by using its search function, and the right to terminate users' access to the system.[57]

The trial court's original version of the preliminary injunction placed on Napster the entire burden of ensuring that no "copying, downloading, uploading, transmitting, or distributing" of plaintiffs' works occurs on the system.[63]

Irreparable Harm

Because the trial court held that plaintiffs had shown a reasonable likelihood of success on the merits of their claims of third-party infringement on the part of Napster users, and contributory and vicarious infringement on the part of Napster, plaintiffs were entitled to a presumption of irreparable harm for purposes of the preliminary injunction. The court found that Napster failed to rebut the presumption, because plaintiffs had established that they had invested in the digital downloading market and that their business plans had been threatened by Napster offering the same service for free.[58]

The appellate court affirmed this finding, but seemed to rest its affirmation on the mushrooming effect that the publicity of the case has had on Napster use (people scrambling to obtain as much free music as possible before the trial).[59]

Preliminary Injunction

The appellate court affirmed the trial court's finding that a preliminary injunction is necessary, but held that the scope of the injunction must be narrowed and modified such that contributory liability may be imposed only to the extent that Napster (1) receives reasonable knowledge of specific infringing files with copyrighted music; (2) knows or should know that such files are available on the Napster system; and (3) fails to act to prevent viral distribution of the works.[60] Citing *Sony*, the 9th Circuit held that "[t]he mere existence of the Napster system, absent actual notice and Napster's demonstrated failure to remove the offending material, is insufficient to impose contributory liability."[61]

The Court further held that Napster may be vicariously liable only if it fails to affirmatively use its *ability* to patrol its system and fails to preclude access to potentially infringing files listed in its user indexes.[62]

The trial court's original version of the preliminary injunction placed on Napster the entire burden of ensuring that no "copying, downloading, uploading, transmitting, or distributing" of plaintiffs' works occurs on the system.[63] In contrast, the appellate court's version of the preliminary injunction "place[s] the burden on plaintiffs to provide notice to Napster of copyrighted works and files containing such works available on the Napster system before Napster has the duty to dis-

able access to the offending content" and Napster "bears the burden of policing the system within the limits of the system."[64]

Fortunately, the 9th Circuit mostly unmuddied the trial court's strained *Sony* analysis, and the appellate court recognized the inherent limitations in policing a P2P file-sharing system. However, the appellate court unfortunately did not address the trial court's arguably flawed findings related to the DMCA's safe-harbor provisions.

The Music Industry v. Napster, Part III: Issuance of the Revised Preliminary Injunction

Napster has already stated that it will appeal to the 9th Circuit Court of Appeals to have the case heard *en banc*.[65] It is not likely, however, that the full panel would reach a different outcome, in that the three-judge panel's analysis seems well reasoned. The full panel might, however, provide guidance to the trial court with regard to the DMCA's safe-harbor provisions. If they do, Napster could have a better chance of prevailing at trial.

Meanwhile, the trial court, on March 5, 2001, issued the revised preliminary injunction.[66] It orders (1) plaintiffs to provide to Napster notice of plaintiffs' copyrighted sound recordings by providing for each work: the title, name of the artist, and the name of one or more files available on the Napster system containing such work; (2) both parties to use reasonable measures to identify variations of the file names, titles and artists' names provided by plaintiffs, and an accompanying obligation to identify the actual identity of the work if it is reasonable to believe that a file available on Napster is a variation of a particular work or file identified by plaintiffs; (3) within three business days of receiving reasonable knowledge of specific infringing files from any source identified in (1) or (2) above, a duty on the part of Napster to prevent such files from being included in the Napster index (thereby preventing access to those files); (4) within three business days of receiving reasonable notice of infringing files, a duty on the part of Napster to search the names of all files being made available by all users at the time those users log on (i.e., prior to the names of files being included in the Napster index) and prevent the downloading, uploading, transmitting or

distributing of the noticed copyrighted works; and (5) Napster to block access to or through its system to any recordings plaintiffs may provide to Napster in advance of release where plaintiffs believe there is a substantial likelihood of infringement on the Napster system.[67]

Many argue that P2P networking devoid of a central server is much more efficient than other ways of sharing information over the Internet, because it overcomes the shortcomings of organizing content in one central server.[73]

What Does It All Mean?

Although the preliminary injunction will considerably reduce the amount of music available through Napster, it need not shut down Napster. The order is much less broad than the original preliminary injunction issued by the trial court (which was stayed and then ordered revised by the 9th Circuit Court of Appeals). The biggest difference is that plaintiffs must share in the burden of identifying files on Napster's service that are infringing plaintiffs' copyrights. The original injunction placed the entire burden on Napster to simply remove all copyrighted works from its service. Because of the transitory nature of the indexes, and the nature of P2P file sharing, the requirement that individual file names be identified before they are blocked will make it considerably more difficult to screen all infringing songs from the service by simply searching for their titles.[68]

Moreover, the preliminary injunction in many ways mirrors steps already taken by Napster to screen some infringing songs out of its service, as Napster continues to take steps to attempt to work with plaintiffs to move to a subscription service.[69]

A remaining and important question is: If this goes to trial, what will Napster be liable for? Under the appellate court's ruling, Napster would be liable for contributory infringement only if it fails to take action after receiving notice from plaintiffs that specific copyrighted works are located on Napster's servers, and liable for vicarious infringement if it fails to use its patrolling abilities to preclude access to potentially infringing files. This is very important in light of the potential statutory damages that could be awarded. Plaintiffs are asking for the maximum of $100,000 for each copyrighted work infringed; a federal judge in New York ruled last year that MP3.com was liable for $25,000 in statutory damages for each CD copied (with an estimated total award of $118 million).[70] Thus, an astronomical damages award against Napster is certainly not out of the question.

However, the appellate court's ruling could be interpreted to mean that Napster is not liable for contributory or vicarious infringement for anything it has done up to this point, because plaintiffs need to provide Napster with notice under the newly issued preliminary injunction before Napster has a duty to act. If that interpretation is correct, no statutory damages would be available in connection with

the alleged infringing activity that occurred prior to the newly issued preliminary injunction and notice received thereunder. But at trial, the trial court could interpret the appellate court's ruling to mean that some or all of the works identified previously by plaintiffs served as adequate notice under the appellate court's ruling. If that interpretation is correct, statutory damages would be available in connection with the alleged infringing activity that occurred prior to the newly issued preliminary injunction and notice received thereunder.

The Bigger Picture

There are two basic versions of P2P networks: centralized Napster-style models that use servers to direct traffic, and decentralized server-free models that directly connect individual users over an IP network.[71] The former enables each user to borrow processing from other workstations on the network, while the latter enables each user's computer storage to join with others to become a large data repository.[72] Many argue that P2P networking devoid of a central server is much more efficient than other ways of sharing information over the Internet, because it overcomes the shortcomings of organizing content in one central server.[73]

The appellate court's holding would arguably make it almost impossible for the music industry to go after companies like Gnutella and Freenet (decentralized P2P file-sharing services) because the files being traded, which include more than music files, are not stored on servers. Also, the open source code software used by Gnutella is in the public domain.[74] Therefore, even if the music industry were able to shut down services like Gnutella and Freenet, it would not shut down P2P file sharing, because clones would probably appear within a matter of days.

Indeed, some argue that the real danger may lie in shutting down centralized P2P file-sharing services like Napster.[75] If individuals who share music files are committing copyright infringement (and they are, according to both the *Napster* trial court and the 9th Circuit Court of Appeals), then violations are so widespread that enforcement may become virtually impossible if Napster is out of the picture, because there will be very little chance of supervising decentralized P2P file

sharing.[76] The music industry must accept the fact that "[w]e are moving from music as a product to music as a service," and begin partnering with service providers to deliver the content to the public in a way that takes advantage of what both sides have to offer.[77]

P2P networking is an important technology far beyond P2P file sharing. P2P networking may hold solutions to a number of problems currently plaguing the Internet. For instance, search engines, which individuals outside a P2P network must use to search for content, are imperfect because they index only a small fraction of available Web sites, and they are notoriously out of date.[78] P2P networking, on the other hand, enables individuals to locate material available over the Internet that many search engines do not find.[79] Moreover, distribution over a P2P network does not require access to a Web server, the content does not have to be translated into HTML code, and the content need not be indexed by a search engine.[80] In short, P2P networking has the potential to change the architecture of the Internet.

Sheila Heidmiller will receive her J.D. in June from Seattle University School of Law, and has been offered a position at Schwabe Williamson & Wyatt. The author wishes to thank Professor Gregory Silverman, whose support made the writing of this article possible.

NOTES

1. Napster is the world's largest P2P file-sharing community, currently boasting a user base of over 50 million. *Napster to RIAA: The Issue Is Not the Copyright, It's the Control* (September 13, 2000) http://www.napster.com/pressroom/pr/000913.html; *Recording Artists Look beyond Traditional Promotion, Turning to Napster Community for Direct Access to Fans* (September 15, 2000) http://www.napster.com/pressroom/pr/000915.html.
2. A&M Records, Inc. et al v. Napster, Inc., No. C 99-05183 MHP, 2000 U.S. Dist. Lexis 6243 (N.D. Cal. May 5, 2000).
3. *Id.* at *3.
4. *Id.*
5. *Id.* at *4.
6. *Id.*
7. *Id.*
8. *Id.* at *20-21.
9. *Id.* at *21.
10. *Id.* at *5.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. 17 U.S.C.S § 512(a) (LEXIS 2000).
18. A&M Records, Inc. et al v. Napster, Inc., No. C 99-05183 MHP, 2000 U.S. Dist. Lexis 6243, at *12-14 (N.D. Cal. May 5, 2000).
19. *Id.* at *14-15 (quoting 17 U.S.C. § 512(d)).
20. *Id.* at *19.
21. *Id.* at *21.
22. *Id.*
23. *Id.*
24. *Id.* at *21-22.
25. New Webster's Dictionary.
26. A&M Records, Inc. et al v. Napster, Inc., No. C 99-05183 MHP, 2000 U.S. Dist. Lexis 6243, at *25 (N.D. Cal. May 5, 2000).
27. A&M Records, Inc. et al v. Napster, Inc., No. 00-16401, at *14 (9th Cir. February 12, 2001).
28. A&M Records, Inc. et al v. Napster, Inc., No. C 99-5183 MHP, No. C00-0074 MHP, 2000 U.S. Dist. Lexis 11862 (N.D. Cal. August 10, 2000).
29. Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984).
30. A&M Records, Inc. et al v. Napster, Inc., No. C 99-5183 MHP, No. C00-0074 MHP, 2000 U.S. Dist. Lexis 11862, at *39 (N.D. Cal. August 10, 2000).
31. *Id.*
32. A&M Records, Inc. et al v. Napster, Inc., No. 00-16401, at *14 (9th Cir. February 12, 2001).
33. *Id.* at *9.

34. A&M Records, Inc. et al v. Napster, Inc., No. C 99-5183 MHP, No. C00-0074 MHP, 2000 U.S. Dist. Lexis 11862, at *39 (N.D. Cal. August 10, 2000).
35. *Id.* at *62.
36. *Id.* at *61-64.
37. Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417, 434 (1984).
38. A&M Records, Inc. et al v. Napster, Inc., No. C 99-5183 MHP, No. C00-0074 MHP, 2000 U.S. Dist. Lexis 11862, at *44 (N.D. Cal. August 10, 2000).
39. *Id.* at *56.
40. A&M Records, Inc. et al v. Napster, Inc., No. C 99-5183 MHP, No. C00-0074 MHP, 2000 U.S. Dist. Lexis 11862, at *65 (N.D. Cal. August 10, 2000) (quoting 17 U.S.C. § 512(d)(1) (A), (B)).
41. A&M Records, Inc. et al v. Napster, Inc., No. 00-16401, at *10 (9th Cir. February 12, 2001).
42. *Id.*
43. *Id.*
44. *Id.* at *10-11.
45. *Id.*
46. *Id.*
47. A&M Records, Inc. et al v. Napster, Inc., No. C 99-5183 MHP, No. C00-0074 MHP, 2000 U.S. Dist. Lexis 11862, at *65 (N.D. Cal. August 10, 2000).
48. A&M Records, Inc. et al v. Napster, Inc., No. 00-16401, at *11-12 (9th Cir. February 12, 2001) (quoting Fonovisa, Inc. v. Cherry Auction, Inc., 76 F.3d 259 (9th Cir. 1996), which held that the support services provided by a swap meet operator materially contributed to infringement).
49. *Id.*
50. A&M Records, Inc. et al v. Napster, Inc., No. C 99-5183 MHP, No. C00-0074 MHP, 2000 U.S. Dist. Lexis 11862, at *70 (N.D. Cal. August 10, 2000).
51. *Id.*
52. *Id.* at *71.
53. *Id.*
54. A&M Records, Inc. et al v. Napster, Inc., No. 00-16401, at *12-13 (9th Cir. February 12, 2001).
55. *Id.* at *16.
56. *Id.* at *13.
57. *Id.* at *13, *16.
58. A&M Records, Inc. et al v. Napster, Inc., No. C 99-5183 MHP, No. C00-0074 MHP, 2000 U.S. Dist. Lexis 11862, at *71 (N.D. Cal. August 10, 2000).
59. A&M Records, Inc. et al v. Napster, Inc., No. 00-16401, at *14 (9th Cir. February 12, 2001).
60. *Id.* at *16.
61. *Id.*
62. *Id.*
63. *Id.* (quoting the trial court's preliminary injunction).
64. *Id.*
65. Brad King, *Napster Faces Shutdown* (February 12, 2001) http://www.wired.com/news/politics/0,1283,41752,00.html.
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67. *Id.*
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69. *Id.*
70. Declan McCullagh, *Napster May Pay Dearly for This* (February 13, 2001) http://www.wired.com/news/politics/0,1283,41757,00.html; *see also* UMG Recordings, Inc. et al v. MP3.com, Inc., No. 00 Civ. 472 (JSR), 2000 U.S. Dist. LEXIS 13293.
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72. *Id.*
73. Mary Mosquera, *Napster Suit Breeds Opportunities, Risks* (August 21, 2000) http://www.techweb.com/wire/story/TWB20000821S0003.
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75. John Heilemann, *David Boies: The Wired Interview* (October 8, 2000) http://www.wired.com/wired/archive/8.10/boies.html.
76. Scott Resenberg, *The Napster Files* (February 4, 2000) http://www.salon.com/tech/col/rose/2000/02/04/napster_swap/.
77. Mary Mosquera, *Lawmakers Grapple with Napster Issues* (July 11, 2000) http://www.techweb.com/wire/story/TWB20000711S0013 (quoting James Griffin, CEO of Cherry Lane Digital, an Internet music company).
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79. *Id.*
80. *Id.*

Prosecutor Gets a Searing Close-up of Alcohol's Toll

by Susan Paynter
Seattle Post-Intelligencer Columnist

The following article was originally printed in the *Seattle Post-Intelligencer*.

At a Friday morning hearing on the 12th floor of the King County Courthouse, a crowd of harried defense attorneys, prosecutors and a few hangdog defendants in orange jail jumpsuits jostled at a last gathering before taking their cases to trial. Amid the controlled chaos, Deputy Prosecutor Amy Freedheim was a laser beam of focus.

When Cynthia Osceola's attorney asked for a week's delay in her vehicular-homicide case, Freedheim smiled but never ceded an inch. She would postpone, but only two days, not a week.

Osceola's case sent a chill up my spine because, in November, I had peered into the remains of what had been the black Suzuki Grand Vitara Osceola folded around a tree near Green Lake in August. A woman passenger died in the back seat, which, when I peeked, still cradled a crushed can of Bud Ice.

The specifics of similar death crashes fueled by alcohol ring familiar in Freedheim's ears. She has prosecuted many since 1991, concentrating exclusively on vehicular assault and homicide for the past two years.

Still, she's anything but blasé. "She's tenacious and really passionate," a Seattle Police Department accident investigations officer told me just before he asked for a transfer to another division. Like Freedheim, he has a baby of his own, and had been called during the night to too many roadside horror shows. Freedheim has gone to a few of those, too. But usually she meets the victims in the photos that sit in folders on her desk. The newest ones were taken in the first hours of New Year's Day 2001. Freedheim filed charges against the driver in that case, 28-year-old Morial D. McDowell of Gig Harbor. He was charged with two counts of vehicular homicide for the deaths of his 24-year-old pregnant wife, Susie, and three-year-old daughter, Eileen. And with one count of vehicular assault for brain injuries and broken bones suffered by his eight-year-old son, Anthony.

There were five children crammed into the compact Kia that allegedly was traveling at speeds exceeding 90 mph when it crashed on a curve trying to outrun police. Medics were reportedly badly shaken at the sight of all seven occupants scattered across a field near Interstate 405. McDowell is expected to be arraigned within two weeks. The names of such pending cases overflow the white marker board on Freedheim's office wall, and more cases are taped nearly to the ceiling. From the first one she prosecuted in 1991 to the newest, she remembers all the names and most of the ages of the kids who died or lost their parents.

In 1999, there were 41,611 traffic fatalities. Of these, 15,786 were alcohol-related, making the percentage of alcohol-related crashes for that year 38 percent.

National Highway Traffic Safety Administration

Most of the time, her brain reigns. Freedheim says she would only get in her own way if she allowed herself to get angry. She is, after all, an officer of the court. Her job isn't only to convict people, but to do justice. And, frankly, Freedheim says prosecuting these cases can

be "a lot of fun." She loves what she calls the "Newtonian physics" involved. She majored in classical archaeology and minored in chemistry before turning to law. "In archaeology, you dig through the dirt for facts," she said. "As a prosecutor, you dig through the facts for dirt."

It's exhilarating to apply the laws of physics to an accident scene, analyzing the dynamics of a crash, the speed, the gravity and momentum. "In a crash at 30 mph, the human body experiences 200 times the gravitational force an astronaut feels on leaving the Earth's atmosphere," Freedheim said. But not for a minute does she forget that those bodies were human beings.

On the wall opposite photos of her own year-old son, she keeps the pictures of several young, smiling faces, including that of Matthew Chumley. The golden-haired, 19-year-old died when his motorcycle was struck in Ballard in 1998 by drunken driver Roger Souther. Souther, who had several priors, including deferred prosecutions for driving intoxicated, had previously struck and killed another man while under the influence of alcohol.

Because of Souther's record, Freedheim was able to get an extraordinarily long sentence. He is now serving 20 years in prison. But the sentencing range usually falls far, far short of such a span. Freedheim hopes that, someday, sentencing guidelines will change. But she doubts it will happen without a big change in this country's fierce, even defiant attitude toward driving — sometimes fast and sometimes even drunk.

"The same weekend that Princess Diana died in an alcohol-related crash (in Paris), 250 American families suffered the same pain from drunken-driving deaths here," Freedheim said. "Over 16,000 people were killed here in the past year in drunken-driving accidents." Still, with no previous convictions, someone convicted of vehicular homicide, even someone driving under the influence of drugs or alcohol, will get maybe 31 to 41 months, Freedheim said with a shrug.

Only when I asked, "Is that ever enough?" did her composure slip and her face turn pink. "It's very, very hard to tell a family that's what it will be," she said.

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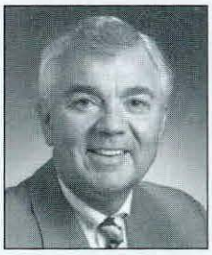

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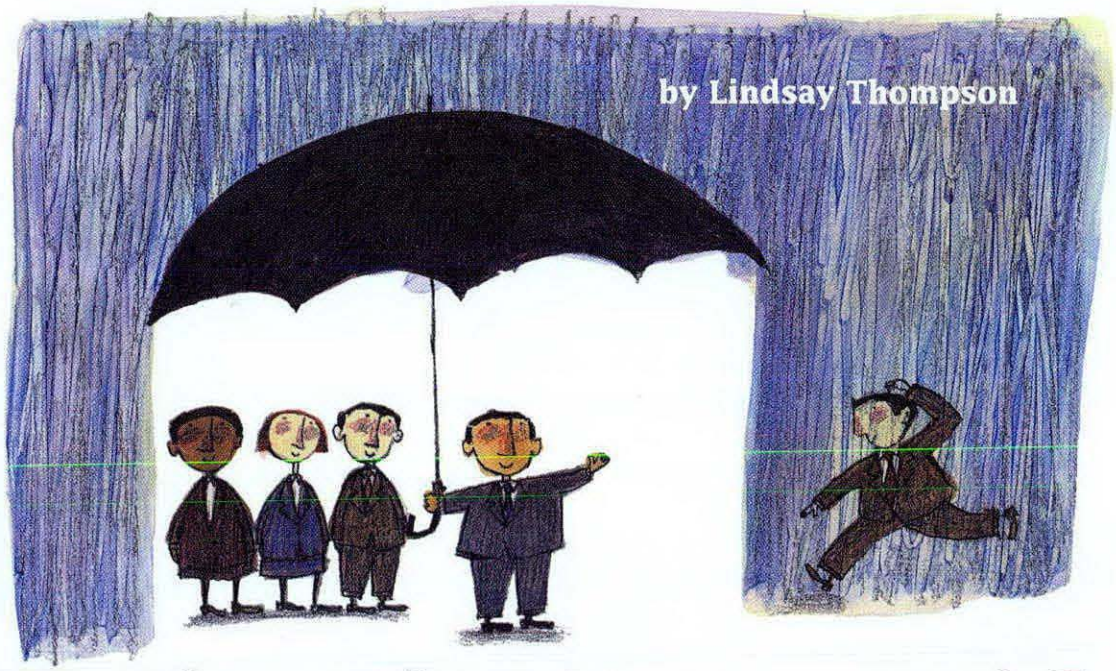


by Lindsay Thompson

Opening the Doors Wider

The Board of Governors Votes to Expand

A long habit of not thinking a thing wrong often gives it a superficial appearance of being right.

— Thomas Paine

In February the Board of Governors adopted this resolution:

WHEREAS, the elected Governors of the Board of Governors of the Washington State Bar Association are elected from the nine Congressional Districts of the State of Washington as a means to provide geographical representation for all lawyers within the State of Washington; and

WHEREAS, the Board of Governors of the Washington State Bar Association recognizes that the selection process does not provide input and insight from the public its members serve as a profession, and further does not always result in the election of a Board of Governors that is representative of the changing membership and geographical array of the membership of the Washington State Bar Association; and

WHEREAS, the Board of Governors and the Washington State Bar Association can and will benefit from the insight, advocacy and unique knowledge of the needs of such groups, and which insight, advocacy and knowledge would benefit the Board of Governors in achieving its mission and in representing its members; and

WHEREAS, the Board of Governors of the Washington State Bar Association recognizes that examples of underrepresented groups of attorneys may, depending upon the outcome of any Board election, include women, young or new lawyers, government lawyers, lawyers engaged in criminal defense or in the prosecution of criminal matters, lawyers from remote and outlying parts of the State of Washington and outside the State of Washington, and ethnic and sexual minority lawyers; and

WHEREAS, the Board of Governors of the Washington State Bar Association is authorized by the authority of the Supreme Court of Washington and RCW 2.48.030 to create seats on the Board by means provided in the Bylaws of the Association, and wishes to create "at large" seats to be appointed by the Board of Governors to underrepresented members who may provide representation, knowledge and benefits to offset the structural deficiencies which operate as a barrier to election;

NOW, THEREFORE,

BE IT RESOLVED

The Washington State Bar Association Board of Governors hereby creates two "at large" seats, the occupant of each to serve a three-year term, and to be selected as follows: the first to be filled by election by the Board of Governors from "underrepresented attorneys" as that term is generally defined above and may be further defined in the Bylaws of the Association or by members whose election will provide for more diversity among the Board's members following the election of Governors by the general membership in 2001; the second seat to be filled by election by the Board of Governors from "underrepresented attorneys" as that term is generally defined above and may be fur-

ther defined in the Bylaws of the Association or by members whose election will provide for more diversity among the Board's members following the election of Governors by the general membership in 2002; and

BE IT FURTHER RESOLVED that the Board of Governors shall fill each vacant "at large" seat designated to be filled by appointment from nominations made in order. The Governors shall fill such seats with a representative to serve as Governor who will, in the Board's sole discretion, have the experience, knowledge of the needs of those lawyers whose membership is or may be historically underrepresented in governance, or represent some of the other diverse elements of the Association's members, to the end that the Board of Governors will be a more diverse and broadly representative body than the results of present methods of election allow.

BE IT FURTHER RESOLVED that the president of the Washington State Bar Association shall promptly appoint a committee to draft necessary revisions to the Bylaws of the Washington State Bar Association to effect this Resolution with a view toward approving those revisions at the next meeting of the Board of Governors held after adoption of this resolution.

I start with the text so you can read for yourself what we did, rather than give you some spin that makes me look good. I drafted the above, so the board directed me to explain why we did what we did. My resolution was based on the work of others, and I will bring them into the story in a few paragraphs.

"*Can* you expand the Board of Governors?" a number of members have asked. Yep. It's in the State Bar Act, RCW 2.48.030: the BOG can be up to 15 members, made up of the president, one member from each congressional district, "and such additional members elected as provided for by the bylaws of the association."

Over the years the board has grown with the state, adding members as new congressional districts were created. The last time that happened was in 1992, when the present 9th District was formed, and Jim Handmacher was elected the first incumbent.

People have proposed creating additional seats for various reasons for a long

time. WSBA General Counsel Bob Welden found a memo from 1975 analyzing how it could be done. In the 1970s, two King County at-large seats were created to accommodate representation of the large population of lawyers in King County. The Young Lawyers Division argued for the creation of a seat for them at various times in the 1980s and 1990s.

In the mid-1990s a Bar task force spent over a year looking into whether the WSBA needed to alter its governance models. Chaired by now former president Wayne Blair, the task force suggested creating a house of delegates (like the American Bar Association, Oregon, and a number of other states have), and/or expanding the board to create a citizen representative, a young lawyer member, a "diversity representative," and a president-elect who would sit with the BOG but have no vote. Among the values the task force believed Bar Association governance should embody were "representation of diverse interests and viewpoints (e.g., geography, race, ethnicity, national origin, language, age, gender, disability and other perceived differences)"; "broad, inclusive involvement (removal or decrease of institutional barriers to participation and engagement in the life and activities of the state Bar, whether those barriers are perceived or real)"; "development of high-quality state Bar leadership"; and fostering of unity and cohesiveness through increased participation and stake holding in governance," among others.

The Board of Governors received the report, debated it some, pretty much declared it too expensive and radical, or that adding seats would balkanize the board (I think that was the phrase I used from my seat on the sideline of the meeting), and filed it on the Shelf of Well-Meaning Task Force Reports We're Going to Ignore.

Bits of its recommendations crept into the work of the board, like the creation of the president-elect position. The idea for that post was to make it possible for someone who hadn't been a BOG member to be considered for the presidency. By sitting in for a year, the president-elect gets up to speed on what's up, and then moves into the head chair.

So far that hasn't worked. It has been useful to get presidents up to speed before they take office, but we still haven't elected anyone who wasn't a BOG member first (only one WSBA president *ever* was elected from outside the BOG alumni association, and that was nearly 30 years ago).

And we still haven't elected a non-white president. Not surprising, in a way, when you consider we've only had one member of the BOG who wasn't white, and that was in the late 1980s.

We haven't had any young lawyers elected either. Many have looked at running and concluded that the election system rewards being well-known, and frankly, it does. There's no question my having been editor of *Bar News* for seven years helped me get elected, just as it did four of my seven predecessors at the magazine when they ran.

There are parts of the state that have never had a member of the BOG and probably never will, because of population distribution in districts. Take the 6th District: when we elected Dale Carlisle of Tacoma, president-elect last year, we had a chance to appoint someone to fill the rest of his term. We chose Brooke Taylor of Port Angeles. No one had ever gotten elected from the Peninsula. Governors from the 6th always come from around Tacoma, because that's where the population is, and always will be.

Many people, including me, have said along the way: "Well, look, in a given year one or two seats up for election go unopposed. People should just run, and the problem will fix itself."

But it hasn't. Members of the board, trying to encourage more participation, have worked hard for years to recruit bar members to run. But human nature is such that we tend to recruit from whom we know, and most of us know people who are like us, and if we're an all-white board, it stands to reason we're going to stay one.

Which we have.

Flash forward five years from the Task Force on WSBA Governance Report. WSBA President Dick Eymann, a leader in a hurry, took office having spent a year on the BOG and not having spent much time in the usual routes to the job before that. Unfettered by the usual ways of seeing things, he set up a committee to look at bringing more minority lawyers into bar governance at all levels — committees, sections, the board — and appointed Jim Deno, a governor from Everett, as chair.

Jim worked very hard and had lots of meetings with minority lawyers and heads of the various minority bar associations around the state. I was on the committee, and we learned a lot in the process.

President Eymann wrote about his minority and young lawyers expansion plan several times in *Bar News*, and the idea generated a good deal of debate among members in the pages of the magazine and in communications to members of the board. Eymann and other supporters wanted to get a consensus, if possible, around the idea, and work out the details later. After discussion at almost every meeting in 2000, at its September meeting the Board of Governors voted first to endorse the concept of creating a racial minority seat. Under one plan promoted by the minority bar leadership, the seat would be created for 12 years, and would be rotated among the principal minority bar groups, one term at a time.

The board asked the minority bar associations to draft the means of implementing the plan, hoping to be able to get someone seated in 2001. Other members of the Association, reading about the plan, contacted members of the board and expressed concern that the plan raised issues under the 14th Amendment of the U.S. Constitution. The board sought the advice of inside and external counsel (the latter, pro bono), and concluded with some disappointment that there was no way to carry out the plan without significant risk that it might not pass constitutional muster. While a couple of other states have created such seats, neither has been sued or apparently even challenged over the issue. We felt if we were going to do this, we wanted to do it right.

But human nature is such that we tend to recruit from whom we know, and most of us know people who are like us, and if we're an all-white board, it stands to reason we're going to stay one.

So we regrouped. At our January meeting in Olympia we advised minority bar leaders of the situation. Governor Brooke Taylor suggested creating a new seat but defining it more expansively to represent "underrepresented lawyers" within the Association. The board could look at its membership after the spring elections, see where it was not adequately representing groups within the Bar (for example, government lawyers, minority lawyers, rural lawyers) and fill the seat accordingly. There was debate about whether to make the seat a one-year term (to have more turnover) or the standard three years (better, the general response was, as we don't want to create second-class seats, it can take a year to get fully up to speed as a governor, and the State Bar Act seems to mandate three-year terms anyway).

This idea intrigued members of the board, as it could address the diversity issue but avoid the potential pitfalls of the old plan.

I felt, as I thought it over, this was all true, but the effect could be that it would take a lot longer to get done what we set out to do — jump-start a more diverse membership on the Board of Governors. So I mentioned that I was thinking about offering a proposal in February to create not one, but three new seats: one for

underrepresented groups within the Association (the Taylor Plan); one for Young Lawyers (The Eymann Plan/Governance Task Force Report), and a seat filled by a member of the public (Governance Task Force Report/my observation of Oregon, which has four such seats and considers it a great success in making the work of the Bar there, and its service to the public, more visible).

No one really objected to the idea when I floated it. A couple of weeks later I sent out an e-mail and asked again if there were objections. Some members wanted more time to think about it.

In the meantime, Governor Jim Deno drafted and circulated a resolution to effect the Taylor Plan. I took it and redrafted it to create three new seats, and sent it out shortly before our February meeting, christening it "Son of Deno."

When I offered my resolution, I laid out the reasons for doing so. Chief among them was that the BOG has historically been a pretty conservative, slow-to-change outfit. It met in closed session into the early 1970s, and opened up only after then-Attorney General Slade Gorton issued an opinion that they had to. They fired a *Bar News* editor for trying to tape-record their meetings — his effort to help him accurately report their work in the magazine. They opposed, at various times, members' demands to apply the open meetings and public records laws to WSBA operations in the 1980s. Receiving the Governance Task Force Report, they considered it and pretty much shelved it.

I was one of those, from my sideline seat as *Bar News* editor, who opposed the Governance Task Force Report's recommendations. I thought a bigger board, or a House of Delegates, would "balkanize the bar." Looking back on it, I believe the bar is balkanizing on its own, not because we acted, but because we didn't. Members are opting out of state Bar activities and leadership when they feel they have no place.

It's easy to say people who feel that way ought to just get a grip and try harder, and many members feel that way. But for most people, perception *becomes* reality over time, and the upper rungs of WSBA leadership are seen by an increasing number of members as a closed club. There's more than a little truth to this. How to get ahead in the WSBA is not set out in any coherent form. It exists as folklore and sporadic announcements in *Bar News*. People take a look, find it too complicated, or appearing stacked in favor of certain kinds of lawyers, and go off to take part in minority and specialty bar associations where they feel they *can* make a difference in a reasonable period of time.

So I changed my mind. Winston Churchill once remarked he'd eaten his words many times in a long career and overall found them a wholesome and satisfying diet. I felt we had an opening to act boldly, and that we should do so.

We had a lengthy debate over my motion. Members of the board had the most trouble with the public-seat idea. It was just too new, and hadn't been part of the debate before. In time I agreed to let that idea be the subject of further study.

Members also felt, as the debate evolved, that two Taylor Plan seats would work better than one Taylor Plan and one Young Lawyers seat. I figured as a practical matter, YLD members, being not just under- but never-represented, would be included in the Taylor Plan, and agreed to that amendment as well. Some mem-

bers felt we ought to send the idea out to the membership and seek input. There I balked. We spent a year debating and seeking member comment on creating one new seat, and got a ton of response. We voted to do it. Creating two seats on somewhat different terms of selection didn't make enough difference to me to warrant spending most of 2001 redebating the core idea and the particulars of one plan over a slightly different plan. So I called for a vote and we adopted the plan 8-0, with two abstentions by members who didn't oppose the plan, but thought we should consult the membership more widely before acting.

A committee made up of me, Brooke Taylor and Bill Hyslop of Spokane is drafting a Bylaw amendment to put the plan into effect. We hope to be able to start filling the seats this summer. I don't see the bylaw frontloading the selection process with directives. The board should have the leeway to determine the representation needs of its members from time to time based on the evidence they find and the good sense they collectively apply to the task.

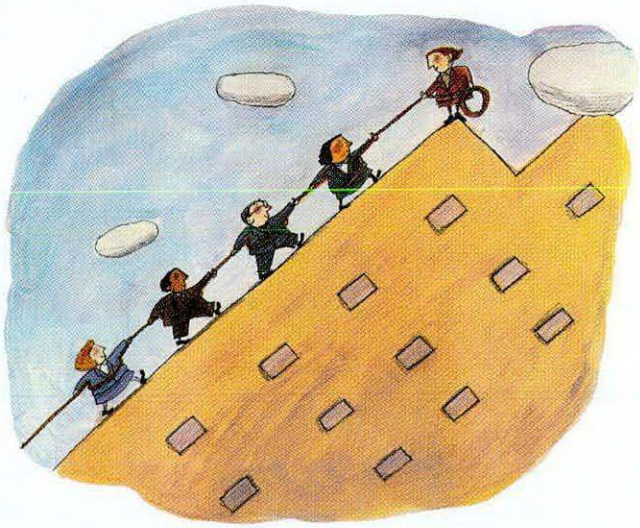
There are members who see any question of "rights" or access to power as a zero sum game: there must only be a finite number of rights, or a definable quantum of power, and giving some to someone who hasn't had any, or as much, must therefore mean it is being taken from someone else. There are those who think they are somehow being held to account for the wrongs others did in the past.

I don't buy those arguments. The rhetorical flourishes of the law — all the equal justice stuff — mean little if we as a profession are not willing to extend ourselves to include all of our own members fully in the privilege of self-governance. Change is hard, and requires thinking anew and acting anew. "We choose to go to the moon," President Kennedy said 40 years ago, "not because it is easy, but because it is hard." Sometimes doing the right thing is hard, too. But I believe we have done the right thing by opening up our governance, even if it is just the first of many further steps to finish the journey.

Lindsay Thompson represents the 7th Congressional District on the Board of Governors, and was Bar News *editor from 1988 to 1995. He practices law in Seattle.*

Turnaround

by a LAP Peer Counselor • *WSBA Lawyers' Assistance Program*



I dropped out of college in my second year. They discharged me under other-than-honorable conditions from the military within two years of being commissioned as an officer. My last duty station was an involuntary assignment to Leavenworth, Kansas.

After returning from Vietnam, I went on an exploratory excursion to Central America, where I ended up serving time on an island penal colony for six months. In the course of 23 years, from ages 17 to 40, I was arrested, involved in fights, had auto accidents and a couple of voluntary commitments to Harborview and Western State hospitals. Never, during all that time, did I make the connection that my troubles might be a result of drinking and drugging — that's denial!

I had a rationale for every situation — it was seldom my fault; it was yours or someone else's; it was circumstances, bad luck and life. I had heard that adversity built character, and I rationalized that character was my greatest virtue. Not everyone agreed.

I have been in recovery for 14 years. I finished college, got a J.D., and was admitted to the Bar. My application was several pages longer than the average, since there were serious issues as to whether or not I would be accepted. I sat in my criminal law clinic class as a 3L, listening to classmates agonize over having to include various traffic infractions on their applications. I chuckled and told them that when I got to that level in my own application, the severity of my other disclosures caused me to add "and various other traffic infractions and minor civil violations" as a footnote.

I had the good fortune to find Alcoholics Anonymous through the court system, but certainly didn't think it was good fortune at the time.

When I got my DWI and deferred prosecution in Kittitas County, I never appeared in court. I simply sent the fee to the Cle Elum attorney who represented me. I was required to go to outpatient treatment, which was nonsense to me, but I was afraid of losing my driver's license, so I went. I had finally become a taxpayer and had held a job for about three years — a job that required driving.

I have looked back through the process of recovery, and I now recognize what I couldn't see then. I remember blacking out after a high-school dance. I had driven 25 miles to my parents' driveway and had no idea where I was. I thought I might have a brain tumor, but remember thinking, "I better not tell anyone or they'll tell me that I must stop drinking." That's alcoholic thinking.

I was able to moderate my drinking enough so that blackouts were not a regular occurrence, but by the time I was 19 and in the military, I drank to drunkenness, and was exposed to marijuana and to lax, irreverent attitudes of some Vietnam veterans assigned to my training unit. Eventually it was my use of pot that secured my Leavenworth assignment. A personal plea to Senator Warren Magnuson got me home for Christmas, 11 months early, after serving 14 months in the Army's "big house."

I began a slow, insidious decline from 1970 to 1982. It seemed like I was in control, but I merely surrounded myself with those on the same skid. We reinforced each other's denial, and held each other

The WSBA Lawyer Services Department offers these programs:

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

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

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

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

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

up while bailing water on the *Titanic*. My siblings and parents tried in their loving way to coax me from the other side of the street, but I could not see the fault in my thoughts, nor the hurt I was causing others. I could not see the life of opportunities and potential ebbing away. I regret my behavior, and particularly that my father died before I got clean and sober.

The miracle is that I *am* clean and sober. My attendance at AA meetings began to turn my thinking around. I spitefully agreed to follow some of the suggestions for six months, believing that I would certainly be able to show the "losers" in AA that their infantile approach and Pollyanna program was not going to work for this "road warrior." Hah!

Today I am gladly the butt of my own joke. I cannot tell specifically why or how the program worked for me, but in about three months I began to experience a new joy in my life without any artificial substances. After six months I even began to enjoy going to meetings. After I got into law school, I was lucky enough to find an all-lawyers AA meeting. The professionals in that group, with varying degrees of sobriety from months to decades, have become my friends and mentors in sobriety, in life, and in the practice of law.

When I chuckled at my classmates struggling over their Bar applications, I did not tell them that I called my AA sponsor from the lawyers' meeting, regularly agonizing over my application with such questions as: "Do I have to mention this six months in Panama? After all, it is another country, it was a military government, and I didn't even get a trial." The kind, thoughtful answer was: "Put it down. Put it all down."

I was probably the only one in my class to get a call from the general counsel of the WSBA two months before graduation to tell me that I had made it, because he knew that I would be concerned. He said that when he got to the disclosure part of my application, he thought there might be a problem and couldn't see a way to approve it. When he received my explanation with a narrative of what I had been doing since recovery, including volunteer work and single parenting, he said that he was leaning toward admittance. When he recognized the signatures of two attorneys who recommended me, that clinched it.

Sometimes I use my experience in steering some of my clients in the direction of recovery, and helping those who have "taken the bait" gives me as much satisfaction as any aspect of this wonderful profession.

I believe that if it worked for me, it can work for anybody. I have witnessed miracles of recovery in people from every walk of life, with every degree of substance abuse. I have seen street drunks come to recovery after seven runs through a treatment facility. I have seen successes, and I have seen failures.

The only solution that cannot work is the one left untried. If I can be of help to any person who wants to find out more about recovery, please contact me through the LAP program. I choose to remain anonymous, except to those who will recognize my story — my closest friends and associates, in and out of AA. Thanks for being there when I didn't know I needed you.

Changing Venues


Sharon Nelson


Maren K. Gaylor


Arthur J. Lachman


Larry J. Smith


Michael Tobiason

Honors & Awards

Sharon Nelson has become chair of the board of the Consumers Union, the publisher of *Consumer Reports*. Ms. Nelson is the director of the University of Washington Center for Law, Commerce and Technology.

Movers and Shakers

Michael G. Atkins has joined the Seattle firm Graham & Dunn as an associate on the commercial and financial litigation practice team. His experience is in commercial litigation, antitrust and trade regulations litigation, and intellectual property litigation. **Maren K. Gaylor** has been elected shareholder. She is a member of the real estate practice team, and the banking and financial institutions industry team, focusing on financial institutions, property owners and tenants. **Arthur J. Lachman** has been appointed director of professional development for the firm. He is responsible for all aspects of attorney training and development. **Larry J. Smith** and **Michael Tobiason** were elected to the firm's board of directors. Mr. Smith is a member of the real estate practice team and chairs the firm's condemnation practice team. Mr. Tobiason co-chairs the technology and e-commerce industry team, concentrating on corporate and commercial law, intellectual property licensing, and business transactions.

The Spokane firm Mary Schultz and Associates PS has added three new associates. **Donna Beatty** and **Amy Robinson** concentrate on corporate, commercial and general civil litigation. **James Yockey** focuses on dissolution.

Four lawyers in the Seattle office of Heller Ehrman White & McAuliffe LLP have been promoted to shareholder. **Svend Brandt-Erichsen** joined the firm in 1993 and practices environmental law with emphasis on regulatory and administrative affairs. **Audrey Hwang** joined the firm in 1995 and practices corporate law, focusing on mergers and acquisitions, and intellectual property. **Angela M. Niemann** is a member of the litigation department and has been with the firm since 1997. **Jonathan M. Palmer** is a litigator focusing on complex business litigation including securities, real estate, fiduciary, antitrust and environmental matters. He joined the firm in 1996.

Francesca D'Angelo has become a principal shareholder in the Spokane firm Huppin Ewing Anderson & Paul. She practices family law and civil litigation.

Sara L. Ainsworth has joined Foster Pepper & Shefelman PLLC as public service counsel. In addition to coordinating the firm's pro bono program, she dedicates her entire case load to pro bono matters. Her practice concentrates on poverty and family law with particular emphasis on domestic violence. **Peter R.**

In Memoriam

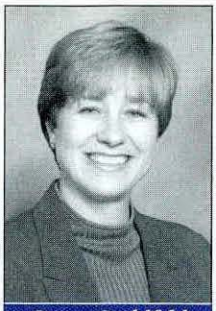
Longtime Seattle lawyer and civic activist **Robert Follette Buck** died February 19 at age 83. Mr. Buck helped promote almost every significant economic or arts development project in Seattle in the last 40 years. In 1981, he won the Municipal League's outstanding citizen award for his efforts on behalf of the city. He was active in the restoration of the 5th Avenue Theatre, and helped create a foreign-trade zone to attract business in tax- and duty-free areas. He served on the boards of Virginia Mason Medical Center, the American Bankers Association, National Municipal League, and the Pacific Northwest Trade Association.

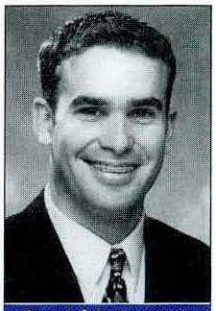
Kent lawyer **James Patrick Curran** passed away January 30 at age 82, as a result of Alzheimer's disease. In 1967, Mr. Curran was one of the elected Freeholders who drafted the current King County Charter. He served seven years on the Kent City Council in the 1950s, and served as president of the South King County Bar Association in the early 1960s. He helped found the Kent Valley Market as a Saturday sales event (now held daily) for farmers and artisans. Mr. Curran was a member of the WSBA Board of Governors in the 1970s.

Bellevue lawyer **Joseph Sylvester Kane**, a lifelong advocate for the disenfranchised, died January 20 at age 93. Early in his career, Mr. Kane worked for the American Civil Liberties Union where he represented an officer of the National Association for the Advancement of Colored People who was denied a hotel room. He later formed a law firm with John Spellman, who went on to become the governor of Washington. Mr. Kane enjoyed representing labor unions, minorities and vulnerable members of society. He was active in the Democratic party, and devoted substantial time and legal services to candidates.

Ronald Kappelman, of Spokane, passed away on February 5 at age 44 following a heart attack. Mr. Kappelman was a solo practitioner focusing on personal injury and criminal defense. He devoted much of his time to helping people addicted to drugs, and worked with self-help drug programs in the Spokane area.


Daniel Brown


Susan Stahlfeld


David J. Peterson

Thomas E. Jensen has been named general counsel and secretary of National Mortgage Lender Pinnfund USA.

David J. Peterson has joined the Seattle office of Ater Wynne LLP. He previously worked for the firm as a law clerk while attending Seattle University School of Law.

Preston Gates & Ellis LLP has added five new partners to the Seattle office. **Christopher H. Cunningham** concentrates on representation of high-tech startups, and general business, antitrust, corporate and securities law. **Eric E. Freedman** emphasizes energy and electric utility law issues in his practice. **Jeffrey C. Johnson** focuses on employment law. **Jamie D. Pedersen** has a domestic and international business practice focused on mergers and acquisitions, and venture capital financing. **Karen H. Simmonds** concentrates on labor and employment law and litigation.

Todd Reuter has been named partner in the Spokane office of Preston Gates & Ellis LLP. He concentrates on environmental counseling, administrative appeals, alternative dispute resolution, and federal and state litigation.

Robert Anderson has become director of the University of Washington Native American Law Center. A special counsel to former Interior Secretary Bruce Babbitt, Mr. Anderson leads the center's study of natural resources rights, tribal sovereignty and other Indian law issues.

Scott A. Milburn has joined Convergent Technology Capital LLC as managing director. He focuses on providing strategic financing.

Jerdee (a member of the Minnesota and New York state bars) has joined the firm as an associate. His litigation and arbitration practice focuses on securities law, antitrust, intellectual property, professional liability defense, bankruptcy-related litigation, and breach of contract actions.

Retired King County Superior Court Judge **Patricia Aitken** has joined the Seattle office of JAMS as part of the family law panel.

Daniel Brown and **Susan Stahlfeld** have become partners in the Seattle office of Miller Nash LLP. Mr. Brown focuses on business, intellectual property, international law, litigation, products liability and securities litigation. Ms. Stahlfeld concentrates on labor and employment law.


Christopher H. Cunningham

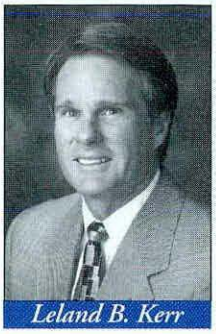

Jeffrey C. Johnson


Jamie D. Pedersen


Karen H. Simmonds

Philip P. Mann, **George E. Renzoni** and **Julie C. VanDerZanden** have become members of the Seattle firm Christensen O'Connor Johnson Kindness PLLC. Mr. Mann practices in the areas of patent, trademark, copyright and unfair competition litigation. Mr. Renzoni concentrates his practice on chemical patent prosecution. Ms. VanDerZanden focuses on patent prosecution, patent licensing and opinion work.

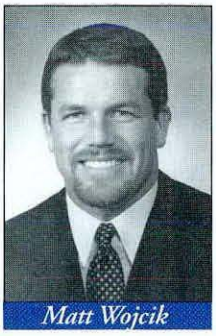
Alisa E. George has joined the Seattle office of Dorsey & Whitney LLP as of counsel, concentrating on estate planning and trusts.


Leland B. Kerr


Robert Bergquist


Daniel Ferm


Diana Moller


Matt Wojcik


Jeff Wolf

tegic advice and investment banking services to technology companies.

Leland B. Kerr has merged his Tri-Cities practice with the Spokane firm Paine, Hamblen, Coffin, Brooke & Miller LLP. Mr. Kerr concentrates on municipal representations, family law, business entities, agri-business and litigation.

Steven W. Block and **Bradley J. Rorem** have been named directors of Betts, Patterson & Mines PS in Seattle. Mr. Block concentrates on transportation and logistics law, as well as customs, domestic and international business, and civil litigation. Mr. Rorem focuses on commercial litigation, with an emphasis on construction and real estate litigation.

Robert Bergquist has joined Deal-Planner, a Seattle financial services software company, as president and CEO. Prior to joining the company, he was a shareholder at the Seattle firm Graham & Dunn.

Gregory A. Clark has joined the Seattle office of Bullivant Houser Bailey PC as an associate in the construction litigation practice group. He primarily defends construction defect claims.

Daniel Ferm, **Diana Moller**, **Matt Wojcik** and **Jeff Wolf** have joined the Seattle office of Williams, Kastner & Gibbs PLLC. As of counsel, Mr. Ferm concentrates on state and federal appeals, briefing in complex commercial and products liability litigation, and employment litigation. Ms. Moller is an associate focusing on labor and employment law, and immigration law. Mr. Wojcik is also an associate, and he concentrates on the creation, protection and enforcement of clients' intellectual property interests, as well as products liability and commercial litigation. Mr. Wolf is of counsel to the firm, and emphasizes products liability and commercial litigation.

Please send items for Changing Venues to Allison Parker at allisonp@wsba.org; fax 206-727-8319. Mail to Allison Parker, WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330.

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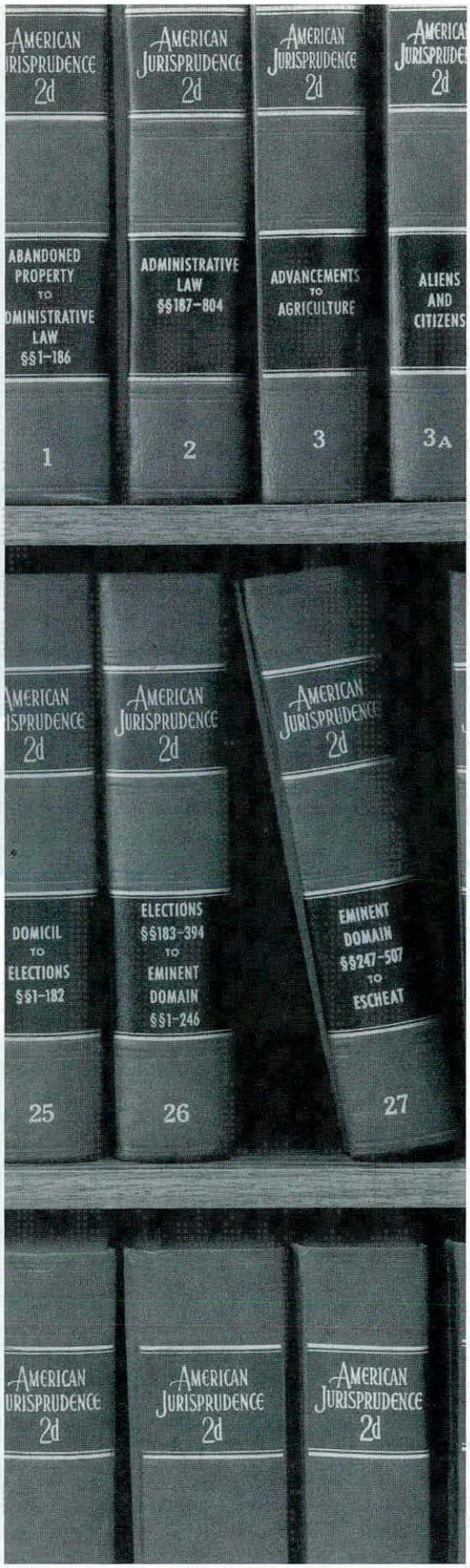


Write of Passage:

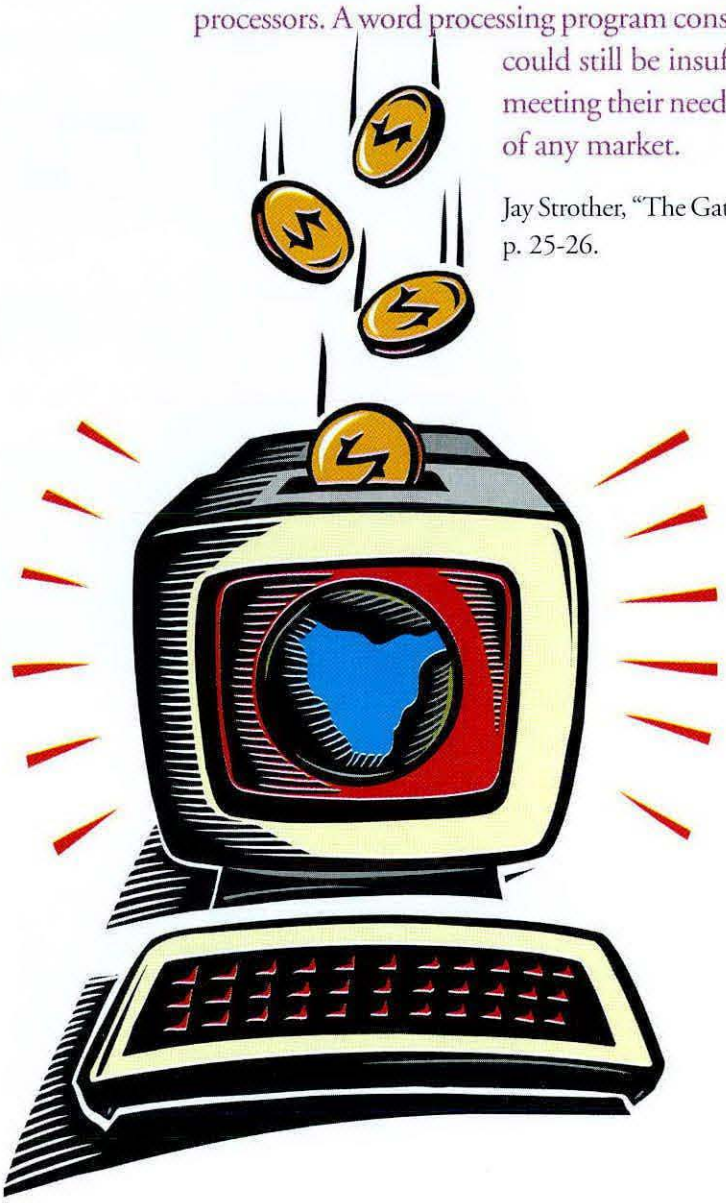
Word Processor Upgrades in Law Firms

by Thomas Workman

Introduction

A few years ago, Bill Gates had the following to say about the intersection of word processing software and the legal community:

> Word processing is one good example of how the legal market directly impacts [Microsoft's] development efforts. Because so much of legal practice is based on creating, editing, and managing documents, legal professionals set the standard for word processors. A word processing program considered excellent by users in most markets could still be insufficient for lawyers, but a word processor meeting their needs would probably satisfy the requirements of any market.
>
> Jay Strother, "The Gates' Way," *Legal Management*, March/April 1997, p. 25-26.



For once in his storied life, Bill Gates may be guilty of an understatement. Word processing software is nothing less than the lifeblood of modern legal practice. Without word processing software, lawyers could not serve their clients. As a result, few technical decisions have as much impact on law firms and legal departments as the choice of word processor.

At one time, WordPerfect reigned as the de facto standard of the legal profession. The times have changed, and the choice of word processor has become more complex. For this and other reasons, many law firms that chose WordPerfect without hesitation all those years ago still cling to the past (i.e., outdated versions) for fear of upgrading and its concomitant headaches. These law firms cannot postpone this decision forever.

Eventually, they must upgrade their word processing software or else fall even further behind their competitors.

Corel WordPerfect, Microsoft Word, or something else? Many law firms are currently trying to answer this question. This article sets forth 10 steps designed to help these law firms make a wise and informed choice, rather than one dictated by last-minute desperation.

STEP ONE

Analyze the Work Flow

How do most of the lawyers in your office work? If most of the lawyers in your firm use their computers to draft documents, then the decision-makers should weigh their input more heavily than the input received from the support staff. After all, the lawyers likely work the longest hours and generate the most revenue, so your firm should accommodate their preferences if possible. If most of the lawyers use standard dictation or pen and paper to craft their legal documents, then give the preferences of the support staff greater weight. If the firm's workflow is not so black and white, seek out the heaviest users of word processing software regardless of their rank, and give their preferences the greatest weight.

STEP TWO

Recognize that People Have Different Needs

What impact will the choice of word processor have on your firm's productivity? As the saying goes, no two people are alike. Some people don't really care all that much about which word processing program they use, whereas others view it with religious fervor. And some can move freely between word processors, whereas others struggle with such a switch. Identify those who care either because of a deep commitment or fear of change, and give their preferences considerable weight.

STEP THREE

Eliminate Conversion Headaches to the Extent Possible

Does your law firm frequently share its documents with clients and co-counsel? If your firm's clients and co-counsel like to work in actual documents rather than on PDF files or facsimiles, then ask them about their current word processing software, their future upgrade plans, and their platform. Give this data consideration when making your determination. By using the same word processor as your clients and co-counsel, you will eliminate most, if not all, conversion headaches. If your clients and co-counsel prefer the red-pen approach to editing, then feel free to place their word processing preferences low on the totem pole in your decisional analysis. However, make sure that you have the capability to accommodate your clients and co-counsel if such a need arises. After all, if your bread-and-butter client uses Lotus WordPro and hires a new general counsel who likes to exchange documents, then your firm must figure out how to do that or another firm will!

If your most important clients fall on both sides of the fence with respect to word processing software, then consider purchasing both WordPerfect and Word. Your firm can standardize on one, but having the other will certainly come in handy every now and then. At the very

least, consider buying both for your power users. WordPerfect and Word have built-in translators that do a pretty good job of creating documents in each other's format, but specialized formatting (like paragraph numbering) does not translate particularly well. As for the cost, remember that many business computers come with Microsoft Office installed. Therefore, if your firm also plans to upgrade its hardware, it would only have to purchase WordPerfect.

STEP FOUR

Add-on Software in the Equation

Which word processor add-ons does your firm use in the document creation process? Evaluate the types of documents typically created by your firm, and identify all critical add-on software used in the document-creation process. In addition, anticipate future needs. The worst possible upgrade scenario consists of one in which an essential software component is not compatible with the word processor your firm chose. These add-on products include legal dictionaries, document-assembly software, voice-recognition software, table/index generation software, document-comparison software, OCR software, countless macros and scripts, and even interoperability with other programs, such as Corel Quattro Pro and Microsoft Excel.

Modern word processing software comes with many features and capabilities that often go unused, not because of their superfluity, but because people never learn about them. With some training, your firm's employees will make use of these features and enhance their productivity.

STEP FIVE

Don't Place a Jet Engine in a Yugo

Does your law firm still use computers with a first-generation Pentium chip? If your firm's computers are more than three years old, make sure they can adequately run the word processing software you plan to purchase. For example, if your firm uses Pentium II-class computers with 32 MB of RAM, it will only have to double the RAM to accommodate the latest word processing software. But if your firm still uses computers with the 486 chip, it will have to replace the computers before upgrading. As noted above, if your firm plans to use Word, it can easily buy hardware that comes bundled with Microsoft Office.

STEP SIX

Training Makes the Upgrade Complete

Will everyone at your firm understand how to make efficient use of the new word processing software when it arrives? Probably not. Therefore, consider at least some level of professional training for your employees. There are many books that do a good job of explaining the word processing software. Of special note is Payne Consulting Group's opus, *Word 2000 for Law Firms*, and Stephen E. Harris and Erwin Zijleman's *WordPerfect Office 2000 Bible*. Your firm could also opt for multi-media training courses on CD-ROM or videotape. But no book or CD-ROM can match live training — especially when it's one-on-one. Many community colleges offer technology training courses as do technology consulting companies. Modern word processing software comes with many features and capabilities that often go unused, not because of their superfluity, but because people never learn about them. With some training, your firm's employees will make use of these features and enhance their productivity.

STEP SEVEN

Migrate with Care

Does your firm plan to migrate — either from one word processor to another or from a very old version to its current iteration? Fortunately, many other firms have already blazed this trail and mapped out the inevitable mine field that awaits every migrator. To avert disaster, consider hiring a technology consultant to assist your firm with its migration. A talented consultant will figure out how to preserve or at least recreate your firm's macros, and how to deal with your firm's archive of documents in the previous word processor's format. The time to focus on these issues is during the upgrade, not on some future Friday at 5:00 p.m. when a partner desperately needs an old document but is unable to convert it to the new format.

STEP EIGHT

Keep an Eye on the Bottom Line

Has your firm used a budget to map out the upgrade costs before taking the plunge? For the most part, upgrade costs fall into two categories: implementation and training. Regarding implementation, it's generally less expensive to upgrade to the latest version of the same program than to move to a new program. Similarly, it's also less expensive to stick with the same platform. But, law firms currently mired in a Windows 3.11 environment do not have the luxury of an inexpensive solution, since they must upgrade to a new platform. If your firm falls into this category, bite the bullet without delay, lest your system fall further and further behind the times.

Regarding training, the same axiom applies — it's generally less expensive to train people on the latest version of a word processing program they have used for years than to train them on a new program. If that axiom does not apply because of a migration from "ancient" software, your colleagues and support staff will have no choice but to learn a new program from the ground up. WordPerfect's reveal codes may provide some reassurance. On the other hand, don't discount Word's wizards and other features designed for beginners.

STEP NINE

Beware of Myopia

What will become of Word and WordPerfect in the future? With Corel taking a beating from Microsoft in the marketplace, one cannot help but wonder whether Corel will continue to develop new versions of WordPerfect. On the other hand, a breakup of Microsoft coupled with the rise of Linux as an alternative operating system may lead to a WordPer-

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Regarding training, ... it's generally less expensive to train people on the latest version of a word processing program they have used for years than to train them on a new program.

fect renaissance (WordPerfect dominates the Linux platform) — especially if Corel can negotiate bundling deals with computer makers. In addition, Corel clearly caters to the legal market more than Microsoft does (Corel ships a special suite for the legal market whereas Microsoft does not). Whatever happens, keep your eye on the big picture when making your upgrade decision.

STEP TEN

Consider Taking the Road Less Traveled

Does an alternative to the big two (Word and WordPerfect) make sense for your firm? Word and WordPerfect may grab all the headlines and dominate the word processing market, but that doesn't necessarily make them suitable for your firm. If your firm takes pride in being nonconformist, it might find Lotus' SmartSuite (http://www.lotus.com) or Sun's Star Office (http://www.sun.com) to its liking; StarOffice is free.

Alternatively, if your firm simply wants the most powerful and elegant word processor on the planet regardless of its price, check out Adobe FrameMaker (http://www.adobe.com). At $800 for a single-user license, FrameMaker is no bargain, but it does eliminate some of the shortcomings of Word and WordPerfect. Finally, if your firm does much of its work in foreign languages and is not averse to the Macintosh platform, take a look at Nisus Writer (http://www.nisus.com).

Conclusion

Next to the choice of platform (PC v. Mac), no other technology debate generates as much passion from legal professionals as the choice of word processing software. Deciding how to weigh the above steps depends on your firm's particular circumstances. By carefully reviewing the feature sets of the programs it evaluates and employing the 10 steps listed above, your firm will have the tools it needs to make an informed decision.

Thomas Workman is a former software engineer turned solo practitioner in Massachusetts. You can contact him at 508-822-7777 or thomas.e.workman@verizon.net.

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Disciplinary Notices

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

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

Suspended

Sherrie Bennett (WSBA No. 12159, admitted 1981), of Seattle, was suspended for 60 days following a stipulation approved by order of the Supreme Court dated June 13, 2000. The discipline is based upon her practicing law while her license to practice was suspended in 1995. The suspension became effective June 19, 2000. Ms. Bennett has since been reinstated.

On June 2, 1995, the Supreme Court ordered Ms. Bennett's license to practice suspended for failure to pay WSBA dues. Ms. Bennett indicated that she did not receive the notice mailed to her by the court. On July 6, 1995, Ms. Bennett received a letter from disciplinary counsel advising her of her duties on the suspension of her license.

Ms. Bennett represented a dissolution client, including signing pleadings, between June 2 and July 6, 1995. After July 6, Ms. Bennett communicated with her client and the opposing counsel's office regarding the pending dissolution. On July 21, 1995, Ms. Bennett delivered her dues payment to the WSBA office. She wrongly believed that delivering the payment would result in automatic reinstatement. She appeared in court representing her dissolution client on this same day.

During the time she was suspended, Ms. Bennett was employed as a program director and staff attorney for Student Legal Services at the University of Washington. One of her duties was to assist Rule 9 interns in providing legal assistance to clients. During Ms. Bennett's suspension, at least two interns worked in the office and served clients.

Ms. Bennett did not notify her dissolution client or the University of Washington of her suspension. Ms. Bennett's license to practice law was reinstated on August 4, 2000. The stipulated sanction in this case included several mitigating factors.

By continuing to practice law after receiving notice that her license to practice had been suspended, Ms. Bennett's conduct violated RPC 5.5.

Joy McLean represented the Bar Association. Kurt Bulmer represented Ms. Bennett.

Suspended

Grant Kinnear (WSBA No. 8935, admitted 1979), of Seattle, was suspended for 60 days following a stipulation approved by order of the Supreme Court dated June 13, 2000. The discipline is based upon his practicing law while his license was suspended, failing to diligently represent a client, and misrepresentation. The suspension became effective June 23, 2000. Mr. Kinnear has since been reinstated.

Matter 1:

On March 10, 1998, the Supreme Court suspended Mr. Kinnear's license to practice law for failure to comply with continuing legal education reporting requirements. Mr. Kinnear received notice of this suspension on March 11, 1998. After receiving this notice, Mr. Kinnear continued to practice law in two matters.

In April 1998, he represented a client in a mediation. He did not inform the mediator that his license to practice had been suspended. The opposing counsel asked Mr. Kinnear before the mediation if he was an active member of the WSBA. Mr. Kinnear untruthfully said that he was an active member. Following the mediation, Mr. Kinnear withdrew from the representation and arranged for another lawyer to represent the client.

In the second case, Mr. Kinnear attended the closing of a refinance of a commercial building on behalf of a client who knew that Mr. Kinnear's license had been suspended.

On July 15, 1998, a WSBA employee called Mr. Kinnear's law office. The person answering the phone said, "law office," and indicated that Mr. Kinnear was practicing law in that office. Mr. Kinnear was a tenant in an office-sharing arrangement with several other lawyers. The receptionist did not know about his license suspension. Although Mr. Kinnear did not remove his name from the building directory during his suspension, he did not take new clients or bill existing clients for work done during this time. Mr. Kinnear's license to practice law was reinstated on February 24,1999.

Matter 2:

From fall 1993 until fall 1997, Mr. Kinnear represented the West Shore Tenants Association (WSTA). After a lengthy administrative appeals process and several attempts at mediation, WSTA asked Mr. Kinnear to file a federal court lawsuit on behalf of some tenants. In December 1997, after some delay, Mr. Kinnear told several WSTA members that the complaint had been filed when in fact it had not. Although there was no statute of limitations on this lawsuit, the issues involved were financially important to WSTA members and the resolution was delayed. The sanction analysis in this matter involved mitigating factors.

By continuing to practice law after receiving notice that his license to practice had been suspended, Mr. Kinnear's conduct violated RPCs 5.5(a), 1.15(a)(1) and 8.2. By falsely telling WSTA members that the complaint had been filed, Mr. Kinnear's conduct violated RPCs 1.3, 1.4(a) and 8.4(c).

Anne I. Seidel represented the Bar Association. Wesley N. Edmunds represented Mr. Kinnear.

Suspended

Marc L. Meigs (WSBA No. 19992, admitted 1990), of Portland, Oregon, was suspended for 60 days following a stipulation to discipline in Oregon. The Washington Supreme Court approved the RLD 12.6 reciprocal discipline by order dated June 30, 2000. The discipline is based upon his delay in paying funds to an insurance company, and making an unwarranted argument regarding his client's entitlement to the funds.

Mr. Meigs represented a client injured in an automobile accident. He negotiated a settlement with the other driver's insurance company. The settlement included a $9,600.23 payment to the client's insurance company to reimburse PIP (personal injury protection) payments already

made to her. The PIP reimbursement check stated on its face, "full and final settlement of PIP lien." An accompanying letter also indicated that the check would satisfy the PIP lien. The check was made out to the client and her insurance company.

On June 19, 1996, Mr. Meigs deposited the check into his trust account without obtaining the insurance company's endorsement or notifying it of the check. Mr. Meigs advised the client's insurance company that he would settle his client's unfiled claim against the driver of the car in which she had been a passenger if they would waive the PIP reimbursement. The insurance company rejected the settlement offer and demanded full PIP reimbursement, which Mr. Meigs refused to pay. The insurance company made two additional demands for the PIP reimbursement and the accrued interest. Mr. Meigs did not pay the PIP reimbursement until July 10, 1997. Neither the client nor Mr. Meigs had any claim to the PIP reimbursement funds.

By depositing the check and retaining the proceeds without any claim of right, Mr. Meigs' conduct violated Oregon DR 1-102 (A)(3), prohibiting misrepresentation; and Oregon DR 7-102(A)(2), prohibiting knowingly advancing an unwarranted claim.

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

Reprimanded

H. Gary Wallis (WSBA No. 6311, admitted 1975), of Tacoma, has received a reprimand pursuant to a stipulation approved by the Disciplinary Board on May 15, 2000. The discipline is based upon his failure to make reasonable efforts to ensure his firm correctly administered its trust account.

Mr. Wallis worked for attorney Marvin Olsen from the time he was admitted to practice. In approximately 1977, Mr. Wallis and Mr. Olsen formed a partnership in which Mr. Wallis remained until 1998. During that time, Mr. Olsen was the managing partner, and had control and responsibility for the client trust account. In 1993, the Bar Association audit manager determined, after a preliminary audit, that the firm's trust account contained $14,000-$20,000 less than the known client balances. Although Mr. Wallis did not believe that he had caused the shortage, he deposited $8,000 to cure it. Mr. Wallis believed Mr. Olsen would cure the remaining shortage, but he did not.

In January 1994, after a full audit, Mr. Olsen and Mr. Wallis were told that they needed to deposit $6,989.96 to cure a remaining trust account shortage. The auditor also found that the firm failed to keep complete client records, failed to keep all client funds in the trust account, used client trust funds for business with other clients, and that Mr. Olsen used client trust funds for his own business transactions. No funds were deposited into the trust account to cure the shortage.

Although Mr. Wallis believed Mr. Olsen would deposit the required funds, Mr. Wallis did not verify that the firm's trust account was in compliance with the Rules for Professional Conduct. In December 1997, the auditor reported findings from a subsequent audit. The auditor found that the four problems listed above were continuing.

By failing to take reasonable steps to ensure the firm properly managed the client trust account and failing to take steps to mitigate Mr. Olsen's misconduct, Mr. Wallis's conduct violated RPCs 1.5, 1.14, 5.1 and 5.3.

Joy McLean represented the Bar Association. Mr. Wallis represented himself.

Censured

John G. Ziegler (WSBA No. 5875, admitted 1974), of Waitsburg, has been censured pursuant to a stipulation approved by the Disciplinary Board on May 15, 2000. This discipline is based on his failing to diligently represent and adequately inform a client about the status of his case. Mr. Ziegler represented the father in a dissolution action and post-dissolution modifications.

On May 3, 1996, the mother filed a petition to modify the parenting plan. The hearing was scheduled for May 13, 1996. Mr. Ziegler requested that opposing counsel continue the hearing twice because he was having difficulty obtaining financial information from his client. The hearing was continued to May 28, and then to July 8, 1996. Mr. Ziegler did not appear for the July 8 hearing. On the same day, opposing counsel served Mr. Ziegler with a motion for an order of default. Mr. Ziegler did not respond to the motion or appear at the hearing, so the court entered an order of default.

The court increased the father's child-support payment based on an imputed income, and entered a judgment against him for back child support. Mr. Ziegler did not file a motion to vacate the default or to reconsider the orders, nor did he send copies of any of the motions or orders to the father. Mr. Ziegler states, however, that the father knew about the hearings and knew that Mr. Ziegler was waiting to receive financial information.

In May 1998, the father retained new counsel. In July 1998, the court set aside the default child-support orders and parenting plan. The stipulated sanction in this case included several mitigating factors.

Mr. Ziegler's conduct violated RPC 1.1, requiring lawyers to provide competent representation; and RPC 1.3, requiring lawyers to diligently represent their clients.

Jean McElroy represented the Bar Association. Mr. Ziegler represented himself.

Admonished

Jerry Schumm (WSBA No. 0623, admitted 1964), of Bellingham, has been admonished following a June 2000 order of a review committee of the Disciplinary Board. The disciplinary action is based upon his allowing his office to disclose clients' secrets or confidences.

Mr. Schumm represented a husband, wife, and their children in a personal injury claim. While the case was pending, the wife filed for dissolution, and also submitted a claim to the couple's PIP insurance carrier. The husband and Mr. Schumm's legal assistant believed the claim was false. The husband asked the legal assistant to sign a declaration regarding the false claim, which the legal assistant did. Mr. Schumm reviewed the declaration and directed the legal assistant to send it to the husband's dissolution lawyer.

Mr. Schumm's conduct violated RPC 1.6, prohibiting lawyers from disclosing clients' secrets or confidences; and RPC 5.3(a), requiring partners to make reasonable efforts to assure that nonlawyer assistants they supervise comply with the

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 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

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Rules for Professional Conduct.

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

Admonished

Robert W. Huffhines (WSBA No. 11279, admitted 1980), of Kelso, has been admonished following an order of a review committee of the Disciplinary Board. The disciplinary action is based upon his failure to diligently represent a client.

In 1996, Mr. Huffhines represented a client in a lawsuit to recover a commission due on a purchase and sale agreement. In mandatory arbitration, the arbitrator entered an award against the client. The client told Mr. Huffhines that she wanted him to file a notice for trial de novo, which Mr. Huffhines did not do, because he believed that the client would not have achieved a different result at trial.

Mr. Huffhines' conduct violated RPC 1.3, requiring lawyers to diligently represent their clients.

C. Elizabeth Williams represented the Bar Association. Mr. Huffhines represented himself.

Admonished

Daniel P. Kinnicutt, (WSBA No. 24217, admitted 1994), of Del Rio, Texas, has been admonished following a June 2000 order of a review committee of the Disciplinary Board. The disciplinary action is based upon his making a discriminatory argument in court.

In April 1998, Mr. Kinnicutt was the deputy prosecuting attorney arguing a criminal case in Pierce County Superior Court. During his closing argument he stated: "[Y]ou know in the world's eye she [the victim] is not the most attractive lady. She is heavyset. In terms of the way she styles herself, you would probably walk by her in public and look, and probably not turn around, and maybe make a snide remark simply because of her status in society. And maybe even because she is dating an individual of the opposite race in color."

The Court of Appeals found that this argument constituted an appeal to prejudice and egregious misconduct. The defendant was acquitted of the charges in the criminal case. Mr. Kinnicutt believed that his statements were relevant to point out that the defendant could have unduly influenced the victim based on her vulnerability.

Mr. Kinnicutt's conduct violated RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice; and RPC 8.4(g), prohibiting committing a discriminatory act.

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

Admonished

Randy W. Loun (WSBA No. 14669, admitted 1984), of Bremerton, has been admonished following a June 2000 order of a review committee of the Disciplinary Board. The disciplinary action is based upon his failure to diligently represent a client.

Mr. Loun represented a client who was injured in 1995 when a truck struck the espresso stand in which she was working. He advised his client not to settle the case, and in 1998, decided to file a lawsuit because the statute of limitations was about to expire. Mr. Loun did not locate or serve the truck driver, and therefore the lawsuit was dismissed. The client received no recovery for her injuries.

Mr. Loun's conduct violated RPC 1.3, requiring lawyers to diligently represent their clients.

Nancy Miller represented the Bar Association. Mr. Loun represented himself.

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.

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.

WYLD Trustee Elections

Filing deadline: July 13, 2001

Young lawyers interested in serving on the WYLD Board of Trustees are invited to submit a statement of eligibility and qualifications to represent the King district (King County), Pierce district (Pierce County), and Southwest district (Clark, Cowlitz, Pacific, Skamania and Wahkiakum counties). To be eligible, a candidate must reside or have a principal place of business in the district he or she wishes to represent, and must be a member of the WYLD for the entire term of the position. Elected trustees will serve three-year terms commencing October 1, 2001. An active members of the Washington State Bar Association is also a member of the Washington Young Lawyers Division until December 31 of the year in which he or she turns 36, or until December 31 of the fifth year in which he or she has been admitted to practice, whichever is later.

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.

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.

WYLD Seeks Nominations for President-elect

Filing deadline: July 13, 2001

Young lawyers interested in serving as president-elect of the WYLD are invited to submit a statement of eligibility and qualifications for this position. The president-elect automatically succeeds to the position of the president of the WYLD upon completion of a one-year term commencing October 1, 2001. To be eligible for the position, a candidate must have a principal place of business in Washington, and must be a member of the WYLD at the time he or she assumes the office of president. Additionally, the Bylaws require that the president and president-elect have principal places of business in different counties. Therefore, this year's candidates may not have a principal place of business in King County. An active member of the Washington State Bar Association is also a member of the Washington Young Lawyers Division until December 31 of the year in which he or she turns 36, or until December 31 of the fifth year in which he or she has been admitted to practice, whichever is later.

Direct statements of eligibility and qualifications to:

Sherri L. Jefferson, WYLD President-elect
c/o Stoel Rives
600 University St., Ste. 3600
Seattle, WA 98101
Phone: 206-386-7661
E-mail: sljefferson@stoel.com

Christine Gregoire to Receive Award

The University of Washington College of Arts and Sciences will present the Distinguished Alumna Award to Attorney General Christine Gregoire on May 11, 2001. The Celebration of Distinction dinner will be held in the student union building at the University of Washington Seattle campus. Individual tickets may be purchased for $150 per person, and tables of 10 are available from $1,500 to $25,000. For more information, contact Patricia Di Palms at 206-616-6226 or dipalma@u.washington.edu.

On behalf of LAW Fund, Michael Longyear accepts a check for $10,000. Pictured are Robert Miera, Michael Longyear, Carol Hunter, Jeanne Clavere, Barbara West and Eileen Peterson.

Elder Law Section Donates to LAW Fund

The WSBA Elder Law Section made a $10,000 donation to Legal Aid for Washington (LAW) Fund on February 12. This is the second year that the section's 545 members have donated to LAW Fund. The Elder Law Section is committed to improving access to services needed by the elderly, such as low-cost legal services, insurance and health care. LAW Fund was chosen as the donation recipient because it assists the elderly in accessing such services.

WestCoast Hotels Contribute to LAW Fund

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

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.

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.

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.

World Peace Through Law Section Awards Ceremony

The WSBA World Peace Through Law Section will sponsor an awards luncheon to honor an individual who has made significant contributions toward the goal of achieving international peace. The Ralph J. Bunche Award, named for the winner of the 1950 Nobel Peace Prize, will be presented. The award ceremony will be held May 18 from 10:00 a.m. to 2:00 p.m. at Plymouth Congregational Church in Seattle. The cost is $15. For information or to reserve space, contact Paul Schlossman at 253-473-0537 or paaaaas@yahoo.com.

USURY RATE

The average coupon equivalent yield from the first auction of 26-week treasury bills in March 2001 is 4.70% percent. The maximum allowable interest rate for April is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988-June 1999 appear on page 53 of the June 1999 Bar News. Information from January 1987 to date appears at www.wsba.org/barnews/usuryrate.html.

Forms Revised to Comply with GR 14

The following sets of forms have been reformatted to comply with General Rule 14 margin requirements that are mandatory effective April 1, 2001: domestic relations; domestic violence; anti-harassment; misdemeanor judgement and sentencing; juvenile court.

In addition to margin changes, domestic relations, domestic violence, and juvenile court forms contain some substantive changes. The forms, summaries and instructions are available to view or download at no charge on the court's Web site at http://www.courts.wa.gov/forms. For more information, call the Office of the Administrator for the Courts forms line at 360-705-5328.

WSBA Annual Awards Dinner and Business Meeting

The WSBA annual awards dinner and business meeting will be held Thursday, September 13, 2001. Details about the time and location will appear in the next issue of *Bar News*.

ABA Creates Council of Appellate Lawyers

The Council of Appellate Lawyers has been created as an entity of the American Bar Association to assist in the professional development of lawyers practicing appellate law. The council will conduct a program in New York in conjunction with the annual meeting of the Council of Chief Judges of Courts of Appeal in October. Membership in the Council of Appellate Lawyers is open to any lawyer who practices, teaches or has an interest in appellate law and procedure. For more information, contact Melissa Sehstedt at 800-238-2667, ext. 5704, or sehstedm@staff.abanet.org.

WYLD Midyear Conference, April 27-28

The 2001 WYLD Midyear Meeting will be held at the Quinault Beach Resort and Casino in Ocean Shores, April 27-28. The conference will feature an opening ceremony luncheon with a keynote speaker, the President's Reception, WYLD Awards Luncheon, and a closing ceremony and reception for WSBA dignitaries. There will be a CLE program designed to promote professionalism and practice skills, as well as a technology CLE with hands-on training and laptop computers available. Because the WYLD midyear was chosen as the site of the ABA Western States Regional Conference, the midyear is expected to attract ABA members, including ABA officers and dignitaries from several western states. For more information, contact Lisa KauzLoric at 206-733-5944 or lisak@wsba.org, or visit www.wsba.org/wyld.

Spokane and Thurston County Lawyers Fill the Gap

The Access to Justice Board and Washington Young Lawyers Division have collaborated to kick off the Greater Access and Assistance Project (GAAP) pilot program in Spokane and Thurston counties. GAAP is a county-by-county panel of attorneys who will represent eligible, low-income clients on a discounted fee basis. A growing segment of the population, often fully employed, are increasingly unable to afford legal representation, but also aren't eligible for free legal services potentially available for those with incomes below the poverty level. The GAAP program is intended to fill this "gap."

Lawyers in Spokane and Thurston counties are invited to participate on the GAAP panel. Please contact Joe Panesko in Thurston County at 360-586-0643, or Mark Kim in Spokane County at 509-484-1001. For more information about starting a GAAP panel in your county, please contact Brian M. Born at 253-383-7058.

HANSON BAKER LUDLOW DRUMHELLER P.S.

is pleased to announce that

Joshua Rosenstein
has become a shareholder of the firm
as of January 1, 2001.

Josh's emphasis in business and real estate transactions and condominium development complements the firm's existing general business practice, including transactions and litigation involving business entities, real estate, construction, banking, estate planning and probate.

HANSON BAKER LUDLOW DRUMHELLER P.S.
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We are pleased to announce that retired
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Congratulations to

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253-627-3656

Calendar

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

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

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

BUSINESS

Agricultural Law
April 20 – Yakima. 6.75 CLE credits pending. By WSBA-CLE and Business Law Section; 800-945-WSBA or 206-443-WSBA.

Business Law Section Midyear
May 18-20 – Kennewick. 12 CLE credits estimated. By WSBA-CLE and Business Law Section; 800-945-WSBA or 206-443-WSBA.

COMPUTER SKILLS

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.

Internet Tool Kit: Tools, Tips and Technology to Leverage Your Practice
May 17 – Seattle; May 30 – Olympia. 6 CLE credits estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CRIMINAL LAW

Forensic Criminal Evidence
April 19 – Seattle. 6.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ELDER LAW

Planning for Your Clients' Social Security Benefits
April 6 – Portland. 5.5 CLE credits, including 1 ethics pending. By Oregon State Bar; 503-684-7413.

National Academy of Elder Law Attorneys' 2001 Symposium
April 18-21 – Vancouver, B.C. CLE credits TBD. By National Academy of Elder Law Attorneys; 520-881-4005, ext. 114.

ENVIRONMENTAL LAW

Environmental & Land Use Law Section Midyear
May 31-June 2 – Skamania. 11.75 CLE credits, including 1 ethics estimated. By WSBA-CLE and Environmental & Land Use Law Section; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

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 TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

GENERAL PRACTICE

Americans with Disabilities Act Briefing
April 5-6 – San Francisco, CA; April 12-13 – Chicago, IL; April 19-20 – Washington, D.C. CLE credits TBD. By National Employment Law Institute; 303-861-5600.

Subrogation: Disaster Avoidance Strategies and Reducing the Payback
April 11 – SeaTac. 6 CLE credits, including .5 ethics. By WSTLA; 206-464-1011.

Drafting LLC and LLP Operating Agreements
April 12 – Portland. CLE credits TBD. By Oregon State Bar; 503-684-7413.

Perfecting the Social Security Disability Claim
May 4 – Portland. 5.5 CLE credits, including 1 ethics pending. By Oregon State Bar; 503-684-7413.

Immigrants in the Legal System
May 16 – Seattle; May 23 – Yakima. 7.25 CLE credits, including .25 ethics estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

National Firearms Law Seminar
May 18 – Kansas City, MO. CLE credits TBD. By NRA Foundation; 800-672-4521.

INDIAN LAW

Indian Law
May 11 – Seattle. 7 CLE credits estimated. By WSBA-CLE and Indian Law Section; 800-945-WSBA or 206-443-WSBA.

LAW OFFICE MANAGEMENT

Time Management for Lawyers *with Frank Sanitate*
April 27 – Portland. 6.5 CLE credits pending. By Oregon State Bar; 503-684-7413.

Starting Your Own Law Practice
April 28 – Seattle. 7 CLE credits pending. By UW-CLE; 206-543-0059.

Human Resources Institute: Practical Guidance for HR Professionals and their Counsel for Dealing with Difficult Issues that Arise Every Day in the Workplace
May 3-4 – Chicago, IL; May 10-11 – San Francisco, CA; May 17-18 – Washington, D.C. CLE credits TBD. By National Employment Law Institute; 303-861-5600.

LITIGATION

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.

Ultimate Cross-examination: How to Dominate a Courtroom – Moderated Video Replay
April 18 – Chehalis; April 19 – Vancouver; April 26 – Mt. Vernon; April 27 – Wenatchee; May 10 – Hoquiam. 6.75 CLE credits. By WSBA-CLE and county bar associations; 800-945-WSBA or 206-443-WSBA.

The Jury: The Latest Techniques for Selecting and Persuading Juries
May 16 – Seattle. 8.5 CLE credits. By WSTLA; 206-464-1011.

REAL ESTATE

Real Estate & Land Use Update
April 4 – Seattle. CLE credits TBD. By Foster Pepper & Shefelman; 206-447-8985.

Hot Topics in Commercial Real Estate
April 19 – Portland. 5.75 CLE credits, including .5 ethics pending. By Oregon State Bar; 503-684-7413.

Illustration by Jay Flynn

DIVORCE REPRESENTATION FOR ATTORNEYS

FAMILY LAW

Rodney G. Pierce
is available for association and consultation in all phases of family law matters.
Mr. Pierce's practice includes representation of attorneys, accountants, doctors, engineers, athletes and other professional individuals in family law matters.

PIERCE LAW OFFICES
900 Fourth Avenue, Suite 3000
Seattle, WA 98164
206-587-3757
fax: 206-587-0780
pager 206-361-7777

APPEALS

James E. Lobsenz
handles both civil and criminal appeals in state and federal courts. He has argued over 25 cases in the Washington Supreme Court, including *Washington State Physicians v. Fisons*, 122 Wn.2d 299, 858 P.2d 1054 (1993).

CARNEY, BADLEY, SMITH & SPELLMAN, PS
701 Fifth Avenue, Suite 2200
Seattle, WA 98104
206-622-8020
lobsenz@carneylaw.com

LEGAL MALPRACTICE and DISCIPLINARY ISSUES

Joseph J. Ganz
is available for consultation, referral and association in cases of legal malpractice (both plaintiff and defense) as well as defense of lawyer disciplinary and/or grievance issues.

2101 Fourth Avenue, Suite 2100
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Richard Gemson,
former adjunct professor of law at UPS and former in-house counsel for North Pacific Insurance Co., is available for consultation, association or referral in matters involving all types of insurance coverage.

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

FIBROMYALGIA

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

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BRITISH COLUMBIA LAW

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fax: 206-623-6751
e-mail: DadsLawyer@aol.com

APPEALS

Margaret K. Dore

Former law clerk to the Washington State Supreme Court and the Washington State Court of Appeals

Passed CPA exam in 1982

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

ETHICS & LAWYER DISCIPLINE

Leland G. Ripley,
former Chief Disciplinary Counsel (1987-94), is available for consulation or representation regarding all aspects of professional responsibility or discipline defense.

206-781-8737

Classifieds

Reply to WSBA *Bar News* Box Numbers at:

WSBA *Bar News* Box ____
Bar News Classifieds
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330

Positions available are also posted by telephone at:

206-727-8261
and online at www.wsba.org

FOR SALE

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.

Toshiba fax machine: Purchased 10/28/99. Model TF 671 with 2 MB memory upgrade, $1,500. Revised Code Washington Annotated, Volume 1-91, and parallel reference tables, $1,000. Please contact Steele & Sales at 206-682-2202.

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.

Sublease large view office space with small law firm, top floor of Securities Bldg., 1904 3rd Ave., Seattle. Space includes amenities. Contact Deb at 206-623-0900.

For sublease: Partner-sized office, reception services provided; Class-A building, downtown Seattle; high floor; stunning western views. Some internal space available for support staff. Available immediately. Contact Al Bentley or Emily Coward at 206-343-9391; emilycoward@hotmail.com.

For sale: Full, brand new set of Revised Code of Washington (RCW) books and 2001 pocket parts. Sale price: $900 or best offer (compare to publisher price of $1,200). Please contact Knoll at 206-860-2976.

SEEKING SPACE

Space wanted (sublease): Two or three lawyers plus paralegal need downtown Seattle office space. Call Gloria at 206-224-3460.

SPACE AVAILABLE

Downtown Bellevue: Sixth floor view of Cascades with legal support station to accommodate attorney/paralegal team. All necessary amenities. Available March 1. Call Darcy at 425-455-3186; e-mail dbirkeland@qwest.net.

Office space, Bellevue: Beautiful two-story office building in desirable office park "in the pines" next to park; close to downtown. Free parking. Various space configurations available; 6,000 sq. ft., 3,000 sq. ft., or groups of one to five offices with conference rooms, kitchen, copier, fax, reception. Potential for client referrals. Call Michael DuBeau, 425-455-9787 or David Richardson, 425-646-9801.

Leschi: Excellent location, new building, interior office in attorney suite, elegant reception and conference room, library. $700/mo. Call 206-578-0000.

University (Laurelhurst): Large executive office plus clerical space available. Share amenities including receptionist, library and conference rooms with attorneys, CPA and consultants. Great location. Joint marketing and referral. For information, call 206-523-6470.

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

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

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

Belltown, Seattle: Law firm has six offices available to share with other professionals. Great alternative to downtown. Flexible terms. Call 206-689-8594.

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.

Downtown Bellevue office sharing and potential association: Six-attorney business, tax, and estate-planning firm seeks attorney with existing client base in compatible practice for office sharing and potential long-term affiliation. Suite includes conference room, secretarial space and other amenities. Send résumé to: Nikki Thomas, 777 108th Ave. NE, Ste. 2250, Bellevue, WA 98004.

West Olympia: Office available in new, centrally located building shared with friendly four-attorney firm. Copy, fax, voice-mail and receptionist services. Access to conference rooms and kitchen. $750 rent includes utilities. Call Lloydene or Angie at 360-754-8028.

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.

POSITION 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 attorneys: Stafford Frey Cooper is seeking two litigation associates with a minimum of three years' experience. Stafford Frey Cooper is a 25-attorney Seattle law firm that focuses on commercial, tort and employment litigation. In addition to a competitive salary and the standard benefits, Stafford Frey Cooper also pays medical and dental insurance premiums for spouses, domestic partners and dependents;

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., May 1 for the June 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.

health club dues; and 401(k) matching. Successful applicants will be able to work independently; to develop relationships with existing clients and new clients; and to contribute to the firm and community by assisting in recruiting, marketing and pro bono projects. Successful applicants must also have good writing, oral advocacy and communication skills, and a sense of humor. Please send résumé to: Mike Bolasina, 1301 5th Ave., Ste. 2500, Seattle, WA 98101 or Mbolasina@staffordfrey.com.

Thorsrud Cane & Paulich, an eight-attorney downtown Seattle law firm seeks litigation associate with a minimum of three years' experience. Insurance defense and coverage experience strongly preferred. Applicants must have strong writing and analytical skills. Send résumé to: Managing Shareholder, Thorsrud Cane & Paulich, 1325 4th Ave., Ste. 1300, Seattle, WA 98101-2509.

Coordinator of professional development: The coordinator of professional development is a management position reporting to the firm's co-managing partners. The coordinator oversees the design and implementation of the firm's department leadership to design and implement systems (including work assignment and tracking systems; formal training programs; and review, evaluation and compensation systems) which impact associate training and development. In addition, the coordinator of professional development acts as an individual advisor to associates with regard to issues related to their professional development. The coordinator of professional development also oversees all aspects of the firm's summer clerk program. The coordinator of professional development is a standing member of firm committees that affect associates and, in those roles, coordinates the committees' works on various aspects of the associate training and development program, and participates in firm policy decisions to the extent that they affect associate training and development. The coordinator of professional development also oversees the firm's mentor and alumni-relations programs. The coordinator of professional development must have a JD degree and preferably will have large law firm experience, as well as experience practicing in other settings. Please send cover letter and résumé to: Mr. Len Roden, Recruiting Coordinator, Lane Powell Spears Lubersky LLP, 1420 5th Ave., Ste. 4100, Seattle, WA 98101-2338.

Established Eastside firm, AV-rated, seeks associate with at least three years' experience in commercial litigation and real estate transactions. Salary DOE. Send résumé to: PO Box 817, Kirkland, WA 98083; fax 425-827-8725.

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.

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ERISA Attorney: Part-time or full-time. Employee Benefits Institute of America LLC, Shoreline, WA (http://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)-plan 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.

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.

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Litigation attorney: Karr Tuttle Campbell seeks an experienced litigation associate. 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.

The City of Puyallup seeks a city attorney. Reporting to the city manager, the city attorney will be responsible for advising council members and staff regarding policy issues and proposed city actions, as well as developing strong linkages with other departments. Candidates must have a JD degree and at least five years' experience in the field of municipal law, as well as membership in the WSBA and a license to practice law in Washington. The salary range is $69,648-90,540. Please send cover letter and résumé by March 30, 2001 to: Waldron & Company, 101 Stewart, Ste. 1200, Seattle WA, 98101; 206-441-4144; fax 206-441-5213; info@waldronhr.com.

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

Contract attorney: Telecommunications real estate experience and/or retail leasing experience preferred. Please respond with cover letter, résumé, writing sample and transcript to: Dee Hayward, Hiring Coordinator, Davis Wright Tremaine LLP, 10500 NE 8th St., Ste. 1800, Bellevue, WA 98004-4300.

Keller Rohrback LLP is seeking a staff attorney to be part of our insurance practice group, working with three partners in the areas of insurance coverage and bad faith. Candidates should have a minimum of two years' litigation experience, a solid understanding of, and drafting skills required for, motions practice and discovery. Deposition and court experience a plus, but not required. Interested applicants should send a cover letter, résumé and writing sample to: Linda O'Brien, Director of Administration, 1201 3rd Ave., Ste. 3200, Seattle, WA 98101; HR@kellerrohrback.com. See our Web site at http://www.kellerrohrback.com.

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Associate attorneys: Established in 1935 as the Eastside's first law firm, our high-quality 10-attorney firm seeks two associates to help our team service our fast-growing real estate, estate planning, business, health care and education clients. If you are an energetic professional who desires to be part of an exciting Kirkland and Eastside commercial practice, and enjoy a balanced professional career and personal lifestyle, we would like to meet with you. We have an immediate need for a litigator with one year's experience and an accomplished estate planner with at least four years' experience. Please mail, fax or e-mail cover letter and résumé to: Kurt R. Lundquist; Firm Administrator; Livengood, Carter, Tjossem, Fitzgerald & Alskog LLP; 620 Kirkland Way, Ste. 200, P.O. Box 908, Kirkland, WA 98083; e-mail lundquist@lclaw.com; fax 425-828-0908.

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Associate attorneys: LeGros Buchanan & Paul seeks two associates to join its downtown Seattle office. Strong research and writing skills required. Excellent salary and benefits package for your expertise. Send résumé and writing samples to: Louis Shields, Recruiting Director, LeGros Buchanan & Paul, 701 5th Ave., Ste. 2500, Seattle, WA 98104-7051; e-mail lshields @legros.com. Visit our Web site at http://www.legros.com.

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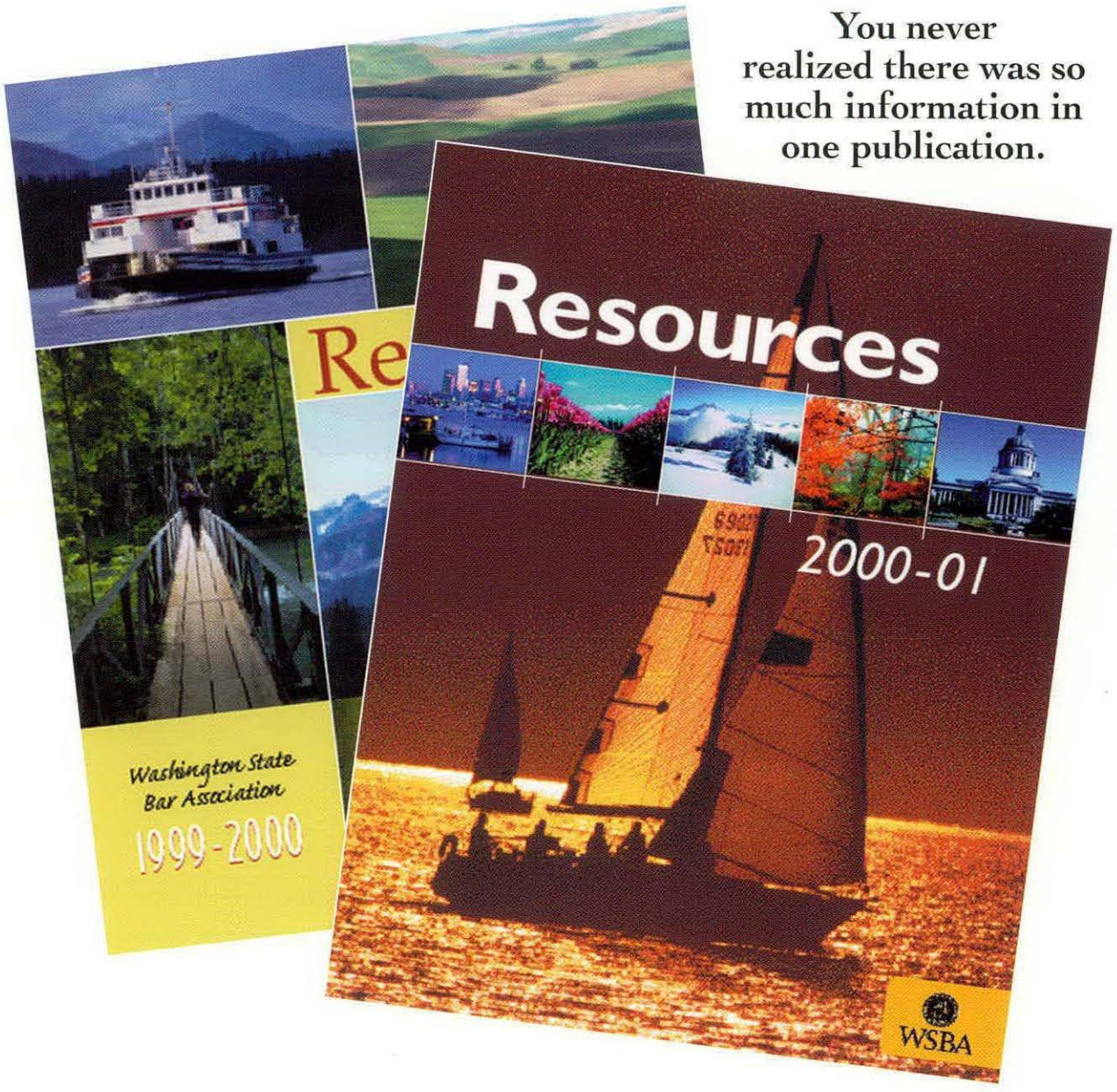

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