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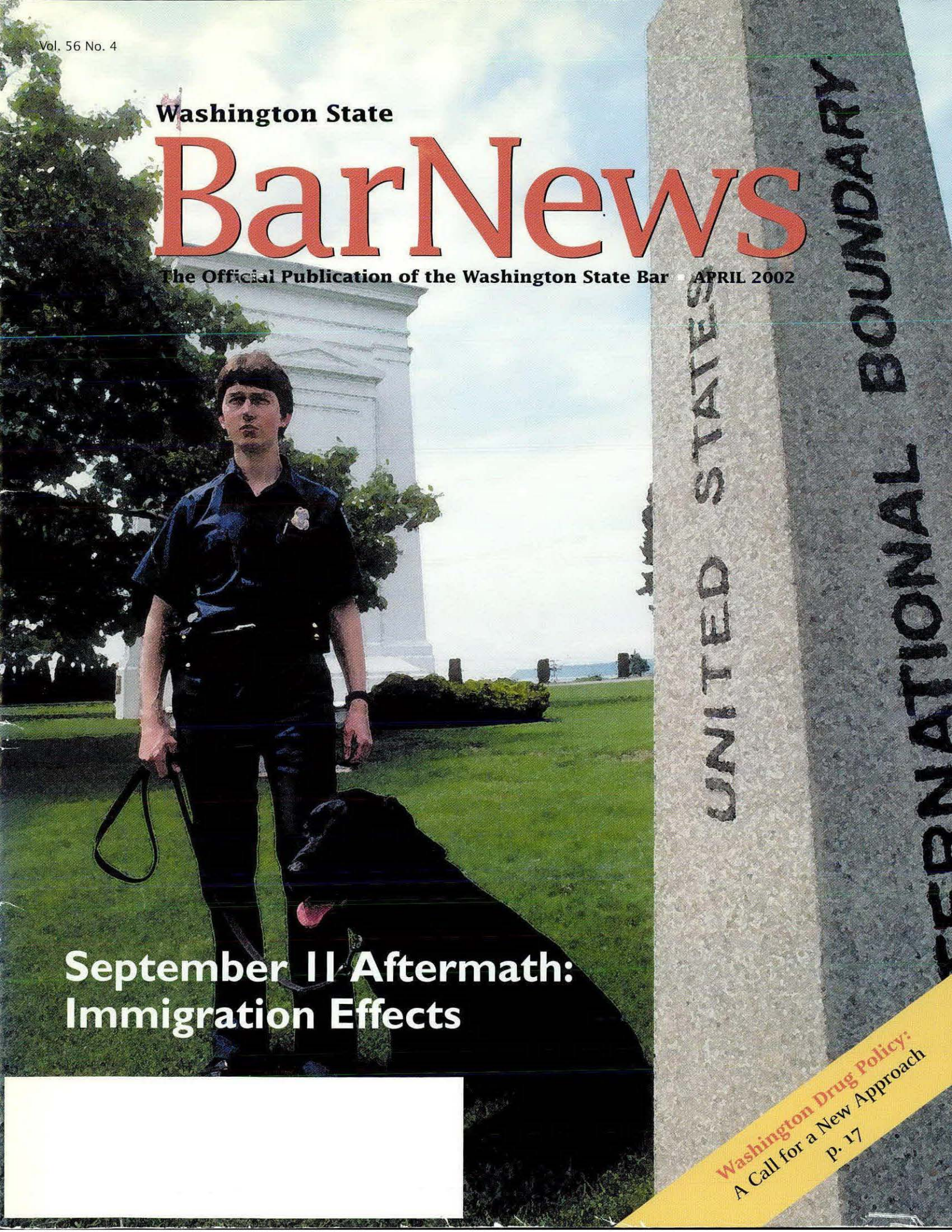

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April 2002

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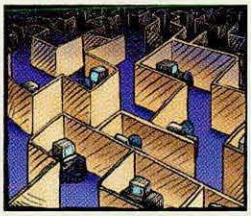

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Cover photograph: David Falconer

Working together to champion justice

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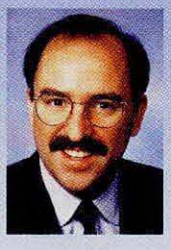

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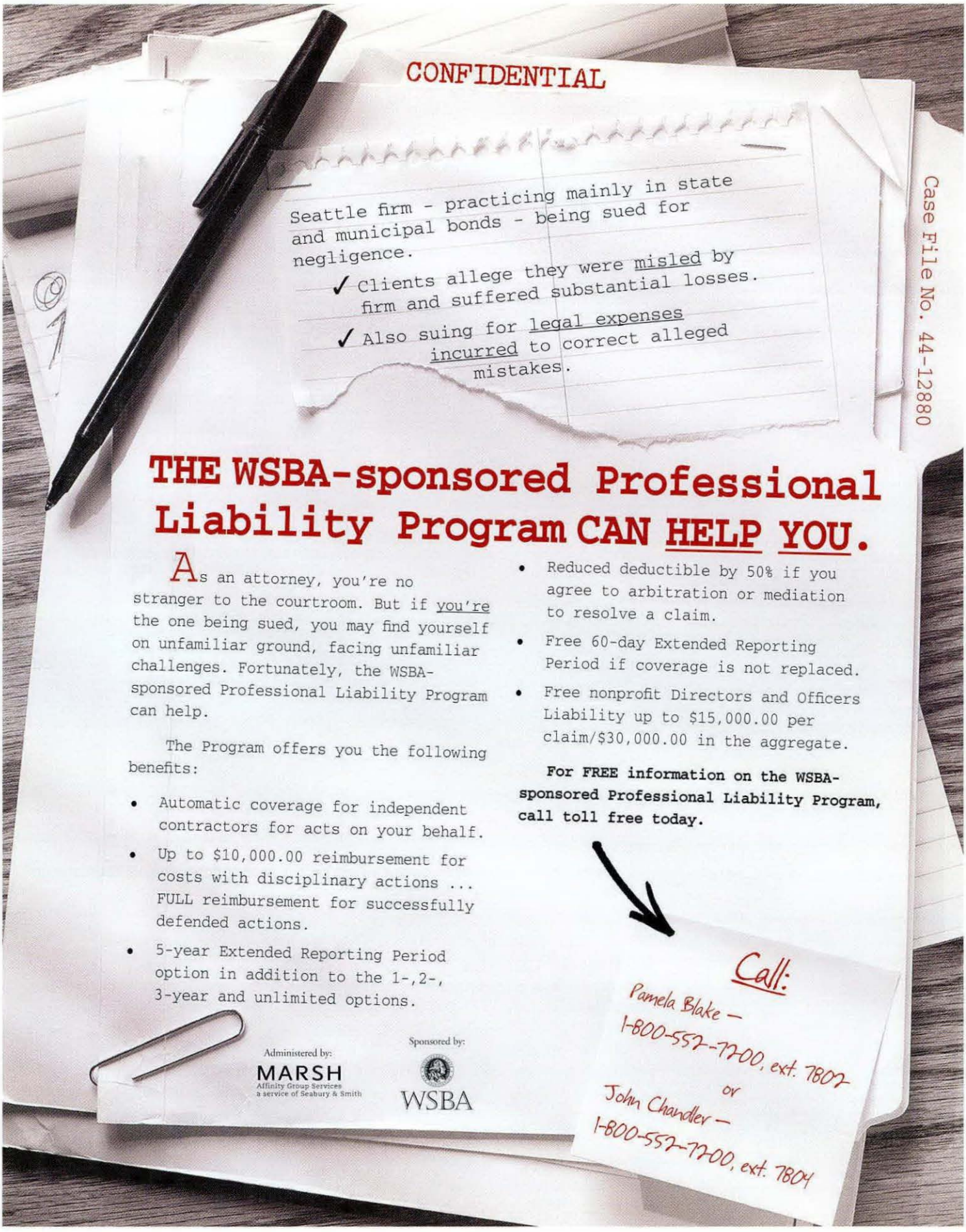

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Proud of the Profession

Editor:

I note with sadness the passing of two giants of the legal profession: Judge Stanley Soderland and Ernest L. "Bud" Meyer. Both of these lawyers had a great influence on me. They both began their legal career about the same time, over six decades ago. When I began my legal career as a deputy prosecuting attorney in King County three decades ago, Judge Soderland was recognized as one of the finest judges in the state. I soon discovered why he had earned that reputation. He was simply one the best trial judges I have ever observed.

Bud Meyer was one of the premier lawyers in Olympia when I began my judicial career in Thurston County District Court. When his opponents used 50 pages in their briefs, Bud would need only three. He was the master cross-examiner. His word was his bond. He had a wonderful sense of humor. An example of this sense of humor was displayed during an adverse possession trial which Bud was defending. Plaintiff's counsel argued that children playing in the disputed strip of land was evidence of adverse possession. Bud countered by suggesting that if that argument were valid, he could claim most of south Olympia. (Bud and his wife lived in south Olympia and raised nine boys, four of whom are Olympia lawyers.)

Sometimes the people who influence our lives are unrelated to us. Observing Bud Meyer and Judge Stan Soderland has made me a better lawyer and a better judge. I am grateful to have known both of them. I am proud to be a member of the same profession that they both honored by their careers. They will both be missed.

Judge Daniel J. Berschauer
Thurston County Superior Court

Objection to Glass-Ceiling Concept

Editor:

Fearing that I am making a big mistake for which I will soon be excoriated (I can already see the outraged letters in the next issue), I am going to speak truth to power. The power to which I refer is that of the politically correct sensibilities of the day, as so exquisitely, unerringly and consistently reflected in the pages of *Washington State Bar News*. The particular embodiment thereof provoking this letter is Ms. Lisa M. Stone's "The Glass-Ceiling Survey" article published in your February issue.

Nobody is supposed to ever question the underlying assumptions of the prevailing sensibilities. To do so is considered by many to be worse than gauche: it is proof of moral turpitude or other grievous fault. Thus, when one challenges the unstated starting point of a politically correct proposition, one invites as surely as the night follows the day *ad hominem* charges of sexism, racism, classism, depending about whom or what one speaks truth.

One tends to get defensive, saying things like: gee, some of my best friends (even relatives) are women or girls. But, I'll resist that temptation to craven cowardice and just get on with it.

The unstated assumption behind Ms. Stone's article and the survey she reports upon is that there is a problem that needs to be fixed because women do not equally share with men the fruits of power, money and prestige in the upper tiers of the legal profession. After noting that women have made up about half the law students for the past two decades, she laments that

women are "underrepresented" in certain areas that she judges to be desirable, e.g., the firm's "decision-making processes" and "power structures," and "overrepresented" in areas that are apparently less worthy, such as "diversity, artwork, public relations [and] philanthropy."

Here is the truth: women, as a group, are different from men, as a group, in ways that bear very directly and significantly on the differences in attained earnings and power that Ms. Stone identifies. The key differences are related to biology and the fact that women can bear children, and frequently do. Men lack this ability, which frees them in turn from certain impediments to attaining the most money and power in the legal profession. There are other differences that may be culturally rather than biologically based, but the gorilla in the living room is definitely that God made women different than men.

Here is another truth: the particular men, as a group, who attain the highest echelons of money, power and prestige in the legal profession, are different from the particular men, as a group, who do not attain the highest echelons. The higher-achieving men tend to be a lot harder working (and are sometimes smarter, although that correlation based on my observations is perhaps less clear) and more goal-driven. Many of the most successful male lawyers have very little "life" other than their profession (although, curiously, they not infrequently have a greater number of wives over their careers). That is their choice.

One never hears anyone say that it is a problem that needs to be fixed that some male lawyers who work harder than other male lawyers therefore get more money and power. Most people would acknowledge that he who works hardest to attain a goal deserves the fruits of any resulting success.

Why then is it a problem if fewer women lawyers, as a percentage of their number, get to the very top echelons of the profession? It is only a problem, moral or otherwise, it seems to me, if there is unfair discrimination against them.

I know many superior women lawyers, and many of them work as hard and successfully as any men lawyers. They tend to be the ones who attain the profession's highest echelons, albeit admittedly in lower number than men. But I also have to say (again, speaking truth to power) that I have observed many women who are very unhappy at having to make the sacrifices that it takes to attain the upper echelons of the profession. That is not surprising, because the same thing is true of many of the male lawyers I have known. But, in my experience, the percentage of women who are unhappy and ultimately (after a couple or a few years of trying) unwilling to make the required sacrifices is significantly higher than that of men. That is the way it is, and I suspect that anybody who has practiced law the last two decades knows (even in the most liberal heart of hearts) that it is true.

So, I am dubious of the implied point of the article that there is a "glass ceiling" keeping women lawyers down. If there is such a ceiling, instead of just different career results following from different career choices and efforts, none of the "data" referred to in Ms. Stone's article provides any good evidence of such a state of affairs.

Which is not to deny that individual women may be discriminated against unjustly, for which we have laws that allow case-by-case adjudication.

Arthur D McGarry
Seattle

Support for Ethics Article

Editor:

RE: Barrie Althoff's article on ethics and the law (January *Bar News*, p. 38), it was the most important and relevant article I have ever read in our journal. Let's be honest. Our policing of unethical lawyers has been a joke for most of my legal career since 1961. This is in spite of the fact that, in my experience, the ethics of lawyers have substantially deteriorated during that period. (We never used to have annually required courses on ethics, as if we could teach ethics in a classroom.) Only after a very critical report by the American Bar Association of that state of affairs did our Bar take steps to police lawyers more effectively.

But, as Mr. Althoff's article makes very clear, our state Supreme Court still looks out for the welfare of dishonest lawyers more than that of our clients.

Some of you may be interested in the results of a survey I took while on a recent four-week trip through 10 countries of Europe. I engaged in conversations with hundreds (I am mostly Irish!) of people of all ages, economic situations, sex and educational background. After establishing rapport with them, and without revealing that I was a lawyer, I asked well over a hundred of them what line of work in America they thought was the most dishonest. All but two said "lawyer." (Two said "politician.")

Now do you want this to continue or do you want it to change? There is only one way to change it. Get rid of those among us, in high and low station, who are cheats.

Bert Metzger
Seattle

Addicts *Do* Want Treatment

Editor:

Roger Ley's letter in the February *Bar News* (p. 9), which you titled "Opposition to KCBA Drug Policy Position," asserts that "[m]any, probably most, defendants do not want treatment.... If they wanted treatment, they would have asked for it." The assertions precede comments on heroin addiction and the likelihood of successful treatment.

Do many people who are addicted to heroin want treatment? In its May 2001 report, available on the King County Bar Web site at www.kcba.org, the Treatment Task Force of the KCBA Drug Policy Project presented data suggesting that many do want treatment, but are unable to get it. For example, in the spring of 2001, the King County Health Department had a waiting list of approximately 500 applicants seeking methadone treatment. Some had been waiting since 1999. There is a significant demand for treatment, but for many who need it treatment simply is not available.

"Methadone treatment [according to the National Institutes of Health] significantly lowers illicit opiate drug use, reduces illness and death from drug use, reduces crime, and enhances social productivity." *Effective medical treatment of heroin addiction: NIH consensus statement 1997.* According to a United States General Accounting Office report that looked critically

at studies of the effectiveness of drug treatment: "Methadone maintenance — the approach that has been evaluated using the most rigorous studies, randomized clinical trials — has been shown to be the most effective approach to treating heroin abusers." GAO Report to Congressional Requesters, *Drug Abuse: Research Shows Treatment Is Effective, but Benefits May Be Overstated,* GAO/HEHS-98-72, March 1998.

The monthly cost of methadone treatment is a tiny fraction of the cost of incarcerating an addicted individual. At present, this treatment is available in a limited number of clinics that cannot serve many who need and want it. In most counties, it is not available at all. By failing to fund methadone treatment adequately, and by otherwise making it difficult to obtain, we as a society are missing our best opportunity to reduce heroin addiction and its associated costs.

Peter Greenfield, chair
Treatment Task Force
KCBA Drug Policy Project
Seattle

Drug-Policy Options to Consider

Editor:

Without commenting on the King County drug-policy debate, I'd like to offer a couple of suggestions for attorneys to make to the Legislature, and which the BOG may look to in addition to or in place of the King County proposal.

First, it seems to me that years ago, the law (or the courts in absence of a mandate against the same) allowed conversion of jail time up to one year to be served, day-for-day, in inpatient treatment. This resolved a number of possession cases more easily, thereby lessening the burden on court and jails. It also provided the "carrot" for someone truly motivated for treatment.

Second, Washington should institute drug courts statewide. I practice in Island County, defending adult felony matters. Island County has a drug court for juvenile offenders, but not for adults. Yet if any of my clients who might be eligible for drug court committed their offense across the water (a 15-minute ferry ride), or just off the north end of Whidbey, or across the way on Camano Island, they might be eligible in adjoining counties.

The smaller counties just don't have the resources for drug courts. A statewide system would allow a person to get help and I am told that early studies show a lower recidivism rate from successful drug-court participants. Treatment should focus on who would benefit from help, not where the offense was committed. I know it costs money, but then so do prisons.

Both options allow the courts to exercise discretion, offer substantial enforcement tools, and offer something many sentences or alternatives don't offer: a real chance at rehabilitation. Just a thought.

Tom Pacher
Coupeville, WA

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.

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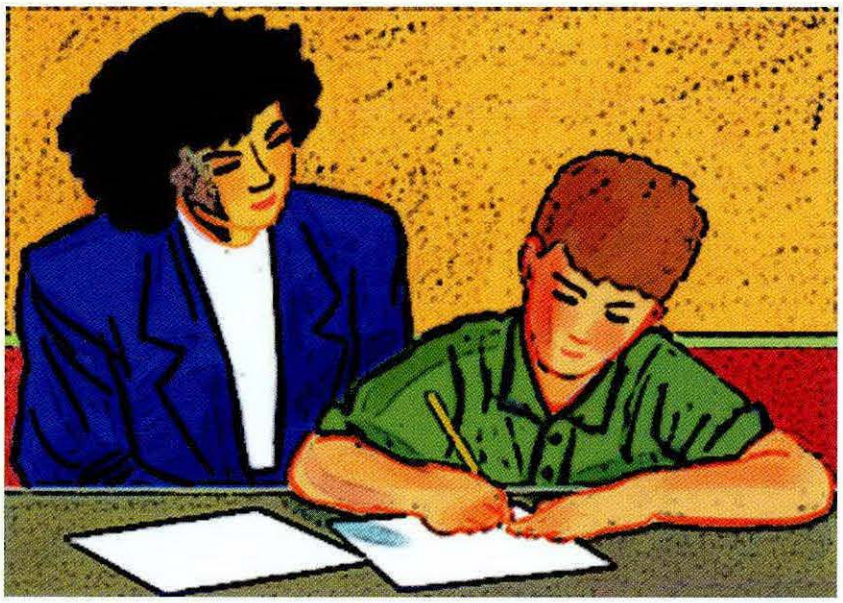

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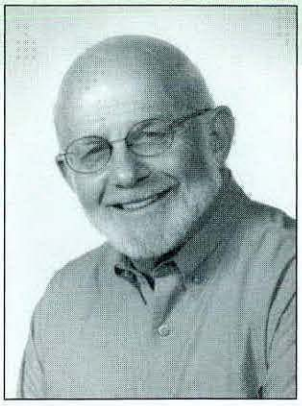


Looking at Member Benefits

by Dale L. Carlisle
WSBA President

When the WSBA did its strategic planning a few years ago, one issue regularly raised by members was a request for improved member benefits. This became an objective of our long-range plan, and after some review the Board of Governors (BOG) created a Member Benefits Task Force to examine this issue and make recommendations for implementation of benefit programs. Joe Nappi of Spokane is the current chair of this task force.

One area of attention has been insurance of various types, in addition to the current malpractice insurance program the WSBA makes available to members. We found that many of our members in solo practice or small firms have difficulty obtaining health insurance. The task force also has identified group insurance programs that may be of interest to some members. Because of changing market conditions and inconsistent insurance costs, it has been difficult for the task force to develop a program. However, it now appears that in the spring or early summer, a health-insurance program will be presented to the BOG for approval, and then offered as a benefit to WSBA members. When this occurs, other group insurance-benefit programs may follow.

The task force has also reviewed various benefit programs in the services area. Proposals have been received regarding credit-card programs, and rental car and hotel group rates. Task force members report that a credit-card program will soon be presented to the BOG, and that other programs may be ready for presentation later this year, and, if approved, implemented in the fall and winter.

A separate but important feature is to make certain the WSBA incurs no financial obligations in pursuing these affiliations.

Another and somewhat more difficult service area involves group plans for information services for lawyers. The WSBA Law Office Management Assistance Program (LOMAP) currently offers training and advice on computer programs for small firms. LOMAP also offers a software lab where members may examine a variety of law office-management software, or arrange to have the software brought to them. Task force members have examined "law office in a box" software/hardware programs, and believe this area offers opportunities for member benefits beyond what LOMAP now provides.

A separate but important feature of the task force's work is to make certain the WSBA incurs no financial obligations in pursuing these affiliations. The task force also expects that offering these types of member benefits will provide non-dues revenue to the WSBA.

If you are interested in serving on the Member Benefits Task Force, you may contact me at 253-620-6401 or dalec@wsba.org. Contact Peter Roberts at 206-727-8237 or peter@wsba.org for information about LOMAP. If you have input for member-benefit programs, please notify a member of your Board of Governors.

Pro Bono's Triple Win

by Judge William L. Dwyer

In my experience, the gratitude felt by those who receive *pro bono* legal help is almost boundless.

[***Editor's note:** The late Judge Dwyer was the honoree at the Legal Foundation of Washington annual Goldmark Award Luncheon on February 21, 2002. At the luncheon, Judge Dwyer's daughter read the speech he wrote and had intended to present.*]

I am Joanna Dwyer Tiffany, Judge Dwyer's daughter. My father wanted very much to speak to you today, so he did ask me to read these remarks as if he were delivering them himself. So, from this part on the pronoun "I" will refer not to me, but to my dad.

I am deeply honored to receive this award. I know as well as anyone that others are much more deserving of it, but that will not deter me from accepting in the full spirit or from saying a few words to you about *pro bono*.

This award is especially gratifying because it bears the name of my late friend Chuck Goldmark, who stood for everything that is best in the legal profession. My wife and I and our children have had the good fortune to be close friends with three generations of Goldmarks — with John and Sally, who moved to this state from the East Coast after World War II, and took up a new life as ranchers; with their two sons, Chuck and Peter, and their wives; and with the new generation of Goldmarks, which we trust will produce at least one lawyer to offset an unnecessarily high number of scientists.

The phrase *"pro bono"* endures as a rare survival of Latin in everyday legal talk. We don't hear much any more about *res ipsa loquitur* or *de minimis non curat lex*, but *pro bono* is here to stay as a shorthand way of referring to the providing of legal services without charge to those who cannot afford to pay for them. This activity of ours, it seems to me, is not a sideline, but is at the heart of our calling. It also represents a rare triple win — it benefits three distinct categories of people.

First, and most obviously, there is the client. Unequal access to justice remains a major problem in American life. About three-fourths of the legal needs of the poor go unmet because of the expense barrier, and our society as a whole has been unwilling to bridge the gap; the United States spends far less per capita on subsidized legal representation than the other western industrial societies. *Pro bono* alone can't fill the entire need, but it can make a tremendous difference. The client, ordinarily, would go without legal help if it were not provided free of charge. Psychiatrists are fond of telling their patients that unless they pay the full freight they will not appreciate or value sufficiently the hours of consultation. I don't believe that has ever been a problem with free legal services. In my experience, the gratitude felt by those who receive *pro bono* legal help is almost boundless. Some of them even decide they want to go to law school, an impulse that should be carefully monitored.

Then there is the public. Let us remember that *pro bono*'s full name is *pro bono publico* — for the good of the public. When the unrepresented or underrepresented gain legal assistance, it is not just they, but all of us — all citizens, and the entire legal system — who benefit. To the extent that access to justice is denied to any segment of society because of unequal wealth, we all suffer, because we know that life is only good in a society where justice is available to everyone, not just to a privileged few.

Finally, and most often overlooked, there is the lawyer himself or herself. *Pro bono* cases are fun — they often form the most interesting, exciting and memorable parts of a legal career. Deborah Rhode, in her excellent recent book on the legal profession,[1] writes: "The greatest source of discontent among today's lawyers is their perceived lack of contribution to social justice." That feeling can easily be dispelled by *pro bono*.

I will mention as examples two Seattle lawyers who have brought honor to their profession, and happy memories to themselves, through their *pro bono* work.

Nancy Pacharzina I met quite recently when she worked as an extern in my chambers during her last year of law school. She graduated, passed the bar, served a clerkship in another district, and then joined a major law firm in Seattle. While there she undertook a lawsuit on behalf of migratory farm workers — the goal was to require enforcement of the laws creating standards for the housing of these workers. Nancy put in something like 1,500 hours of work, and the suit succeeded. She is likely to have a long and successful career, but I doubt that she will ever have a more personally rewarding case than this one.

Matt Kenney I met many years ago when he showed up as counsel for parties opposed to my clients in major commercial litigation. He still does that for a living — complex civil litigation — but he also devotes half of his working time to a legal aid clinic where he gives advice and assistance to the poor. Matt is a *pro bono* hero because he gives his time and skill unselfishly to those who could never pay his bills at the usual rates.

These two lawyers have been exceptionally generous, but they also have been exceptionally rewarded. Similar rewards are open to every lawyer who is willing to donate time and work to those who need help most desperately.

Thank you.

NOTE

1. *In the Interests of Justice: Reforming the Legal Profession* by Deborah L. Rhode, 2000, Oxford University Press.

Two Cents' Worth

by Mark A. Panitch
Bar News Editor

On a trip to Asia a few weeks ago, President Bush took the opportunity during a fuel stop in Alaska to talk to American troops stationed there. He told the military audience that the war against terrorism is a "crusade" and asserted that "if you're not with us, you're against us."

This is the kind of language that you expect from a drill sergeant or a football coach or a politician. It's the language of the zero sum game. If I win, you must lose. It's good politics, but it's questionable public policy, and it's bad law. So when those words come from the president of the United States, you have to wonder: "Is he speaking as a politician trying to rally the troops?" or "Is he speaking as the chief executive announcing policy and law?"

In most countries the government system is designed to encourage quick decisions with a minimum of dissent and no popular recourse.

These are really important questions because patriotism and national spirit are important. The troops and the nation need to be rallied. If there are legitimate hardships to be borne, the citizens have to be prepared. But if you are a lawyer, sometimes the most patriotic thing you can do is hold up your hand and say, "Whoa, not so fast." If you think these are conflicting demands, you couldn't be more right.

After all, the United States is different from most other countries. It is the only country that was literally invented by lawyers. Lawyers and the law have a much more central role in America than other countries. The author of the Declaration of Independence, Thomas Jefferson, was a lawyer. Three of our first five presidents were lawyers. Thirty-five of the 55 delegates to the Constitutional Convention were practicing lawyers or had a legal education.

In most countries there is a founding family with mythic origins. And most countries have relatively homogeneous populations bound together by a common language and culture. Indeed, we often confuse citizenship and nationality, using them as synonyms for each other. The United States, on the other hand, is a country with a heterogeneous population speaking many languages and representing cultures from every corner of the world. Instead of a founding myth we have a founding legal document — our Constitution. And Article 6 of that document creates a system of courts and judges.

Courts are right up there with Congress and the presidency as one of three co-equal branches of government. And that system is echoed in every state constitution as well. In most countries the government system is designed to encourage quick decisions with a minimum of dissent and no popular recourse. In America the system is exactly opposite. Our three co-equal branches of government are in a state of near constant deadlock, which is only broken by a *lawful* compromise. Of course politics generally is called the art of compromise. But we may be seeing a new paradigm emerging from the last election and the "war on terrorism."

In his recent book *Too Close to Call*, attorney-author Jeffrey Toobin describes the 36 days between the presidential election and Al Gore's ultimate concession. His conclusion: despite winning the popular vote — and possibly even the Florida vote — Gore lost because he was too deferential to the legal process (with an emphasis on *process*).

On the other hand, George W. Bush's election campaign continued for more than a month after the election. He never deferred, never conceded and — most surprisingly — never compromised on anything. The strategy was obviously successful. The result appears to be an administration that seeks to create a new paradigm, attempting to transfer this election experience to the world at large. It's fair to ask if this experience doesn't nourish unrealistically high expectations of the administration's ability to control events, and an unrealistically low tolerance for frustration.

The administration announced the implementation of secret military tribunals using both very relaxed evidence standards and a very relaxed burden of proof to try foreign nationals accused of being terrorists.

The response wasn't what the administration expected. The strongest objection came from the military. Military lawyers, many of them career officers, formed the core of the opposition. These officers — quietly supported by senior military commanders — pointed out that what separates "us"

from "them" is the rule of law, and that should not be sacrificed for expediency. This may seem ironic, but it shouldn't be. First, every military lawyer is also a civilian lawyer; there is no federal bar exam. Second, the people who are most likely to kill or be killed in defense of the Constitution are often among those who actually know — and care — what it says.

The military operates under the Uniform Code of Military Justice (UCMJ), which superseded the Articles of War in 1950. Unlike its predecessor, the UCMJ clearly adopts the basic principles of due process that underlie civilian law. There is a presumption of innocence. Soldiers subject to serious punishment are entitled to counsel; soldiers subject to penalties that don't include loss of liberty may have counsel at their own expense. No one can be forced to incriminate herself, and the military version of the "Miranda" warning must be given to any *suspect*, not just those in custody. Defendants have the right of confrontation. It's a principled and uniform system that can be replicated at any U.S. military installation anywhere in the world. There are differences between American military and civilian law, and lawyers, but the similarities are far greater.

Every high government official, every executive in private business, and every bureaucrat in every local sewer district seeks to concentrate her power and expand her zone of authority. The common goal is invariably to increase control and power while reducing impediments and questions. The current Bush administration is no different in its goals. What is different is its attitude toward power — and our nominal state of war. Clearly the United States was attacked last September 11th. Congress would undoubtedly have approved a formal declaration of war — if we just knew who we were fighting. And there is the rub.

The "war against terrorism" threatens to become the rationale for enacting or imposing many bad plans and policies whose connection to fighting terrorism is tenuous at best.

The "war against terrorism" threatens to become the rationale for enacting or imposing many bad plans and policies whose connection to fighting terrorism is tenuous at best. Many of these ideas would particularly impact our criminal justice system, changing or reversing established principles of due process. Some would impose new principles that have been rejected over the years, but which continue to lurk in the darkest political recesses like legal vampires waiting for troubled times and an injection of new blood to bring them back to life.

We are starting to hear again about the necessity to obtain quick information without the technicalities of due process, and words like "torture" and "unlimited detention" without trial are starting to be heard. The reality is that both the British and the Israelis — among the most democratic countries on earth — have used these methods without success. Despite the most draconian measures, the IRA was not stopped, and the Palestinians continue to kill Israelis with suicide bombs and other weapons of terror. The fact is that adopting the methods and the end-justifies-the-means mindset of the terrorists — whether domestically or abroad — doesn't work. It just turns "us" into "them."

I would never suggest that one administration's political policies are superior or inferior. That would be straying far from the mandate of this magazine to cover legal matters. But I can, and do, suggest that when the *political* goals of an administration include important changes in the justice system, *Law*-yers' first duty is to protect the law. American concepts of access to justice and due process have evolved slowly in response to American needs. Our courthouses substitute for village squares. Our jury-based criminal justice system provides legitimacy for our government. Most police (including the FBI) gave what amounted to "Miranda" warnings long before the Supreme Court codified the warning and made it universal.

Congress enacted federal civil and criminal rules and the Federal Rules of Evidence only after decades of study and debate by the most distinguished lawyers and jurists in America. The system itself received "due process" before it was significantly changed.

Before anyone messes with our principles of due process, such as warrant-based arrest, lawyer-client confidentiality, humane treatment of prisoners, and all the rest that distinguishes "us" from "them," lawyers need to stand up and loudly and firmly utter the words of caution that have served us well for the last 300 years: "Hold on, let's look at this a little more carefully; Once something is done it's pretty hard to undo; Put yourself in the defendant's place — is this what you would want for yourself?"

The end never justifies the means, and we lawyers are the people with the special duty to say so.

A Call for a New Approach to Drug Policy in Washington State

by Ken Davidson
Guest Columnist

The King County Bar Association, Washington State Bar Association, Washington State Medical Society and Washington State Pharmacy Association held a joint news conference in December, calling for a new approach to drug policy in Washington. Theirs was not a call for decriminalization, but a forceful call, nevertheless, for re-evaluating and refocusing how society addresses drug use. Each of these professional organizations has called for approaching drug abuse primarily as a public-health problem, not an issue of law and order. Each has adopted resolutions calling for more emphasis on treatment and prevention, and less reliance on incarceration, which has proven to be very costly and marginally effective. The WSBA's resolution was featured in the February issue of *Bar News* (p.13) and is posted on the WSBA Web site at www.wsba.org/2001/drugpolicyresolution.htm.

Unfortunately, despite clear evidence that drug treatment benefits patients and society, Washington currently lacks the capacity to provide treatment to most who need it.

The KCBA Drug-Policy Study

The action of these professional organizations was inspired by a comprehensive study of drug policy conducted by the King County Bar Association (KCBA) over the previous year. The KCBA drug-policy study grew out of a *Bar Bulletin* column by its then-President Fred Noland, in which he questioned whether the use of harsh sentences for drug users is wasting tax dollars, clogging the court system, and creating greater hardships for users' families, without reducing drug abuse. His column generated scores of phone calls and e-mails from lawyers, judges, physicians and others working with drug issues who felt the current system was not working and wanted to know what they could do to help.

The tremendous response to Mr. Noland's column led the KCBA to call two open meetings on drug policy and invite participation from many interested groups as well as its membership. Each meeting attracted more than 80 participants, including legislators, prosecutors, public defenders, physicians, police officers, drug counselors, lawyers in private practice, one-third of King County Superior Court judges, and other interested citizens. A consensus was reached that drug-policy issues should first be thoroughly studied. Four task forces were formed to study the effectiveness of drug treatment, drug-abuse prevention programs, the effectiveness of the use of criminal sanctions, and the impact of current drug policy on poor and minority persons. The reports can be found on the KCBA Web site at www.kcba.org/drug_law/druglaw_index.htm.

Drug Treatment

The Drug Treatment Task Force, chaired by former KCBA President Peter Greenfield, found that drug treatment is effective, but only available to a small percentage of those who need it. The task force cites many studies documenting the effectiveness of treatment, including the *Principles of Drug Addiction Treatment: A Research-Based Guide* by the National Institute on Drug Abuse (NIDA), which reported:

> [T]reatment reduces drug use by 40 to 60 percent and significantly decreases criminal activity during and after treatment.... [D]rug addiction treatment reduces the risk of HIV infection.... Treatment can improve the prospects for employment, with gains of up to 40 percent after treatment.

In conducting a cost-benefit analysis of drug treatment, a 1994 RAND Corporation study found that for every dollar spent on drug treatment, there was a $7.46 savings in societal costs associated with crime and lost productivity. By comparison, RAND found a $.52 savings in societal costs for every dollar spent on domestic law enforcement and incarceration in drug cases. Like other medical treatment, drug treatment may not work in every case, but the clear consensus of medical experts is that it is effective. As the NIDA report concluded: "Treatment of addiction is as successful as treatment of other chronic diseases such as diabetes, hypertension, and asthma."

Unfortunately, despite clear evidence that drug treatment benefits patients and society, Washington currently lacks the capacity to provide treatment to most who need it. In his testimony before the Washington State Legislature in February 2001, King County Prosecutor Norm Maleng stated: "The

In the 1980s, criminal sanctions in drug cases were dramatically increased at state and federal levels. As a result, prison populations have increased at many times the growth rate of the general population.

exclusive currency of the justice system remains incarceration.... [T]he options for treatment within sentencing laws have been mostly illusory — they exist in theory and statute, but not in reality."

There is no drug treatment offered in county jails, even though a survey in one county showed that 43 percent of those arrested on both drug and nondrug charges wanted and needed drug treatment. In state prison, an estimated 20 percent of the inmates who have drug problems receive treatment, and the rest receive none. In 12 counties, drug courts have been formed to monitor supervised treatment in lieu of incarceration in selected cases, but they need much more funding to have a significant impact throughout the state. Outside the criminal justice system, the Washington State Division of Alcohol and Substance Abuse calculates that the current treatment system can serve only 18 percent of Washington residents who need treatment and whose income is under 200 percent of the federal poverty level.

Prevention

The Task Force on Effective Drug Abuse Prevention, chaired by WSBA Past-President Stephen DeForest, found prevention programs in a time of re-evaluation and regrouping. Recent studies have shown that D.A.R.E. and similar school-based prevention programs have not reduced drug use. While "universal" programs targeted at all youth have not proven effective, there is evidence that "selective" programs aimed at youth who are deemed more vulnerable to drug abuse because of personal and family risk factors, and "indicated" programs providing intensive efforts with youth already abusing drugs, alcohol and tobacco can be cost-effective and efficacious. The task force recommends the formation of a special working group of experts and stakeholders to improve upon Washington's comprehensive substance-abuse prevention plan.

Use of Criminal Sanctions

The Task Force on Use of Criminal Sanctions, chaired by former KCBA President and WSBA Governor Mary Alice Theiler, found that the current reliance on long, mandatory sentences to reduce drug abuse has been costly to taxpayers and largely ineffective. In the 1980s, criminal sanctions in drug cases were dramatically increased at state and federal levels. As a result, prison populations have increased at many times the growth rate of the general population. In the last 20 years, there has been a 1,200 percent increase in the number of drug offenders in state prisons. Despite billions of dollars spent on increased incarceration, drug use has remained unchanged. The task force found that heavy drug users have generally comprised slightly less than one percent of the population, and the popularity and use of any particular drug fluctuates without

apparent correlation to sentencing laws. At a cost of around $24,000 per year, incarcerating a drug user is an expensive method to curb drug use and, based on recidivism rates for such inmates, a marginally successful one.

Disparate Impacts on Minorities

A damaging side effect of the increased use of criminal sanctions has been its disparate impact on minorities. The Washington State Sentencing Guideline Commission reported that in fiscal year 2000, African-Americans received felony drug sentences in King County at the rate of 150 per 10,000 persons, compared with seven per 10,000 for Caucasians. Native Americans and Hispanics received felony drug sentences at the rate of 34 per 10,000, and 32 per 10,000, respectively. African-Americans constitute about three percent of the Washington population, but represent over one-third of those incarcerated for drug offenses. Yet, studies have shown that the percentage of drug users who are African-American is the same as the percentage of African-Americans in the general population. The Task Force on Racial and Class Disparity is still working on its study, and we may have much to learn about the collateral damage caused by the "war on drugs" to minority communities and race relations.

Changing Drug Policy

In a historic effort, lawyers, doctors and pharmacists have joined together to call for a major shift in drug policy — a shift to a public-health model to address drug abuse. New drug policy can borrow from the successful public-health effort which has dramatically reduced smoking in the span of one generation. Like smoking, drinking and overeating, most people understand that taking drugs is a bad health choice. The challenge is to convince the individual to make a healthy choice. But choice cannot be forced.

The public-health effort to reduce smoking involves education, prevention programs, and treatment for nicotine addiction. A similar investment in prevention and treatment programs is needed in the effort to influence an individual's choice about drug use. Criminal sanctions will still have a role to play, particularly with respect to drug dealers and harm caused to others. However, new and more effective ways must be found to help users overcome their drug habits and convince individuals not to choose drugs in the first place.

Among professionals, lawyers have a particular interest in drug policy because of its impact on the courts. The heavy reliance on criminal sanctions has led to large increases in drug-case filings, most of which involve simple possession and low-level sales by addicts trying to support a habit. These increased filings have clogged court dockets, delayed trial dates in civil cases, and jeopardized court budgets for other important programs such as Court-Appointed Special Advocates and mandatory arbitration. Moreover, judges are complaining that mandatory sentencing formulas in drug cases often deprive them of the ability to impose fair and just results. Poor drug policy may be hijacking the courts.

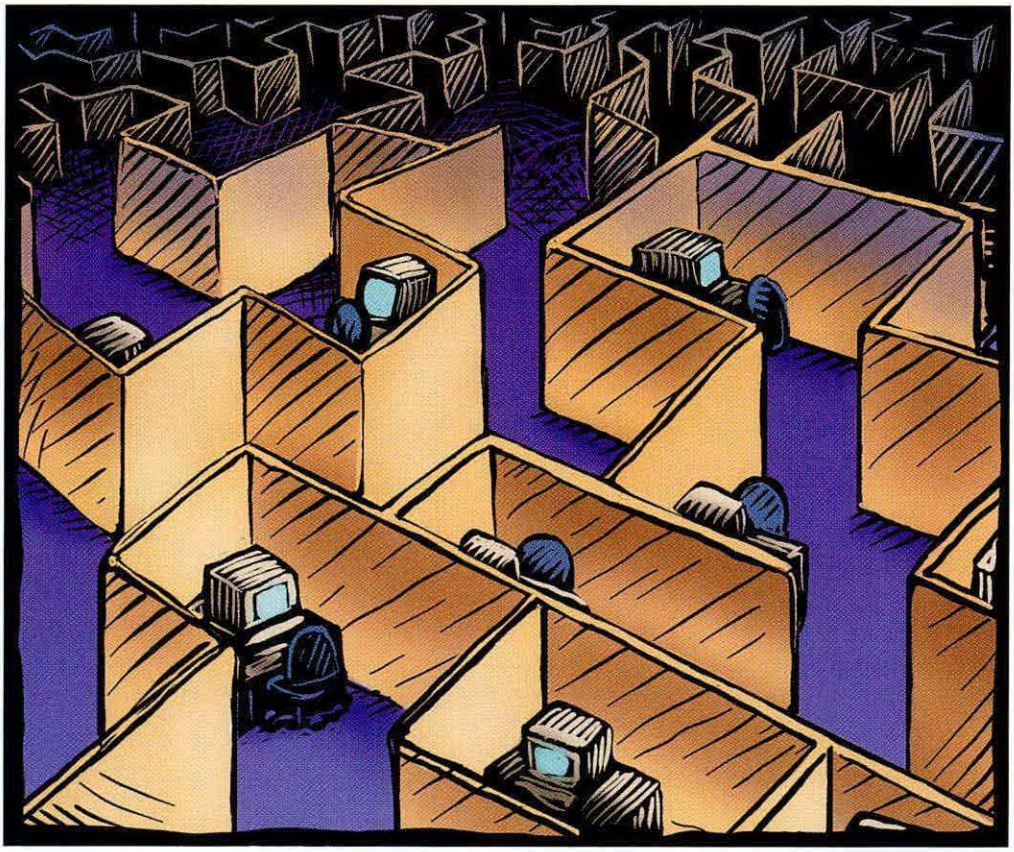
A Time for Action

Change in drug policy is already in the making. Voters in California and Arizona have approved initiatives which divert nonviolent drug users into treatment, rather than prison. Similar initiatives are being proposed in Michigan, Ohio and Florida. The Washington Legislature is close to passing a bipartisan bill, which would reduce sentencing ranges in certain drug cases and direct the savings in prison costs into drug treatment. President Bush has announced a new emphasis on treatment, prevention and interdiction, and a six percent increase in federal funding for treatment.

These are important first steps, but a change in drug policy will involve action on many fronts. The KCBA is now forming new task forces to translate its studies into action. Those interested in participating in the development of new drug policy and programs should contact Roger Goodman at rogerg@kcba.org or 206-267-1222.

New dialogue, creative solutions and significantly more resources are needed to address drug abuse in Washington. Responsible professionals are calling for a major shift in drug policy for the benefit of individual users, their families, taxpayers and society. ✍

Ken Davidson is a past-president of the East King County Bar Association. He is WSBA governor for the 1st District.



Navigating the Perils of Discovery in the E-Information Age

by David H. Schultz and J. Robert Keena

On the day they are admitted to practice law, lawyers swear under oath to abide by the Rules of Professional Conduct (RPCs) in service to their clients. In Washington, RPC 1.1 requires that "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Attorneys today are faced with an overwhelming array of new challenges created by the proliferation of information stored in electronic format.

Recently, the Washington Supreme Court noted increasing problems associated with electronic documents: "As governments everywhere move from paper and microfiche documentation into the age of 21st century information technology, public records are increasingly being stored — even created — in digital format, then added to virtual databases that are accessed, in streams of bits and bytes, by vast networks of governmental agencies, often across jurisdictional boundaries."[1] From the investigation and pre-discovery stages of a lawsuit through trial and beyond, true zealous advocacy requires a solid understanding of electronic discovery issues.

Preservation of Electronic Discovery

Electronic files and e-mail are, by their very nature, fragile. While electronic files are easy and convenient to create and duplicate, they are also easy to alter or destroy. Accordingly, one of the foremost issues in electronic discovery is preservation.[2] When litigation becomes imminent, corporate clients should be instructed to immediately discontinue electronic document-destruction policies with regard to any potentially relevant files at all locations of the client's and the opponent's businesses. Preservation letters should be sent to all parties and nonparties in possession of potentially relevant data. In some cases the additional step of securing a preservation order may be required. As the case moves forward, monitoring preservation compliance can be important and potentially quite fruitful.

Increasingly, parties with little or no

electronic data themselves will aggressively pursue e-mail and other electronic files from their opponents. The goal is more commonly to create a spoliation problem than to actually obtain and review hundreds of thousands of pages of electronic files. Among the most common practices causing spoliation are the failure to fully discontinue document-destruction policies (both intentionally and negligently[3]), the improper collection and imaging of electronic data, and the modification of Web sites.

Sanctions for spoliation of evidence include adverse inferences or presumptions (at either the case level or the issue level), preclusion of evidence, monetary sanctions, and dismissal or default.[4] In several jurisdictions, spoliation gives rise to a separate cause of action in tort. At the federal level, criminal penalties apply to the obstruction of justice through destruction of evidence.

Disclosure

Once the perils of preservation have been navigated, attorneys must address the disclosures required by Fed.R.Civ.P. 26. Rule 26(a)(1)(B) specifically requires the disclosure of "data compilations" (e.g., electronic files, databases, e-mail) following a full investigation of the case. This requires, at a minimum, locating all sources and locations of electronic data.[5] Data will commonly be located on individual desktops and laptops, network hard discs, removable media (e.g., floppy discs, tapes and CDs) and, increasingly, personal digital assistants (e.g., Palm Pilots). Data may also be in the possession of third parties, such as Internet service providers, and on the computer systems of other peripherally involved entities. Determining the volume of e-mail and other electronic information is crucial, but can be difficult to do without the assistance of an experienced electronic-discovery expert. This information, however, is essential to an effective Rule 26(f) discussion regarding the timing, form, and limitations on discovery.

Fed.R.Civ.P. 26(a)(2) calls for the disclosure of any person who may be used at trial to present evidence under Fed.R.Evid. 702, 703 or 705. Counsel must make a determination as to whether to disclose any electronic-discovery experts involved in the case under this rule. Obviously, an expert who has engaged in any sort of forensic analysis of hard drives or other systems falls within the gambit of this rule. The more interesting issue is whether one must disclose an expert who handles the collection and reproduction of electronic data without conducting any sort of forensic analysis. Though electronic-discovery experts possess the kind of "scientific, technical, or other specialized knowledge" contemplated by Fed.R.Evid. 702, a parallel can be drawn between such an expert and a records custodian who simply retrieves, photocopies and certifies hard-copy documents.

A discovery expert used in the records-custodian capacity should be retained by the law firm (as opposed to the client) and should perform only duties that fall squarely within the work-product doctrine. To the extent such an expert is necessary to establish chain of custody, he becomes a foundational witness and need not be disclosed under Rule 26. The safer approach may be to err on the side of over-disclosure by including such electronic-discovery experts in the Rule 26(a)(2) disclosures.

In cases that require expert computer-forensic work, an additional expert should be retained. This expert should be provided with only the information necessary to formulate and present opinions as to the evidence and should not perform any hands-on collection or processing of electronic information.

One of the most useful electronic-discovery management tools may be the Fed.R.Civ.P. 16 pretrial conference. As with the Rule 26(f) meeting, counsel must be prepared with the salient facts regarding all electronic data involved in the case. Doing so will assist in limiting the scope of discovery required from one's client while maximizing the disclosures from opposing parties. In many situations it may be necessary to provide the court with expert testimony as to the nature, location and volume of electronic data, as well as the time and cost involved in producing it. Topics for discussion at the Rule 16 conference may include preservation of evidence (including whether backup, archival and "deleted" files will be exchanged); preliminary disclosures as to the parties' computer systems (including numbers, types and locations of computers, operating systems in use, and backup schedules); document processing; production for-

mats; testifying experts; and anticipated evidentiary disputes.

If, for jurisdictional reasons[6] or otherwise, a Rule 26 initial disclosure related to "data compilations" has not occurred, practitioners may acquire the data through a combination of interrogatories, requests for documents, and depositions. A request for "all electronic data" will likely result in an objection based on burden or expense, and courts have been inconsistent on how deeply they allow a discovering party to dig. For example, in *Demelash v. Ross Stores, Inc.*, 20 P.3d 447 (Wash. Ct. App. 2001), the Washington Court of Appeals restricted the scope of the electronic discovery, stating: "A trial court must manage the discovery process in a fashion that promotes full disclosure of relevant information while at the same time protecting against harmful side effects. Consequently, a court may appropriately limit discovery to protect against requests that are unduly burdensome or expensive."

As such, discovery requests must be specific, and exhibit an understanding of how electronic data is created, stored and destroyed. For example, the same criteria used in disclosing client data under the Rule 26 initial-disclosure provision can be used to formulate effective interrogatories. If properly phrased, an opponent's response should provide a roadmap for a follow-up request for documents or subpoena *duces tecum*. If the response does not provide this roadmap, there are plenty of cases to support a motion to compel.[7]

Once the data has been produced, intricate knowledge of the advantages and potential pitfalls of electronic evidence becomes more important. Often, the key difference between discovery of electronic data and hard-copy data is the sheer volume. In three-million electronic pages of data, it becomes relatively easy for a well-meaning attorney to miss an e-mail between counsel and client, inadvertently waiving the attorney-client privilege.[8]

Dealing with Spoliation

Electronic evidence also creates new and unique ways for clients to cause spoliation of evidence. When copying data for production or review, failure to make sector-by-sector images prior to viewing may result in spoliation.[9] Simply booting a computer can destroy "slack" and "temporary" files. Clicking on a file rather than properly copying it can change its last access date and lead to sometimes harsh sanctions or inadmissibility. Because of this, the service of an interrogatory on an opposing corporate party as to whether they have overwritten or revised any relevant documents since the beginning of the litigation may have extraordinary consequences and significant bite. No party should avoid bringing a motion to compel to enforce the production of this data knowing that if the data is produced in an altered state, spoliation may have occurred. Just as certain, because of the inconsistency in case law, no attorney should pass on the opportunity to seek a protective order to prevent the destruction of this data.[10]

Conclusion

Once the minefield of electronic discovery has been traversed, spoliation has been avoided, and no "smoking gun" e-mail has been discovered forcing settlement or supporting summary judgment, the issue of the admissibility and use of electronic evidence at trial remains. To be admissible, e-mail and other electronic evidence must be authenticated pursuant to Fed.R.Evid. 901(a), and the evidence must clear any hearsay hurdles. Computer records may be admitted under the business-records exception to the hearsay rule.[11] However,

Fed.R.Evid. 803(6) requires the proponent of a computerized record to prove it was created "at or near the time" of the transaction, act or event recorded in order to qualify as a business record exception to hearsay.[12]

As technological developments simplify our daily activities, they simultaneously create trails of data complicating legal discovery. The question a litigator should ask at each stage in the process — from investigation through trial — is whether zealous advocacy can be provided without engaging in electronic discovery. With 70 percent of all data now stored in electronic form,[13] the responsible practitioner knows the answer.

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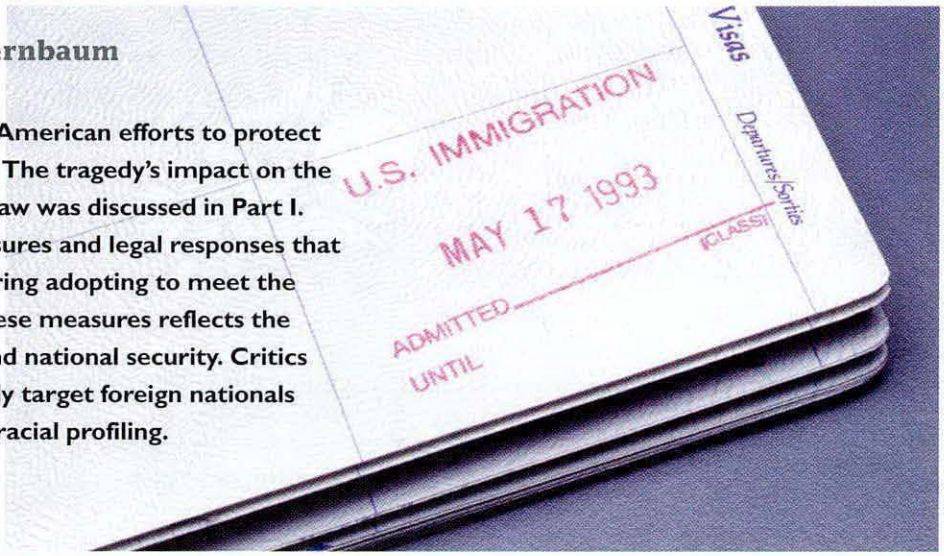
NOTES

1. Guillen v. Pierce County, 2001 WL 11045031, __P.3d__ (Wash. Sept. 13, 2001).
2. Linnen v. A.H. Robins Co., 1999 WL 462015 (Mass. Super. June 16, 1999).
3. In re Prudential Ins. Co. Sale Practices Litig., 169 F.R.D. 598 (D.N.J. 1997).
4. Crown Life Ins. Co. v. Craig, 995 F.2d 1376, 1382-83 (7th Cir. 1993).
5. Kleiner v. Burns, 2000 WL 1909470 (D. Kan. Dec. 15, 2000).
6. Prior to the December 1, 2000 amendments to the Federal Rules of Civil Procedure, Rule 26 contained a district-by-district opt-out clause eliminating the initial disclosure requirement.
7. National Union Elec. Corp. v. Matsushita Elec. Ind. Co., 494 F. Supp. 1257 (E.D. Pa. 1980); Milwaukee Police Assoc. v. Jones, 615 N.W.2d 190 (Wis. Ct. App. 2000).
8. United States Fidelity and Guar. Co. v. Canady, 460 S.E. 2d 677 (W. Va. 1995); In re Sealed, 877 F.2d 976, 980 (D.C. Cir. 1989).
9. Gates Rubber Co. v. Bando Chem. Ind., 167 F.R.D. 90 (D. Colo. 1996).
10. Demelash v. Ross Stores, Inc., 20 P.3d 447 (Wash. Ct. App. 2001); Van Westrienen v. Americontinental Collection Corp., 189 F.R.D. 440 (D. Or. 1999); Symantec Corp. v. McAfee Assoc., Inc., 1998 WL 740807 (N.D. Cal. Aug. 14, 1998); Strasser v. Yalamanchi, 669 So.2d 1142 (Fla. Dist. Ct. App. 1996).
11. State of Wash. v. Ben-Neth, 663 P.2d 156 (Wash. Ct. App. 1983). Computer-generated evidence is hearsay but may be admitted as a business record provided a proper foundation is laid.
12. United States v. Hutson, 821 F.2d 1015 (5th Cir. 1987); United States v. Cestnik, 36 F.3d 904 (10th Cir.1994).
13. Lori Enos, *E-Commerce Times*, "Digital Data Changing Legal Landscape," May 16, 2000 (visited July 6, 2001), http://www.ecommercetimes.com/perl/story/3339.html.

Part II

September 11 Aftermath: Immigration Effects

by Steven S. Miller and Laurie Bernbaum



September 11 was a major failure of American efforts to protect the country from foreign terrorists. The tragedy's impact on the general trends of U.S. immigration law was discussed in Part I. This article addresses more specific measures and legal responses that the government has chosen or is considering adopting to meet the challenge of terrorism. The debate on these measures reflects the ongoing balance between civil liberties and national security. Critics argue that many of these measures unduly target foreign nationals and are strongly suggestive of ethnic and racial profiling.

Such measures include the establishment of military tribunals to prosecute accused terrorists; modified federal regulations offering greater powers to detain foreign nationals suspected of terrorist activity and monitor conversations between detainees and their lawyers; a concentrated effort to arrest and detain hundreds of Middle Eastern men; a program to give special immigration status to those who provide useful and reliable information about suspected terrorists here and abroad; implementation of special security clearance procedures for U.S. visa applicants from 26 designated countries; a federal plan to interview 5,000 young Middle Eastern men who have entered the United States on temporary visas since January 2000; and incentives, without clear protections, for foreign nationals who provide information relating to terrorism. Finally, this article looks at the challenge of tracking and keeping records of all aliens in the United States.

In what has been the government's most controversial measure, the implementation of military tribunals has created a swift path to justice for noncitizen accused terrorists, raising numerous legal and procedural questions. On November 13, 2001, President Bush established tribunals as a military order in his constitutional capacity as commander in chief of the armed forces. Some critics believe military tribunals are unnecessary and that the government's success in prosecuting terrorists in federal courts over the last decade warrants a continuation of the system already in place.

The use of military tribunals appears to jeopardize the major tenets of the American judicial system, including, among others, the right to due process, the right to appeal, the right to a jury trial, and strict evidentiary standards. Military tribunals allow prosecution of any noncitizen if the president has "reason to believe" that such an individual is or was a terrorist or "conspired to commit acts of international terrorism" against or threatened to cause injury to the United States. Furthermore, the trials are allowed to take place in secret and allow the use of confidential evidence against the accused, which may not be accessed or contradicted by the accused's attorney, a military officer appointed to represent the defendant.

Also in this setting, suspected terrorists will be tried not before a jury, but rather, a commission made up of military officers serving as judge and jury. The evidence of the accused's guilt does not have to meet the "beyond a reasonable doubt" standard, but merely "have probative value to a reasonable person." Finally, the conviction and sentencing can be reached by only a two-thirds vote of the commission's members.

The American Bar Association passed a resolution in February calling for such tribunals to incorporate traditional American standards of fairness including the presumption of innocence, proof beyond a reasonable doubt, unanimous verdicts in death-penalty cases, and appeals to the U.S. Supreme Court. The ABA also called for tribunal proceedings to be open to the public and press, or when necessary, to be closed, so trial observers with appropriate security clearances are allowed to attend. Since the administration has not yet issued any specifics for tribunals, it argued the ABA resolution was premature.[1] The draft versions of regulations already call for some of the provisions including the presumption of innocence for defendants and a unanimous verdict for capital punishment.[2]

The only person charged so far in connection with the September 11th attacks, a French Moroccan, Zacarias Moussaoui, was not charged in a military tribunal, but in federal court, with six counts of conspiracy charges. Moussaoui was arrested prior to the attacks because of his suspicious behavior in flight school in Minnesota. The military tribunals may, however, be used to determine the fate of prisoners captured in Afghanistan and held in Guantanamo Bay.

In a broad effort to thwart future attacks, the United States has conducted a nationwide search for terrorists. While this pursuit has resulted in the arrests of more than 1,000 people, only a small number of those detained were believed to have any links to terrorism. Immediately following September 11, more than 700 people were held on immigration charges. To date, the Immigration and Naturalization Service (INS) reports that 326 people are still detained, down from 460 in January. A handful are still being investigated as possible terrorists. The vast majority, found to have no involvement with the terrorist activity of September 11, were handed over to INS for immigration violations, usually overstaying a tourist or work visa. Despite having been absolved of any link to terrorist

In a broad effort to thwart future attacks, the United States has conducted a nationwide search for terrorists.

activities, the Justice Department has blocked the release of at least 87 detainees who have either been ordered deported or granted voluntary departure. Justice Department officials say they are going through new information gained about Al Qaeda to ensure that none of the detainees have terrorist ties. Civil-rights advocates are concerned by what they say is essentially indefinite detention without a criminal conviction or even a criminal charge.

In addition, several interim regulations have taken immediate effect in response to the terrorist attacks. Critics argue that many of these provisions are too broad in scope, essentially permitting detention and deportation of individuals engaging in legitimate pursuits deemed to be associated with terrorist activity.

On September 20, 2001, immediately following the terrorist attacks, a new Interim Final Regulation (8 CFR §287.3(d)) took effect, requiring a determination in the event an alien is arrested without a warrant whether to charge or release the detainee within 48 hours of arrest and detention. However, this same provision also essentially provides for detention without charges for a longer, indefinite period of time, or "an additional reasonable period of time," in the event of "an emergency or other extraordinary circumstances."

Upon enactment of the USA PATRIOT Act (discussed in Part I), which provides extensive detention provisions, the regulation's authorization to detain for "an additional reasonable period of time" arguably has been restricted by the specific provision in the USA PATRIOT Act which limits the period of detention without charges to a maximum of seven days where an alien has been "certified." However, individuals who have violated their immigration status may still be held on immigration charges without the possibility of release on bond, as indicated by the 326 people still detained.

Another federal regulation, 8 CFR 3.19(i)(2), has emerged which further expands INS power to detain foreign nationals. Effective only three days after being signed by Attorney General Ashcroft and published in the Federal Register only five days later on October 31, eliminating the prescribed comment period, the rule allows

a foreign national to remain detained even after an immigration judge has ordered him to be released for lack of evidence. The change allows the INS to set aside any release order issued by an immigration judge in cases where the INS believes the individual to be a danger to the community or a flight risk.

To have such a ruling set aside, the INS simply has to file a form indicating an intention to appeal to the Board of Immigration Appeals (BIA). The person then remains detained, and the INS has 10 days to decide whether to appeal. If the INS files a notice of appeal, the stay of the judge's order continues until the BIA issues a decision. Even if the BIA orders the detainee released, the INS can also set aside that order, under the new regulation, by certifying the case to the attorney general. Critics argue that the new rule deprives the detainee of the fundamental right of bond hearings where the immigration judge weighs the evidence to decide whether a detainee should be allowed to be free on bond. But now, regardless of the outcome of those hearings, the government can continue to hold detainees by filing a form to automatically stay the order. This modified regulation ignites the heated constitutional question of due-process rights of foreign nationals on U.S. soil.

The fight against terrorism also threatens to jeopardize the attorney-client privilege. Another interim regulation[3] which has taken immediate effect gives permission to eavesdrop on attorney and detainee client communications where the attorney general has certified that there is a reasonable suspicion that such communications are being used to further acts of violence or terrorism. Advance notification is required except in the case of a prior court order.[4] A senior government official, according to *The New York Times*, acknowledges: "The priority now is stopping terrorist activity, saving American lives and not on getting evidence that's admissible in court."[5]

This urgency also has fueled suspicions that proposals to stop money-laundering may impinge on confidential communications between lawyers and their clients. The ABA also approved a resolution urging Congress to protect the confidential relationship between lawyers and their clients in the passage of any new law to cut off and track the cash flow to terrorist organizations. Some foreign governments place greater burdens on professionals, including lawyers and accountants, to report suspicious financial activity by clients. The ABA urged the U.S. government not to adopt rules that could chill the relationship between attorneys and their clients and potentially hamper legitimate business transactions.

Another aggressive step prompted by future terrorist attacks, a plan to interview 5,000 Middle Eastern men aged 18 to 33 who entered the United States from countries linked to terrorism on temporary visas since January 2000, has been met with considerable criticism. While the interviews are required to be "voluntary," and the men interviewed "are not suspected of any terrorist activity," should the interview lead to further interest or suspicion of criminal activity, the men may be immediately held without bond. The INS has indicated that where INS agents are not present at the interviews and the interviewer suspects that a particular individual is in violation of status, those cases are expected to be referred to the INS by law-enforcement officers.

This questioning has been portrayed as yet another example of a targeted investigation of a select group of individuals

based solely on national origin resulting in discriminatory profiling. Moreover, the possibility of being detained, together with the atmosphere of a coercive investigation, may cause voluntary attendance at these interviews unlikely, thereby resulting in a less-than-voluntary program. Some law-enforcement agencies have indicated they would not participate in this plan, citing violation of departmental policy, state or local laws against racial profiling, or intelligence-gathering for political purposes.

In an effort to appease critics of the laundry list of measures initiated in direct response to the events of September 11, the government has been aggressively promoting a plan already in existence for seven years (the "S" visa classification, aka the "snitch" visa) in an effort to reduce crime and terrorist operations, to reward those who present reliable and useful information related to terrorist activity with legal immigration status in the United States. The Responsible Cooperators Program is designed to provide incentive for foreign nationals in the United States and abroad to provide information to the government in its widening terrorist investigations. The "S" nonimmigrant status is available to certain informants who have critical reliable information regarding either criminal organizations, the S-5 visa (200 per year), or terrorist operations, the S-6 visa (50 per year). The program allows a foreign national who obtains this status to remain in the United States for three years even if he had previously come to the United States illegally. For those who are not eligible for the S visa, but do provide useful information in the apprehension of terrorists or prevention of future terrorist acts, the government may consider delaying removal proceedings.

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As with the plan to interview 5,000 men on a "voluntary" basis, this program creates a dilemma for those who believe that while they may be rewarded for coming forward with information, they may also be subject to arrest and detention based on the vast number of new provisions in place should they have committed a minor immigration violation. The Justice Department has ensured that the program would be organized so that informants are not asked their visa status, nor would their status be used against them.

An additional issue which remains unclear is how a determination will be made as to the useful and reliable quality of the information provided. The rules provide that a Justice Department official must make a recommendation, and the attorney general and secretary of state both must agree the information is useful and reliable. The attorney general has stated that the information does not have to lead to a conviction and may even appear insignificant to the informant. Critics argue that promoters of this program offer few assurances to those who come forward with information, and are inconsistent with the threat of arrest and detention inherent in many of the recently implemented executive orders and regulatory changes.

Most recently, the Justice Department has turned its attention to the immigration court system and the severely backlogged appeals process in further efforts to account for foreign nationals present in the United States, and speed the process that could lead to the their deportation. The Justice Department has introduced a proposed rule involving drastic procedural reforms at the BIA, the court that reviews immigration court decisions, including cutting the number of board members from 19 to 11. The proposed rule seeks to reduce the backlog of 55,000 cases pending before the BIA through numerous means, most notably by requiring most appeals to be heard by one judge instead of the current three-member panels, means critics say would jeopardize noncitizen rights.

Despite the heated debate sparked by most of the above-mentioned measures initiated in direct response to September 11, Congress, the administration, and immigration advocates alike agree that improved national security and effective entry- and exit-tracking measures are imperative. Existing laws provide for two key anti-terrorism measures but were never fully implemented as a result of huge technological barriers and competing political

interests. These measures call for an automated system to record when a foreigner enters and leaves the country, and for a student-visa database. The student-visa database program, Coordinated Interagency Partnership for Regulating International Students (CIPRIS), was created to provide a means of sharing student information between the INS and educational institutions, and track students violating the terms of their visas or those involved in criminal activity. Disputes over collection of fees and objections to targeting foreign-national students resulted in significant implementation delays.

Similarly, a tracking system to monitor the entry and exit of every foreign national (estimated from 350 million to over 500 million entries)[6] posed enormous logistical nightmares. The INS has not shown itself able to manage much smaller database problems.[7] Further, even adding a few minutes to every entry on our land border would tie up border traffic for long hours. Such border gridlock met with extreme resistance and ultimately was postponed due to serious concerns about the economic livelihood and overly burdensome backups for border communities. This is an area of particular concern in Washington, with potentially tremendous impact on local businesses dependent on Canadian commerce.

Given the obstacles to the above-mentioned measures, but recognizing the dire need for improved tracking and monitoring capabilities, Congress has been focusing great attention on border security and entry/exit monitoring. On December 19, the House passed the Enhanced Border Security and Visa Entry Reform Act of 2001. The Senate, however, has yet to pass its companion border-security measure. Both bills include many needed reforms aimed at deterring terrorism, and share many provisions in common, including authorizing increased funding for the Department of State and the INS; requiring federal agencies to coordinate and share information needed to identify and intercept terrorists; providing improved training for consular officers; authorizing funds to improve technology; requiring more pre-inspections abroad; and mandating in-flight transmittal of passenger lists, focusing attention on the implementation of a North American Perimeter Safety Zone; increasing access to lookout lists; creating a workable and integrated entry-exit control system; and implementing changes in the Foreign Student Monitoring Program. These measures are aimed at increasing the layers of protection that stand between the United States and any potential adversaries from abroad, while allowing for the continued flow of family-based and business-based immigration, refugees and asylees.

Given the current state of heightened alert at our borders, foreign nationals residing in the United States who have no association with terrorist activities are frightened, and perhaps rightfully so. In light of these new stringent and broad measures aimed at restricting mobility and increasing scrutiny of foreign nationals, it is recommended that all non-U.S. citizens carry documentation demonstrating proof of valid status at all times, as well as inform the INS of changes of address. A little-known provision in the Immigration and Naturalization Act (INA), which to date has generally not been enforced, requires every non-U.S. citizen 18 or over to carry with him and have in his possession any certificate of alien registration receipt (such as a green card, I-94 card or EAD card) issued

to him. Failure to comply with this documentary requirement is a misdemeanor offense punishable by fine or imprisonment. An additional provision deems deportable a non-U.S. citizen who does not notify the INS of changes of address unless such failure was reasonably excusable or not willful. Again, while the INS has not generally enforced or pursued violations of these provisions, in light of the current climate, foreign nationals, whether nonimmigrants or lawful permanent residents, are strongly advised to carry documentation at all times and notify the INS of all changes in address.

While each of these actions and new laws is clearly aimed at preventing future terrorist atrocities within U.S. borders, serious questions regarding the feasibility and effectiveness envisioned in instituting such systems; the prevention of cumbersome, inefficient and invasive tracking programs; and the protection of civil liberties and our traditional American legal system are being raised. Implementation of a centralized tracking system is difficult given the volume of border crossings each year coupled with the lack of coordination among key federal agencies including the INS, the Department of State, the FBI and the CIA.

...a tracking system to monitor the entry and exit of every foreign national ... posed enormous logistical nightmares.

More importantly, such technology will be ineffective without the ability to collect critical intelligence information required to effectively apply the grounds of inadmissibility and to prevent those who intend to commit harm from entering the United States. Furthermore, the security interest in tracking entries and exits of all foreign nationals and monitoring the activities of all foreign national students must be weighed against the cost of its implementation and intrusion on civil liberties.

The need for drastic changes to our current national security has been made alarmingly clear, but these changes must specifically aim to prevent the infiltration of those determined to cause harm — not those who embrace the opportunity to live and work in the United States.

Moreover, American history has repeatedly shown that from war times has stemmed the adoption of measures which were later viewed as sadly unnecessary and excessive infringements on civil liberties.

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NOTES

1. *Washington Post*, February 5, 2002; p. A02.
2. *Ibid.*
3. *Federal Register*, October 31, 2001/Vol. 66, No. 211, p. 55061-55066.
4. 26 CFR 501.3(d)(2).
5. Neil A. Lewis and Christopher Marquis, *The New York Times*, November 10, 2001.
6. The large variance in estimates demonstrates part of the problem of current record-keeping.
7. The INS is now entering the names of some 314,000 "fugitive aliens," or absconders, into the FBI's National Crime Information Center database, according to INS Commissioner James Ziegler. Despite the fact these individuals have been ordered deported, the INS does not know where they are, nor has it provided the information to law enforcement prior to now.

Juveniles' Waiver of *Miranda* Rights: Competence and Evaluation

There are good reasons, both quantitative and qualitative, for questioning adolescents' capacities in many waiver decisions.

by Delton W. Young

The tensions inherent within the institution of the juvenile court stem from its conflicting roles — on the one hand, its historic mission as benevolent protector of youth, as *parens patriae*, versus its role as adversarial agent of the state. These decades-long contradictions are nowhere more apparent than in the matter of juveniles' waiver of the right to remain silent and the validity of confessions obtained after waiving that constitutional right.

Even before *Miranda's* procedural protections were extended to juveniles in *In re Gault* (1967),[1] the U.S. Supreme Court had urged caution in judging the validity of juveniles' waivers of the right to silence and the voluntariness of their confessions. In *Haley v. Ohio*,[2] the Court stated: "(a juvenile) needs counsel and support if he is not to become the victim first of fear, then of panic." In *Gallegos v. Colorado*,[3] the Court stated: "Without some adult protection against this inequality, a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had." In *In re Gault*, the Court again asserted that "admissions and confessions of juveniles require special caution" and that, because of immaturity and vulnerability, they were at greater disadvantage in dealing with police.

Psychological research over the past two decades supports those early admonitions from the Supreme Court. Empirical studies by psychologist Thomas Grisso[4] at the University of Massachusetts, for example, showed that only 20.9 percent of juveniles displayed adequate understanding of the four components of a *Miranda* warning, and 55 percent of juveniles demonstrated no adequate comprehension of any of the four warnings. Younger juveniles, as expected, showed poorer understanding. Replication studies at other sites supported Grisso's conclusions. In one research program, a substantial proportion of juveniles interpreted the warning that "anything you say can and will be used against you in a court of law" to mean that "any disrespectful words directed to police would be reported to the judge."[5]

There are good reasons, both quantitative and qualitative, for questioning adolescents' capacities in many waiver decisions. Cognitive and intellectual capacities continue to expand through the teen years and attain maturity only in early adulthood. In addition, during adolescent years, normal children develop the capacity for "formal operational" thinking — the capacity to think in the abstract, to consider hypothetical actions or decisions and then to weigh their practical consequences.

In the matter of *Miranda* waivers, this entails the capacity to consider a right in the abstract, as provided by law and society, instead of by just those persons in the juvenile's immediate experience. Younger adolescents and those with cognitive developmental delay are at particular risk for not grasping the meaning of those rights and for not understanding their actual function and significance in the context of interrogation.

In addition to those cognitive issues, juveniles' relative emotional immaturity and dependence upon adults renders them more

vulnerable to pressure and to suggestion. Many adolescents believe, for example, that being as cooperative as possible with police will bring interrogation to a close more quickly, and benefit them and their families. The personal and emotional strength to resist coercion and to assert a constitutional right is not at the disposal of some youths under interrogation. The result can be waivers of questionable validity and even an occasional false confession. I have seen intellectually normal but emotionally troubled early adolescents yield to leading questions and suggestions, and "confess" to acts and intentions that never took place.

Given the evidence for cognitive and emotional immaturity in juveniles in relation to the demands involved in waiving one's constitutional rights, legal scholar Barry Feld[6] concluded: "[R]easons exist to question whether a typical juvenile's waiver decision is or ever can be, 'knowing, intelligent and voluntary.'"

In *Fare v. Michael C.*,[7] the U.S. Supreme Court retreated from the postulate that juveniles require special protections against waiving their right to remain silent. *Fare* reaffirmed the adult test involving the "totality of circumstances" for assessing the validity of such waivers, and referred to two broad factors: attributes of the individual, and circumstances of the interrogation and statement or confession. Appellate courts have specified several relevant individual factors including the juvenile's age, education, IQ, mental disorder, and previous experience with the police. None is given controlling weight, and no threshold values were specified for age or IQ.

Circumstances of the interrogation that have been considered include the physical setting of the questioning, the length of time the suspect was in custody and apart from family or other support, whether the officers did anything that might be seen as an attempt to intimidate or instill fear, and the presence or absence of an "interested adult" to assist and support the juvenile. The nature and presentation of *Miranda* warnings themselves can also become an issue. For example, some recitations of *Miranda* have a *pro forma* quality and, when asked to "sign at the bottom," may not indicate that the youth has a choice not to waive his or her rights.

Challenges to the validity of a juvenile's confession usually are based upon the claim that the youth lacked the requisite capacities — that he was not competent in that time and circumstance — to waive his right to remain silent. An evaluation by a forensic mental health expert then seeks to determine the youth's cognitive and emotional capacities at the time of the confession.

The majority of *Miranda* waivers that are ruled invalid are done so because of deficient intellectual functioning. Relevant variables include general intellectual level, easily measured by scientifically well-grounded IQ tests for children and adolescents. The juvenile's reading level and comprehension also can be assessed by standard measures bearing strong validity and reliability. School-administered academic achievement tests also can provide salient data about the adolescent's ability to listen, read, comprehend and understand written and verbal material. In addition to these general tests of intellectual development, the examiner must assess the juvenile's grasp of the meaning and significance of the actual *Miranda* warnings used prior to his state-

ment. The examiner often will have the juvenile read the specific warnings he was given at the time of the confession, and then paraphrase them in his own words.

With support from the National Institute of Mental Health, Professor Grisso[8] developed four instruments, with standardized scoring criteria and statistical norms, for assessing a suspect's understanding of the *Miranda* warnings. Each instrument has strong psychometric properties — high inter-rater reliability and external validity.

First, the *Comprehension of Miranda Rights* asks the individual to paraphrase the four warnings to assess his or her general level of comprehension of the warnings. Second, the *Comprehension of Miranda Rights-Recognition* asks the subject to identify other statements that are "the same as" or "different from" *Miranda* warnings. This second test addresses the difficulty that some subjects may understand adequately but lack the verbal ability to express what they know.

A third instrument, the *Comprehension of Miranda Vocabulary,* assesses the subject's grasp of the vocabulary used in the warnings. This instrument aids in the interpretation of low scores on the two comprehension tests. Fourth, the *Function of Rights in Interrogation* assesses the youth's appreciation of the meanings of *Miranda* warnings in the context of the legal process. For example, a youth may understand that he has a right to speak to an attorney before being questioned, but this does not indicate whether he understands the function of a defense attorney, for example, that the attorney serves as an advocate.

When cognitive capacities are the primary issue, personality tests may be of limited utility and in some cases may be moot. However, they can be valuable when questions about the juvenile's competence go beyond cognitive/intellectual capacities. One such factor, especially salient with adolescents, is *suggestibility.* Juveniles who are especially dependent upon adults or who show unusual degrees of deference to authority figures may readily acquiesce to pressure or suggestion. Such suggestibility can be assessed through traditional clinical evaluation methods — interviews and psychological tests. There also are specific tests that may be useful occasionally that measure the individual's proneness to "yield" to suggestion.

When there is a question of mental disorder, clinical assessment methods will come into play. Background information from family, mental health providers, and medical records will provide pertinent data. Formal mental status examination and psychological testing, for example, the MMPI-A, Millon Scales (MMPI), will clarify dimensions of psychopathology. In rare instances, neuropsychological testing may be needed to assess neurological deficits that may preclude a valid waiver.

When psychological evaluation findings cast doubt on a juvenile's capacity to waive his *Miranda* rights "voluntarily, knowingly and intelligently," one other possibility must be considered — malingering. Malingering is the intentional fabrication of symptoms or deficits for some instrumental purpose, for example, for financial gain or to avoid responsibility for one's actions. Fortunately, there are several well-established strategies for detecting malingering. These include sensitive validity scales on self-report inventories like the MMPI, and inclusion of tests that are nearly impossible to "fake" (e.g., the Rorschach). Also, symptoms that deviate markedly from known syndromes, and patterns of scores that are inconsistent are

suggestive of malingering. In addition to these traditional methods, there are standardized tests that specifically assess malingering of various kinds of symptoms.[9]

Confirmation of significant cognitive or emotional deficits, by itself, is not sufficient to invalidate a *Miranda* waiver and exclude a confession. Numerous *Miranda* waivers have been ruled valid even in persons with intellectual deficiency (mental retardation) or severe mental disorder (e.g., schizophrenia). Rather, it must be demonstrated in specific terms how a particular cognitive limitation or emotional weakness is likely to have undermined the individual's capacity — knowingly and intelligently — to waive those rights under the known circumstances. The examiner must not, of course, assert an opinion on the ultimate issue of the validity of the waiver. However, well-researched and clearly presented data about pertinent cognitive and emotional factors will assist the trier of fact in judging the juvenile's competence to waive his right to remain silent.

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NOTES

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2. Haley v. Ohio, 332 U.S. 596 (1948), p. 599.
3. Gallegos v. Colorado, 370 U.S. 49 (1962), p. 54.
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7. Fare v. Michael C., 442 U.S. 707 (1979).
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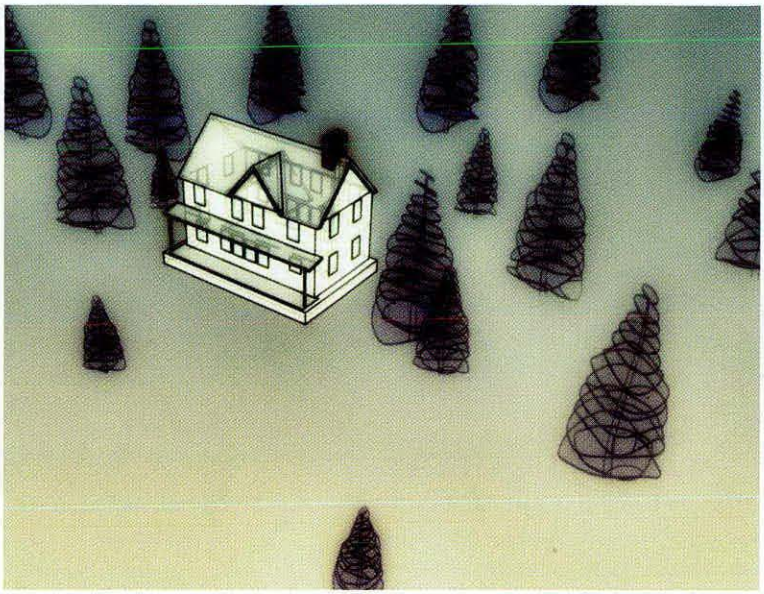
You and I
Are suddenly what the trees try
To tell us we are:
That their merely being there
Means something; that soon
We may touch, love, explain.[1]



Tree Law

by Daniel M. Warner

"The Evergreen State" is an apt enough nickname for Washington, at least if you live on the west side of the mountains. It suggests the importance of trees and timber in the economic development of the state, and it is not surprising that a considerable body of "tree law" has grown up in Washington over the last century and beyond. As the state's economy has diversified in the last 40 years, though, "tree law" has become somewhat domesticated, increasingly touching on disputes between suburban neighbors as well as between timber-tract owners. And, of course, there are plenty of trees on the east side, too.

This article briefly summarizes Washington tree law.

A landowner suffering timber trespass in Washington may elect to pursue either common-law or statutory remedies; the two remedies are mutually exclusive. When the statutory remedy is chosen, common-law remedies and damages are preempted.[2] The common-law measurement of damage is the difference between the value of the real estate before and after the trespass.[3]

There are four statutes. The first is RCW 64.12.030, originally adopted in 1881:

> Whenever any person shall cut down, girdle or otherwise injure, or carry off any tree, timber or shrub on the land of another person, or on the street or highway in front of any person's house, village, town or city lot, or cultivated grounds, or on the commons or public grounds of any village, town or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town or city against the person committing such trespasses or any of them, if judgment be given for the plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be.

The second statute, RCW 64.12.040, also adopted in 1881, clarifies the "without lawful authority" part of .030 (quoted above) as follows:

> If upon trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodlands, for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages.

Note that .030 allows a person to make a claim when the trees cut are on the street in front of his house, not just on his property.[4] The treble damages punishes the trespassing offender; it provides a rough measure for all damages that normally arise in a logging operation, including, *inter alia*, "the loss of trees of less than merchantable size, the carving out of unwanted logging roads, or possible soil erosion and stream pollution."[5]

The treble damages also discourages persons from forcing a landowner into becoming an unwilling seller of timber, on the theory that intentionally removing and selling another's timber would be profitable if, when caught, the wrong-doer only had to pay actual damages,[6] but of course would not be profitable if treble damages were assessed. Under the statute, extraordinary losses are also recoverable if they

Once a plaintiff has established trespass and the cutting of timber, the burden of demonstrating the casual or involuntary nature of the trespass falls upon the defendant.

are properly segregated. Extraordinary losses are "those that are not the normal consequence of a logging operation conducted in a reasonably prudent manner, e.g., damages to bridges, pipelines, dwellings and outbuildings."[7] Once a plaintiff has established trespass and the cutting of timber, the burden of demonstrating the casual or involuntary nature of the trespass falls upon the defendant.[8]

In a 1994 case, the Washington Court of Appeals compiled the cases measuring damages under RCW 64.12.030.[9] The statute applies to any "tree," "timber" or "shrub." When the damage is to "timber," the landowner is generally compensated based on the "stumpage value" of the severed trees, together with other damages that are a normal consequence of the logging operation, as noted just above. When the damage is to a "productive tree," its production value rather than its stumpage value is the measure of damages. Measure is lost production value of fruit trees while replacement trees are maturing, less production costs. When the damage is to Christmas trees intended to be sold at market, lost profits — not stumpage — are an appropriate measure of damages. When the damage is to residential or ornamental trees or shrubs, the appropriate damages are the restoration or replacement cost of the vegetation.

In *Birchler*,[10] the court held that a plaintiff had to choose between common-law and statutory remedies. But once the statutory remedy is chosen, all appropriate damages are awardable, including damages for emotional distress:

> A claim for damages from emotional distress is not an alternate or cumulative remedy for timber trespass that one may elect in lieu of a common law remedy or the statutory remedy, but merely another item of damages for a wrong committed as a result of the timber trespass. Nor are emotional distress damages "repugnant and inconsistent" with damages caused by timber trespass.[11]

Whether damages for emotional distress may also be trebled has not been addressed by Washington courts; the issue was not properly raised in *Birchler*.[12]

The third relevant statute is RCW 4.24.630, adopted in 1999:

> (1) Every person who goes onto the land of another and who removes timber, crops, minerals, or other similar valuable property from the land, or wrongfully causes waste or injury to the land, or wrongfully injures personal property or improvements to real estate on the land, is liable to the injured party for treble the amount of the damages caused by the removal, waste, or injury. For purposes of this section, a person acts "wrongfully" if the person intentionally and unreasonably commits the act or acts while knowing, or having reason to know, that he or she lacks authorization to so act. Damages recoverable under this section include, but are not limited to, damages for the market value of the property removed or injured, and for injury to the land, including the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.
>
> (2) This section does not apply in any case where liability for damages is provided under RCW 64.12.030 ...

This statute appears to combine both of the 1881 laws, and makes clear that damages include certain costs not called out in the earlier statutes. It would seem that — Birchler's failure to address the issue notwithstanding — under either the 1881 or 1999 laws, treble damages for emotional distress related to the trespass could be argued.

The fourth statute, the "Christmas tree statute," was enacted in 1937.

> It shall be unlawful for any person to enter upon any of the state lands, including all land under the jurisdiction of the department of natural resources, or upon any private land without the permission of the owner thereof and to cut, break or remove therefrom for commercial purposes any evergreen trees, commonly known as Christmas trees, including fir, hemlock, spruce, and pine trees. Any person cutting, breaking or removing or causing to be cut, broken or removed, or who cuts down, cuts off, breaks, tops, or destroys any of such Christmas trees shall be liable to the state, or to the private owner thereof, for payment for such trees at a price of one dollar each if payment is made immediately upon demand. Should it be necessary to institute civil action to recover the value of such trees, the state in the case of state lands, or the owner in case of private lands, may exact treble damages on the basis of three dollars per tree for each tree so cut or removed.

Rather unexcitingly, the modern trend is to abolish any distinction between urban and rural, and simply say that landowners have a general duty of care in all situations.[17]

The Washington court has held that a Christmas tree grower may elect remedies. He may choose between the Christmas tree statute's damages of $1 for each tree ($3 in the case of willful trespass) and not prove specific damages, or the general statute's treble-damages provision and obtain "more compensatory remedies."[13] In the latter case, of course, proof of damages is required. It is unlikely that the Christmas-tree statute would be much used today, as its statutory damages are very small in today's money.

So much for the statutory regime. There are a couple of other tree law issues worth a glance:

- ***Limbs or roots overhanging property line.*** A landowner has a remedy in his own hands as respects alleged nuisance from overhanging branches or cross-line roots from a tree on adjoining landowner's lot: without notice, if he has not encouraged the maintenance of such conditions; and after notice, if he has, he may clip the branches or roots overhanging his premises at the line.[14]
- ***Tree or limb falling on neighbor's property.*** A rural landowner may be liable if he has actual or constructive notice that an alteration to a natural condition creates a hazard to persons on adjacent property. It would seem that a landowner who cuts trees on his own property, thus exposing a neighbor's trees to wind, might be liable if the wind blows down the neighbor's trees.[15] And, in general, a possessor or owner of urban or residential land who has actual or constructive knowledge of defective trees is under a duty to take cor-

rective action for the protection of the plaintiff on adjacent land.[16]

Rather unexcitingly, the modern trend is to abolish any distinction between urban and rural, and simply say that landowners have a general duty of care in all situations.[17]

None of us will ever see a *Bar News* article as lovely as a tree, but nevertheless it may be that this bit of law is of use to you or me.

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NOTES

1. John Ashbery (b. 1927), U.S. poet, critic; *Some Trees.*
2. Birchler v. Castello, 942 P.2d 968 (Wash. 1997).
3. Guay v. Washington Natural Gas Company, 383 P.2d 296 (Wash. 1963).
4. Simons v. Wilson, 112 P. 653 (Wash. 1911).
5. Pearce v. G. R. Kirk Co., 589 P.2d 302, aff'd, 602 P.2d 357 (Wash. 1979).
6. Guay v. Washington Natural Gas Co., 383 P.2d 296 (Wash. 1963).
7. *Id.*
8. Ventoza v. Anderson, 545 P.2d 1219 (Wash. Ct. App., 1976).
9. Sherrell v. Selfors, 871 P.2d 168, rev. den., 886 P.2d 1134 (Wash. 1994).
10. Note 2, *supra.*
11. Birchler, note 2, *supra,* at 973.
12. Birchler, note 2, *supra,* at footnote 3.
13. That is, more money. Pearce v. G.R. Kirk Co., 602 P.2d 357 (Wash. 1979), at 359.
14. Gostina v Ryland, 199 P. 298 (Wash. 1921): "One adjoining owner cannot maintain an action against another for the intrusion of roots or branches of a tree which is not poisonous or noxious in its nature. His remedy in such cases is to clip or lop off the branches or cut the roots at the line."
15. Albin v. National Bank, 375 P.2d 487 at 490 (Wash. 1962): "It was the basic theory of the plaintiffs, as stated by counsel, that when the loggers cut down the protective timber around from this snag and the other snags ... they increased the hazard. The trial court properly concluded that there was no duty to inspect and no liability so far as the owner was concerned (absent knowledge of a hazardous condition), so long as the forest remained in its natural condition; that the liability of the owner, if any, must be predicated on a dangerous condition created on its land, as a result of the logging operation, of which the owner knew or should have known; and presented the case to the jury on that theory."
16. *Id.*, and Lewis v. Krussel, 2 P.3d 486 (Wash. Ct. App., 2000).
17. Lewis, note 16, *supra.*

On Trial: A Treasure Trove for Trial Lawyers

by Thomas J. Greenan

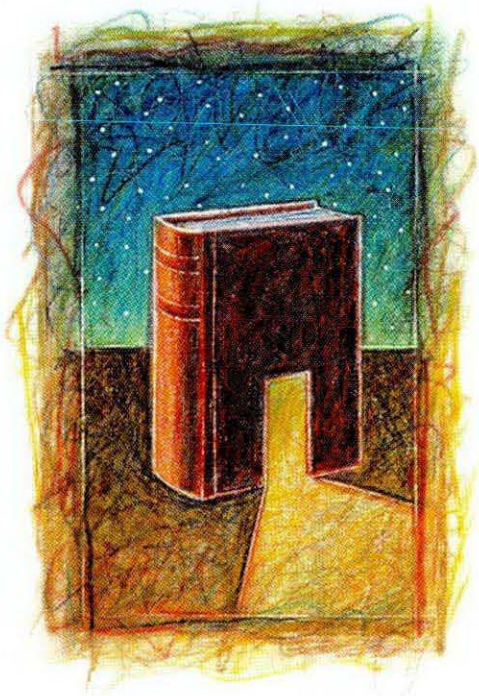
On Trial: Lessons from a Lifetime in the Courtroom
by Henry G. Miller Esq.; ALM Publishing, a Division of American Lawyer Media, Inc.; 2001

Here is a book for all trial lawyers, whether they are at the beginning of their careers or leaders of the trial bar. *On Trial* is the accumulation of knowledge, wit and wisdom of a distinguished trial lawyer who has spent a lifetime in court. It is a humorous, witty, but always practical guide on how to survive and prosper in front of judges and juries.

Henry G. Miller is a prominent member of the New York State Bar Association. His many accomplishments include previous service as director of the New York State Trial Lawyers Association, president of the New York State Bar Association, and regent of the American College of Trial Lawyers. *On Trial* is based upon a series of essays that Miller first penned for the *New York Law Journal*. The essays were immensely popular, and he was encouraged to compile them into this entertaining, instructive and very readable little book.

On Trial is a treasure trove for trial lawyers. It is a distillation of the wisdom garnered by a distinguished advocate during a 40-year career in the courtroom. Miller covers every phase of a trial, offering common-sense advice on the art of advocacy. The prologue, titled *Trying Your First Case? Nineteen Tiny Tips*, offers advice that I wish someone had given me earlier in my career (e.g., forget yourself, love your client, don't shoot every mosquito, make lists, over-prepare, be yourself).

The chapters that follow are filled with common sense that comes only after years of experience and some hard knocks. For example, chapter one, *The Forty-Four Most Common Blunders of Jury Selection*, identifies mistakes that could only be recognized by one who has painfully lived through them. Blunder No. 7, "Stupidly Using Your Last Challenge," is contrasted with No. 8, "Stupidly Not Using Your Last Challenge." The discussion of Blunder No. 35, "Engaging in Levity," precedes an examination of Blunder No. 36, "Not Engaging in Levity." You get the idea.



***On Trial* is a treasure trove for trial lawyers. It is a distillation of the wisdom garnered by a distinguished advocate during a 40-year career in the courtroom.**

Once I started reading *On Trial*, I found it difficult to put down. The very titles of the chapters enticed me onward: *Opening – The Twenty-Seven Steps*; *Direct Examination – Thirty-One Pertinent Pointers, Fifteen Suggestions and Four Rules on How to Survive Cross-Examination*; *Some Dos and Don'ts for Summation*; and so on. Although always focusing on the practical, the book is presented with the warmth and humor of one who is, quite obviously, very happy with his chosen profession.

This is not just another "how-to" book. Miller also sets out his philosophy for trial lawyers, embodied in chapters such as *Courage, or Trying a Case When the Judge and Jury Hate You* and *The Ten Most Common Transgressions Against the Manners and Morals of Advocates*. Typical of the advice offered throughout is the following: "Did you ever hear of a lawyer's losing a contract? If you lose a trial, every explanation seems lame. The client who adored yesterday's summation glares at you in disgust after today's defeat. The jury has rejected you. It's a personal defeat. It burns in memory. Defeat is the price trial lawyers pay for success."

Miller sprinkles his text with quotations, learned and otherwise, from many sources, such as this one by Mark Twain: "The efficiency of our jury ... system is only marred by the difficulty of finding twelve men every day who don't know anything and can't read."

Seasoned advocates and raw beginners will find much here to savor. Miller offers suggestions on how to live with experts, judges, colleagues and opponents. He discusses strategies for settlement as well as trial. Typical of his advice are the precepts which he offers for reaching old age at the trial bar: "Keep fit, be ethical, take vacations, have many interests, laugh, do not take yourself too seriously, love your work, be creative, face up to hard problems." As the author puts it, that's "[n]ot a bad prescription. Come to think of it, it is not a bad way to get through life for anyone — whether you are a trial lawyer or just a normal human being."

I found *On Trial* to be a very enjoyable read, and one to keep close at hand for periodic future reference.

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SETTLEMENT

After much preparation, caterwauling
and more,
Smith Co. v. Jones Inc. has come on
before
A capable Mediator who's striving to
find
An effective combination to put this
lawsuit behind —
Not only the parties — but the lawyers
as well;
It's the last hope for ending this
"Spite Case From Hell."

After opening comments — which
end very soon,
She installs each party in its own
separate room.
"Tell me your story," she asks each
in turn,
Trusting that by sifting the rankle
she'll learn
The key to extinguishing this long-
simmering burn.

"This cannot continue," the Defendant
cried.
"They're bleeding us, sure, that can't
be denied; but
Such liars and scoundrels one just
can't abide!"

"This has to be finished!" the Plaintiff
exclaims.
"At this rate we're winning only anger
and blame;
They're thieves and villains without
any shame!"

Counsel exhort their clients along:
"We can't go first; You must stay strong;
The first sign of weakness will be
pounced upon.
Our remedy lies with the court;
you'll see.
There we can forge complete victory!"

While each party listens to its lawyer's
spiel,
The Mediator calmly tries to focus a
deal.
Each CEO says: "I'm outraged! This is
unreal, but
I can't bet the company on some
judge's wheel!"

As emotions reverse (they invariably do),
The litigants demand vindication too.
It's not good enough only to win,
There must be the other's annihilation.

At that point the counselors invert
the prism.
Joining the search to end this schism;
Soon the Genie emerges from out of
the mist,
And words once despised, and earlier
dismissed,
Now hit like a bolt through the wall of
resentment:
"Its time to explore our options for
settlement."

"If they will give 'X,' then we can give 'Z';
That's a win for each side — surely
they'll see!
But they must go first; we'll demand
that they do.
Only then can we maintain the proper
view.
We'll stay on the High Road whatever
transpires,
And won't let them drag us down into
the mire.
If a deal with the Devil can end this mess,
Get it done, and let's get back to normal
business."

"But no more than an inch; that would
only encourage
New blackmail from them, which we
must discourage.
And no matter what, if it's not finished
today,
We take it to court and go all the way.
Damn the result, whatever the cost.
None will remember who won or who
lost; but
We'll have made our best shot, and no
one can blame us
For the ultimate outcome, however
infamous!"

Like winds shifting through wheatfields,
the rhetoric plays;
Back and forth 'til the combatants,
exhausted, each say
To the Mediator: "Enough! Let's get out
of this pickle."
So the lawyers write it, and the clients
initial,
The Mediator nods and blesses the
ritual.

Next the Judge approves, then seals it
all up,
So none can assess who came out on top.
Each can move on, yet both claim
the win;
After all, neither side cares to makes
amends;
Settlement doesn't mean that we'll all
just be friends.

— *Dan Caine*

Dan Caine is a Seattle attorney whose practice emphasis is on creditors' rights and bankruptcy. He is also a sometimes poet.

Recent RPC Informal Opinions

by Christopher Sutton • *WSBA Professional Responsibility Counsel*

The Rules of Professional Conduct (RPC) Committee receives, researches and prepares responses to written ethical inquiries submitted by bar members. Upon receipt, each written inquiry is assigned to two committee members for research. If the response to an inquiry could have wide impact, additional information from knowledgeable experts may be sought. Those assigned to the inquiry present a written response memo to the entire RPC Committee for discussion. Specific language is proposed and voted on by the committee, and a response letter is directed to the inquirer. The response letter is redacted to remove identifying information and is designated an informal opinion. If the inquirer acts in accordance with the response letter, a rebuttal presumption arises that the action is ethical. Informal opinions are based on the specific facts of the inquiry and reflect only the opinion of the RPC Committee and not the official opinion of the WSBA.

While informal opinions are generally concerned with situations specific to the inquiry, many of the recently issued informal opinions may be of interest to bar members. Below are summaries of these opinions.

Informal Opinion 1931 concerns possible conflicts of interest when acting as a construction consultant and as an attorney. The inquiring lawyer owns a substantial interest in and is employed by a consulting company, and in his lawyer capacity represents clients of that company. The inquiring lawyer asks if another employee of the company may testify as an expert witness for the inquiring lawyer when the lawyer is the legal representative of a client of the company in an action involving the findings of the consulting company, and may informed consent allow an otherwise impermissible representation?

The committee stated that the inquirer partly owns a consulting business with a nonlawyer. The inquirer proposes to identify potential legal clients from among the consulting business clients, advise the consulting clients to hire the inquirer as their attorney, and use the inquirer's consulting partner as an expert witness to avoid possible difficulties with RPC 3.7.

If the response to an inquiry could have wide impact, additional information from knowledgeable experts may be sought.

The committee opined that using either the consulting business to refer legal business to the inquirer's law practice or the law practice to refer business to the consulting business, including expert testimony, is a violation of RPCs 1.7(b) and 1.8(a). See Formal Opinion 187 and Informal Opinion 1926. There may also be a violation of RPCs 1.6 and 7.3, depending on circumstances. The committee believes these conflicts may not be waived because they are likely to occur.

Informal Opinion 1941 concerns the RPCs and neglect of a client. The inquiring lawyer poses a question about his obligation to a former client who is now represented by new counsel, regarding the subject matter of new counsel's representation. The inquiry focuses on whether the inquirer should contact the former client about possible legal malpractice by the new lawyer committed during the resolution of the matter that was the subject of both lawyers' representation of the same client.

The committee response is based upon the fact that the inquirer no longer represents the client; the matters that are the subject of the inquiry occurred after the new lawyer took over representation of the client; the client chose another lawyer; and the inquirer appears to have met his obligations as withdrawing counsel by briefing new counsel about the case, including the claim for reasonable attorney's fees.

The committee opined that absent authorization by law, which the inquirer has not provided, the inquirer is precluded from making unilateral contact with the former client that forms the substance of the inquiry. Such unilateral contact is not required by RPC 1.15. More importantly, such contact would undermine the attorney-client relationship that RPC 4.2 serves to protect.

The inquiry also seems to presume that the new lawyer has probably committed malpractice and may not have consulted with and been guided by the decisions of the client. Since the purview of the committee is limited to dealing with inquiries concerning the inquirer's own conduct and not that of other lawyers, the committee may not respond to that matter.

Informal Opinion 1922 concerns the hiring out of nonlawyer computer and information-technology (IT) employees as consultants to other law firms. The inquiring law firm wrote that several of its nonlawyer employees are skilled in computer and IT, and that other law firms are interested in hiring these employees for their administrative projects. The inquiring firm would like to provide the services of its computer and IT employees to the inquiring firm for profit.

The committee opined that it would be permissible under the Rules of Professional Conduct for the inquiring firm to hire out computer and IT employees of the inquiring firm for profit to other firms, provided that the inquiring firm complies with RPCs 5.4(a) and (b), 5.3 and 1.8(a). RPC 5.3 requires the inquiring firm to put in place measures giving reasonable assurance that its computer and IT employees

maintain confidences under RPC 1.6 and, more generally, to ensure that their conduct is consistent with the professional obligations of lawyers in the firm. Confidentiality and nondisclosure agreements, mentioned in the inquirer's second question, are among the steps that the inquiring firm may take to address confidentiality in the context of RPC 5.3. However, the committee does not opine on the adequacy of these measures under the RPCs. Because the third and fourth questions are predicated on a negative response to the first question, the committee does not consider them. Finally, the committee offers no opinion based on the inquiry as to the obligations of the hiring firm.

Informal Opinion 1932 concerns fee-splitting and RPC 5.4(a). The inquirer asked about the propriety of an attorney's payment of administrative charges to a for-profit lawyer-referral service. The service arranges attorney-client relationships, and imposes certain charges on the attorney for, in part, management of invoices for the attorney's fees to client.

The committee stated that unlike a lawyer's relationship with a "not-for-profit" lawyer-referral service, RPC 7.2(c) bars an attorney from entering an agreement with a "for-profit" lawyer-referral service that provides for the lawyer's payment of charges to the service. The committee believes that under Rules 5.4(a) and 7.2(c), a lawyer may not pay charges of a "for-profit" lawyer-referral service for administrative or other charges associated with the service's activities.

Informal Opinion 1935 deals with percentage cost recovery. The inquirer asked if a lawyer may ethically add a flat percentage amount to a client's bill (e.g., two or three percent in lieu of specific itemized charging of costs, such as long-distance phone calls, postage, copying and faxes).

The committee opined that a lawyer may charge a flat percentage to a client's bill in lieu of itemization of costs if there is full prior disclosure to the client, the client agrees, and the amount of the charge is reasonable pursuant to RPC 1.5.

Informal Opinion 1937 concerns advertising to the Hispanic community using the inquirer's mother's maiden name in addition to the inquirer's legal last name. (Editor's note: All names used in this opinion are fictitious.) The inquiring lawyer asks whether it is ethical to advertise his legal services under the name "John Doe Gonzales" or "John Doe-Gonzales," where his legal name is "John Doe." The inquirer states that it is customary in many Hispanic cultures to use the first part of the father's surname with the first part of the mother's surname. Because his mother's maiden name is "Maria Gonzales Rodriguez," the inquirer would like to advertise his legal services in the Hispanic community under the name "John Doe Gonzales" or John Doe-Gonzales."

The committee believes that the inquiring lawyer's use of the "John Doe Gonzales" or "John Doe-Gonzales" in advertisements is false and misleading in violation of RPCs 7.1(a) and 7.5(a). The use of more than one name at the same time in a lawyer's practice is false and inherently misleading. Lawyers should use the name under which they are licensed to practice with the WSBA. This allows the public at large to make accurate inquiries to the WSBA re-

garding a lawyer's good standing and disciplinary history.

Informal Opinion 1940 deals with ethical considerations of a Web site. The inquiring lawyer asks several questions about Web sites, including whether it is ethical for a Web site to link to other Web sites for the purpose of providing more detailed educational information; whether it is ethical for a Web site to link to other Web sites for the purpose of providing information that, although not necessarily purely educational to a particular area of practice, would potentially be useful to the reader; whether it is ethical to provide a disclaimer; and whether it is ethical to have one or more Web search engine links to embedded words, or purchase the use of words in a search engine that are not exactly contained in the site.

The committee opined that it is ethical for a Web site to link to other Web sites for providing educational information only or other information related to an area of law as long as it has the disclaimer discussed in the inquirer's letter and has complied with RPCs 7.1 and 7.2. In accordance with the requirements of RPC 7.2(b), the inquirer should keep copies of all advertisements for at least two years following the last date the advertisement is used; maintain a list of all linked Web sites and the dates the links appeared; and, as some commentators have suggested, maintain copies of hypertext mark-up language of the Web site to establish META-tag honesty. Where possible, a list of "hits" to the site to establish the level of dissemination of the information, and backup or archive copies of every material change to the site should also be kept.

Informal Opinion 1951 concerns a law firm's compensation plan for a nonlawyer lobbyist. The inquirer wrote that his law firm wished to hire a nonlawyer lobbyist who has an office in Washington, D.C. The firm would like to compensate this individual with a compensation plan based in part on fees the firm collects from clients referred by this individual.

The committee opined that RPC 5.4 prohibits lawyers from sharing legal fees with nonlawyers. In addition, RPC 7.2 prevents a lawyer from paying referral fees for channeling professional work. Any profit-sharing arrangement that includes nonlawyers must be based on the firm's overall profits and not on a particular referral.

Informal Opinion 1952 deals with a company that provides loans to clients secured by a lien on the client's lawsuit. The inquirer asks whether an advertisement from a company that appears to provide loans for lawsuits, including client expenses, is ethical under Washington's ethics rules. The committee stated that, since the advertisement had been issued by a nonlegal entity, the inquiry does not present an issue upon which the committee can opine.

Informal Opinion 1939 concerns a conflict of interest with a former client. The inquiring lawyer asks if he may ethically represent a client in an action against a former client. The lawyer states that he collected debts that had been assigned to a collection agency and prosecuted an unlawful detainer action for a property management firm. The debts were owed by patients to hospital A, and the detainer action was taken with respect to rental

property owned by the hospital. The lawyer states he had no contact with the hospital but only with the collection agency and the property-management firm. The lawyer is no longer engaged by the collection agency and he has not handled any unlawful detainer actions for more than six months. The hospital is part owner of a medical clinic that employs a doctor or contracts with the doctor as an independent contractor. The lawyer asks if he may represent a client in a malpractice action against the doctor, the clinic and the hospital.

The committee opined that for purposes of responding to the inquiry, the committee does not determine whether the hospital was the inquirer's client, either as to the collections or the unlawful detainer work described, because there is insufficient information to make that determination. The committee simply assumes, without deciding, that such a relationship existed. Based upon the facts presented, we conclude that RPCs 1.7, 1.8 and 1.9 would not preclude the inquirer from representing the client in the malpractice action described.

RPCs 1.7 and 1.8 would not apply because the hospital is not a current client. RPC 1.9 addresses conflicts regarding former clients, and requires disclosure and consent of the former client when a lawyer who has formerly represented that client in a matter represents another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client.

Based upon the information provided, there is no basis for concluding that the collections and unlawful detainer matters are substantially related to the malpractice claim of the current client. Accordingly, the inquirer may proceed without the consent of the hospital. Note, however, that RPCs 1.6 and 1.9(b) prohibit the inquirer from revealing secrets or confidences relating to the hospital that may have been acquired in the unlawful detainer or collection actions, and from using those confidences or secrets to the hospital's disadvantage, except as RPCs 1.6 would permit.

Informal Opinion 1943 concerns application of the Rules of Professional Conduct to lawyers in nonlawyer jobs. The inquirer is a lawyer employed by the Department of Social and Health Services Medical Assistance Administration to defend client appeals of adverse denials of Medicaid medical services. The inquirer appears before administrative law judges in hearings that result in a decision binding on the department unless appealed. Occasionally the inquirer believes that a case should not, in good faith, be appealed. The position does not require a lawyer, although legal expertise is helpful in the job.

The committee opined that the RPCs apply to all lawyers licensed in Washington, regardless of the characterization of the position with the employer. As to the inquirer's defense of cases as directed by the employer, RPC 3.1 addresses the inquirer's responsibilities upon the determination by the inquirer that the matter cannot be defended in good faith. RPCs 1.2 and 1.4(b) require disclosure to and consultation with the client.

The attorney-client relationship does not properly exist unless and until the potential client has first made contact with the attorney.

Informal Opinion 1947 concerns a lawyer's participation with a for-profit Internet entity that provides users access to a list of lawyers willing to provide services for fixed fees or lower rates. The committee stated that, under RPCs 5.4(a) and 7.2(a), a lawyer is not prohibited from entering into an agreement such as that required by the for-profit Internet entity that operates a Web site providing users of the site access to lawyers who are willing to provide legal services for fixed fees or lower hourly rates. Such an agreement does not entail fee-sharing with a nonlawyer, and/or indirect payment of a referral fee to a for-profit referral service.

Informal Opinion 1949 deals with use of partners' names as the firm name when the firm is registered as a PLLC under a different name. The inquiring lawyer asks the committee if it is ethical for a law firm to use, as the firm name, a name different from the legal, professional limited liability company name. The committee opined that a law firm may not, consistent with the mandate of RPCs 7.1s and 7.5(a), use as its primary name to the public, to the courts and opposing counsel a name different from their legal name.

Informal Opinion 1950 concerns conflicts of interest that may arise when representing both an employer and an employee. The inquirer asks two questions:

(1) In the event a lawyer determines that joint representation of an employer and an employee is possible, may a lawyer seek engagement letters that provide that one client defers case control and strategy decisions to the client who is paying for the defense?

(2) In the event of such joint representation, may one client enter into an advance waiver of a conflict if a conflict arises during the dual representation, such waiver allowing the lawyer to continue representation of the other client?

The committee opined that the Rules of Professional Conduct do not prevent a lawyer from joint representation of civil co-defendants. RPC 1.7 requires that in the event of conflict, the joint representation will not adversely affect the relationship with either client, and there is written consent to the representation after consultation and disclosure of material facts. In authorizing the joint representation, a lawyer may theoretically limit the objectives of the representation of one client under RPC 1.2(c) "if the client consents after consultation." However, the limitation on the representation of one client cannot adversely affect the relationship with that client. See RPC 1.7(a)(1). In the event of an initial joint representation of civil co-defendants, the ability of a lawyer to withdraw from representation of only one client is governed by RPC 1.9.

Informal Opinion 1953 concerns a lawyer/CPA who works for a CPA firm that requires the lawyer/CPA to sign a termination agreement limiting future employment. The inquirer is a lawyer/CPA employed by a CPA firm. The firm has asked that he sign an employment agreement with a noncompete clause. The clause would preclude him, if he terminates employment with the CPA firm, from providing similar tax-related services for 12

months from termination, as a lawyer, to any of the CPA firm's clients or prospective clients. The lawyer declined to sign the agreement, but suggested a *proviso* acknowledging restrictions of RPC 5.6 prohibiting noncompetition agreements and exempting the practice of law from the scope of the noncompete clause.

The committee opined that the employer's proposed noncompetition agreement would violate RPC 5.6's explicit direction that "... a lawyer shall not participate in ... making a[n] ... employment agreement that restricts the rights of a lawyer to practice after termination of the relationship." The fact that the lawyer might only be subject to damages if he should violate the agreement still amounts to a restriction. The proposed additional clause that "these provisions shall in no way limit or restrict employee's right to practice law" would cure the violation.

Informal Opinion 1955 concerns use of out-of-state Internet lawyer-referral services that operate in a similar fashion to Martindale-Hubbell legal directory, which charges a monthly or yearly fee for a listing, but not on a per-referral or per-client basis.

RPC 7.2, which deals with advertising generally, does not contain rules specific to the Internet. Rather, the scope of RPC 7.2 is defined broadly enough to include all "public media." Therefore, Web-based legal directories should fall under RPC 7.2, just as their print counterparts do. Further, because RPC 7.2(a) incorporates RPC 7.1 by reference, this provision should apply to Web-based directories as well.

Under RPC 7.1, all communications concerning lawyer's services for which the lawyer is responsible must be truthful and complete. Therefore, a lawyer is responsible for ensuring that all communications made in a Web-based directory concerning the lawyer and the lawyer's services are truthful and are otherwise in compliance with the RPCs, just as with more traditional printed directories, including any material that may purport to "recommend" the lawyer or the lawyer's services. However, the committee is of the opinion that recommendations such as identifying the lawyer as among the highest caliber should contain an appropriate disclaimer that reasonably allows the reader to understand that past performance does not guarantee future performance. See RPC 7.1(b). Furthermore, the basis upon which a lawyer is identified as being among the highest qualified must be reasonably verifiable. See RPC 7.1(c). The manner in which the RPCs apply to Internet advertising and solicitation in multijurisdictions are currently being examined by the ABA and various states, including Washington. Changes may occur in the future.

Finally, the committee cautions the inquirer that this analysis applies only to the Washington State Rules of Professional Conduct and the interpretation of those rules.

Informal Opinion 1956 concerns whether a lawyer-referral service's lawyer may initiate a call to a referral client. The inquirer asks whether or not it is permissible under RPC 7.3(a) for attorneys participating in the King County Bar Association Lawyer Referral Service to initiate telephone contact with prospective clients who have been referred to them by the

lawyer-referral service. Such contact is made after receipt by the attorneys of a written conformation of referral and before any attempt by the prospective clients to initiate contact with the attorneys.

The committee opined that it is not permissible under RPC 7.3(a) for the participating attorneys to initiate telephone or personal contact with prospective clients who have been referred to them by the King County Bar Association Lawyer Referral Service. This is because, as is the expectation of the prophylactic prohibition of RPC 7.3(a), the attorneys will usually have pecuniary gain as a significant motivation in making such contact. The attorney-client relationship does not properly exist unless and until the potential client has first made contact with the attorney. Attorneys administering the Lawyer Referral Service must also take care not to risk violating the provisions of RPC 8.4(a) by facilitating conduct known to be outside the bounds of RPC 7.3(a).

Informal Opinion 1958 concerns deposit of client funds in an account not federally insured and situations where trust account funds exceed the FDIC limit of $100,000. The inquirer asked two questions related to the interpretation of RPC 1.14.

(1) May an attorney, at the direction and with the consent of his client, place trust funds of the client in a higher interest-bearing account, not federally insured, as required under 1.14?

(2) When trust account funds exceed FDIC limit ($100,000), is an attorney required to open multiple accounts to provide full coverage for individual clients?

The committee opined, in answer to the first question, that according to Informal Opinion No. 86-3, the requirements of RPC 1.14(c) are mandatory and cannot be waived by the client. Per RPC 1.14, trust funds must be deposited in "qualified public depositories," and "each trust account referred to in section (a) shall be an interest-bearing trust account in any bank, credit union or savings and loan association selected by a lawyer in the exercise of ordinary prudence, authorized by federal or state law to do business in Washington and insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, the Washington Credit Union Share Guaranty Association, or the Federal Savings and Loan Insurance Corporation (which is a qualified public depository as defined in RCW 39.58.010(2))."

Accordingly, it is the committee's opinion that client funds cannot be deposited into accounts at institutions lacking the insurance specified in RPC 1.14, unless the institution is a "qualified public depository" as defined. Client consent does not waive this requirement.

As to the second question, the committee opined that RPC 1.14 does not require multiple accounts in multiple institutions or otherwise to guarantee insurance for the full amount of the deposit so long as RPC 1.14 is followed. The committee does not opine on other legal requirements such as fiduciary duties, standards of legal negligence, or statutory duties that may apply to a question.

To submit an ethical inquiry, contact Christopher Sutton at 206-727-8284 or chriss@wsba.org.

Changing Venues

Honors and Awards

Attorney General **Christine O. Gregoire** has been honored by the Washington State Committee for Employer Support of the Guard and Reserves (ESGR) in appreciation of her support of national guardsmen and reservists. The Seven Seals Award is presented in recognition of individuals or agencies whose policies help citizen soldier employees meet both their military and career responsibilities.

Timothy J. Blake has been appointed to a three-year term on the advisory board of the Phoenix Public Library System.

Salvador A. Mungia has been elected president of the board of Legal Aid for Washington (LAW) Fund. Mr. Mungia is a partner in the Tacoma office of Gordon Thomas Honeywell Malanca Peterson and Daheim.

Karen P. Sluiter has been elected to a one-year term as chair of the Seattle-King County Advisory Council on Aging and Disability Services. She has served on the council since 1996.

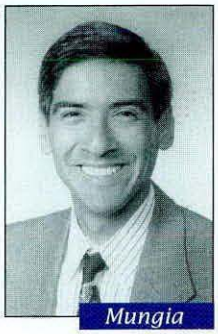
Francois X. Forgette has been named Kennewick Man of the Year by the Tri-City Area Chamber of Commerce. He was honored for exceptional service to the community.

The Washington chapter of the American Board of Trial Advocates has honored Chief Justice **Gerry L. Alexander** as Judge of the Year, **Joel L. Cunningham** as Trial Lawyer of the Year, and **Daniel F. Sullivan** received the chapter's Lifetime Achievement Award. The chapter's 2002 officers are **Ronald B. Leighton**, president; **Cheryl Robbins Berg**, president-elect; **Thomas H. Fain**, vice president; **Reed P. Schifferman**, treasurer; **Elizabeth A. Leedom**, secretary; **Ron Perey**, past-president; and **Timothy D. Blue** and **James S. Rogers**, national board representatives.

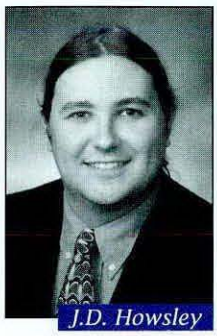
Movers and Shakers

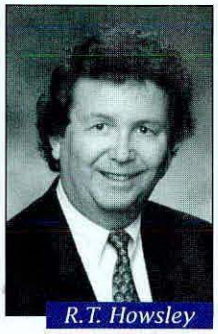
Thomas W. Hillier II has been reappointed federal public defender for the Western District of Washington. He was first appointed federal public defender in 1982, and has been reappointed every four years since.

Russell W. Hartman has been appointed to the Kitsap County Superior Court bench by Governor Gary Locke. Mr. Hartman replaces Judge **William J. Kamps**, who retired after 12 years on the bench.


Mungia


Holmes


J.D. Howsley

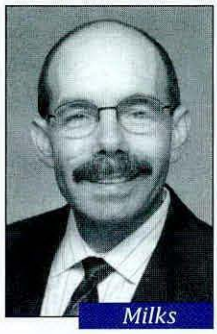

R.T. Howsley

Patrick D. Holmes and **James D. Howsley** (members of the Oregon State Bar), and **Richard T. Howsley** have joined the Vancouver office of Lane Powell Spears Lubersky LLP. All three focus on land use, real estate, environmental and natural resources law.

Preston Gates & Ellis LLP has named six new partners in its Seattle office. **Hilary Buckley Domeika** represents health care clients in general corporate and transactional matters. **Sam Z. Haviland** focuses on mergers and acquisitions, joint ventures, limited liability companies and partnerships, and financings. **John R. Lange** works with high-tech companies on transactions related to product development, cross-licensing, and online marketing and product distribution. **David Lenci** concentrates on business litigation, including antitrust, unfair competition, trademark and copyright infringement, franchise disputes, securities fraud, insurance coverage, environmental remediation, land-use permit denials, and employment discrimination. **Norman S. Milks** focuses on tax-qualified retirement plans, health and other welfare benefit plans, executive compensation plans, and stock-based compensation plans. **Helen Bergman Moure** practices general commercial litigation in federal and state courts.


Domeika


Lenci

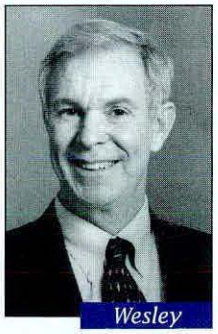

Milks


Moure

Amy E. Weissman has been named of counsel in the Seattle office of Preston Gates & Ellis LLP. She works with the firm's technology and intellectual property department.

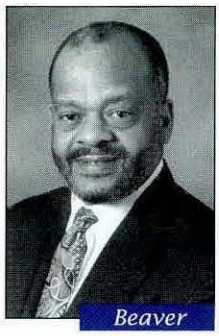
Richard D. Campbell has been elected a principal in the Spokane firm McCormick, Dunn & Black PS. His practice emphasizes construction-claim litigation.

Paul R. Willet has been elected a member in the Seattle firm Short Cressman & Burgess PLLC. He is chair of the firm's estate planning, probate and trust administration group.


Wesley

Retired Superior Court Judge **R. Joseph Wesley** has joined Judicial Dispute Resolution as a panelist. He served on the superior court bench for 18 years, most recently in King County.

Paul C. Cullom Jr. has joined the Seattle firm Christensen O'Connor Johnson Kindness PLLC. He works with the firm's patent practice group. **John D. Denkenberger** has become a member of the firm. His practice focuses on intellectual property, including U.S. and international mechanical and electro-mechanical patents, technology transfer and trademarks.


Beaver


Parkinson

James E. Britain has joined the Bellingham firm formerly known as Carpenter Hardesty. Mr. Britain focuses on construction litigation and represents a number of Washington affiliates of Canadian companies. The new firm name is Carpenter, Hardesty and Britain.

Julie A. Brooks has been named chief legal officer of GiftCertificates.com. Ms. Brooks has an extensive background in technology-driven companies.

Jeffrey A. Beaver has been elected shareholder in the Seattle firm Graham & Dunn. He concentrates on financial services, condemnation and commercial litigation.

Eric B. Zimbelman has become a shareholder in the Bellevue firm Romero Montague PS. He leads the firm's employment practice group, and focuses on litigation. **Michael Wiggins** has become an associate concentrating on complex commercial litigation.

Robynne Thaxton Parkinson has returned to the Seattle firm Groff & Murphy PLLC as of counsel. Her practice emphasizes labor and employment law, and construction-related contracts and disputes.

Mary D. Chaffin has been named regional trust manager for U.S. Bank's private client group. She previously served as senior corporate counsel for U.S. Bancorp.

Scott M. Edwards, **Allison Kendrick**, **Bruce G. MacIntyre**, **Elizabeth L. McDougall-Tural**, **James Sanders**, **Donald E. Walther** and **Georges H.G. Yates** have been promoted to partner in the Seattle office of Perkins Coie LLP. Mr. Edwards focuses on taxation and taxation litigation. Ms. Kendrick practices with the firm's products liability litigation group. Mr. MacIntyre concentrates on matters related to insolvency and bankruptcy, debtor/creditor issues, commercial litigation, transportation law and creditors' rights. Ms. McDougall-Tural has a general litigation and appellate practice in state and federal courts, and before administrative bodies. Mr. Sanders works with the firm's labor and employment law group. Mr. Walther's litigation practice emphasizes intellectual property enforcement, antitrust, franchise law, estate and fiduciary law, criminal law, personal injury law, and the False Claims and Consumer Protection acts. Mr. Yates serves as outside general counsel to publicly and privately held companies, focusing on international business transactions and joint ventures, mergers and acquisitions, corporate finance and real estate. **Heidi B. Boone** has been named of counsel in the firm's Seattle office. She focuses on real estate acquisitions and dispositions, leasing, real estate finance and commercial finance.

In Memoriam

Alexis Boris died February 21 at age 57. He practiced law in Seattle for more than 20 years. Mr. Boris was a member of the Magnolia Community Club and the Queen Anne/Magnolia Community Council, and worked with the city of Seattle on neighborhood-improvement projects. Memorials may be made to King County Medic One (7064 S. 220th St., Bldg. 9, Kent, WA 98032).

U.S. District Court Judge **William L. Dwyer** died February 12 at age 72. Though he had taken senior status in 1999, he continued to work until late January this year. Judge Dwyer was known for ruling in the case to save the Northern Spotted Owl from extinction, and for forcing the American League to give Seattle a baseball franchise. Prior to his legal career, Judge Dwyer worked as a waiter, dishwasher, truck driver, sawmill hand, cab driver and newspaper copy boy.

Wylie Hemphill died February 2 at age 84. Mr. Hemphill began his legal career with the Seattle firm Preston Thorgrimson. He then served in WWII, rising to the rank of lieutenant commander. He resumed the practice of law following the war, but took over his family mining and oil businesses in 1949, after his father's death. Mr. Hemphill was active in the Monday Club, Rotary, the 101 Club, and the Last Man's Club. Memorials may be made to St. Mark's Episcopal Cathedral (1245 10th Ave. E., Seattle, WA 98102).

John Huneke died December 11 at age 92. A lifelong resident of Spokane, he practiced with the firms Brown & Huneke, Huneke & Van Tyen, and Paine Hamblen Coffin Brooke & Miller. Mr. Huneke was a past-president of the WSBA, the Spokane County Bar Association, and the Western States Bar Conference. He served on the WSBA Board of Governors, and was a fellow of the American Bar Association.

Judge **John Lawson** died of a heart attack December 27 at age 73. He served as the Redmond city attorney for 20 years, and then served at Northeast District Court for 11 years. In 1991, Judge Lawson switched to pro-tem assignments, primarily at Aukeen District Court in Kent.

Lloyd Wiehl died February 6 at age 92. Mr. Wiehl was a prosecuting attorney in Yakima County for many years before serving on the Yakima County Superior Court bench. In the late 1990s, he was concerned that the history of the Hanford area where he grew up might be lost. He commissioned Yakima artist Don Crook to paint a series of pictures of Hanford between 1811 and the early 20th century. Mr. Wiehl is believed to have been the oldest living caucasian to reside in the Hanford area.

Peter Gordon Young died January 27 from lung cancer at age 72. He began his legal career in Palo Alto, California, where he practiced for 10 years before returning to his hometown of Wenatchee in 1963. Mr. Young was appointed part-time superior court commissioner in 1978, and became the full-time commissioner nine years later. Memorials may be made to Chelan-Douglas CASA (427 Douglas St., Wenatchee, WA 98801); Central Washington Hospital Hospice (PO Box 1887, Wenatchee, WA 98807); or Woods House Conservatory of Music (PO Box 2071, Leavenworth, WA 98826).

Once in a while I am asked what my greatest success as a lawyer is. The questioner expects to hear about a jillion-dollar verdict or the acquittal of a wrongly charged person. My success is neither.

Proud to Be a Lawyer

Modest Dreams

by Jeff Tolman

When I was young I was going to change the world. After I found a cure for cancer and won the Nobel Peace Prize, I would search for new horizons. The world would be a better place because of me. At 20 I knew that.

Nearly 30 years later, reality has set in. Cancer still ravages the world and peace is tentative in many parts of the planet. My dreams have come up short of reality, at least in the broadest terms. In smaller, more personal terms I'm not sure that's true. Like so many lawyers, I have on one level achieved both goals.

Often, I meet clients riddled by cancer. Though usually not the medical kind, certainly one as devastating — the cancer of a broken family or broken heart; a body ravaged by lack of sleep due to an overwhelming legal problem; the hopelessness of feeling like they are in the world alone.

After new clients have tried unsuccessfully to solve problems with the help of family and friends, they come to me. As we analyze their legal troubles, I organize the chaos and bring some order to their lives. As a mentor of mine said long ago, "Your goal with every client is the same. They must feel better going out your door than they did coming in, because you have solved their problem. Or because they now have someone to share their burden with. Or maybe they simply know there is no good news. That is how you earn your pay."

Recently a woman I knew from the community came to see me. I didn't recognize her. She had lost 20 pounds or more over the past month. On the few occasions it came, sleep was fitful. Her eyes looked bruised from exhaustion. Her mother had died, she was a wreck, and wondered what was going to happen next. I explained the probate process to her — that accounts would not be frozen or front doors padlocked; how she would receive letters testamentary and have full authority to handle the estate quickly, smoothly and cheaply.

My client looked at me incredulously for a second, then in a voice louder than I would have liked, screamed, "Well, that's b***sh*t!"

"What?" I asked, surprised by her response.

"I haven't slept in weeks or eaten in days, and in five minutes you make sense out of this! It's b***sh*t that I didn't come in sooner."

I acquired the information I needed and we began drafting papers to probate the estate. Almost immediately my client began eating and smiling again. Her worst fears disappeared and, with some certainty back in her life, she returned to the person I'd known. I had cured the cancer of uncertainty that controlled her life. Like most lawyers, I have had similar experiences with many clients before and since. Once in a while I am asked what my greatest success as a lawyer is. The questioner expects to hear about a jillion-dollar verdict or the acquittal of a wrongly charged person. My success is neither. Here is the story of my Peace Prize.

When I helped clients with divorces, a man came to see me. He and his wife were well-respected in the community, one of those couples you use as role models after you are married. He quietly walked into my office one morning before regular business hours.

"We need to talk," he said. "It's important. Do you have a few minutes now?"

I had a free hour, so we chatted. He was planning on getting a divorce. His marriage just wasn't like it used to be — not as exciting; more day-to-day than extraordinary; so much transporting kids to and from events; fast-food meals and living activity-to-activity; too little recreation, fun and intimacy. Life was too short to live like this, he had concluded. Would I represent him in the divorce?

Sure, I said, but first we needed to talk about a couple of things. How would he feel waking up every other Christmas morning without his kids? How would he take it the first time one of his kids inadvertently called his wife's next husband "Dad"? Certainly his wonderful wife would have men pursuing her. Had he thought of that?

We talked for a long time about marriage and the routine it can become. In the end we made an agreement. He would take his wife on a week's vacation. No kids. Warm weather. Spend a bit more money than he normally would — to see if the magic had died, or was buried by work and family responsibilities. If he returned from vacation and still felt the same, I would represent him.

I thought of this man and his wife often during their week away. Our paths crossed a couple of weeks later at the ballpark.

"How was your trip?" I asked.

"It couldn't have been better," he said. "But I'll be making an appointment to see you soon."

After a short, uncomfortable pause he continued, "Lisa (not her real name) and I need to get wills. We have a long life left together and need to get things in order." I had been a part of finding peace in a marriage. I felt as proud (and still do) as if I had won the Nobel Prize.

My dreams and experiences aren't unique or different than many lawyers. We cure cancer and help find peace every day as part of our work. Now we need to determine what new discoveries and horizons await us.

Jeff Tolman is a lawyer and part-time municipal court judge in Poulsbo. He has served on the WSBA Board of Governors, and is a frequent writer on law-related topics.

Disciplinary Notices

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

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

Disbarred

Norman B. Maas (WSBA No. 7380, admitted 1977), of Kenmore, has been disbarred by order of the Supreme Court effective September 20, 2001, following a hearing. The discipline is based upon his filing a frivolous claim, making false statements to a court, and obstructing another party's access to evidence between 1982 and 1996.

Mr. Maas represented his friends Mr. and Mrs. R (the Rs) in several business transactions. In 1982, Mr. R was the principal owner of a new business in need of financing. After careful analysis of the business opportunity, Mr. H, a private investor, agreed to make a $25,000 unsecured investment in the company. When the company needed more money, Mr. H. agreed to make another investment, but only if it was secured by a deed of trust on the Rs' personal residence.

In March and April 1983, Mr. H verified four pre-existing lien holders on the Rs' residence. These lien holders included a savings and loan, Norman B. Maas ($12,000), a corporation wholly owned by Maas ($4,500), and the original seller of the Rs' company. Mr. H verified the current balances and arranged for the company to assume Mr. R's personal debts, to allow more security for his own loan. Mr. Maas prepared the documentation for this transaction.

Mr. H loaned the company an additional $32,000 and believed that his loan was secured in second position, just behind the savings and loan. After this transfer, neither Mr. R nor his company received any further billings from Mr. Maas. The last billing, dated May 1, 1983, indicated a total outstanding bill of $1,307.67. The promissory note to Mr. Maas had a notation "paid-in full" written on the note. A request for reconveyance was also found, but the date was blotted out. The Maas corporation debt also indicated it had been paid in full and had a request for reconveyance. The date on this document was also unreadable.

The reconveyance deed was never executed or recorded. The hearing officer concluded that no current balance was owed by the Rs to Mr. Maas at the time of the H loan. The hearing officer found that Mr. Maas participated with the clients in providing a facade of lien holders on the Rs' property so that they could exempt their home from their bankruptcy petition. The liens also assisted the client in obtaining an advantageous settlement of Internal Revenue Service claims. Mr. Maas did not discuss his own deed of trust with Mr. H when he prepared the deeds for the company loan.

In April 1996, 17 years after the promissory note and deed of trust were executed, Mr. Maas commenced foreclosure proceedings against the Rs and Mr. H, among others. Mr. Maas asserted that he was owed almost $500,000 on the original $12,000 debt, based on 24 percent interest compounded monthly. During the lawsuit, Mr. Maas and the Rs cooperated with each other. Mr. Maas indicated that he did not maintain payment records, even though he had previously been in banking.

The hearing officer found that, in fact, at the time the foreclosure action was filed, the Rs owed no debt to Mr. Maas. During his deposition in the civil suit, Mr. Maas testified that he had a "gentleman's agreement" with his clients to put them back into a house of their choice after the foreclosure. The hearing officer also found that Mr. Maas blacked out the words "paid in full" on the promissory notes prior to producing them in the civil litigation.

Mr. Maas's conduct violated RPC 3.1, prohibiting lawyers from filing frivolous claims; RPC 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; RPC 3.3, prohibiting lawyers from knowingly making a false statement of fact or law to a tribunal; RPC 3.4, prohibiting lawyers from unlawfully obstructing another party's access to evidence; and RLD 1.1(p), prohibiting lawyers from engaging in conduct demonstrating unfitness to practice law.

Anne I. Seidel represented the Bar Association. Kurt M. Bulmer represented Mr. Maas. The hearing officer was David R. Tuell.

Disbarred

Anthony J. Meyers (WSBA No. 7702, admitted 1977), of Everett, has been disbarred by order of the Supreme Court effective September 20, 2001, following a hearing. The discipline is based upon his 1995 felony conviction for forgery.

In June 1994, Mr. Meyers was in Ms. N's home without her permission. Later, when he was arrested, Mr. Meyers had $450 in travelers checks belonging to Ms. N. It appeared that Ms. N's signature on the checks had been forged. Mr. Meyers had a prior 1990 conviction for aiding and abetting a false statement, and a prior 1991 conviction for forgery. On March 15, 1995, Mr. Meyers pled guilty to one count of forgery. No action was ever taken on Mr. Meyers's 1990 felony conviction. The Bar Association learned of the 1995 conviction in June 2000.

Mr. Meyers's conduct violated RPC 8.4(b), prohibiting lawyers from committing criminal acts that reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; RLD 1.1(a), prohibiting lawyers from engaging in acts of moral turpitude; and RLD 1.1(c), prohibiting lawyers from violating their oath or duties as attorneys.

Linda Eide represented the Bar Association. Mr. Meyers represented himself. The hearing officer was Lish Whitson.

Suspended

Dianna Carlson (WSBA No. 13271, admitted 1983), formerly of Thurston County, has been retroactively suspended for one year by order of the Supreme Court effective May 4, 1998, following a hearing. The discipline is based upon her making knowing misrepresentation of fact to the district court in a citizen's complaint in 1997.

In January 1993, Ms. Carlson married Mr. K. They separated in February 1994 and were involved in bitter dissolution

proceedings from March 1994 through May 1998. While the dissolution was pending, Ms. Carlson lived in the family home, and her mother-in-law lived in a mobile home on the same property.

In 1995, two men related to the ex-husband emerged from the mother-in-law's home and confronted Ms. Carlson in her wheelchair; she ended up on the ground. The facts regarding the incident are disputed. Either the men were retrieving a fence post that belonged to the mother-in-law and Ms. Carlson hung on, causing herself to fall, or the men assaulted Ms. Carlson. Ms. Carlson was injured and reported the incident to the Thurston County Sheriff's Office. The sherriff's office investigated, but did not recommend prosecution. Ms. Carlson complained to the sherriff about the lack of prosecution of this and other incidents. Subsequently, she met with a deputy prosecuting attorney at her home to review records. The deputy indicated that he believed there was insufficient evidence to file a criminal charge.

In 1997, Ms. Carlson contacted the prosecutor again and provided him with transcribed testimony in the civil-crime victim-compensation case that he had not previously considered. The prosecutor again met with Ms. Carlson and indicated that he still did not believe there was enough evidence to file a criminal charge.

In 1997, Ms. Carlson typed and filed a citizens complaint regarding the 1995 incident. The complaint stated: "I have not consulted with a prosecuting authority concerning this incident. . . ." On this same day, Ms. Carlson filed a petition in Thurston County Superior Court requesting a domestic-violence order of protection against one of the two men involved in the 1995 incident. Following a hearing, the court denied the request.

In April 1997, Ms. Carlson filed a petition in Thurston County Superior Court requesting an order of protection from unlawful harassment against the two men involved in the 1995 incident. As part of this petition, Ms. Carlson answered "no" to the following question: Have you ever sued the person who is harassing you in any court, or has that person ever sued you in any court?

In May 1997, Ms. Carlson amended her citizen complaint and again stated that she had not consulted with a prosecuting authority concerning the incident. The hearing officer found that Ms. Carlson made knowing misrepresentations. Ms. Carlsons's citizen complaint was denied. The judge stated: "Further, it appears this matter was investigated by law enforcement and the matter was referred to the Thurston County Prosecutors, who declined to prosecute. While that fact alone is not determinative, it is one factor to be considered as required by the rule, as well as the prosecution standards under RCW 9.94A. 440."

Ms. Carlson's conduct violated RPC 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and RPC 8.4(d), prohibiting lawyers from engaging in conduct prejudicial to the administration of justice.

Becky Neal represented the Bar Association. Ms. Carlson represented herself. The hearing officer was J. Donald Curran.

Suspended

A. Graham Greenlee (WSBA No. 890, admitted 1968), of Seattle, has been suspended for 90 days by order of the Supreme Court effective February 20, 2002, following a hearing. This discipline is based upon his failure to promptly deliver client funds in 1997.

Mr. Greenlee represented Mr. W in a personal-injury claim. In 1996, the jury returned a $7,500 verdict in favor of Mr. W. The court then awarded Mr. W $125 in attorney's fees. In April 1997, Mr. Greenlee sent Mr. W a "pay-out" letter with a copy of the fee agreement and the $7,856 check from the court. Mr. Greenlee's letter indicated that his fee was 40 percent of the jury verdict plus the costs he incurred, and that Mr. W would receive $4,000. In fact, Mr. W was entitled to $4,500 plus the $125 awarded by the court. Mr. Greenlee made a mathematical error when he calculated his 40 percent fee. Mr. W did not question the amount of the fee and endorsed and returned the check. At Mr. W's request, Mr. Greenlee sent the check to Mr. W's mother. Neither Mr. W nor his mother cashed the check.

On February 10, 1998, Mr. Greenlee issued a replacement check at Mr. W's request. Mr. Greenlee maintained Mr. W's money in his IOLTA account during the time between the first and second checks. Mr. W did not question the amount of the fee at this time, but he did contact another lawyer. The other lawyer requested an accounting of the "settlement." Mr. Greenlee requested Mr. W to sign a letter verifying that he had not received the earlier "pay-out" letter. Before responding to this letter, Mr. W's new lawyer filed a grievance with the Bar Association. Mr. Greenlee did not respond to disciplinary counsel's requests that he respond to the allegations in the grievance.

In September 2000, disciplinary counsel served Mr. Greenlee with a *subpoena duces tecum* for a deposition. Mr. Greenlee failed to attend the deposition and produce the required documents. In November 2000, Mr. Greenlee refunded $500 to the client for his miscalculation on attorney's fees.

Mr. Greenlee's conduct violated RPC 1.14(b)(4), requiring lawyers to promptly deliver client funds when requested; and RLD 2.8, requiring lawyers to promptly comply with disciplinary counsel's requests for information relating to grievances.

Jean McElroy and C. Elizabeth Williams represented the Bar Association. Mr. Greenlee represented himself.

Suspended

Joveliano C. Trinidad (WSBA No. 27144, admitted 1997), of Seattle, has been suspended for one year by order of the Supreme Court approving a stipulation effective January 2, 2002. The discipline is based upon his closing his law office in late 2000 without taking steps to protect his clients' interests.

Matter 1: Ms. S, who had been injured in an auto accident, retained Mr. Trinidad in October 1997 to represent her in a personal-injury case. In March 1998, Ms. S told Mr. Trinidad she had completed treatment and was ready to settle her claim. Mr. Trinidad worked on damage calculations, but did not complete the case. In June 1999, after several unanswered phone calls, Ms. S paid a surprise visit to Mr. Trinidad's office; they discussed the approaching statute of limitations. In August 1999, Mr. Trinidad filed a lawsuit on

the client's behalf in King County Superior Court. In April 2000, the court dismissed the lawsuit because Mr. Trinidad did not attend a required status conference. The statute of limitations expired, and Mr. Trinidad did not inform the client that her lawsuit had been dismissed.

Matter 2: In summer 1999, Mr. Trinidad agreed to represent Mr. E, who was injured in an auto accident, in a personal-injury claim. In January 2000, Mr. Trinidad filed a lawsuit in King County Superior Court. In August 2000, the court dismissed the suit because Mr. Trinidad failed to comply with the case scheduling order. By the time the case was dismissed, the statute of limitations had expired. In January 2001, the client learned that Mr. Trinidad's office telephone was disconnected. The client also visited the courthouse and learned for the first time that his lawsuit had been dismissed.

Matter 3: Mr. Trinidad represented Ms. L in a personal-injury claim that was set for arbitration in September 1999. Mr. Trinidad failed to file the client's pre-hearing statement and did not appear for the arbitration hearing. The arbitrator dismissed the case. By the time the case was dismissed, the statute of limitations had expired.

Mr. Trinidad's conduct violated RPC 1.3, requiring lawyers to diligently represent their clients; RPC 1.4, requiring lawyers to keep clients informed of the status of their cases; and RPC 1.15, requiring lawyers to take steps, to the extent reasonably practicable, to protect clients' interests when representation is terminated.

Linda Eide represented the Bar Association. Mr. Trinidad represented himself.

Suspended

Diane Marie Ward Turk (WSBA No. 16456, admitted 1986), of Seattle, has been suspended for six months by order of the Supreme Court effective February 12, 2002, following a hearing. The discipline is based upon her telephone harassment of a bank employee in 2000.

On October 7, 2000, Ms. M, a bank employee, received a voicemail message from Ms. Turk about bank statements. The voice mail stated: "I want you to please let [J] know that I'd like to receive those statements by the end of the week at the latest. If I don't I will make a trip out there with a gun to shoot either you or [J] right between the eyes and I mean it. I'll blow your head off. I want my statements. Goodbye."

The hearing officer found that Ms. Turk made the statement with the intent to harass, intimidate, torment or embarrass Ms. M. The police found a gun in Ms. Turk's residence. Ms. M obtained a restraining order against Ms. Turk and the bank hired guards to protect the two employees. On February 12, 2001, Ms. Turk pled guilty and was convicted on one count of telephone harassment under RCW 9.61.230(3)(b), a class-C felony.

Ms. Turk's conduct violated RPC 8.4(b), prohibiting lawyers from committing criminal acts that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and RLD 1.1(a), prohibiting lawyers from committing acts reflecting a disregard for the rule of law.

Anne I. Seidel represented the Bar Association. Ms. Turk represented herself. The hearing officer was Douglas S. Dunham.

Suspended

Robert J. Verzani (WSBA No. 4415, admitted 1958), of Federal Way, has been suspended for 60 days by order of the Supreme Court effective February 15, 2002, following a hearing. The discipline is based upon his failure to abide by a client's decisions regarding the objectives of the representation, and failure to communicate properly with that client in 1998 and 1999.

Mr. Verzani began representing Mr. R in 1995. Mr. R's construction company was involved in a construction contract dispute with the Washington State Department of Corrections. Another contractor for the department project alleged that Mr. R's company's work was deficient, leading to deductions in the contract payments due Mr. R.

In October 1995, Mr. Verzani filed a notice of claim for Mr. R against the department. In January 1996, Mr. Verzani filed a lawsuit on the client's behalf. In March 1996, the general contractor offered to settle the lawsuit. Mr. Verzani conveyed the offer to his client, but the client rejected the offer. Mr. Verzani counseled the client that there was a substantial likelihood that the client would not prevail in his claim. The client rejected this settlement amount three times.

In October 1997, the case was transferred to mandatory arbitration. The case was scheduled for arbitration on April 8, 1998. Two days prior to the arbitration, the defendants again made a settlement offer. Although this offer was for the same amount as the previous offers, Mr. Verzani accepted the offer and agreed to dismiss the lawsuit. He did not communicate this offer to his clients or obtain their authority to settle the case.

At the time Mr. Verzani accepted the settlement offer, he believed that it was in his client's financial best interest to accept the settlement. Additionally, he was not prepared to conduct the arbitration hearing. When the client learned of the settlement, he indicated he did not approve and wanted the case re-opened. Mr. Verzani told the client the lawsuit had already been dismissed. The client received and cashed the settlement check and filed a grievance against Mr. Verzani. Mr. Verzani refunded all of the fees and costs to the client.

Mr. Verzani's conduct violated RPC 1.2, requiring lawyers to abide by a client's decisions concerning the objectives of representation; and RPC 1.4, requiring lawyers to keep clients reasonably informed about the status of their cases.

Douglas Ende represented the Bar Association. Leland Ripley represented Mr. Verzani. The hearing officer was David B. Condon.

Reprimand

Byron D. Coney (WSBA No. 367, admitted 1955), of Seattle, has received a reprimand, following a hearing. The discipline is based upon his failure to comply with his client's decisions concerning the scope of representation in 1997.

Between 1993 and 1997, Mr. Coney had a romantic relationship with Ms. R. During this time, Mr. Coney represented Ms. R on various legal matters.

In July 1995, Ms. R sold real property on Vashon Island. Six months after the sale, the purchasers sued Ms. R and her real estate brokerage, alleging that they had misrepresented the adequacy of the water supply available from the property's well. Mr. Coney appeared for Ms. R and

the real estate company. He told Ms. R that he would not charge her fees, but that if they prevailed, he would seek fees from the purchasers. In May 1997, Ms. R obtained new counsel. New counsel billed Ms. R and she paid the bills. In July, the trial court found for Ms. R in the lawsuit and ordered the purchasers to pay Ms. R's attorney's fees and costs.

In July 1997, Mr. Coney re-associated as counsel for Ms. R for the limited purpose of presenting a claim for attorney's fees. In August, Mr. Coney filed a claim for $22,500 in attorney's fees and $9,410 in costs. The costs included $8,800 in CR 11 sanctions Mr. Coney paid in connection with a court-ordered dismissal of a third-party defamation case Mr. Coney filed against some of the purchaser's neighbors. Ms. R's new counsel and the purchaser's counsel continued to negotiate the amount of attorney's fees and did not include Mr. Coney in the negotiations. Mr. Coney sent a fax to Ms. R's new counsel stating that he would not authorize settling his attorney's fees for less than the full amount without his prior written consent.

In August 1997, the parties settled the attorney's fees for $40,000. Ms. R's new counsel's fees were approximately $26,000, and costs for an expert were under $10,000. New counsel sent a letter to Mr. Coney regarding the settlement, indicating that any matters about earlier attorney's fees were between Ms. R and Mr. Coney, and would not involve new counsel.

In August 1997, the trial court entered the judgment and dismissed the entire lawsuit. When Mr. Coney, who had been out of town, returned and learned of the judgment, he filed a motion to alter and amend judgment of dismissal. This motion asked the court to re-open the case to enter an award of attorney's fees to him; however, Mr. Coney did not ask his client's permission to re-open the case. New counsel wrote a letter to Mr. Coney asking him to withdraw the motion, pointing out that the client would incur additional attorney's fees. Ms. R signed a declaration opposing the motion; however, Mr. Coney proceeded.

The hearing officer found that Mr. Coney had a conflict of interest with his client at the time he pursued this motion to amend. The court dismissed Mr. Coney's motion and awarded Ms. R $1,200 in fees against him. Mr. Coney filed a notice of appeal of the decision without his client's consent. The Court of Appeals dismissed the case on a motion on the merits, stating that the appeal was "frivolous in every sense." The court commissioner awarded the client attorney's fees on appeal.

In November 1998, Ms. R filed a civil suit against Mr. Coney to dissolve a trust established during their relationship. Mr. Coney counterclaimed for his attorney's fees in the real estate litigation. Mr. Coney also filed a third-party claim against Ms. R's new counsel for attorney's fees in the real estate matter. On April 9, 2000, Ms. R filed a grievance against Mr. Coney. On April 10, Mr. Coney and Ms. R settled their lawsuit.

Mr. Coney's conduct violated RPCs 3.1, prohibiting lawyers from filing frivolous claims; 1.2(a), requiring lawyers to abide by their client's decisions concerning the scope of representation; and 1.7(b), prohibiting lawyers from representing a client if the representation is materially limited by the lawyer's own interests.

Linda Eide and Michael D. Hunsinger represented the Bar Association. Mr. Coney represented himself. The hearing officer was Andrea A. Darvas.

Reprimand

Carolyn A. Elsey (WSBA No. 23626, admitted 1994), of Tacoma, has received a reprimand, following a hearing. The discipline is based upon her knowingly making a false statement of material fact to a third party.

In 1996, the Pierce County Superior Court appointed Ms. Elsey to serve as *guardian ad litem* (GAL) for a child. The child lived with the mother in Spokane, and the father lived in Tacoma. In November 1996, an expert determined that the mother suffered from Munchausen's Syndrome by Proxy (MSBP), a disease in which the caregiver feigns or produces illness in the child. The expert also believed that the mother might flee when confronted with the diagnosis. Ms. Elsey notified the father's attorney of her intention to bring a motion seeking to transfer primary residential placement to the father. Ms. Elsey did not notify the mother because of the fear that she would flee with the child. Ms. Elsey set the motion for November 12, 1996.

On October 31, 1996, a Spokane attorney filed a notice of appearance on the mother's behalf. He did not mail this notice to Ms. Elsey until November 6, 1996. On November 5, the mother's lawyer left phone messages for both Ms. Elsey and the father's attorney. Although the content of the message was disputed, both Ms. Elsey and the father's attorney thought that the mother's attorney was still considering whether to actually appear in the case. Ms. Elsey received the mother's lawyer's notice of appearance on Saturday, November 10, 1996. She opened the envelope and date-stamped the cover letter, but did not read the contents. It was Veteran's Day weekend and Ms. Elsey planned on reviewing her mail after the weekend. Ms. Elsey and the father's attorney appeared in court on Tuesday, November 12, 1996, and the commissioner signed an order transferring primary residential placement to the father.

The pleadings and orders state that the mother was *pro se*. The father's counsel informed the court that a lawyer was considering representing the mother, but had not received a notice of appearance. The father flew to Spokane and obtained custody of the child. By the end of the case, MSBP was no longer an issue, and primary residential placement was returned to the mother. The hearing officer found that although Ms. Elsey may not have known that the mother was represented, it was negligent for her to have received and date-stamped the notice without reading the contents prior to the hearing.

Ms. Elsey's conduct negligently violated RPC 8.4(c), prohibiting lawyers from engaging in misrepresentations.

John L. Messina and Joanne Abelson represented the Bar Association. Kurt M. Bulmer represented Ms. Elsey. The hearing officer was Peter Matty.

Non-Disciplinary Notice

Interim Suspension

Matthew J. Dever (WSBA No. 24193, admitted 1994), of Puyallup, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered January 30, 2002.

Opportunities for Service

WSBA Presidential Search

Application deadline: May 15, 2002

The Board of Governors of the Washington State Bar Association (WSBA) is seeking applicants to serve as WSBA president for the 2003-2004 term. Pursuant to Article IV(A)(2) of the WSBA bylaws, the primary place of business for the president must be the area east of the Cascade mountain range generally known as eastern Washington. The WSBA 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, 2002, 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. The Presidential Search Committee and the Board of Governors will consider endorsement letters received by May 31, 2002. Applications and endorsement letters should be sent to Executive Director, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Confidential interviews with the Presidential Search Committee will be conducted May 16-31, 2002 at the WSBA office. Direct contact with the governors is also encouraged. All candidates will have an interview with the full Board of Governors in open session at the June meeting. Following the interviews, the board will select the president.

Although prior experience on the WSBA's Board of Governors may be helpful, there is no requirement that one must have been a member of the board 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 2002, following selection. A one-year term as president-elect will begin at the annual business meeting in September 2002. The president-elect is expected to attend two-day board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national and local meetings.

In September 2003, at the WSBA annual business meeting, the president-elect will assume the presidency of the WSBA. During his or her service, the president-elect and president will also be required to meet with members of the bar, courts, media and public and legal-interest groups, as well as be involved in the bar's legislative activities. Appropriate time will need to be devoted to communication by letter, electronic mail and telephone in connection with these responsibilities. The duties and responsibilities of the president are set forth in the WSBA bylaws.

Presidential Search Committee: Victoria L. Vreeland, chair; Robert M. Boggs; Dale L. Carlisle; William D. Hyslop; Lucy Isaki; J. Richard Manning

WYLD President-elect Nominations

Application deadline: June 3, 2002

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 WYLD president upon completion of a one-year term commencing October 1, 2002. To be eligible for the position of president-elect, candidates must have a principal place of business in Washington and must be a member of the WYLD at the time of taking office for the president-elect position. 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 Pierce County.

Any 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.

Individuals intending to stand for election must send their statement of eligibility and qualifications to Lisa KauzLoric, WYLD Liaison, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; phone 206-733-5944; fax 206-727-8319; e-mail lisak@wsba.org.

WYLD Trustee District Positions

Application deadline: June 3, 2002

Young lawyers interested in serving on the WYLD board of trustees are invited to submit a statement of eligibility and qualifications for the following trustee district positions:

- **Northwest District** – representing Island, San Juan, Skagit and Whatcom counties
- **North Central District** – representing Chelan, Douglas, Ferry, Grant, Kittitas and Okanogan counties
- **Snohomish District** – representing Snohomish County
- **Greater Spokane District** – representing Lincoln, Pend Oreille, Spokane and Stevens counties
- **Greater Olympia District** – representing Lewis and Thurston counties
- **King County District** – representing King County
- **Southeast District** – representing Adams, Asotin, Benton, Columbia, Franklin, Garfield, Klickitat, Walla Walla, Whitman and Yakima counties

To be eligible for one of these positions, a candidate must reside or have his or her 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 serve three-year terms commencing October 1, 2002.

Any 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.

Individuals intending to stand for election must send their statement of eligibility and qualifications to Lisa KauzLoric, WYLD Liaison, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; phone 206-733-5944; fax 206-727-8319; e-mail lisak@wsba.org.

Welcome New Governors-elect Joni Kerr, Howard Graham and Ronald Ward

Board of Governors nominating petitions for the 3rd, 6th and 8th districts have been received from Joni R. Kerr (3rd district), Howard L. Graham (6th district) and Ronald R. Ward (8th district), all unopposed.

2002 WSBA Award Nominations Sought

Each year, members of the Washington State Bar Association are asked to identify those members of our profession and the public 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. 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 member of the WSBA 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 system of justice, 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.

Lifetime Service Award
This is a special award given for a lifetime of service to the WSBA and the public.

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
This award is presented to an elected official for outstanding service to Washington residents, 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 system with fairness and sensitivity requires intelligence, knowledge, dedication and high skill levels. This award is given to a journalist and his organization who set the standard for relevance, clarity, accuracy and understanding in reporting.

It is important to note that presentation of any WSBA award is made only when there are truly deserving recipients. Some years, no award is given in some categories. If you know of someone who fits the criteria set forth above, please send a letter of nomination and relevant information by May 1, 2002. Awards will be presented at the WSBA Annual Business Meeting and Awards Dinner. Send nominations to Executive Director, WSBA, Attn: Awards, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; fax 206-727-8319; e-mail oed@wsba.org.

WYLD "Bridging the Gap" Conference

The Washington Young Lawyers Division Bridging the Gap Conference will take place September 20-21, 2002 at the Washington State Convention & Trade Center and the Sheraton Hotel & Towers in Seattle. This low-cost, two-day CLE will provide practical skills-training on subjects like how to write a "killer" brief, and how to argue (and win) a motion. More information will be available soon at www.wsba.org/wyld.

WYLD Practice Conditions Forum

The Washington Young Lawyers Division Practice Conditions Forum will take place May 31, 2002 at the Museum of Flight in Seattle. The forum will address such topics as stress management, balancing your work and personal life, résumé building, and exploring alternative careers in the law. 3 CLE credits pending approval. More information will be available soon at www.wsba.org/wyld.

WYLD Seeks Award Nominations

The WYLD is accepting nominations for the Thomas Neville *Pro Bono* Award, Outstanding Young Lawyer of the Year, and the Professionalism Award. All three awards recognize lawyers who epitomize the best in the legal profession. Nominations are also being accepted for Outstanding YLD Affiliate or Organization for recognition of public service and/or member service programs. Awards will be presented at the WYLD Bridging the Gap Conference in Seattle on September 21. Letters of nomination should include the nominator's name,

address and daytime phone number, as well as a copy of the nominee's résumé or list of accomplishments. Nominations must be received by July 31, 2002, and should be mailed to Lisa KauzLoric, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Hosted Reception and Networking with Nonlawyers

The WSBA Interprofessional Committee invites all interested bar members to a forum discussion with members of the financial industry (including CPAs, financial planners, appraisers, trustees and underwriters). The focus will be on fostering better relations, teamwork and interprofessional dialogue. The event will be held May 16, 2002 from 3:30 p.m. to 7:00 p.m. at the Women's University Club in Seattle. Pre-registration is not required. For more information, please contact Toni Doane at tonid@wsba.org or 206-727-8293.

LOMAP Traveling CLE Presentations

The WSBA's Law Office Management Assistance Program continues a series of presentations around the state for CLE credit. Presentations will be made in Bellingham, April 22; Bremerton, April 25; Colville, May 7; Lake Chelan, April 5; Oak Harbor, April 23; Port Angeles, April 24; and Spokane, May 8. The cost is $65. For more information, contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA or questions@ wsba.org, and cite event number LOM-0502.

BOG Meetings

- April 5-6 – Walla Walla
- May 10-11 – Stevenson
- June 7 – Yakima
- July 26-27 – Ocean Shores

With the exception of a one-hour executive session the morning of the first day, BOG meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated, but not required. Please contact Lori Lee at 206-727-8244 or loril@wsba.org. The complete BOG meeting schedule for fiscal year 2001-2002 is available on the WSBA Web site at www.wsba.org/2001/bog-schedule.htm.

License Fee Reminder to WSBA Members

Licensing Packets

Licensing packets, which include license fee, trust account and MCLE reporting (C-2 Compliance Affidavit) forms, were mailed in early December. If you have not received your licensing packet, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org to request a duplicate. Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the licensing packet.

Fees

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

More Information

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

MCLE Reporting

Group 1

Active WSBA members who are in reporting group 1 (active members admitted through 1975; or in 1991, 1994, 1997 or 2000*) are reporting CLE credits this year for activities undertaken in 1999, 2000 and 2001.

**Newly Admitted Members*

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

CLE Compliance

If you are in reporting group 1, your C-2 compliance affidavit was due to the WSBA on February 1, 2002. If you are in group 1 and have not yet met your CLE requirements or submitted your C-2 compliance affidavit, you will receive an automatic four-month extension, but you must also pay a late fee. You must make up any needed credits before May 1, file the signed C-2, and pay the late fee. The late fee is $150 the first year, and then increases by $300 each consecutive reporting period that you file late (a reporting period is a three-year reporting cycle). For more information, see the WSBA Web site at www.wsba.org/faq/mcle.htm.

New Online MCLE Credit-Tracking System

The new online MCLE Credit-Tracking System (http://pro.wsba.org) is ready for you to use. Here's what you can do using the new system:

- View your CLE courses and credits on your online attendance roster.
- Make changes to your online attendance roster.
- Search for approved courses.
- Apply for course approval.

To enter the MCLE Credit-Tracking System, go to http://pro.wsba.org, select Member Login, and follow the onscreen instructions. If you have questions, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

WSBA Bar Leaders and Access to Justice Conferences

The 2002 WSBA Bar Leaders Conference and Access to Justice (ATJ) Conference will be held June 7-9 at the Yakima Convention Center. Conference registration brochures will be mailed this month. For bar leader registration information, please contact Toni Doane at tonid@wsba.org or 206-727-8293. For ATJ information, please contact Sharlene Steele at sharlene@wsba.org or 206-727-8262.

Law Week 2002

Law Week 2002 is an exciting opportunity for lawyers and judges to bring legal education into the classroom. Each year, Law Week provides an enriching experience to youth through positive interactions with lawyers and judges. Law Week 2002 will take place the week of April 29-May 3. To learn more about the program or to participate, visit www.lawweek.org, or contact Lisa KauzLoric at 206-733-5944 or lisak@wsba.org.

CLE Credits for Pro Bono Work? Limited License to Practice with No MCLE Requirements?

Yes, it's possible! Regulation 103(g) of the Washington State Board of Continuing Legal Education allows WSBA members to earn up to six hours of credit annually for providing pro bono direct representation under the auspices of a qualified legal-services provider. APR 8(e) creates a limited license status of emeritus for attorneys otherwise retired from the practice of law, to practice pro bono legal services through a qualified legal-services organization.

For more information, contact Access to Justice Liaison Sharlene Steele at 206-727-8262 or sharlene@wsba.org.

Resources on Sale for Half Price

The 2001-2002 *Resources* membership directory is now on sale for half-price:

$8.50 – WSBA members ($9.25 in WA)
$17.50 – non-WSBA members ($19.04 in WA)

To order a copy of *Resources*, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or mail a request to WSBA Order Processing, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330. Payment may be made by check (payable to WSBA), MasterCard or Visa, and must accompany your order. Please note that the 2002-2003 edition will be available in the spring.

Web Site Links from Lawyer Directory

The lawyer directory on the WSBA Web site has been enhanced! A link to your Web site can be added to your directory listing, so current and potential clients can find out more about you and your practice at the click of a button.

The fee is $75 annually ($50 if you sign up July 1 or later). If your firm has seven or more lawyers, you'll save through our special pricing structure. Special pricing is also available for those who work for nonprofit or government agencies. For more information and sign-up instructions, see www.wsba.org/directory/addlink.

The WSBA Store Is Open

The WSBA online store is open at www.wsba.org/store. You can purchase Cutter & Buck polo shirts, twill baseball caps, ballpoint pens, and brass luggage tags emblazoned with the WSBA logo. The store features secure online credit-card ordering. You can also purchase logo merchandise by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

- **Polo shirt** (pewter or white, size L or XL) – $56
- **Baseball cap** (stone) – $24
- **Ballpoint pen** – $12
- **Luggage tag** – $7

Prices include shipping and handling. Sales tax (8.8%) will be added to orders shipped within Washington.

NJP Board to Meet Quarterly

The Northwest Justice Project board of directors will hold the remainder of its 2002 meetings on April 13, July 13 and October 19. Public meetings begin at 9:30 a.m. For site information, contact Lisa Giuffré at 888-201-1012 or 206-464-1519.

Multilingual Legal Assistance Now Available

Eastside Legal Assistance Program (ELAP) has expanded its offering of free legal clinics. Multilingual services will operate twice monthly for people who speak Spanish, Russian or Ukrainian. For schedule information and appointments, call 425-747-1663.

Creed of Professionalism: The WSBA now has an aspirational Creed of Professionalism developed by the Professionalism Committee with input from members around the state and approved by the Board of Governors. The text of the creed is on the WSBA Web site at www.wsba.org/creed. The creed is available for purchase, either unframed or mounted on a mahogany-finish wooden plaque. It is our hope that Washington lawyers will display the creed proudly in their offices.

Creed suitable for framing @ $4 each (includes shipping) $_____
Creed mounted on a wooden plaque @ $20 each (includes shipping) $_____
If in Washington, add sales tax @ 8.8% $_____
Total $_____

❒ MasterCard ❒ Visa No. _____ - _____ - _____ - _____
Exp. date _____ Name as it appears on card _____
Signature _____

Please send to:

Communications Department, WSBA
2101 Fourth Ave., Ste. 400
Seattle, WA 98121-2330

Name _____
Address _____
City _____
State _____ Zip code _____

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The WSBA is pleased to offer photo bar cards to members. This is an option for those who are interested in having their photo on their card; original and replacement cards without photos are provided at no cost. Here's how it works:

- You can either e-mail an electronic photo in .bmp format or mail a hard-copy photo that we will scan. Photos can be any size.
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- The cost is $10 for cards created from electronic photos, and $15 for cards created from hard-copy photos. Checks, MasterCard and Visa are accepted for payment.
- If you're mailing a hard-copy photo, please mail the photo with the completed order form and payment.
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If you have questions, please contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA or questions@wsba. org.

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If submitting an electronic photo, please e-mail to allisonp@wsba.org. We recommend that you e-mail the photo the same day you send this form. If paying by credit card, you may fax this form to 206-727-8319. If submitting a hard-copy photo, be sure to write your name on the back and enclose it with this form. Your photo will be returned to you.

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Announcements

GROFF & MURPHY PLLC

is pleased to announce that

Robynne Thaxton Parkinson

has returned to the firm as Of Counsel, effective November 1, 2001.

Ms. Parkinson's practice will continue to focus on the areas of labor and employment law, and construction-related contracts and disputes.

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Fax: 206-628-9506
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royer@leeroylaw.com

ROMERO MONTAGUE PS,

a boutique commercial litigation and business law firm, announces that one of its associate attorneys,

Eric Zimbelman,

is now a shareholder in the company.

Zimbelman, who heads up the firm's employment practice group, will continue his litigation practice in the areas of employment law, intellectual property, real estate, construction, and complex commercial litigation.

The company also announces that

Michael Wiggins

has been hired as an associate attorney at the firm.

Wiggins, a 2001 graduate of Seattle University School of Law, will focus his practice on complex commercial litigation, primarily in the areas of intellectual property, securities and real estate.

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LAW OFFICE OF RON PEREY

is pleased to announce that

John Siegel, J.D.
Douglas Weinmaster, J.D.

have joined the firm as trial lawyers.

Mr. Siegel is a graduate of Louisiana State University Law Center (1996), and Mr. Weinmaster is a graduate of Gonzaga University School of Law (1998).

The Law Office of Ron Perey practices personal injury law throughout the state representing those who have suffered catastrophic injuries or death due to the negligence of others. Special practice areas include medical malpractice, automobile accidents, product liability and wrongful death.

Trial Lawyers
Ron Perey, J.D.; Jane Seavecki, R.N., J.D.; John Siegel, J.D.; Douglas Weinmaster, J.D.; Carla Tachau Lawrence, J.D.

Medical Director
Alexandra Finney McCafferty, M.D.

Case Managers
PJ Anderson, R.N.; Janice Perey, R.N.; Barbara Fletcher, L.A.

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Calendar

Please send information to: WSBA *Bar News* Calendar
2101 Fourth Avenue, Suite 400, Seattle, WA 98121-2330;
fax 206-727-8319; e-mail comm@wsba.org.

ADR

New Vistas in Dispute Resolution
April 4-6 – Seattle. CLE credits TBA. By UW-CLE; 206-543-0059.

Arbitration Training
April 19 – Spokane. CLE credits TBA. By Spokane County Bar Association; 509-777-0078.

ARTS AND ENTERTAINMENT LAW

How to Take Your Stand: Negotiating the Gallery Contract
April 18 – Seattle. 2 CLE credits pending. By Washington Lawyers for the Arts; 206-328-7053.

BUSINESS

Business Law Midyear
May 31-June 2 – Stevenson. 11 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

American with Disabilities Act Briefing
April 4-5 – San Francisco; April 11-12 – Chicago; April 16-17 – Washington, D.C. Up to 15 CLE credits available. By National Employment Law Institute; 303-861-5600.

Employment Law and Litigation: Coping with the Changed Workplace Since 9/11
April 11 – via satellite. CLE credits TBA. By American Law Institute/American Bar Association; 800-CLE-NEWS.

Workers' Compensation
April 11 – Seattle. 5.75 CLE credits, including .5 ethics. By WSTLA; 206-464-1011.

35th Annual Pacific Coast Labor and Employment Law Conference
May 2-3 – Seattle. 13.75 CLE credits, including 1.5 ethics pending. By Pacific Coast Labor Conference; 206-243-0927.

Human Resources Institute
May 2-3 – Chicago; May 9-10 – San Francisco; May 16-17 – Washington, D.C. Up to 15 CLE credits pending. By National Employment Law Institute; 303-861-5600.

ENVIRONMENTAL

ELUL Midyear
May 16-19 – Vancouver, BC. 13 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

The Professional Estate-Planning Seminar, with Roy M. Adams
May 17-18 – San Francisco. 13.75 CLE credits, including .5 ethics pending. By Northwestern University; 201-391-6859.

FAMILY LAW

Family Law Skills Institute
April 26-27 – Seattle. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

GENERAL PRACTICE

Persuasive Writing – AM
April 23 – Seattle; May 7 – Tacoma and Vancouver. 3.25 CLE credits. By WSBA-CLE, 800-945-WSBA or 206-443-WSBA.

Legal Document Drafting – PM
April 23 – Seattle; May 7 – Tacoma and Vancouver. 3.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Auto Cases
April 25 – Seattle. 6.75 CLE credits, including .5 ethics. By WSTLA; 206-464-1011.

Communication Skills: The Keys to Successful Advocacy and Litigation
April 25 – Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Legal Issues Facing Non-Profits
May 23 – Seattle. 7.25 CLE credits. By WSTLA; 206-464-1011.

Plaintiffs' Motion Practice: Facts and Forums
May 30 – Spokane. 4.5 CLE credits. By WSTLA; 206-464-1011.

Themis Assembly, Personal and Professional Development for Women Lawyers
May 31-June 2 – Vancouver, BC. CLE credits pending. By Renaissance Lawyer and Lawyer Coaches Directory; 800-663-1144.

LAW OFFICE MANAGEMENT

LOMAP Traveling CLE Workshop
April 5 – Lake Chelan; April 22 – Bellingham; April 23 – Oak Harbor; April 24 – Port Angeles; April 25 – Bremerton; May 7 – Colville; May 8 – Spokane. 4 credits, including 1 ethics. By LOMAP; 800-945-WSBA or 206-443-WSBA.

LITIGATION

Courtroom Survival Kit for the New Practitioner
May 2 – Tacoma. 7 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Courtroom Survival Kit for the New Practitioner
May 3 – Seattle. 7 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

REAL ESTATE

Doing the Deal: Handling Complex Issues in the Purchase and Sale of Commercial Real Estate
April 18 – Vancouver; April 19 – Seattle. 7 CLE credits, including .5 ethics (in Seattle only). By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

APPEALS

Margaret K. Dore

Counsel for appellant in landmark child custody case, *Lawrence v. Lawrence* (Wn. App. 2001)

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

Passed CPA exam in 1982

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State Physicians v. Fisons*,
122 Wn.2d 299,
858 P.2d 1054 (1993).

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

SEEKING

Nicholas George, Tacoma attorney, seeks to obtain a set of Washington 2d series and Washington appellate series. Please call 253-272-7181.

Lease is up: I am looking for space in a law-firm setting to maintain my part-time mediation practice. Needs are an office and space for one staff person, use of a small conference room (4-6) two days per week, and access to a larger conference room (8-12) one week every two months for training purposes. 206-281-9950.

SPACE AVAILABLE

Office space to sublet in downtown Seattle: The attorney general's office has two separate office suites available to sublet in the Bank of California building: (a) 1,460 rentable sq. ft. on the 24th floor or (b) 3,216 rentable sq. ft. on the 18th floor. Subtenants' rent would start at $30/sq. ft. (full service). For additional details, call Karen Cowan at 206-389-2990.

Tacoma: Cozy office sublet perfect for one to three lawyers/support. Historic building on "Opera Alley," six blocks from court and across the street from city/county building. Views of Rainier, clock tower and skyline. One to three private offices, large common area for library, reception area and walk-in storage. 1,170 sq. ft. total – part or all available. Will finish to suit – restoration 90 percent complete. Affordable. Contact Joe at 253-573-9750.

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

For sublease: Two spacious offices in small suite on the 22nd floor at 1111 3rd Ave., one with full western exposure, one with northern exposure (ideal for paralegal or support staff). Reception and other amenities provided. Available May 1, 2002. Contact Allen Bentley at 206-343-9391 or e-mail abentley@concentric.net.

Silverdale waterfront: Two modern waterfront offices available for monthly rental. Additional offices available. All utilities paid; kitchen facilities and receptionist available. Call Vicki at 360-692-4000.

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Office space available with attorney, practicing primarily in the area of family law. Reception; space for secretarial. Call Paul Reni, 206-542-1840.

Renton: Downtown office space with usual amenities. 425-228-8899.

New class-A Seattle space in Mt. Baker: 10 minutes from downtown at 1414 31st Ave. S. Great access to freeways. 2,800 sq. ft. available. Can divide. Free street and leased garage parking. Call Douglas at 206-322-3690, ext. 3.

Downtown Everett office-sharing: Office available in congenial four-attorney suite in the Frontier Bank building. Office is located one block from the courthouse in downtown Everett. Amenities available: secretarial space, telephone, facsimile, photocopy machine, kitchen facilities, conference room and garage parking. Contact Mark Olson at 425-388-5516 or Rod Moody at 425-259-5656.

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

Wells Fargo Center, 32nd fl.: View attorneys' offices. Completely equipped law office, including receptionist, conference room, electronic law library, high-speed DSL access and kitchen. Secretarial station available. Call Harris, Mericle & Wakayama at 206-621-1818.

Downtown Seattle office-sharing: $200 per month. Also, full-time offices available on 32nd fl., 1001 Fourth Ave. 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.

Space-sharing: 25th fl., Wells Fargo Center, Seattle. Two to four offices available with small full-service firm and other subtenants. Receptionist, two conference rooms, library, lunchroom provided. Negotiable terms. 206-382-2600.

POSITIONS AVAILABLE

McElroy Law Firm PLLC, a Seattle law firm focusing statewide in environmental law, water rights, land use and litigation before administrative agencies and courts, is expanding to meet its client needs, and seeks an attorney with at least three years' experience in the same practice area. Will welcome attorney from public sector who would like to join private sector. Strong legal analysis, research and writing skills required. Please fax cover letter, résumé, references and writing sample to Firm Administrator, 206-654-4161.

Associate attorney: Premier 15-attorney law firm seeking quality associate with at least two years' experience in medical malpractice defense litigation, insurance coverage and/or insurance defense litigation. Qualified candidates must possess a strong academic background and superior research, writing and oral advocacy skills. Reed McClure is a dynamic law firm offering competitive salaries, benefits and a congenial work environment. Visit our Web site at http://www.rmlaw.com. Send résumé and cover letter in confidence to Firm Administrator, Two Union Square, 601 Union St., Ste. 4901, Seattle, WA 98101-3920; or e-mail same to lpowers@rmlaw.com; fax 206-223-0152.

Associate position: Downtown Seattle law firm seeks an associate with at least two years' employment law litigation experience. Applicants with less than two years' experience will not be considered. Send résumé and writing sample to Jaci Lucien, LeGros Buchanan & Paul, 701 5th Ave., Ste. 2500, Seattle, WA 98104-7051; or e-mail jlucien@legros.com. Visit our Web site at http://www.legros.com.

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To Place a Classified Ad:

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

Deadline: Text and payment must be received (not postmarked) by the first day of each month for the issue following, e.g., May 1 for the June issue. No cancellations after deadline. **Mail to:** WSBA *Bar News* Classifieds, 2101 Fourth Ave., Ste. 400, 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.

lectual property for growing Eastside business law firm. Send résumé to Administrator, Pacific Northwest Law Group, PO Box 86, Redmond, WA 98073.

Anchorage, Alaska: Estate planning associate. Small, busy estate planning firm is seeking an associate with estate planning experience and tax background. Our practice involves planning for medium and large estates, and estate and trust administration. Anchorage is a medium-sized city with many of the amenities of a larger city, but few of the drawbacks. We are ringed by beautiful mountains and the ocean, and can boast one of the largest state parks in the nation in our backyard. Recreation includes all forms of outdoor activities in pristine settings within 30 minutes of downtown. Our streets and highways are congestion-free, and our residents enjoy a leisurely pace of life. For more information, please see our Web site at http://www.shaftellaw.com. Fax or mail résumé to 907-278-6015 or 550 W. 7th Ave., Ste. 705, Anchorage, AK 99501.

Senior mediator/public involvement specialist: Well-established, non-law firm with 25 years' experience in mediating complex environmental disputes and managing public involvement processes is seeking a person to fill the role of senior associate/senior conflict resolution specialist. A minimum of 10 years' experience in complex mediation/public process is necessary. Experience working with a variety of interest groups and governmental agencies is highly desirable. The work generally involves multiple parties and is interesting, complex, and often demanding. Every project is different and requires an insightful, patient, hard-working person who knows how to deal effectively with a wide range of interest groups and governmental agencies. Excellent compensation, benefits and working conditions are available. Send résumé and letter of interest to D. Foster; Triangle Associates, Inc.; 811 1st Ave., Ste. 255, Seattle, WA 98104.

Workers' comp. defense firm seeks associate attorney: Qualified candidate will possess a minimum of two years' workers' comp./med. mal./ins. defense experience, excellent writing and client-relations skills. Send résumé, cover letter, transcript and writing sample to L. Nelson, 216 1st Ave. S., Ste. 340, Seattle, WA 98104.

LSAT instructor: We are looking for talented and dynamic individuals to teach our LSAT courses. $25 to $70/hour. Apply at http://www.powerscore.com/instructor.htm or call 800-545-1750.

Libertarian/conservative attorneys: The Institute for Justice (www.ij.org), the nation's premier DC-based, pro-free enterprise public-interest law firm, seeks a director and staff attorney for a new Seattle-based state chapter. Director will have excellent and creative litigation skills, extensive state court experience, organizational savvy, potential for high-profile media, and assistance with fundraising. Salary range $75,000-80,000 plus benefits. Staff attorney should possess at least one year of litigation experience (graduating law students welcome) and solid academic credentials. Both positions require a passionate commitment to freedom and a good sense of humor. Apply via mail to Clint Bolick, VP and Director of State Chapter Development, Institute for Justice, 111 W. Monroe St., Ste. 1107, Phoenix AZ 85003; or e-mail cbolick@ij.org.

Thorsrud Cane & Paulich, a nine-attorney downtown Seattle law firm, seeks litigation associate with minimum 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.

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Partner-level Indian law attorney: Seattle-based law firm with a national practice representing Indian tribal governments and Alaska native entities seeks a dynamic partner-level attorney for Washington, D.C. This position will have management responsibilities in the firm's Washington, D.C., office. See Web site at http://www.msaj.com. Candidates should possess litigation experience in federal and tribal courts, and sophisticated Indian law experience. The candidate must have the ability and desire to expand the firm's practice through contacts in Indian country. The candidate should have familiarity with the Departments of Justice and Interior. At least 10 years' law practice, top academic credentials, and excellent writing skills are expected. Native Americans are encouraged to apply. Send résumé to Morisset, Schlosser, Ayer & Jozwiak; Jerry E. Rugh, Legal Administrator; 801 2nd Ave., Ste. 1115, Seattle, WA 98104; j.rugh@ msaj.com.

Brett & Daugert PLLC: AV-rated 11-lawyer Bellingham firm seeks a business/corporate lawyer with at least five years' large-firm experience, good academic credentials, a sense of humor, and a spirit of adventure to join us in building our corporate/business practice. Send résumé to PO Box 5008, Bellingham, WA 98227.

Luce, Lombino & Riggio PS, a Tacoma law firm, has an opening in its municipal department. Successful candidate will have a minimum of five years' experience representing municipalities, be highly motivated, and possess excellent legal and interpersonal skills. Please fax cover letter and résumé to Human Resources Manager; Luce, Lombino & Riggio PS; 253-922-2802.

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The Seattle office of Lane Powell Spears Lubersky LLP seeks a litigation associate with a minimum of two years' experience, preferably with federal clerkship experience. Candidates should have experience in complex commercial litigation, including depositions and trial preparation. Excellent research and writing skills required. Experience with class-action litigation and federal court practice preferred. Candidates should submit a cover letter and résumé to Len Roden, Administrator of Attorney Recruiting, Lane Powell Spears Lubersky LLP, 1420 5th Ave., Ste. 4100, Seattle, WA 98101-2338.

Litigation associate: An AV-rated Bellingham firm seeks an associate to practice civil litigation. Applicant should have strong research and writing skills, and a desire to become active in the local community. Send résumé to Jeff Fairchild; Adelstein, Sharpe & Serka; PO Box 5158, Bellingham, WA 98227-5158.

McElroy Law Firm PLLC, a Seattle law firm focusing statewide in environmental law, water rights, land use and litigation before administrative agencies and courts, is seeking a senior attorney to join our growing practice. Please fax cover letter and résumé to Firm Administrator, 206-654-4161.

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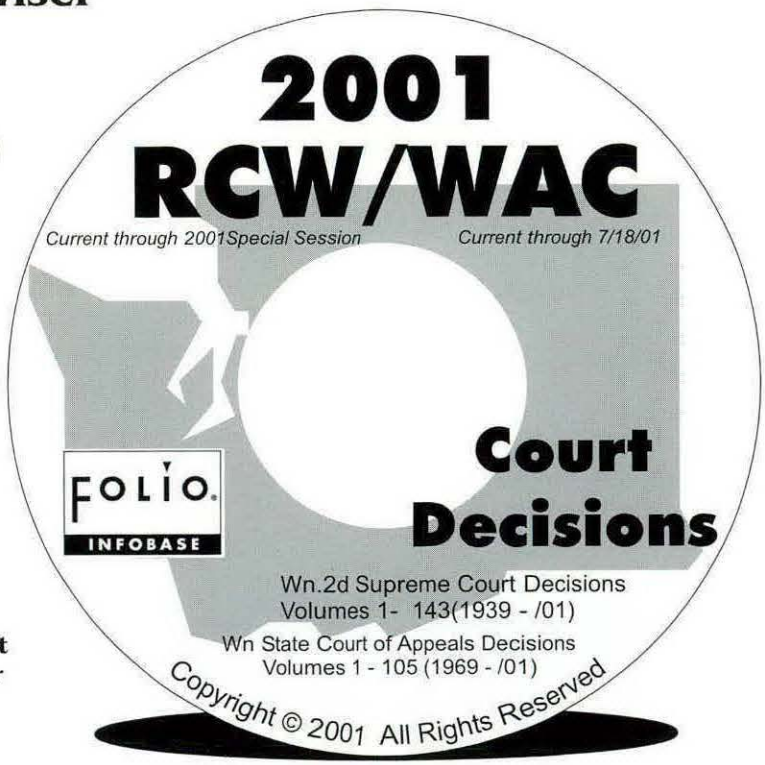

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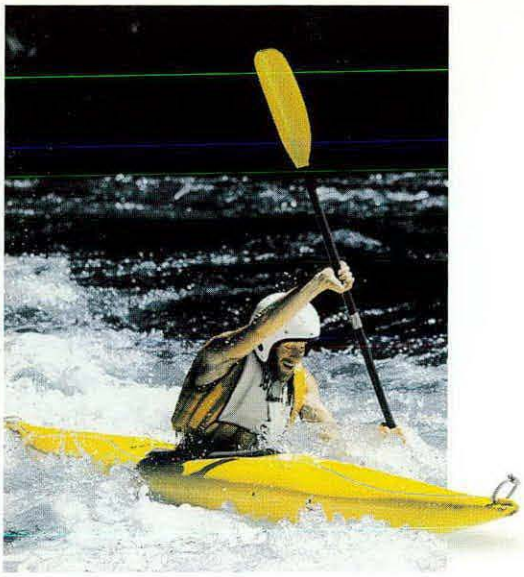

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