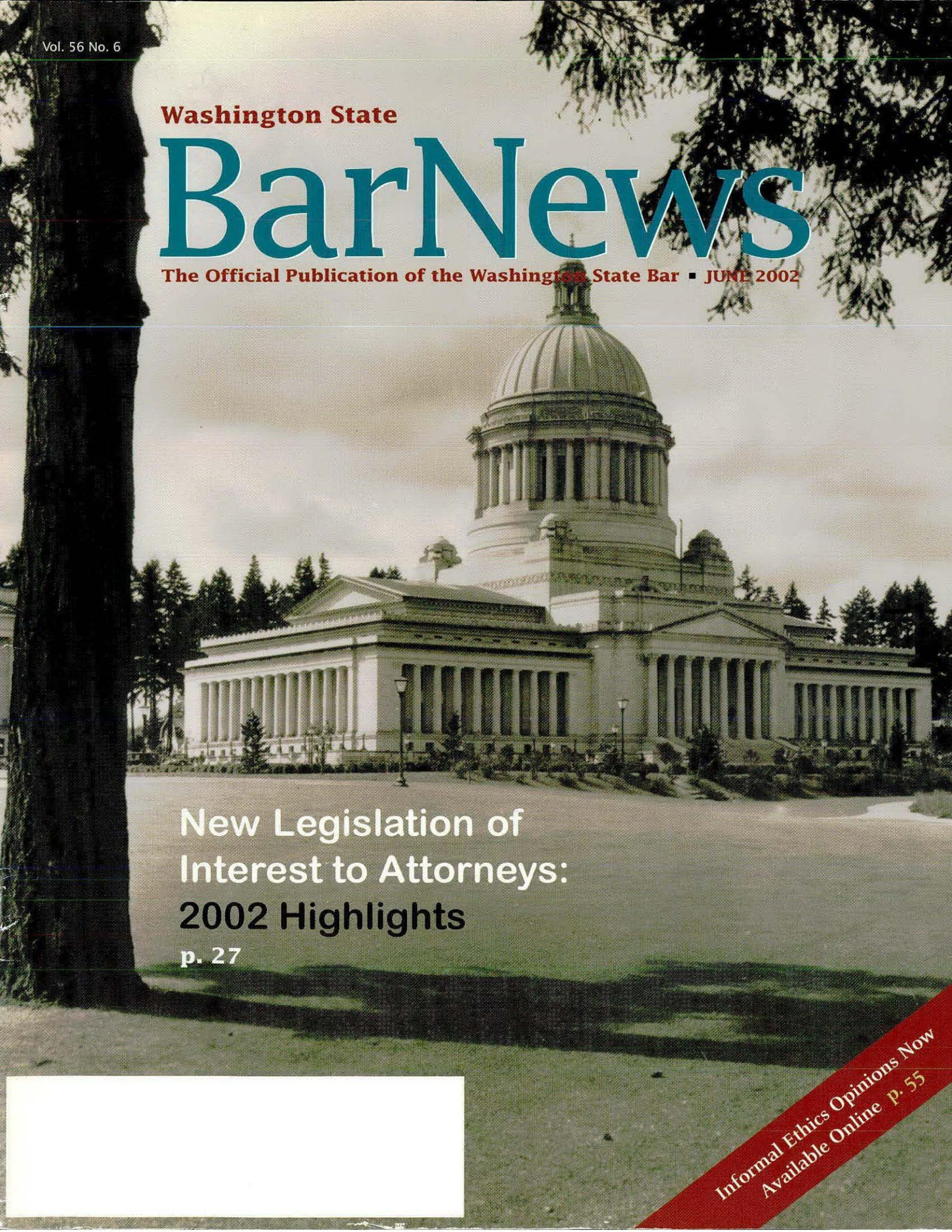
Vol. 56 No. 6



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New Legislation of Interest to Attorneys: 2002 Highlights

p. 27

Informal Ethics Opinions Now Available Online p. 55

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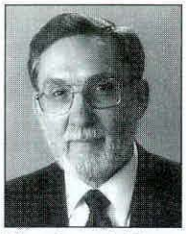

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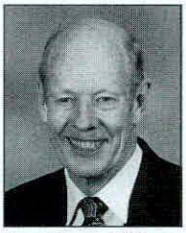

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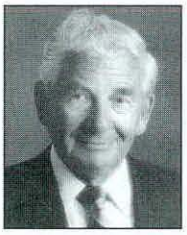

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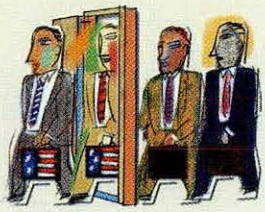
Contents

Articles

Columns

Departments

Listings



P. 16

p. 20

p. 36

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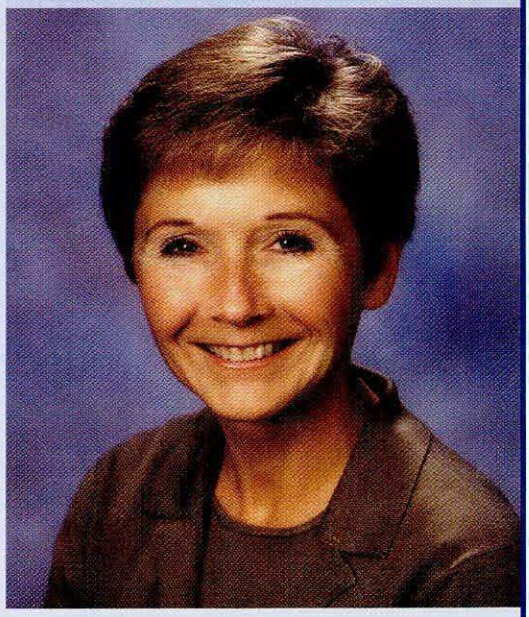

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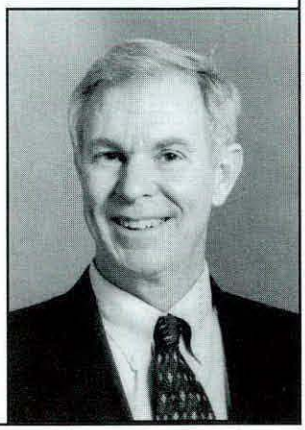
And, welcome to our newest member ... **R. Joseph Wesley,** former King County Superior Court Judge.



Letters

Honoring Judge Dwyer

Editor:

Your April 2002 issue contained a notice of the death of U.S. District Court Judge William L. Dwyer. The notice contained some interesting biographical information, but it left out the most important thing about him. He had Parkinson's disease, which is incurable and progressively disabling. He could have taken medical retirement years ago. Instead, he stuck to his post like a Roman. For me, Judge Dwyer exemplified the stoic philosophy of the Great Emperor Marcus Aurelius. I wrote him a letter about two years ago, in which I expressed my admiration. I'm glad now that I did write it. He was kind enough to reply. Men and women like Judge Dwyer are examples to all of us.

William Kirby
Olympia

KCBA Member Benefits

Editor:

I read with interest Dale Carlisle's column in April (p. 13) saying that the WSBA will soon be offering member benefits, including health-care insurance and a credit card, two needs WSBA members requested at strategic planning forums held years ago.

WSBA members may be interested in knowing about insurance options available to King County Bar Association members, which could include KCBA associate members, i.e., readers who practice outside King County. The KCBA offers a selection of nine different health-care plans through Northwest Employee Benefits (800-284-1331; or www.nwebi.com, click on "KCBA Plans"). A real advantage to these plans is that even in small offices, staff and attorneys can select different plans based on their needs. Even with staff having different plans, it is easy to administer since you receive just one bill. Cost management is easy too. If you need to set a fixed amount that the office covers for each employee or attorney, the employee can pay the balance.

WSBA members outside King County may join the KCBA as associate members for only $75 per year. Associate members also receive other benefits of membership, such as the monthly *Bar Bulletin*, reduced rental-car rates, hotel rates and other discounted services. The MBNA credit card not only offers competitive interest rates, but pays a royalty stream supporting our award-winning *pro bono* programs with every transaction.

While we commend the WSBA for trying to meet members' needs in these offerings, we want WSBA members to know they may access benefits from a local county bar now, and would support the KCBA's vital community service work in so doing. If you'd like to talk with me about any of this, please call.

Alice C. Paine, Executive Director
King County Bar Association, Seattle

Writer Objects to Editor's Columns

Editor:

I write to express my strong disapproval of *Bar News* Editor Mark Panitch's use of his "Two Cents' Worth" forum to repeatedly advocate a politically and socially liberal viewpoint under the guise of protecting the law. If protecting the law is so important, I wish he would show a little more respect for the First Amendment rights of WSBA members whose dues pay for the platform from which he speaks.

Although my WSBA membership is a condition to my practicing law in Wash-

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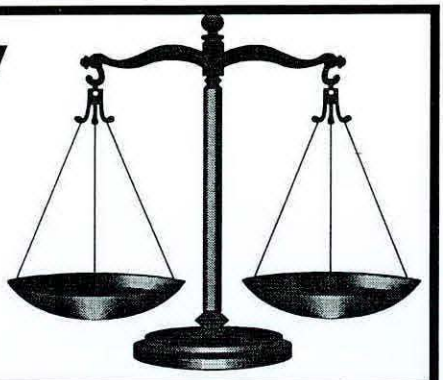

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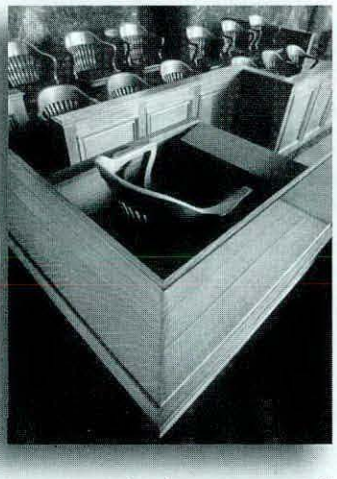

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ington, my First Amendment rights are protected by GR 12(c)(2) (prohibiting the WSBA from taking "positions on political or social issues which do not relate to or affect the practice of law or the administration of justice") and *Keller v. State Bar of California*, 496 U.S. 1 (1990) (prohibiting state bar associations from using mandatory dues to conduct political or ideological activities not reasonably related to regulating the legal provision or improving the quality of legal services). Since taking over as editor of *Bar News* slightly over a year ago, Mr. Panitch has disregarded these mandates as he uses his column to push a liberal viewpoint on a number of topics where the connections to the WSBA's purposes are tenuous at best.

Mr. Panitch started slowly in January 2001 (p. 17). While purporting to offer an optimistic twist on the ugly 2000 presidential election battle, the cynicism in his fourth paragraph makes it quite clear that he is not at all pleased with the impending outcome. Had this been an isolated incident, I would have given him the benefit of the doubt.

In May 2001, however, he confirms his ideological stance when he takes an irrelevant dig at President Bush's conduct in the 2000 election (p. 15). For the remainder of the article, he unashamedly bashes Bush for removing the ABA from the federal judicial nominee screening process, where he consistently focuses on the political rather than legal aspects of the issue.

In December 2001 (p. 15), Mr. Panitch, for the most part, takes a break from politics to engage in the last acceptable form of bigotry: religious bashing, where he starts by comparing Jerry Falwell to Osama Bin Laden, then proceeds to go through a number of evils done in the name of religion, throughout which his theme is the relativistic position that anyone who advocates for "truth" is a certifiable nut (or equivalent to someone who murdered 3,000 innocent people). How is that relevant to the quality of legal services in our state? Not to leave Bush feeling ignored, however, Mr. Panitch finally gets to his point, which appears to be a warning that the president is about to trample on the Constitution in his efforts to defend it.

In April 2002, Mr. Panitch takes on Bush yet again. He starts by writing that

Bush's statement to troops in Anchorage was bad public policy. Next, he slides into yet another rehash/Bush bash regarding the election, again with less than a favorable view of the president. He cites Toobin's *Too Close to Call* as if it were an objective account of the election, but passes on the chance to (1) uphold the first statement in the Society of Professional Journalists' Code of Ethics (seek truth and report it); and (2) illustrate the time-tested legal principle that justice and truth are best reached through the competition of ideas. For example, he could have at least balanced his sources by also citing someone who disagrees with Toobin (*At Any Cost* by Bill Sammon comes to an opposite conclusion and is mainstream enough that it outsells Toobin's book on Amazon). Rather he relies upon Toobin as gospel and uses Bush's election tactics as an explanation for the president's disregard for the civil rights of the Taliban and al-Qaida.

Thus, in four out of nine columns to date, Mr. Panitch used his state-sanctioned forum to engage in political speech, and always from a certain viewpoint. Arguably, in each case his column eventually relates to the administration of justice. Since the law permeates all political, social and ideological issues, however, Mr. Panitch will always be able to make that argument for any column he writes. In order to fulfill the purposes of GR 12 and *Keller*, however, he must keep in mind *Keller*'s requirement that the relationship between the political issue and the regulation of the profession or the quality of legal services be reasonable.

The court stated that "the extreme ends of the spectrum are clear: Compulsory dues may not be expended to endorse or advance a gun control or nuclear weapons freeze initiative." 496 U.S. at 15-16. Certainly a gun-control initiative relates to the law, but the court's common-sense approach demonstrates that at some point an issue becomes more political than legal and should not be addressed with member dues. Moreover, "a given activity might be reasonably related to the Bar's legitimate purposes, and yet possess such strong political or ideological content as to run afoul of the First Amendment." *Popejoy v. New Mexico Board of Bar Commissioners*, 887 F. Supp. 1422, 1428 n.3 (D.N.M. 1995). Mr. Panitch's strong anti-Bush rhetoric and anti-religious statements further distance his column from the legitimate purposes of the WSBA.

Mr. Panitch's conduct is made all the more offensive by the lip service paid to the topic about which I write. First, he acknowledges the prohibitions to which I refer while simultaneously disregarding them. In April 2002 (p. 15) he writes: "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." One not need read too many of his columns to see how ludicrous that statement is. Second, the WSBA's Web site states that the Bar Association uses an "extremely conservative" test for determining nonchargeable activities in compliance with *Keller*, but then notes that the only nonchargeable activities of the WSBA are those in the legislative arena. Mr. Panitch may or may not be paid for his services to the WSBA, but the column space in *Bar News* certainly has value, as any advertiser I'm sure could confirm. Thus the WSBA is funding, to some degree, repeated po-

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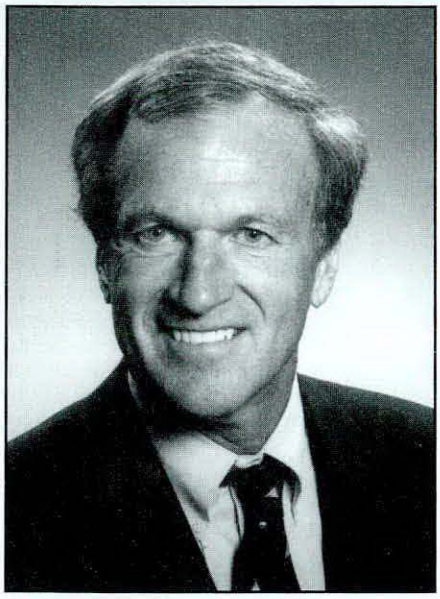

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Jim is a Washington native, he graduated form North Seattle's Ingraham High School, received his Bachelor's degree from Harvard and earned his J.D. from the University of Washington. Jim and his wife Kathy have two grown daughters, a schoolteacher and businesswoman. He served in the U.S. army from 1971 to 1973 and he enjoys distance running, boating, hunting, fishing and opera.

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litical and ideological speech with compulsory member dues, yet calling such activity chargeable even under an "extremely conservative" test.

Mr. Panitch raises important points upon which reasonable minds could disagree, and he is certainly entitled to both hold and speak his views. I submit, however, that *Bar News* is not the proper forum. If, as Mr. Panitch writes, a lawyer's "first duty is to protect the law," he can be an example by respecting the First Amendment rights of Washington lawyers who are forced to pay for his column but don't agree with his views.

Nathaniel Taylor
Seattle

Writer Supports Editor's Columns

Editor:

Thank you for your timely articles in *Bar News*. It takes a little guts to stand up for a principle when you know you will catch some flak from the dissenters. Keep up your good work.

Arthur R. Paulsen
Tacoma

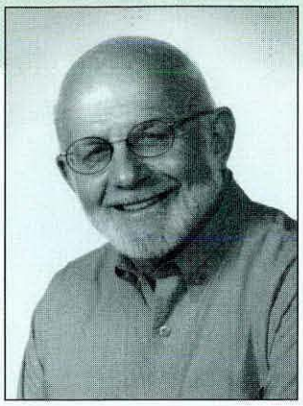
McGarry's Opinion on Glass-Ceiling Article His Own

Editor:

As the "excoriation" that our partner Arthur D. McGarry expected now begins, the firm wishes to advise that his views as expressed in the April 2002 *Bar News* (p. 7) do not necessarily reflect the opinions of the partnership. However, we are hopeful that the ensuing discussion will be undertaken in a serious and thoughtful manner, as the debate on this issue is of broad importance within the legal community.

Robert J. Burke
J. Craig Rusk
Seattle

Readers are invited to submit letters of reasonable length to the editor via e-mail at comm@wsba.org, by fax (206-727-8319), or mail. Due date is the 10th of the month for the second issue following, e.g., June 10 for publication in the August 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.



Committees, Boards, Panels and Sections:
The Lifeblood of the Bar

by Dale L. Carlisle
WSBA President

There are 27 committees, boards and panels, and 24 sections in the WSBA family. Nearly 70 percent of our members belong to one or more sections, and approximately 1,000 of our members belong to committees. The length of service on a committee varies.

Sections Operate Independently

Except for administrative support provided by WSBA staff, sections operate independently of the Bar. The WSBA staff supports section officers and executive committees with newsletters, CLE seminars and annual meetings. Sections are financed by their membership dues, and most have reserves that carry over from year to year. Sections provide a vehicle for members to remain current in their practice areas, and to share experiences with other attorneys.

The WSBA adds about one section every two years as various practice areas expand.

Sections serve members and the public, and are essential to meeting the WSBA's objectives. The WSBA's legislative proposals originate with sections. As well, members may be asked to review other bills introduced in the Legislature. With an all-volunteer force of section members and officers, and the WSBA's legislative staff, major legislative improvements are made each year. Sections that have been extremely active in the last few legislative sessions include Business Law; Real Property, Probate & Trust; Family Law; Elder Law and Taxation Law. Also, the Young Lawyers Division has been quite active.

Examples of legislation originating from sections include revisions to the Uniform Commercial Code, Probate Code, guardianship statutes, family law, and many individual statutes and acts too numerous to mention. This major annual effort receives little recognition from the public or legislators; therefore, I wish to acknowledge in this column that the invaluable work of the sections is a primary reason to continue to encourage and support them. If you do not belong to a section, consider joining one. If you are a section member, thank your officers and executive committees.

Most bar associations in the western states have more than 20 active sections; Texas and California have as many as 40. The WSBA adds about one section every two years as various practice areas expand. At its April meeting, the Board of Governors approved the formation of the Animal Law Section, bringing the total number of WSBA sections to 24.

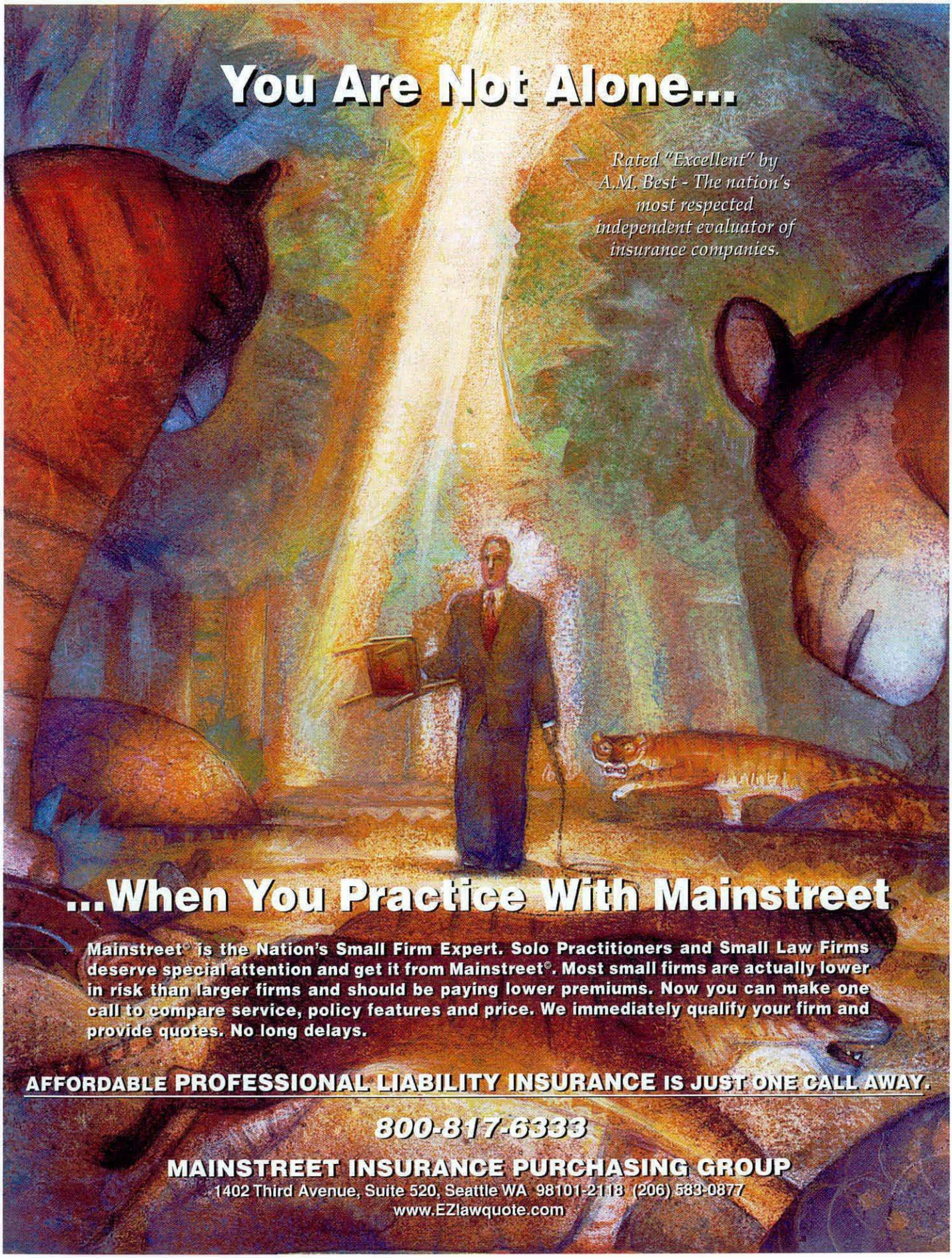
Committees, Boards and Panels Support Many Efforts

Committees, boards and panels (hereafter called committees) are supported by the WSBA, both financially and with staff. A primary purpose of committees is to support the Board of Governors (BOG) in achieving the objectives of the WSBA Long-Range Strategic Plan.

About three-quarters of our committees have program functions, such as the Bar Examiners Committee, Legislative Committee, Judicial Recommendation Committee, Rules of Professional Conduct Committee, *Bar News* Editorial Advisory Board, Disciplinary Board, and Lawyers' Fund for Client Protection Board. With the exception of a small stipend to bar examiners, who write and grade questions for the bar examination, those who serve on these committees are volunteers who receive little or no recognition or thanks. In fact, less than half of committee members are reimbursed for travel and other expenses. Those who receive reimbursements are in "funded" committee positions.

The recent announcement of the availability of Washington case law online (http://www.LegalWA.org) is an example of the dedicated service of the Electronic Communications Committee (EC2) and its former chair Walt Krueger. This committee, which advises the WSBA and the BOG on technology matters of importance and interest to members, worked diligently to achieve the goal of having case law available online at no charge to WSBA members and the public. With the support of the Code Reviser's Office, the Washington State Supreme Court, and the Municipal Research & Services Center, the committee's goal has been achieved at no cost to those who use the service — only one example of what committees do for the WSBA and its members. My congratulations to Mr. Krueger and the EC2 Committee.

Whether the effort is a biannual Bar examination or a special project, we thank past, current and future members of sections and committees for their effort and dedication. These groups are the lifeblood of the WSBA. Your participation and involvement would be valued and appreciated.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Tensions in American Law

by Jan Michels
WSBA Executive Director

Since joining the WSBA, I have talked to many lawyers about their law practices. Though views vary, many practitioners experience tension, frustration and dissatisfaction with the practice of law. A book recently recommended to the Board of Governors by Governor Rob Boggs (4th District) of Yakima is *Jurismania: The Madness of American Law* by Paul F. Campos. The book is hopelessly overwritten and difficult reading, but offers some explanation about how growth in the body of law relates to some of the dissatisfaction. Campos discusses the tension between law and social order, the irrational aspects of the law, the sense of disingenuousness in using performance rather than reason, and the unpredictability of outcome that lessens personal and client satisfaction with the legal process. He suggests that clients will seek other means of resolving disputes.

The Tensions

1. American law tries to regulate the social order.
There is huge and rapid proliferation of bureaucratic regulation that is impossible to keep up with, much less apply meaningfully. We seem to want enough law to make all consequences predictable. Instead, we've created a situation where all relevant regulation needs to be posted so violations are "informed," yet there is such proliferation of information that the average person becomes immune. Does failure to post rules of conduct create a "fair game" of all conduct? Does the lack of a prohibition equal a right? Campos argues that regulation texts read like a crazed amalgam of the rule against perpetuities and the Uniform Commercial Code. America's legislative attempt to resolve the tension between moral freedom and the consent to be governed (social compact) simply leads to more and more laws attempting to regulate social conduct.

In place of religious or spiritual commonality, we look to constitutionally established "rights" to guide the enforcement of conduct. But inherent conflicts in the U.S. Constitution between state and individual rights, freedom of information versus the right to be left alone, free speech versus public protection, and the individual right to choose versus public morality cause endless litigation. No one set of circumstances exactly fits another, and we seek more and more legal analysis in a vain attempt to discern what the Constitution says and means. Attempts to rationalize difficult questions of morality, Campos claims, are "madness." There will simply never be agreement on such things as individual freedoms and rights, faith-based definitions of "life," and social responsibility. What would seem the unproblematic act of buying groceries becomes laden with ethical and moral dilemmas about the treatment of animals, support for WTO, use of pesticides, and global stewardship. No amount of regulation or analysis can detail what is acceptable conduct in these circumstances.

2. Law can be "arational."
Lawyers are trained rationalists, Socratic thinkers who deduce "right" from a set of principles. Yet, the truth is that there is not always a commonly held principle in the mix of religious, moral and cultural beliefs. What rational principles apply to divorce or who gets "prosecuted" for truancy? What principle helps us sort out the interests of a fetus in a drug-abusing mother? Rationalists obsessively create more and more law, hoping to get it right — to remove ambiguity and conflicts — and resorting to "just because." Campos uses the term "arational" as the midpoint between rational and irrational.

Many times rational thinking must be force-fit into legal arguments without real integrity or substance, and sometimes purely in hindsight. Searching for a rational argument based on precedent is incredibly expensive. Campos suggests that some attempts at rationality can be measured in inches of documentation and hours of research, and then asks how many inches of rationalization the average litigant can afford. How many inches will it take to reach the truth?

Additionally, the law is helpless to resolve existential or metaphysical questions. Many current legal issues, such as defining life, cannot be reasoned from legal principles or rational arguments.

3. Practicing law can require cognitive dissonance.
Law has become incredibly complex and secular, and lawyers are forced to create a performance in the service of proving that constitutional, moral and social principles will yield the "right" answer. In the service of advocacy a lawyer is required *ex post facto* to contrive the set of principles that would have rationally lead to the conduct in question. Contradictions and tensions in the law, for example, led Bill Clinton to state that he could be telling the legal truth while clearly obscuring the authentic truth. This disingenuousness creates a sense of performance rather than a more satisfying sense of discerning the "truth." Contriving circumstances to fit the de-

sired outcome is a required skill, better suited to legal analogy than to authenticity. There can be an extreme conflict in authenticity when a practitioner confronts the fact that equal justice and due process are rife with favor for the clever and wealthy. It can be hard to authentically represent the nobility of the rule of law in the face of this conflict.

4. Outcomes of legal conflicts are less predictable.

Predictability is a strong manager of conduct, yet as we overregulate and complicate our laws, predictability becomes increasing elusive. If the law doesn't produce predictability, we tend to make more laws. Each new law reflects all the previous laws to date. There is an accounting principle called "a random walk" which is applied to predicting the stock market. A "random walk" is a statistical pattern in which previous iterations of a phenomenon have no predictive value of its future course. Campos argues that if current law always reflects all relevant information to date, it will always change, and predictability will become a "random walk." Property law is an example. It has become such a labyrinth that it defies any two persons to reach the same conclusion. Any one legal fact pattern can become so unique that it is an example of one and not predictive of other or future situations — a "random walk." When more and more regulation doesn't seem to increase predictability, the tension lawyers feel is exacerbated.

Campos Speculates on the Future

As the pyramids and burial rituals of the Egyptian Pharaohs in 26 century BC demonstrate their theological obsession, American law is approaching an obsession that craves meaning and predictability in an increasingly secular and chaotic world. Campos's premise is that we have become obsessed and maniacal about creating laws to address the irrational aspects of life's social and moral dilemmas. This is the legal anomaly that causes pain for lawyers.

"Legal speak" and the search for constitutional rationality has so permeated our culture that the only way out is a massive change in how we think about resolving conflicts. The standards become: "How much analysis and argument can my client afford?"; "What is the easiest way out?"; and "I just want my client to be able to get on with his life." Citizens will turn to actuarial tables, probability analysis, administrative law, and restorative methods of dispute resolution rather then the unpredictable, cognitively dissonant, irrational world of litigation. The dilemma between authentic, rational practice and affordable practicality will cause increasing discomfort for lawyers.

What Can We Do?

We can look at the "piece of work" that American law has become, and expose and accommodate its shadow side. Our mania for giving reasons, ascribing culpability, and searching for and following absolute precedent could be replaced by acknowledging and accepting some degree of arbitrariness, softer opinions in terms of precedent, and alternate dispute resolution. We could admit that, in some cases, there is no tree of knowledge, no moral truth. We will get on with helping our clients through their particular disputes without an overdeveloped call to the higher order or constitutional imperative, painstaking documentation of precedent, and/or inches of rationality the client cannot afford.

Perhaps Campos's concepts can help name and raise for discussion some sources of frustration within the practice. Perhaps we can develop different tools for some areas of practice.

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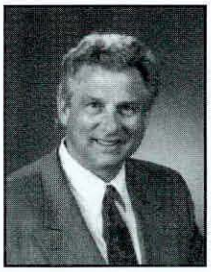

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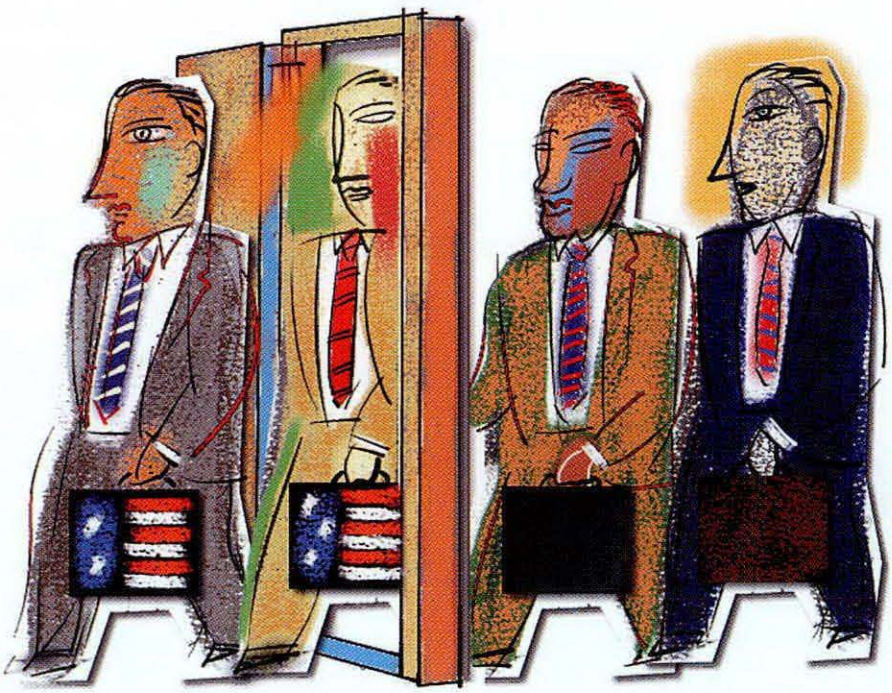
Enforcing Letters Rogatory in British Columbia – An Update

by Stephen Antle

Editor's note: A "Letter Rogatory," or in federal law a "Letter of Request," is a request from a court in one nation to the court of another nation to enforce an order for deposition or discovery of evidence. Historically, Canadian courts would not enforce orders for discovery, but would enforce orders for depositions in lieu of appearing at trial. In February 1995, *Bar News* carried a piece about this important aspect of cross-border practice, highlighting practical points involved in obtaining an order from the Supreme Court of British Columbia enforcing letters rogatory issued by American federal or state courts. Now author Stephen Antle, Q.C., brings us up to date.

Under British Columbia Rules of Court, a nonparty witness who refuses to be interviewed or to answer written questions can be ordered to be examined under oath.



Substantive Law

The making of an order enforcing letters rogatory remains a matter within the discretion of the Supreme Court (British Columbia's trial court). However, the basis on which the court will exercise that discretion has changed. Previously the court had generally refused to enforce letters rogatory unless their principal purpose was to obtain evidence for use at trial, rather than as part of a discovery process. While the purpose of letters rogatory remains a factor in the exercise of the court's discretion, it is no longer determinative. The key issue now is the impact the proposed examination will have on the British Columbia witness, and whether the imposition and inconvenience of being required to testify in a foreign proceeding compromises Canadian sovereignty by placing an undue burden on him or her. (*Campbell Estate v. Stenhouse*, [1995] B.C.J. No. 2304; *GST Telecommunications Inc. v. Provenzano* [2000] B.C.J. No. 378).

Comparative Burden Test

The extent of the burden on witnesses is often measured by comparing it to what would be required of them if the litigation were in the Supreme Court of British Columbia, rather than a foreign court. Under British Columbia Rules of Court, a nonparty witness who refuses to be interviewed or to answer written questions can be ordered to be examined under oath. In most circumstances, examination under letters rogatory is not an undue burden in comparison.

Provenzano provides an example of circumstances which did amount to an undue burden. The letter rogatory named British Columbia counsel for the party obtaining the letter rogatory as the "commissioner" before whom the examination was to be conducted. The letter rogatory did not limit questioning of the witness to issues relevant to the American action of which the witness was said to have knowledge. The letter made an extremely broad

request for production of documents; it did not recognize that the witness's evidence might be subject to solicitor-client privilege or confidentiality (the witness was a lawyer for one of the parties in the American action). The evidence sought could have exposed the witness to liability.

Provenzano is also noteworthy because, despite the unduly burdensome nature of the letter rogatory, the court addressed that burden by placing limiting conditions on the enforcement of the letter, in effect restricting its request for assistance rather than simply refusing to enforce it, as had been the previous practice.

Recent cases also raise a number of practical and procedural points. In *United States Securities and Exchange Commission v. Ono* (2001), 94 B.C.L.R. (3d) 385, the British Columbia Supreme Court reiterated that not only the proposed witness, but the other parties in the American action, should be named as respondents to the petition seeking to enforce the letter rogatory and should be served with that petition and its supporting affidavits. In *Ono* this was not done. However, in another example of the Canadian court's recent willingness to remedy deficiencies in letters rogatory rather than refusing to enforce them, the court ordered that the letter rogatory be enforced, but required the enforcing order to be served on the other American parties, and gave them 10 days from the service date to seek reconsideration or modification.

Lead Time for Enforcement

A practical consequence of naming the other parties to the American action as respondents is that under the Rules of Court, residents of the United States have 28 days from service of the petition to file an appearance in the proceeding. The petition cannot be heard until those 28 days have passed. If the other parties do appear and take a position, there will be further delay while materials for the hearing are exchanged.

Where there is no dispute between the American parties that the proposed witness should be examined, it is often possible to persuade the other parties to waive their 28 days to appear, and advise that they do not intend to file an appearance. Armed with evidence of that, it is possible to have the petition heard within the 28 days. Otherwise, it generally takes about seven weeks from service to hearing of the petition. This may cause problems with discovery cutoffs in the American litigation. Counsel should give themselves plenty of lead time to have their letters rogatory enforced in British Columbia.

Letters rogatory generally require that the witness be examined before a "commissioner," who functions as a sort of referee, to ensure that the examination takes place as ordered. Where the examination is not expected to be contentious, there is no real need for a commissioner. It is generally my practice to have the court reporter for the examination serve formally in that capacity; however, where there are likely to be issues between the American parties or between the witness and the parties, it is wise to have an experienced British Columbia litigation lawyer serve as commissioner. In *Ono*, a master of the Supreme Court was appointed commissioner. Counsel should bear in mind that when lawyers serve as commissioners, they will charge their usual hourly rate for doing so.

The Supreme Court has made it clear that examinations of witnesses under letters rogatory are to be conducted according to procedural and evidentiary rules of both British Columbia and American jurisdiction, with those of British Columbia

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to prevail in the event of a conflict. Under British Columbia rules, the party who obtained the letter rogatory calls the witness. That party must examine the witness-in-chief and may not, ordinarily, cross-examine him. It has been my practice to recommend that letters rogatory be obtained expressly permitting counsel to examine the witness in accordance with the Federal Rules of Civil Procedure, which I understand give the party obtaining the letter rogatory the right to cross-examine. Many orders enforcing such letters rogatory have been granted, but not, to my knowledge, in a contested case. I expect that if a petition seeking such an order were to be contested by the witness or the other parties, that term would be refused.

Notwithstanding that British Columbia procedural and evidentiary rules govern, the relevance of the questions on the examination is to be determined under American law. This is only common sense, as the examination is to be evidence in an American action. In *Ono*, the order enforcing the letters rogatory provided for the referral of questions of relevance to the American court for resolution.

The Supreme Court will likely limit questioning of witnesses, and their obligation to disclose documents, to specific issues in the American action about which they have been shown to have knowledge. The court will also likely limit the documents the witness is required to disclose at the examination to those held in his personal capacity, as distinct from corporate officer or counsel. Documents held in those capacities would have to be obtained directly from the corporation or client. It is generally possible to negotiate the disclosure of such documents in advance of the examination in the interest of making the process more cost-efficient for all concerned.

In *Provenzano*, the court suggested that the witness (who was a lawyer) would not be required to disclose documents which were confidential or the subject of solicitor-client privilege. Presumably they would not be required to answer questions of that nature either. And presumably the rationale was that these documents and issues could be canvassed with the client. At least where the documents on which the witness may be examined are numerous, the court has required the party examining the witness to disclose in advance of the examination the particular issues and documents they intend to put to the witnesses.

Notwithstanding that British Columbia procedural and evidentiary rules govern, the relevance of the questions on the examination is to be determined under American law.

Limitation of Use

British Columbia law requires that parties obtaining evidence through the discovery process use it only for the purposes of the action in which it was obtained, unless they have the consent of the party from whom they obtained the evidence, or a court order permitting them to do otherwise. In *Ono*, the court made it a condition of the order enforcing the letter rogatory that the parties' use of the evidence obtained in the examination be similarly restricted, and required counsel for the parties to provide written undertakings to that effect.

The issue of compensation for the wit-

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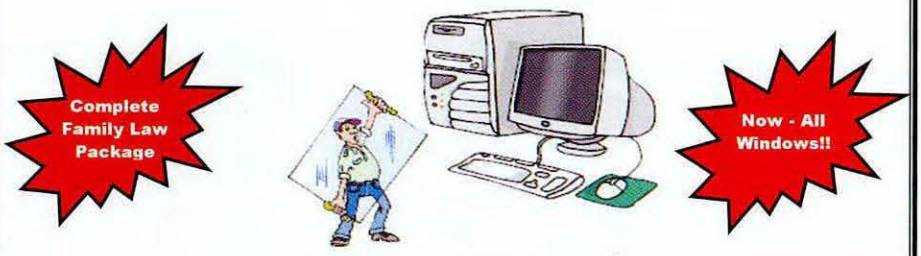

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ness is difficult. Under British Columbia Rules of Court, a witness is entitled to only C$20 per day of examination. However, he is also entitled to "a reasonable sum" for necessary preparation to give evidence. That amount is entirely in the discretion of the court. At least where the witnesses are lawyers and the issues are complex, the court has been willing to allow significant amounts for preparation, although not usual lawyers' fees.

The court has also been willing to allow the witness to be represented by counsel at the examination, where the issues warrant it. However, the court has been clear that such counsel have no general right to participate in the examination. They may only advise the witness about issues such as solicitor-client privilege and confidentiality. The court has not expressly required the examining party to pay for the witness's counsel.

While these procedural and practical issues may make the prospect of enforcing letters rogatory in British Columbia seem daunting, counsel should remember that they arise in complex, contested cases, often where the proposed witness is the British Columbia lawyer for one of the American parties.

As with most legal issues, the more complex case will likely generate a more contentious and complex dispute over the use and enforcement of letters rogatory. In a more routine case, where the witness is simply a lay person who was somehow involved in the events giving rise to the American action, few of these issues are contentious. In such cases the details of the examination are usually negotiated among the American parties and the witness, and if the petition seeking enforcement of the letter rogatory is actually heard at all, it is unopposed.

Under any circumstances, in recent years the British Columbia court has become more friendly to American lawyers looking for information in B.C., especially if they are prepared in advance to work with the B.C. court.

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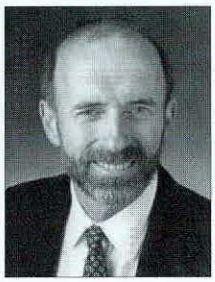

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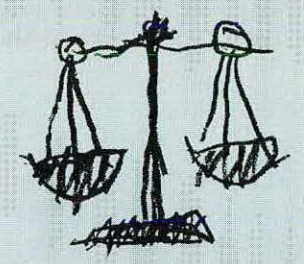

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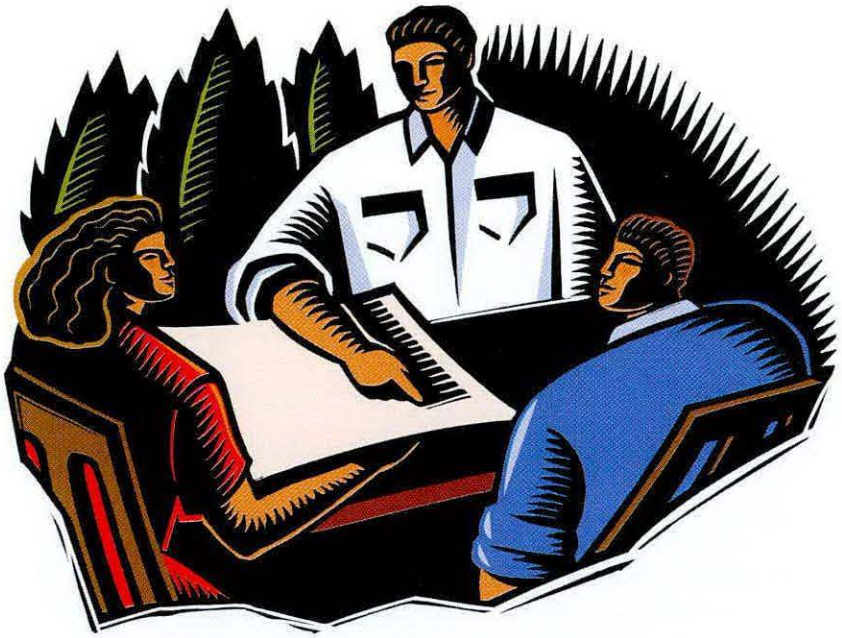
by Marc A. Perrone



Clarifying the Demise of Washington's Independent Business Judgment Rule: *City of Seattle v. Blume*

The doctrine of proximate causation is well-developed and fairly uniform between most jurisdictions. Until recently, however, Washington law contained a unique and ill-fated deviation in the law of proximate causation called the Independent (Business) Judgment Rule.[1] The rule held that where parties independently decided to forego legal rights, such as a defendant deciding to settle a lawsuit instead of litigating the suit through trial, the decision to forego their legal rights is the proximate cause of their injury. Consequently, in cases involving third-party tortfeasors, if the first and second parties settle, the third party is absolved of liability because their tortious conduct is not the legal cause of the defendant's loss — the decision to settle is.

In *City of Seattle v. Blume*,[2] the Washington State Supreme Court (*en banc*) abandoned Washington's Independent Business Judgment Rule and re-established the majority interpretation of proximate causation. Nonetheless, because majority interpretation of proximate causation recognizes circumstances where intervening events break the chain of causation, the impact of *Blume* is difficult to appreciate. Further hindering its clarity, intertwined in *Blume* is a complex and unusual application of an intentional interference with a business expectancy claim in a two-party municipal context.

In an effort to clarify the significance of *Blume*, this article will examine the facts and law pertinent to the allegations in *Blume*, as well as the reasoning and effect of the court's ruling.

Intentional Interference with a Business Expectancy

The tort of intentional interference with a business expectancy is one of the most ubiquitous causes of action in American jurisprudence. It permeates almost all situations in which contracts exist, such as attorney-client relationships,[3] employment contexts,[4] debtor-creditor relationships,[5] sale or lease of real property,[6] tender-offer contests,[7] permit-application situations[8] and others.[9] Nor is the tort insignificant in terms of the damages for which a defendant may be liable. The largest civil jury verdict in U.S. history arose out of tortious interference with a contract action.[10] However, despite the above, the law governing this tort is not well-developed and the tort is sometimes misapplied.[11]

A simple example of a fact pattern giving rise to a claim for tortious interference with a business expectancy is as follows: Suppose X, a property owner, contracts with Y, a carpenter, to build a deck on his property. The contract specifically states that the deck is to be finished no later than two days after the signing of the contract. This provides Y one day to gather the materials and one day to build the deck. Y has previously built similar decks in the same amount of time. On the first day, Y gathers the materials and reasonably secures them on the job site. However, that night, Z, a competing carpenter, sets the materials on fire in an effort to sabotage Y's business. Thereafter, X sues Y for breach of contract, whereby the parties settle. Y, according to these facts, would have a claim against Z for intentional interference with Y's business expectancy.

In the case of *City of Seattle v. Blume*,[12] the principle is the same; however, the facts can be somewhat confusing because the City of Seattle plays the role of both the plaintiff in a breach-of-contract claim and the defendant to a claim of intentional interference with a business expectancy. In short, the Blumes alleged the City of Seattle's negligence caused the Blumes to breach a separate contract the Blumes had with Seattle.

The Facts

In February 1987,[13] the Blumes applied to the City of Seattle's Department of Construction and Land Use (DCLU) for a Master Use Permit (MUP) for a development project.[14] At that time, the usual time period to obtain a MUP was nine months or less.[15] Due to community and DCLU con-

cerns of the project's effect on local transportation, the project encountered a series of delays.[16] Consequently, in June 1992, the Blumes withdrew their MUP application, stating that the project was no longer feasible due to the city's numerous unjust delays, as well as expenses in excess of $1 million in pursuit of the MUP.[17]

Thereafter, in an effort to offset these costs, the Blumes refused to pay the interest on a loan taken through the City of Seattle[18] for a different and separate project.[19] This action was commenced by the City of Seattle to collect the unpaid interest on this loan made to the Blumes.[20] The Blumes filed a counterclaim alleging that the City of Seattle, in delaying the permitting process, (1) acted in an arbitrary and capricious manner in violation of RCW § 64.40.020,[21] and (2) intentionally interfered with the Blumes' business expectancy arising from the development project they abandoned.[22]

At trial, the City of Seattle moved to dismiss the Blumes' counterclaims in a motion for summary judgment.[23] The trial court granted the city's motion, finding that (1) the RCW § 64.40.020 claim was barred by the statute of limitations in RCW § 64.40.030,[24] and (2) the Blumes' voluntary business decision to remove themselves from the permitting process precluded their tortious-interference claim.[25] The Blumes appealed.[26]

The Washington Court of Appeals affirmed, ruling that even if the tortious interference claim was not governed by the statute of limitations in RCW § 64.40.030, it was precluded by the independent judgment rule.[27] The Independent (Business) Judgment Rule holds: "where there is a realistic possibility of correcting the wrongful act by pursuing available legal remedies, and the plaintiff by the voluntary exercise of independent business judgment elects not to pursue those available legal remedies, the defendant's wrongful act is not the proximate cause of the plaintiff's damages."[28] The *Blume* court reasoned that the Blumes' independent business judgment to withdraw from the permitting process was the proximate cause of their injuries.[29] The Blumes filed a petition for review with the Washington State Supreme Court.[30]

The Washington State Supreme Court Opinion

The Supreme Court granted the Blumes' petition for review, and then reversed and remanded the case for trial, ruling that (1) a three-year limitations period applied to the Blumes' tortious interference claim,[31] and (2) the independent business judgment rule did not bar the Blumes' tortious interference claim.[32]

In deciding if the Court of Appeals properly denied the petitioners' tortious interference claim based on the independent judgment rule, Justice Madsen, writing for the majority, chose to first re-examine the wisdom and efficiency of the rule itself. The court began reviewing the rule's history with its common-law origin, the seminal case of *King v. City of Seattle*,[33] decided by the same court 23 years earlier.[34] In *King*,[35] the court held that where there is a reasonable possibility of correcting a wrongful act by perusing available legal remedies, and the plaintiff, by voluntary exercise of an independent business judgment, elects not to pursue available legal remedies, the plaintiff's independent business judgment (and not the defendant's wrongful act) is the proximate cause of the plaintiff's damages.[36]

However, the *Blume* court recognized that *King*[37] had not been widely accepted by the Court of Appeals.[38] Only Division I of the Court of Appeals had applied the rule.[39] Furthermore, in *Flint v. Hart*,[40] Division III criticized the rule at length and declined to apply it.[41] Due to this contro-

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versy, the court analyzed the application of the rule by Division I[42] and the criticism by Division III in *Flint*.[43]

The court concluded that the independent judgment rule lacks clear origins, noting that the court in *King*[44] cited no authority for the assertion that a party's independent judgment not to pursue a possible legal remedy precludes a claim for damages against a third party.[45] Additionally, the court stated that it found no other jurisdiction with a similar rule.[46]

The court then rejected the rule, explaining that it threatens to penalize plaintiffs who mitigate their damages through settlement.[47] The court added that this in turn either (1) discourages settlement, which consequently favors litigation and, therefore, effectually favors those with the financial means to do so,[48] or (2) where plaintiffs do settle, the rule absolves tortfeasors of liability.[49]

The court explained its conclusion by asserting that every time a party settles a claim, they are essentially making an independent business judgment which, under the independent judgment rule, precludes an otherwise valid claim against the third-party tortfeasor.[50] This, the court reasons, will therefore discourage the settlement of claims.[51] The court cited that discouraging settlements is contrary to the express public policy of Washington, which strongly encourages settlement.[52]

The court also reasoned that when defendants confronted by valid claims settle, the independent judgment rule operates as an absolution to third-party tortfeasors against whom the defendants may have valid claims.[53] If the defendant mitigates their damages caused by the tortfeasor, then their settlement becomes the proximate cause of the defendant's injuries.[54] The settlement thereby wrongfully yet legally absolves the tortfeasor of liability.[55]

The court concluded by summarizing its arguments and ruling that the independent business judgment rule may no longer be used as inherently breaking the chain of proximate causation.[56] However, the court adds that its ruling is not to be interpreted as meaning that one's own conduct may not be the sole cause of one's own injuries.[57] Rather, courts should employ traditional principles of proximate causation that may or may not, depending on the facts of the case, show that the plaintiff's settlement was the proximate cause of their injuries.[58] In accord with this ruling, the majority reversed and remanded the case for trial.[59]

The Dissenting Opinion

Writing for the dissent, however, Justice Talmadge presents a sound argument that was not addressed by the majority opinion.[60] The dissent begins with a discourse of the origins and evolution of the tort of interference with a business expectancy to demonstrate the necessity of a third party.[61] It then asserts that the tort of interference with a business expectancy cannot be properly applied against a government agency in a land-use permit context as the court allowed in *King*[62] (thereby establishing the precedent that the plaintiff's claim relies on) because there is no third party.[63] The dissent cites *Olympic Fish Products, Inc. v. Lloyd*,[64] which effectively states that only outside third parties can

The dissent therefore reasons that Seattle would not be tortiously liable for inducing its own breach even if the Blumes had business expectancy.

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be liable for the tort of inducing a breach of contract, not the parties to the contract.[65] The dissent therefore reasons that Seattle would not be tortiously liable for inducing its own breach even if the Blumes had business expectancy.[66] The dissent concludes that since a tortious interference claim cannot be held against the City of Seattle on the facts, the petitioner's claim should be dismissed.[67]

The Impact of *Blume*

This case clearly deviates from Washington's common law since *King*,[68] and effectively changes the law in Washington. Due to the majority holding in this case, independent business judgments will no longer absolve tortfeasors by automatically deeming a party's settlement as the proximate cause of their damages.[69] However, it suggests that if a court found a settlement to be poorly justified, then the chain of causation between the defendant's tortious action and the damages incurred by the settling party would be broken.[70] In such cases the claim should therefore be denied.[71]

This precedent is well-demonstrated in *Mastro v. Kumakici Corp.*,[72] a recent case involving this issue.[73] In this case, Mastro purchased a parcel of land from Kumakici which included a warrantee deed.[74] The parcel of land, however, was encroached upon by a neighbor, Newhall.[75] Mastro informed Kumakici of the encroachment and that Kumakici, as per the warrantee deed, was responsible for Mastro's defense fees and damages.[76] Mastro later settled with Newhall, and then filed suit against Kumakici to recover the settlement costs.[77]

Before the court, Kumakici argued that Mastro's settlement was the proximate cause of his injuries.[78] Citing *Blume*,[79] however, the court noted that the independent judgment rule is no longer an automatic bar to the plaintiff establishing the defendant's acts as the proximate cause of the plaintiff's injuries.[80] Accordingly, following the procedure outlined in *Blume*,[81] the *Mastro* court went on to apply traditional principles of proximate causation to the facts at issue.[82]

The court found that Kumakici was legally responsible for Mastro's litigation fees via the warrantee deed, and consequently, to absolve Kumakici of the duty to pay Mastro's settlement costs, which it deemed to be reasonable, would be contrary to *Blume*.[83] In rejecting Kumakici's argument that Mastro's settlement was the proximate cause of his injuries, the court stated: "it appears fairly certain that if the plaintiff had not settled the claim, a judgment would have been rendered against him at trial."[84] Therefore, the court reasoned, the defendant's acts, and not the plaintiff's independent judgment to settle, was the proximate cause of the plaintiff's injuries.[85]

This last point distinguished by the court clearly demonstrates the impact of the doctrine set forth in *Blume*.[86] Although the independent business judgment rule no longer automatically assigns a plaintiff's settlement as the proximate cause of their injuries, if a plaintiff settles a claim which clearly would have been rejected at trial, the plaintiff's independent business judgment is the proximate cause of the injuries sustained.[87] In such cases, claims against an alleged third-party tortfeasor will be dismissed.

Therefore, due to *Blume*,[88] the independent judgment rule may no longer be an undefeatable defense in settlement recovery cases,[89] but where a settlement is deemed to be poorly justified, then the rule should cause denial of the plaintiff's claim.

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NOTES

1. The Independent (Business) Judgment Rule held "where there is a realistic possibility of correcting the wrongful act complained of by pursuing available legal remedies, and the plaintiff, by the voluntary exercise of independent business judgment, elects not to pursue those available legal remedies, the defendant's wrongful act is not the proximate cause of the plaintiff's damages." City of Seattle v. Blume, 947 P.2d 223 (Wash. 1997).
2. 947 P.2d 223.
3. *See, e.g.*, Wiess v. Marcus, 124 Cal. Rptr. 297 (1975); Gregory Hyatt et al., *American Mineral Fields Inc.: Firm Withdraws Lawsuit Against Anglo-American*, Wall St. J., Mar. 18, 1998, at B4.
4. *See, e.g.*, Signal Const. v. Stanbury, 586 A.2d 1204 (D.C. 1991) (terminated employee recovered damages from former employer under theory of tortious interference with contractual relation after former employer's false, negative reference caused employee to lose job prospect); *see generally* Steve Lash et al., *Su-*

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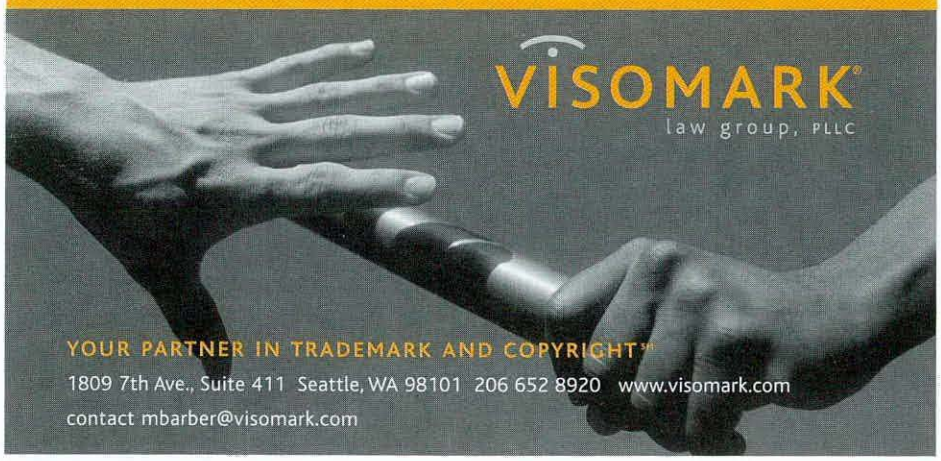

preme Court Set to Hear Dispute over Multistate Litigation Statute, Chi. Daily L. Bull., Nov. 4, 1997, at 1.

5. *See, e.g.*, Flanagan v. Germania, F.A., 872 F.2d 231 (8th Cir. 1989); J. Dennis Hynes, *Lender Liability: The Dilemma of the Controlling Creditor*, 58 Tenn. L. Rev 635, 636 (1991).

6. *See, e.g.*, Tedford v. Roswell Village, Ltd., 328 S.E.2d 403 (Ga. Ct. App. 1985); *see generally* Harvey S. Perlman, *Interference with Contract and Other Economic Expectancies: A Clash of Tort and Contract Doctrine*, 49 U. Chi. L. Rev. 61 (1982); Donald C. Dowling Jr., *A Contract Theory for a Complex Tort: Limiting Interference with Contract Beyond the Unlawful Means Test*, 40 U. Miami L. Rev. 487 (1986) (proposing a more restrictive unlawful means test than Perlman's); Benjamin L. Fine, Note, *An Analysis of the Formation of Property Rights Underlying Tortious Interference with Contracts and Other Economic Relations*, 50 U. Chi. L. Rev. 1116 (1983).

7. *See* Texaco, Inc. v. Pennzoil Co., 729 S.W.2d 768 (Tex. Ct. App. 1987), *cert. dismissed*, 485 U.S. 994 (1988).

8. *See, e.g.*, City of Seattle v. Blume, 947 P.2d 223 (Wash. 1997).

9. However, in certain circumstances the tort has been pre-empted by statute. This is especially true in the context of labor relations. *See, e.g.*, National Labor Relations Act of 1935, 49 Stat. 449 (1935) (current version at 29 U.S.C. § 151-169 (1993)) (governing labor-management conflicts); *see also*, Nili Cohen-Grabelsly, *Interference with Contractual Relations and Equitable Doctrines*, 45 Mod. L. Rev. 241, 266 (1982) (citing recent English legislation that abolished the tort as applied to certain employment contracts); *see, e.g.*, John Danforth, Note, *Tortious Interference with Contract: A Reassertion of Society's Interest in Commercial Stability and Contractual Integrity*, 81 Colum. L. Rev. 1491, 1511-13 (1981).

10. Texaco, Inc., 729 S.W.2d at 768. A Texas jury found that Texaco tortiously interfered with a Pennzoil stock purchase and merger contract and awarded Pennzoil $7.53 billion in compensatory damages and $3 billion in punitive damages. *Id.* On appeal, the punitive damage component was reduced to $1 billion. *Id.* at 866; *see also*, Timothy S. Feltham, Note, *Tortious Interference with Contractual Relations: The Texaco Inc. v. Pennzoil Co. Litigation*, 33 N.Y.L. Sch. L. Rev. 111, 118-20 (1988) (summarizing the damage calculations and rationale). Consequently, Texaco had to file for bankruptcy protection. *See*, Allanna Sullivan et al., *Bankruptcy Option: Texaco Files Petition for Chapter 11 As Talks with Pennzoil Collapse*, Wall St. J., Apr. 13, 1987, at 1.

11. American Petrofina, Inc. v. PPG Indus., Inc., 679 S.W.2d 740, 759 (Tex. App. Fort Worth 1984), *writ dism'd by agr.* ("[T]he law governing the area of tortious interference with a contract is not a well developed area."); *see also*, Steve Lash et al., *Supreme Court Set to Hear Dispute over Mitigation Litigation Statute*, Chi. Daily L. Bull., Nov. 4, 1997, at 1; *see generally*, Note, *Tortious Interference with Contractual Relations in the Nineteenth Century: The Transformation of Property, Contract, and Tort*; 93

Harv. L. Rev. 1510 (1980).
12. 947 P.2d 225.
13. There is a discrepancy as to the exact date the Blumes filed the MUP application. The Supreme Court, in the majority's opinion, states it as February 1987. *See Id.* at 224. The Court of Appeals, however, states the application was filed March 2, 1987. *See* City of Seattle v. Blume, WL 312500 (Wash. App. Div. 1, 1996).
14. *See id.* at 224.
15. *See id.*
16. The DCLU required the Blumes to submit a time-consuming and costly environmental impact statement before it would consider issuing a master use permit for the project. *Id.* at 224. The final draft of the statement was submitted in January of 1990. *Id.* at 225. In June of 1990 the DCLU handed down its MUP decision which required the Blumes to extensively redesign the project. *Id.* In early 1992, the Blumes submitted the redesigned project plans to the DCLU. Blume, 947 P.2d at 225. In a letter dated May 28, 1992, the DCLU enclosed a list of additional modifications it was requiring of the project. *Id.* On June 2, 1992, the Blumes requested the withdrawal of the MUP application. *Id.*
17. *See id.*
18. *See id.*
19. *See* Blume, 947 P.2d at 226.
20. *See id.* at 225.
21. Wash. Rev. Code § 64.40.020 (1986) (provides permit applicants legal remedy for arbitrary, capricious or unlawful governmental acts causing delay of permit processing); *See* Blume, WL 312500 (Wash. App. Div. 1, 1996).
22. *See* Blume, 947 P.2d at 226.
23. *See id.*
24. Wash. Rev. Code § 64.40.030 (1986) (provides in part, 30-day limitation for Wash. Rev. Code § 64.40.020 claims).
25. *See* Blume, 947 P.2d at 226.
26. *See id.*
27. *See id.* The Independent (Business) Judgment Rule holds "where there is a realistic possibility of correcting the wrongful act complained of by pursuing available legal remedies, and the plaintiff by the voluntary exercise of independent business judgment elects not to pursue those available legal remedies, the defendant's wrongful act is not the proximate cause of the plaintiff's damages."
28. Marsh v. Commonwealth Land Title Ins. Co., 789 P.2d 792, 797 (Wash. 1990) (escrow agent's correction of legal description and re-recording trust deed not the proximate cause of damages due to plaintiffs settlement.) *citing*, King, 525 P.2d 228.
29. *See id.* The Court of Appeals affirmed, however initially on somewhat different grounds. Blume, 947 P.2d at 226. Initially the Court of Appeals ruled that both of the Blumes' claims arose under Wash. Rev. Code § 64.40.020 and therefore both of the claims were barred under Wash. Rev. Code § 64.40.030, a limitation provision for the former statute. *Id.* The Blumes then filed a motion for reconsideration arguing that their claim for tortious interference with a business expectancy was not barred by the statute of limitation provision in Wash. Rev. Code § 64.40.030. *Id.* The Court of Appeals, *citing* King v. City of Seattle, 525 P.2d 228 (Wash. 1974), granted in part the motion for reconsideration and changed its opinion, stating in a footnote that even if the tortious-interference claim was not governed by the statute of limitation in Wash. Rev. Code § 64.40.030, the tortious-interference claim was precluded because the Blumes' independent business judgment to withdraw from the permitting process was the proximate cause of their injuries. *Id.*
30. The Blumes filed a petition for review to the Supreme Court arguing that (1) the Appeals Court decision to bar the tortious-interference claim based on Wash. Rev. Code § 64.40.030 is contrary to the Supreme Court's decision in Stenburg v. Pacific Power & Light Co., 709 P.2d 793 (1985), and (2) the Blumes' decision to withdraw from the permitting process does not preclude the tortious-interference claim. Blume, 947 P.2d at 226.
31. The majority, *citing* Stenberg, 709 P.2d 793, held the tortious-interference claim was separate from the claim for damages pursuant to Wash. Rev. Code § 64.40.020 and that it was within the scope of the statute of limitations of Wash. Rev. Code § 4.16.080(2) rather than Wash. Rev. Code § 64.40.030 as held by the Court of Appeals. Blume, 947 P.2d at 226. The court reasoned that Wash. Rev. Code § 4.16.080 provides a catch-all statute of limitations of three years for all common-law torts not specifically enumerated in other limitation sections. *Id.* The court stated that tortious interference was a common-law tort and that the tort was not specifically enumerated in any other limitations section. *Id.* Therefore, the court reasoned that the three-year limitation period within Wash. Rev. Code § 4.16.080 was governing. *Id.*

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32. *See* Blume, 947 P.2d at 226.
33. 525 P.2d 228 (Wash. 1974).
34. *See* Blume, 947 P.2d at 227.
35. 525 P.2d 228.
36. *See* Blume, 947 P.2d at 227 (*citing* Marsh, 798 P.2d 792); *see* King, 525 P.2d 228.
37. 525 P.2d 228.
38. *See* Blume, 947 P.2d. at 227.
39. *See id.* at 226-227; (*citing* Hollis Holmes, Inc. v. Snohomish County, 32 Wn. App. 279, 647 P.2d 43 (1982) (real estate developer's independent business judgment not to pursue litigation to force city to issue permit is proximate cause of injuries); Grader v. City of Lynnwood, 53 Wn. App. 431, 767 P.2d 952 (1989) (city's unfair zoning was not proximate cause of plaintiffs damages because plaintiff failed to seek permit); Horn v. Moberg, 68 Wn. App. 551, 844 P2d. 452 (1993) (proximate causation between attorney negligence in preparing case and damages sustained by former clients not established because plaintiff did not pursue claim); Marsh, 789 P.2d 792.
40. 82 Wn. App. 209, 917 P.2d 590 (1996) (plaintiff's settlement was sound independent business judgment so independent business judgment rule not applicable defense). *See also* Blume, 947 at 229.
41. *See* Blume, 947 at 229.
42. *See* Blume, 947 P.2d at 227-228.
43. *See* Blume, 947 P.2d at 229 (*citing* Flint, 917 P.2d 590).
44. 525 P.2d 228.
45. *See* Blume, 947 P.2d at 229-230.
46. *See id.* at 229.
47. *See id.*
48. *See id.; compare* W. Landes & R. Posner, *The Economic Structure of Tort Law* 254 (1987); Rizzo, *A Theory of Economic Loss in the Law of Torts*, 11 J. Legal Stud. 281, 283-285 (1982).
49. *See* Blume, 947 P.2d at 230.
50. *See id.*
51. *See id.; compare* W. Landes & R. Posner, *The Economic Structure of Tort Law 254* (1987); Rizzo, *A Theory of Economic Loss in the Law of Torts*, 11 J. Legal Stud. 281, 283-285 (1982).
52. *See* Blume, 947 P.2d at 230; (*citing* Seafirst Ctr. Ltd. Partnership v. Erickson, 127 Wn.2d 355, 365, 898 P.2d 299 (1995) (the law "strongly favors" settlement).
53. *See* Blume, 947 P.2d at 230 (*citing* Flint, 917 P.2d 590).
54. *See id.*
55. *See id.*
56. *See* Blume, 947 P.2d at 230.
57. *See id.*
58. *See id.*
59. *See id.*
60. *See id.* at 232-234 (Talmadge, J., dissenting).
61. *See* Blume, 947 P.2d at 232-234.
62. 525 P.2d 37.
63. *See* Blume, 947 P.2d at 234; *see generally*, Francis Bowes Sayre, *Inducing Breach of Contract*, 36 Harv. L. Rev. 663 (1923).
64. 93 Wn.2d 596, 611 P.2d 737 (1980) (tortious interference with contract lies only with third party, a party to a contract cannot be held liable for his own breach).
65. *See* Blume, 947 P.2d at 234.
66. *See id.* The court continues its discussion by further criticizing King's failure to recognize the established precedence requiring a third party in a tortious-interference claim, and adds that even if the King court was attempting to provide permit applicants who were wronged by a city agency with a legal remedy (though through improper means), that since King, both federal and state legislatures have enacted numerous statutes which provide a legal remedy for wronged applicants. *Id.* Therefore, the dissent reasons, the King ruling is unnecessary in addition to being legally erroneous, and as such should be overruled completely. *Id.*
67. *See* Blume, 947 P.2d at 234.
68. 525 P.2d 228.
69. *See* Blume, 947 P.2d at 231.
70. *See id.*
71. *See id.*
72. 90 Wn. App. 157, 951 P.2d 817 (1998).
73. *See id.* at 822-823.
74. *See id.* at 819.
75. *See Id.*
76. *See id.*
77. *See* Mastro, 951 P.2d at 819.
78. *See id.* at 822.
79. 947 P.2d at 823.
80. *See* Mastro, 951 P.2d at 822 (*quoting* Blume, 947 P.2d 223).
81. 947 P.2d 223.
82. *See* Mastro, 951 P.2d at 823 (*following* Blume, 947 P.2d 223).
83. *See id.*
84. *See* Mastro, 951 P.2d at 823.
85. *See id.*
86. 917 P.2d 233.
87. *See* Mastro, 951 P.2d at 822, 823.
88. 917 P.2d 223.
89. *See id.* at 231.

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New Legislation of Interest to Attorneys: 2002 Highlights

by Senator Adam Kline
Chair, Senate Judiciary Committee
and
Senator Stephen L. Johnson
Member, Senate Judiciary Committee and Republican Deputy Leader

The Senate Judiciary Committee (one of 14 Senate committees) considered a diverse number of bills during the 2002 legislative session. Despite being hampered by a budgetary crisis, significant legislation was passed, including bills dealing with criminal, family, civil, and corporations and business law, and landlord-tenant issues. Cooperation with the House Judiciary Committee and the House Criminal Justice Committee was critical in ensuring the passage of many bills which will benefit our state's justice system.

This article focuses on Bar-related legislation considered by the Senate Judiciary Committee during the 2002 session. Space does not allow for a full discussion of the context of each bill; however, all bill reports, including any bills considered by the Legislature, can be accessed at the legislative Web site (http://www.leg.wa.gov). The reports usually provide information on why a bill was introduced, and who testified for and against it. Senate Judiciary Committee staff can be contacted at 360-786-7462 or PO Box 40466, Olympia, WA 98504-0466.

As in past years, a full description of all bills that passed the 2002 Legislature can also be obtained by ordering the 2002 Final Legislative Report. The report is available for approximately $10 by calling the Legislative Information Center at 360-786-7573 or by writing to PO Box 40482, Olympia, WA 98504-0482.

Criminal Law

ESB 6232: Revising crimes relating to possession of ammonia

Prime sponsor: Senator Rasmussen

- All references to anhydrous ammonia relating to the theft and unlawful storage of anhydrous ammonia are changed to "pressurized ammonia gas" and "pressurized ammonia gas solution."
- Solid-waste haulers who unknowingly possess or transport pressurized ammonia gas or gas solution in the normal course of business are not guilty of the offense.

SSB 6233: Clarifying references to ephedrine, pseudoephedrine and ammonia

Prime sponsor: Senator Rasmussen

- Possession of any of the following with the intent to manufacture methamphetamine is unlawful: (1) ephedrine or any of its salts or isomers, or salts of isomers; (2) pseudoephedrine or any of its salts or isomers, or salts of isomers; or (3) pressurized ammonia gas and gas solution.

SSB 6422: Defining "property of another" for purposes of crimes against property

Prime sponsor: Senator Costa

- For purposes of the arson, reckless burning, and malicious mischief chapter, the term "property of another" means property in which the actor possesses anything less than exclusive ownership.

ESSB 6490: Increasing penalties for taking a motor vehicle without permission

Prime sponsor: Senator Roach

- The crime of taking a motor vehicle without permission is divided into two degrees.
- Taking a motor vehicle without permission in the second degree, a class-C felony and ranked at seriousness level II, is committed by taking a motor vehicle without permission or voluntarily riding in it with knowledge of the fact it was unlawfully taken.
- A person is guilty of taking a motor vehicle without permission in the first degree, a class-B felony and ranked at seriousness level V for adult offenders, if a person takes a motor vehicle without permission and does any of the following: (1) alters the vehicle in order to change its appearance or primary identification; (2) removes or participates in removing a part or parts from the vehicle; (3) exports or attempts to export the vehicle across state lines or out of the United States for profit; (4) intends to sell the motor vehicle; or (5) engages in a conspiracy where the object is the theft of motor vehicles for sale to others.

SSB 6602: Revising the crime of extortion in the second degree

Prime sponsor: Senator Costa

- In response to a recent appellate decision, the crime of extortion in the second degree is modified so that it occurs when a person commits extortion by means of a wrongful threat (rather than by any threat).

SSB 6635: Creating a notice and appeal process for animal-control authorities

Prime sponsor: Senator Kastama

- The definition of "dangerous dog" is modified, and notice and appeal procedures are created for situations where an animal-control authority seeks to declare a dog to be dangerous. If a city or county already has procedures in place, they may continue to utilize them.
- The owner of a dog that causes severe injury or death of a human, whether or not the dog has been previously declared to be dangerous, is, upon conviction, guilty of a class-C felony. The state has the burden of showing that the owner of the dog either knew or should have known that the dog was potentially dangerous as defined in law.
- An affirmative defense is created for the class-C felony of owning a dangerous dog that causes severe injury or death of a human. The defense is available if the person injured or killed trespassed on the defendant's property which was properly fenced and marked with warning signs, or provoked the dog on the defendant's fenced and marked property.

2SHB 1938: Making sabotage an aggravating circumstance

Prime sponsor: Representative Pearson (similar bill: SB 6205, Senator Rasmussen)

- A sentence may be longer than the standard range if any offense is committed with the intent to injure, nullify, impair or obstruct the owner's or operator's management, operation or control of any structure used for horticultural or biological research, a health-care facility, or a public or private forestry research facility.

2SHB 2338: Revising sentences for drug offenses

Prime sponsor: Representative Kagi (similar bill: SB 6361, Senator Kline)

- Manufacture, delivery or possession with intent to deliver heroin or cocaine is re-ranked at level VII on the sentencing grid instead of level VIII.
- Prior drug offenses other than the manufacture of methamphetamine are scored as one point instead of three points when determining sentence length.
- Savings from the sentencing changes are used for substance-abuse treatment and drug courts.
- A new drug-offense sentencing grid takes effect in 2004.

SHB 2379: Making it a crime to leave a child with a sex offender

Prime sponsor: Representative Dickerson

- It is a misdemeanor for a parent or person entrusted with the physical custody of a child to leave the child in the care or custody of another person who is not the parent, guardian or lawful custodian, while knowing that the person is a registered sex offender because of a prior sex offense against a child.
- The defendant has an affirmative defense when the sex offender is allowed by court order to have unsupervised contact with the children.

SHB 2381: Addressing the trafficking of persons

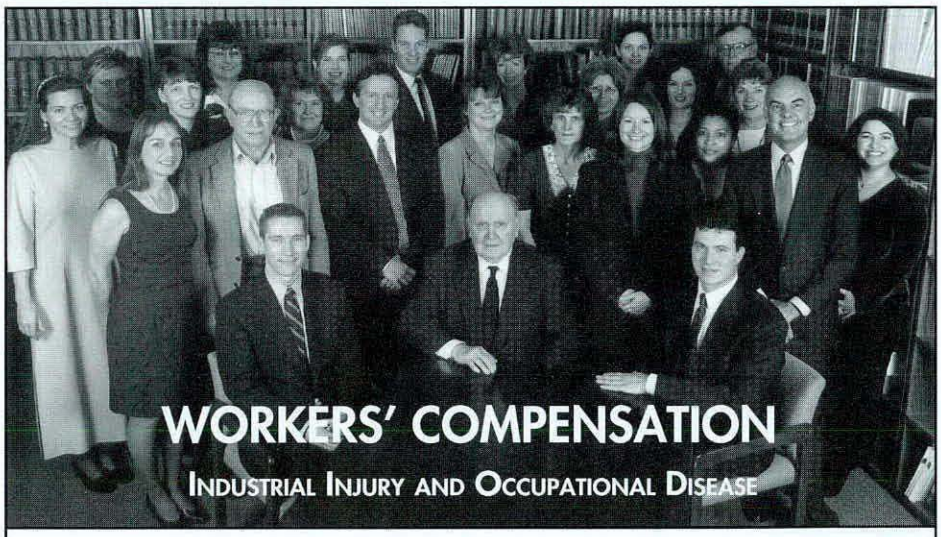
Prime sponsor: Representative Veloria (similar bill: SSB 6407, Senator Costa)

- The Washington State Task Force Against the Trafficking of Persons is created.
- The task force must evaluate the progress of the state in trafficking prevention, make recommendations on methods to provide a system of assistance to victims of trafficking, and report to the governor and Legislature by November 30, 2002.
- For purposes of the Washington State Crime Victims' Compensation Program, the definition of "criminal act" is expanded to include acts committed or attempted in this state that are punishable under federal law comparable to a felony or gross misdemeanor under Washington law.

SHB 2382: Revising provisions relating to criminal mistreatment

Prime sponsor: Representative Dickerson

- Criminal mistreatment in the fourth degree, a misdemeanor, is committed if a person negligently creates an imminent and substantial risk of bodily injury to a child or dependent person, or negligently causes bodily harm or extreme emotional distress to a child or dependent person, by withholding the basic necessities of life.
- A parent charged with criminal mistreatment in the third or fourth degree may be eligible for deferred prosecution one time.
- The deferred-prosecution provisions ap-



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ply only to cases in which there is a child victim.

ESHB 2505: Providing criminal penalties for training in furtherance of civil disorders

Prime sponsor: Representative O'Brien (similar bill: SB 6451, Senator Kline)

- A new class-B felony is created for teaching or demonstrating the use of any device or technique capable of causing significant bodily injury or death to persons while knowing, having reason to know, or intending to employ the device or technique for civil-disorder purposes.
- A "civil disorder" means any public disturbance involving acts of violence that is intended to cause an immediate danger of, or to result in, significant injury to a person.

2SHB 2511: Making any robbery within a financial institution a first-degree robbery

Prime sponsor: Representative O'Brien

- Robbery of a financial institution is classified as robbery in the first degree, whether it occurs with or without a firearm or deadly weapon.

HB 2605: Aggregating value for purposes of determining the degree of theft

Prime sponsor: Representative O'Brien (similar bill: SB 6606, Senator Kastama)

- A series of separate third-degree thefts may be aggregated for the purposes of determining the degree of theft if they are part of a criminal episode.
- A "criminal episode" occurs if three or more thefts are committed by the same person from one or more mercantile establishments within a five-day period.

SHB 2610: Providing criminal penalties for endangerment of children and dependent persons with a controlled substance

Prime sponsor: Representative Darneille (similar bill: SB 6385, Senator Rasmussen)

- The new crime of endangerment with a controlled substance is committed if a person knowingly or intentionally permits a child or dependent adult to be exposed to or have contact with: (1) methamphetamine; or (2) ephedrine, pseudoephedrine or anhydrous ammonia that is being used in the manufacture of methamphetamine.
- The offense is a class-B felony ranked at level IV on the sentencing grid.
- The Washington State Patrol must disclose convictions for endangerment with a controlled substance during background checks for prospective employees or volunteers who may have unsupervised access to children or vulnerable adults.

Probate

SB 6242: Modifying the definition of nonprobate asset

Prime sponsor: Senator Johnson

- The definition of "nonprobate asset" is modified to recognize controlling federal law, and includes those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument other than the decedent's will.
- Eligible written instruments may include a payable-on-death provision of a life-insurance policy, employee-benefit plan, annuity or similar contract, or individual retirement account, unless provided otherwise by controlling federal law.

SB 6484: Authorizing additional trust authority to take advantage of federal estate-tax benefits for conservation easements

Prime sponsor: Senator Haugen (similar bill: HB 2329, Rep. Lantz)

- A trustee may donate a conservation easement in order to qualify for federal estate tax exclusions or deductions if the trust instrument itself allows the donation or every affected beneficiary of the trust has agreed to the donation.

Creditor-Debtor

SB 6266: Updating creditor/debtor personal-property exemptions

Prime sponsor: Senator Johnson (similar bill: HB 2300, Rep. Lantz)

- Current personal-property exemptions from legal process are increased for the following: (1) community household goods ($5,400); (2) "other personal property" ($2,000), including not more than $200 in cash and not more than $200 in accounts or securities; and (3) motor vehicles (two vehicles worth a total of $5,000).
- Exemptions are created for up to

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SSB 6267: Revising the Washington Revised Uniform Principal and Income Act

Prime sponsor: Senator Johnson

- The Washington Revised Uniform Principal and Income Act of 1971 is modernized to incorporate commonly used methods of transferring property, establishing new rules, and changing outdated legal principles.

Civil Law

SB 5373: Changing mandatory arbitration of civil actions

Prime sponsor: Senator Sheahan

- An offer of compromise procedure is provided for mandatory arbitration cases that are appealed to the superior court.
- The process provides that a nonappealing party may serve an appealing party with a written offer to settle the case. If the appealing party does not accept the offer, the amount of the offer becomes the basis for determining whether the party that demanded the trial *de novo* fails to improve his or her position on appeal for purposes of awarding reasonable attorneys' fees and costs under the court rules.

E2SSB 5827: Changing provisions relating to the enforcement of judgments

Prime sponsor: Senator McCaslin

- Parties with judgments issued by any court may, at any time within 10 years of the judgment, have an execution issued for collection or enforcement of any judgment entered or filed in this state.
- Judgments from these courts may be extended for an additional 10 years upon application to the rendering or filing court.
- Any current legal owner or holder of a judgment may have the execution issued and may apply for an extension.
- Judgments are not enforceable beyond 20 years from the original date of entry, except for legal financial obligations and restitution in an adult or juvenile criminal case or for child-support obligations.

SB 6429: Regulating the admissibility of benevolent gestures in civil actions

Prime sponsor: Senator B. Sheldon (similar bill: HB 2354, Representative Alexander)

- Statements, writings or benevolent gestures made to a person or the person's family that express sympathy or benevolence relating to the pain, suffering or death of the person involved in an accident are inadmissible as evidence in a civil action.

ESSB 6700: Limiting publication of personal information of law enforcement and court employees

Prime sponsor: Senator Finkbeiner (similar bill: HB 2947, Rep. Ahern)

- A person or organization who sells, trades, gives, publishes, distributes, or otherwise releases the residential address or telephone number, birthdate or Social Security number of any law-enforcement-related, corrections-officer-related, or court-related employee or volunteer can be civilly liable for actual damages, attorneys' fees and costs.
- A court may issue a permanent injunction against a person or organization engaged in the violation.

HB 1512: Including computer images in the definition of "visual or printed matter"

Prime sponsor: Rep. Sommers

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- The definition of "photograph" in the child pornography statutes is expanded to include "digital images" and "tangible or intangible" items.

EHB 2655: Waiving filing fees and costs for certain protection orders

Prime sponsor: Representative Schual-Berke (similar bill: SB 6421, Senator Costa)

- The filing fee and service-of-process costs may be waived for an individual seeking an anti-harassment protection order against a stalker, sex offender or domestic abuser.

HB 2672: Limiting the liability of providers of treatment to high-risk offenders

Prime sponsor: Representative Kirby

- A licensed mental-health service provider or regional support network which treats a dangerous mentally ill offender is not civilly liable for injury caused by the client unless the provider's or network's act constituted: (1) gross negligence; (2) willful or wanton misconduct; or (3) a breach of the duty to warn.

SHB 2699: Providing immunity for communications with government agencies and self-regulatory organizations

Prime sponsor: Representative Lantz (similar bill: SB 6522, Senator Kline)

- A person who communicates a complaint to any branch of a federal, state or local government agency or certain self-regulatory organizations is provided immunity from civil liability for any claim relating to that communication.
- A prevailing defendant is entitled to expenses, reasonable attorneys' fees and statutory damages of $10,000, unless the complaint or information was communicated in bad faith.

SHB 2754: Modifying mandatory arbitration provisions

Prime sponsor: Representative Lantz

- Counties with a population of more than 150,000 must adopt mandatory arbitration. In counties with a population of less than 150,000, either the superior court judges or the county legislative authority may adopt mandatory arbitration.
- The maximum fee that a county may assess for mandatory arbitration requests is increased from $120 to $220.

Courts

SB 6292: Authorizing lay judicial officers

Prime Sponsor: Senator Kline

- A candidate for district or municipal court judge must be an attorney admitted to the practice of law in the state of Washington unless the candidate resides in a district or municipality with a population less than 5,000.
- In districts or cities with less than 5,000 population, a candidate is eligible to run for district or municipal court judge if the person has passed the qualifying examination for a lay judicial officer by January 1, 2003.

SB 6293: Hearing certain criminal actions by video or other electronic means

Prime sponsor: Senator Kline

- District and municipal courts have jurisdiction to conduct video or electronic hearings for criminal-statute violations if the defendant is located outside the court's geographic jurisdiction or boundaries.

SB 6401: Standardizing references to county clerks

Prime sponsor: Senator Kline

- Where current law requires county clerks to keep certain information, references are standardized so that the information is entered into a "record" or in the form of a "record," rather than in a "journal" or "book."
- All owners of federally assisted housing must serve a written notice of the anticipated expiration or prepayment date on each tenant household, and on the clerk of the city or of the county legislative authority if in an unincorporated area.

SB 6417: Regarding the filing of wills in superior court

Prime sponsor: Senator Johnson

- Wills filed with the clerk of the supe-

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rior court must be noted by the clerk in a record of wills and may be withdrawn from the record only by order of the court.

SSB 6423: Clarifying how criminal history should be used in sentencing decisions

Prime sponsor: Senator Costa

- In response to Washington Supreme Court decision findings that the Legislature failed to explicitly command that the sentence provisions applicable on the date of the offense should be used during sentencing, prior convictions not counted in the offender score or included in the criminal history under repealed or previous versions of the Sentencing Reform Act (SRA) are included in a criminal history and are counted in the offender's score if the current version of the SRA requires their inclusion.

SB 6511: Authorizing any sitting elected judge to be a judge *pro tempore*

Prime sponsor: Senator Johnson (similar bill: HB 2647, Representative Lantz)

- Any sitting elected judge of the Washington Supreme Court, Court of Appeals, or a district or municipal court may serve as a judge *pro tempore* in superior court, as provided by Supreme Court rule.

SB 6596: Increasing the number of Spokane district court judges

Prime sponsor: Senator McCaslin

- The number of district court judges in Spokane County is increased from nine to 10.

HB 2471: Changing the methodology of determining the number of district court judges

Prime sponsor: Representative Esser (similar bill: SB 6512, Senator Kline)

- The weighted-caseload analysis used by the Supreme Court to make recommendations regarding a change in the number of district court judges in a county is changed to an "objective workload analysis."
- The objective workload analysis must take into account available judicial resources and the caseload activity of the court.

Family Law – Domestic Violence

SSB 5369: Revising provisions for jurisdiction in child-support matters

Prime sponsor: Senator Kline

- The statutes governing establishment of child support are changed to include provisions terminating child support when parents marry, and allowing non-parent custodians the same notice and hearing rights as a custodial parent.

2SHB 2346: Updating the Uniform Parentage Act

Prime sponsor: Representative Darneille (similar bill: SB 6555, Senator Costa)

- Certain provisions of the Uniform Parentage Act (UPA) of 1973 are repealed and replaced with the Uniform Parentage Act of 2000.
- The new UPA expands on the procedures for: (1) establishing paternity by distinguishing between a presumed, acknowledged and adjudicated father; (2) establishing processes for adjudicating and acknowledging paternity; and (3) updating procedures for establishing paternity of children born by assisted reproduction.
- A parent may be established by an affidavit and a physician's certificate in cases where a child is born through alternative

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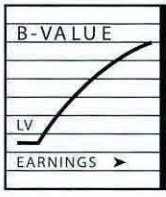

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SHB 2347: Modifying the Uniform Interstate Family Support Act

Prime sponsor: Representative Darneille (similar bill: SB 6554, Senator Costa)

- The Uniform Law Commissioner's amendments are incorporated into Washington's Uniform Interstate Family Support Act.

Traffic

HB 1460: Enforcing seat-belt laws as a primary action

Prime sponsor: Representative Lovick (similar bill: SB 5782, Senator Haugen)

- Failure to comply with seat-belt laws is a traffic infraction.
- Until now, law enforcement could only enforce the law requiring seat-belt use as a secondary action when a driver had been stopped for another violation.
- Violation of the law requiring seat-belt use is a primary action and may be enforced without any other traffic violation.

SSB 6461: Strengthening procedures for disqualification of drinking or drugged commercial drivers

Prime sponsor: Senator Gardner (similar bill: HB 1179, Representative Ericksen)

- All medical review officers (MROs) and breath-alcohol technicians (BATs) under contract with a motor carrier to conduct drug or alcohol testing on commercial drivers must provide positive results directly to the Department of Licensing (DOL). DOL must disqualify commercial drivers who fail the drug or alcohol test.
- Drivers who want to challenge the positive drug or alcohol results are entitled to a hearing on specified issues.
- Employers of commercial drivers who refuse to submit to a required drug or alcohol test are permitted to notify law enforcement, or their MROs or BATs.

SSB 6748: Revising vehicle impound and transfer procedures

Prime sponsor: Senator Kline

- The penalty for abandoning a vehicle is set at $250 and includes suspension of driving privileges until penalties and restitution are paid.
- When a previously abandoned vehicle

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is sold at a public auction, liability for the operation of the vehicle is transferred from the previous owner to the purchaser at the point of sale, and is evidenced by the abandoned-vehicle report. Tow operators must send a copy of the abandoned-vehicle report to the Department of Licensing (DOL) upon selling a vehicle at public auction to record the vehicle's buyer information.

- The DOL must create a system that enables tow operators to send in abandoned-vehicle reports and individuals to send in their seller's reports of sale electronically.
- A tow-truck operator has the option of scrapping a "junk" vehicle that has been abandoned twice without a title change. The value used in determining if a vehicle is a "junk" vehicle is changed from the value of the scrap to the value of the parts of the vehicle.

Business-Corporations-Partnerships

HB 2299: Defining "person" under the Business Corporation Act, Uniform Limited Partnership Act, and Limited Liability Company Act

Prime sponsor: Representative Esser

- The definition of "person" that is used in the Revised Uniform Partnership Act is adopted for the Business Corporation Act, Uniform Limited Partnership Act and Limited Liability Company Act.

SHB 2301: Authorizing electronic notice and other communications under the Washington Business Corporation Act

Prime sponsor: Representative Lantz

- The secretary of state is authorized to adopt rules for the electronic filing of corporate documents.
- Filings, notices, consents, and other forms of communication between corporations, shareholders and directors may be made electronically.

Jails

HB 2407: Establishing the authority to create and operate regional jails

Prime sponsor: Representative Ballasiotes (similar bill: SB 6487, Senator Costa)

- Two or more local governments, or one or more local governments and the state, are authorized to create and operate regional jails.
- A jurisdiction that sends a defendant to a regional jail in another county prior to conviction is responsible for providing the defendant access to his or her public-defense counsel.

SHB 2541: Expanding authority for interlocal agreements for jail services

Prime sponsor: Representative Hurst (similar bill: SSB 6393, Senator Kline)

- Contracts for jail services may be made between a county and a city, regardless of whether the city is within the county, or among counties and cities.
- A jurisdiction that has contracted for the detention of defendants in another county's jail must provide for private contact with defense counsel.

Landlord-Tenant

ESB 5624: Requiring disclosure of fire-protection and building-safety information

Prime sponsor: Senator Kohl-Welles (similar bill: HB 1433, Rep. Cooper)

- Landlords of single-family residences must provide written notice to tenants disclosing fire-protection and safety information.
- The landlord of a multi-family dwelling must provide written notice or a checklist to tenants that discloses specified fire-pro-

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tection and safety information for the building.

2ESB 6001: Authorizing inspections of common areas and tenant dwelling units for fire-code violations

Prime sponsor: Senator Carlson

- Fire officials may immediately seek a search warrant if tenants or landlords deny a fire official the right to search dwelling units and common areas.
- A court must issue a search warrant if it finds there is probable cause, specific to the dwelling unit or common area, of a criminal fire-code violation.

Other Areas of Interest

ESB 5852: Reporting on issues pertaining to racial profiling

Prime sponsor: Senator Franklin (similar bill: HB 2018, Rep. O'Brien)

- Local law-enforcement agencies must institute various training and educational programs to prevent racial profiling.
- The Criminal Justice Training Commission must ensure that racial-profiling issues are addressed in law-enforcement training classes conducted by the commission.
- The Washington Association of Sheriffs and Police Chiefs must report to the Legislature by December 31, 2002, and each year thereafter, on the progress of local law-enforcement agencies in meeting the requirements of the act.

ESSB 6076: Modifying the powers and duties of fish and wildlife law-enforcement officers

Prime sponsor: Senator Kline (similar bill: HB 2153, Representative Kessler)

- Fish and wildlife officers are designated as general authority peace officers, and vested with generally the same police powers and duties as sheriffs and peace officers.
- Fish and wildlife officers do not have the authority to conduct warrantless searches of noncommercial private areas, or otherwise exceed constitutional search provisions.

ESSB 6428: Providing for loss-prevention review teams

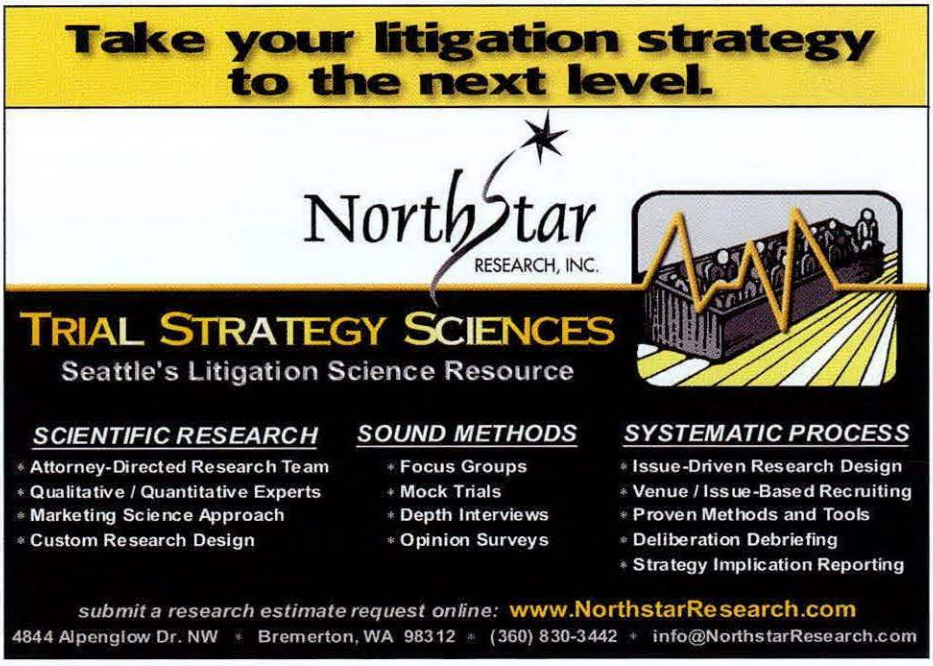
Prime sponsor: Senator B. Sheldon (similar bill: HB 2353, Rep. Alexander)

- The Office of Financial Management must form a loss-prevention review team to review a death, serious injury, or other substantial loss that allegedly involves a state agency.
- The final report of a loss-prevention review team is inadmissible in a civil proceeding, except for impeaching a witness.
- A member of a loss-prevention review team is prevented from testifying in a civil proceeding as to the work of the review team or the incident under review.
- A person who has provided statements to a loss-prevention review team is prevented from being examined in a civil proceeding regarding the person's interactions with the review team.

SSB 6439: Terrorism – public disclosure

Prime sponsor: Senator Gardner (similar bill: ESHB 2411, Rep. Haigh)

- Government records maintained to prevent or mitigate criminal terrorist acts are exempt from public inspection and copying.
- Government records regarding the infrastructure and security of computer and telecommunications networks are exempt from public inspection and copying.
- The Joint Legislative Audit Review Committee must review the effect of the exemptions on agency responses to disclosure requests.



Monitoring Attorney-Client Conversations: A Morality Play in Two Acts

Background: "Our world will never be the same," they said after the September 11 attacks. But what were they talking about? An end to America's insularity and self-absorption? An end to America's mobility and the mutual trust that made mobility possible? Or an end to the legal rights and protections on which Americans have long relied to protect us from government overreaching?

Editor's note: One of the many post-September 11 changes in legal rights and protections involved the attorney-client privilege and the confidentiality of conversations between lawyers and their clients in federal custody. On October 31, 2001, Attorney General John Ashcroft published changes to 28 C.F.R. §501.3, changes designed to permit the "monitoring of conversations with attorneys to deter acts of terrorism." The attorney general justified the changes by stating: "In those cases where the government has substantial reason to believe that an inmate may use communications with their attorneys to further or facilitate acts of violence or terrorism, the government has a responsibility to take reasonable and lawful precautions to safeguard the public from those acts." In this fictional drama, the author, a defense attorney and former federal prosecutor, muses about this change in our legal world.

by Allen Bentley

On October 31, 2001, Attorney General John Ashcroft published changes to 28 C.F.R. §501.3, changes designed to permit the "monitoring of conversations with attorneys to deter acts of terrorism."

Act One

Time: January 2002

Setting: The curtain rises and we see the copy room in a busy federal prosecutor's office somewhere on the East Coast. It is night. City lights are seen through the windows. The copy room is empty except for PROSPERO, an assistant U.S. attorney, who is struggling to clear a paper jam.

Enter CANDIDE.

CANDIDE: Prospero, what are you doing here at this late hour?
PROSPERO: Well, I've been trying to make a copy of this new regulation our boss has put out, permitting us to eavesdrop on conversations between defense lawyers and their clients. But the machine has jammed again.
CANDIDE: Have you tried turning the machine off and on?
PROSPERO [still probing the machine]: Candide, I'm concerned by what I read in the press about this regulation. It seems like a big invasion of the attorney-client relationship, to eavesdrop on other lawyers....
CANDIDE [reaching in and extracting a piece of crumpled paper from the machine]: "Monitor," my friend, *not* "eavesdrop."
PROSPERO: There's a difference?
PROSPERO [didactically]: Yes. "Eavesdropping" is when one secretly listens to a private conversation in order to obtain an advantage over the persons engaged in the conversation. "Monitoring," on the other hand, is openly listening to a conversation in order to

make sure that the parties to the conversation don't break any legal rules.

PROSPERO: Oh.

CANDIDE: The Ashcroft regulation authorizes monitoring, not eavesdropping. And another important point, you know, it doesn't apply in *every* case. It will be used only where we feel that a federal inmate may pose a threat of terrorism or violence. In those cases, we'll notify the inmate and his attorney, in advance, that we may be monitoring. By the way, Prospero, that wily fiscal conservative Ashcroft has hit on a clever way to save the government money. We don't have to monitor everyone whom we notify. Just the notification of *possible* monitoring will deter lots of terrorist and violence-related conversations.

[Sounds of a copy machine, now working properly, in the background.]

PROSPERO: I feel better already. But, Candide, don't all of us in the justice system recognize something called the attorney-client privilege?

CANDIDE: Let me correct you a little bit on that, my friend, and then I'll give you the answer to your question. The Constitution guarantees that in all criminal cases the accused shall have "the Assistance of Counsel for his defence." It doesn't spell out the contours of that right in any detail. So, the attorney-client privilege is not of constitutional stature. It's nothing more than a rule of practice, adopted by a hodgepodge of bar associations, which are essentially nothing more than state regulatory agencies. Gee, I thought we'd put those bar associations in their place a long time ago with the Thornburgh memo. Remember, that was the memo from the attorney general that allowed you and me, as federal prosecutors, to contact witnesses without going through their attorneys, no matter what the bar associations might say.

PROSPERO: You're right. I've put the Thornburgh memo out of my mind, since Congress overturned it through legislation. Yet hasn't the Supreme Court held, since at least the 1930s, that "assistance of counsel" means *effective* assistance of counsel, and doesn't "effective" assistance include allowing the client to communicate confidentially with the attorney?

CANDIDE: *Touché.* But even if I concede that the attorney-client privilege *is* an essential part of the right to counsel, the Ashcroft regulation simply doesn't threaten the privilege.

PROSPERO [incredulous]: It doesn't?

CANDIDE: No way. You know, we prosecutors can *already* get access to certain attorney-client communications, after the fact. Remember that case I handled a few years ago when I was a state court prosecutor? The client went to an attorney and threatened to kill a judge. The lawyer reported it to the authorities. The courts held that the statement wasn't privileged, though it certainly was an attorney-client communication. Or what about those letters that we were able to subpoena from the Abbott & Bashford law firm last month? They were attorney-client communications, but the court denied the firm's motion to quash and ruled that we could get them under the "crime-fraud" exception to the privilege.

PROSPERO: I remember that, of course. We were giving each other high-fives afterward. And the cases do hold that communications between a client and his lawyer aren't protected if, say, we can show that the client and lawyer are abusing the privilege by planning new crimes. I guess you could say that there isn't much difference between the Ashcroft regulation and existing law on the "crime-fraud" excep-

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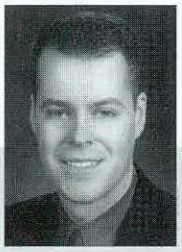

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tion. Hey, if defense lawyers are doing their jobs, just representing their clients and not furthering a terrorist conspiracy or plotting crimes of violence, what right do they have to complain? If we can legitimately get access to defense attorney-client communications under the "crime-fraud" exception, after the fact, why can't we monitor them for such nonprivileged content as they occur? There won't be any prejudice to the defense — our monitors will never disclose those portions of the conversation that are truly confidential.

CANDIDE: You're a quick learner, my friend.

[Candide removes the photocopied pages from the copier and hands them to Prospero. They leave the copy room. The curtain falls.]

Act Two

Time: January 2003

Setting: An urban coffee shop. Prospero and Candide are sitting next to the window. As the curtain rises, a waiter has just served hamburgers and coffee to the two prosecutors.

CANDIDE: Thank you for the lunch invitation, Prospero.

PROSPERO: I wanted to congratulate you on your new job. It's good to see you taking on new responsibilities as the chief of the office's Domestic Security Enforcement Unit.

CANDIDE [biting into his burger]: It's true, both of us have such interesting assignments. You're doing great work, I hear, pursuing that ring of armed bank robbers.

PROSPERO: It's routine now. [pauses] You know, I think the way you were able to clearly articulate the logical basis for the Ashcroft regulation, defending it against those misguided attacks from the legal community, helped you a lot in getting promoted to chief. And now, as the lead prosecutor on the Al-Gazira case, you're getting even more good ink.

CANDIDE: I can't believe how things worked out for me. To be the head of the Domestic Security Enforcement Unit *and* have the opportunity to prosecute the man who owned the travel agency where Mohammed Atta bought his tickets for the flight on September 11 — well, it's quite a ride.

PROSPERO: You're also getting first-hand experience with the workings of the Ashcroft regulation on monitoring the defendant's conversations with his attorney. That's a great experience — cutting-edge stuff, I would think.

CANDIDE: No, actually it's not that uncommon anymore. Do you realize that monitoring notifications were sent out in 43 different cases, nationwide, in the year since the regulation was issued?

PROSPERO: I didn't know that. Gee, when Ashcroft came out with the regulation, I thought it would be used sparingly. You know, "Break glass and use in case of Osama Bin Laden," or something like that.

CANDIDE: Well, our colleagues seem to be using it all the time. Not for bank robbers — the violent types you deal with don't get monitored, though I suppose we could do that, too, under the regs — but for cases involving even the slightest possible terrorist connection.

PROSPERO: No kidding. [pauses] And how is your case going? Foresee any problems convicting the infamous Mr. Al-Gazira?

CANDIDE: It's not open-and-shut, that's for sure.

PROSPERO: What did this guy do? I mean, what's your evidence?

CANDIDE: Al-Gazira played a key role in the murder of more than 3,000 Americans. A *key* role. He sold the tickets. Think of it. Without those tickets, Mohammed Atta would not have been able to board that flight. And Al-Gazira's an Egyptian. We

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have confidential information that he was in the conspiracy up to his neck. In fact, he was supposed to sell tickets to the other hijackers, according to our sources, but he misunderstood a coded message and refused to sell to them.

PROSPERO: Will this come out at trial?

CANDIDE: Dubious. The Bureau doesn't want to blow their source. Frankly, I'm worrying about an acquittal. You know, the media has built me up as "the prosecutor who never lost a case."

I guess you could say that there isn't much difference between the Ashcroft regulation and existing law on the "crime-fraud" exception.

PROSPERO: Yes, you've got quite a reputation.

CANDIDE: Then we had the fracas over the monitoring notification that I issued to Al-Gazira. I guess that helped feed into my public image as a tough prosecutor. You know what, Prospero? I *had* to issue the monitoring notification. I didn't want to.

PROSPERO: Really. Why do you say you "had to"?

CANDIDE: Pressure from the Bureau. They kept telling me that their source told them that Al-Gazira's lawyer was in contact with other Arabs, and she might be used as a channel for funneling information in and out of the jail.

PROSPERO: I hear that after you issued the notification of monitoring, you had quite a battle in court.

CANDIDE: Yes. Al-Gazira's lawyer raised hell and sought an order from Judge Middleman stopping the monitoring. She kept claiming that her client was just a hard-working immigrant who didn't even keep Ramadan. For all I know, maybe he is. But the hijackers themselves were said to go to bars and drink alcohol. I argued that everything changed on September 11. The judge agreed. He even quoted my argument in his opinion. [musing] "Everything changed on September 11."

[Pause. CANDIDE eats French fries.]

CANDIDE: Then the other shoe drops.

PROSPERO: You mean, the lawyer's withdrawal?

CANDIDE: Yes. Al-Gazira's first lawyer would have been a tough but diligent adversary. I doubt that she had anything to do with terrorism, despite what the Bureau said. The fact that she withdrew is probably good proof of that. She said she couldn't ethically represent her client if their conversations were being monitored.

PROSPERO: Yeah, I see your point. I probably would have done the same thing in her place.

CANDIDE: Then the court appointed a new lawyer for Al-Gazira. But now this second lawyer's got client problems. I told him maybe we could work a deal if Al-Gazira could provide information about the other travel agents who were involved in September 11. Al-Gazira isn't forthcoming. The lawyer tells me that Al-Gazira thinks he's wired and that the lawyer's turning the tape over to me after each of their meetings! Can you believe it?

PROSPERO: I bet that breach of confidentiality I read about last month in the monitoring of the Iraqi defendant in that case down south didn't help.

CANDIDE [scowling]: Please. Don't remind me. You know, I still do believe it was an accident, *not* an intentional intrusion into the attorney-client relationship as it was portrayed in the press. The assistant in charge of the monitoring — fired. The defense arguments: "We've become a totalitarian state. None of our rights are safe." The media circus. We *all* looked bad. Thank God the judge there kept a level head and wasn't swayed by the defense argument that the indictment should be dismissed. And for what? *What in the world did we gain by listening to the defendant talking with his lawyer...*

PROSPERO: It sure beats me.

CANDIDE: *...when all we learned was that the lawyer was being fed a bunch of lies!*

PROSPERO: I know. What a waste.

CANDIDE [musing again]: I need to get a dialogue going with this Al-Gazira. You know, Jerry Diskin and his colleagues in Seattle had such success in getting that terrorist — I forget his name — to cooperate back in 2001. How'd he do it?

PROSPERO: From what I hear, they had a very effective defense team. This guy named Hillier and his people really fought for their client. It looks to me like they lost

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the trial, but they won his trust. And trust is what it's all about, wouldn't you agree?
CANDIDE: No, I wouldn't generalize to that extent. Every case is different. You and I, we really don't have any idea of what went on in that other case. As I recall, the guy in Seattle was Algerian. Al-Gazira's Egyptian. Maybe there are cultural differences. Whatever. I *do* wish I could get some dialogue going with this jerk. If not, I may have to try the case. And I could lose. Prospero, all I can show the jury is that he's a travel agent, he sold a ticket, and he's Egyptian!
PROSPERO: You're worried. I've never seen you this nervous before.
CANDIDE: You would be, too. My record's at stake. And you know, Prospero, this case is different from the others I've handled. I've always been able to reassign my dogs to somebody else, or if pressed, dismiss them. I can't do that here — there's the media. And I can't give this guy too lenient a deal now that I'm blaming him for 3,000 deaths.

[Waiter arrives and leaves the check. Prospero picks up the check and studies it.]

PROSPERO: Wow.
CANDIDE: Expensive?
PROSPERO: No, I was thinking more about the monitoring process. It's crazy, in a way. [pauses] By the way, which of our esteemed colleagues is doing the monitoring in your case?
CANDIDE: Would you believe? I don't happen to know.
PROSPERO: Would you happen to know if he or she is taping everything?
CANDIDE: I think so. I think it's required by the revised regulation that came out last month.
PROSPERO: Are you in a position to find out who's doing the monitoring?
CANDIDE: If I wanted to, yes, I could. I've already got a good idea. The department's trying to keep me in the dark — it's part of their new, stricter standard for monitoring, but you don't have to be a rocket scientist to pick up the clues.
PROSPERO: Do you think anything worthwhile might have turned up in the monitoring?
CANDIDE: [shocked]: Prospero. Prospero, I've always looked up to you as the conscience of the office!
PROSPERO: Just a thought.
CANDIDE: As I told you before, this defendant is lying to his attorney, nothing more. Lying. I mean, *probably* lying. If you think I'd risk my job, my career to find out exactly what he's saying...
PROSPERO: I know you wouldn't. Nobody in our office would. Didn't we come to our work with idealism? Haven't we always said, "We're not here just to get convictions, but to do justice." Imagine it: intruding into the attorney-client relationship, just in the hope of winning a trial...I can't believe that would ever happen!
CANDIDE: No, it wouldn't happen. It *won't* happen. Not on my watch. Not here. Not now.
PROSPERO [shrugging]: I feel much better now.

[Prospero leaves money on the table to pay for lunch. The two rise and walk out of the coffee shop.]

[The curtain falls.]

Allen Bentley has spent 25 years in the federal criminal justice system, as an assistant U.S. attorney in the Southern District of New York, as an assistant federal public defender in the Western District of Washington, and as a private practitioner. He recently represented one of four Iraqi men who, in the aftermath of September 11th, were charged with fraudulently obtaining Pennsylvania truck-drivers' licenses.

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My Turn

The Initiative Process:
The Supreme Court Versus the People

by James Bond

Time and again in the last decade the Washington State Supreme Court has invalidated voter-approved initiatives through which the people have sought to shape public policy on important issues,[1] curb the power of their government,[2] and secure tax relief for themselves and their fellow citizens.[3] The court's performance in these cases raises two questions: (1) Has it articulated a clear, constitutionally based, and judicially enforceable test for determining when an initiative passes muster?; (2) Does it in fact invalidate initiatives on neutral legal grounds or on its collective political preferences? The answer to the first question is no; and though no outside observer can confidently know the answer to the second question, the court's often unedifying opinions in the initiative cases unfortunately invite speculation that is less than flattering to the court.

The court's most extended recent disquisition on the subject, its decision in the I-695 initiative case[4] in November 2000, is a particularly egregious example of poor opinion-writing that confuses rather than clarifies the constitutional limits on the people's power to enact laws through the initiative process. Since citizens have persistently resorted to the initiative process in recent years, they are entitled to know, with as much clarity as the law permits, what constitutes a "single subject."[5] The attorney general and citizens need to know, with as much specificity as the law permits, how to satisfy the requirement that the subject matter of the initiative must appear in the title. Moreover, all these criteria, however defined, ought to reflect some sense of the practical realities of both the initiative and governing processes.[6]

Even more importantly, the citizens of Washington should be informed, with as much insight as the court can muster, how the state constitution balances the competing interests of the people in exercising their retained sovereignty against the interest of the state government in exercising the legislative and executive powers delegated to it by those same people.[7] Identifying and articulating this balance is critical because the court's more particular criteria should be grounded in it. Otherwise, these criteria will appear to be nothing but judicial inventions. That appearance will in turn undermine the court's moral authority, as citizens will inevitably conclude that the court prefers unclear and highly manipulable tests that allow its justices to impose their private views about the desirability of initiatives, either generally or in particular cases.

That the majority justices in the I-695 case failed to discharge their responsibility to clarify and ground the law in this area is clear, beginning with their curious statement of the facts. Since the court itself divides its substantive analysis into issues of justiciability and constitutionality, one might have expected the court to organize its statement of facts around those two meta-issues; it does not. Instead, it 1) describes what it understands I-695 does and doesn't do; 2) refers briefly to an explanation of the intent of the initiative supporters in the voters' pamphlet; and then 3) summarizes the claims of the seven plaintiffs (much as a law clerk might in the opening paragraph of a case memorandum to her judge).

The problem with the court's statement of facts is not that it misstates any facts. It doesn't. The problem is that the statement of facts doesn't illumine the critical issues in the case. Consequently, lawyers and citizens alike are left with no clear background understanding of the initiative process and no concise factual focus through which to understand the court's subsequent analysis. It is thus no surprise that this analysis fails to explore the relevant factual context of the issues it decides. Indeed, it rejects such evidence, when offered, as unhelpful.

The court's brief discussion of the justiciability issues, though ostensibly organized around the concepts of mootness, standing, justiciability, and failure to cross-appeal, seems in fact to be organized around the *seriatim* claims of the parties, as if acknowledging the party making a particular claim is more important than analyzing the substance of those claims, a sense reinforced by the court's general heading for Part I of its opinion: "Campaign's Motion to Dismiss." (Again, the organization looks like a preliminary summary of the parties' claims in a clerk's research memo.)

The court, complaining repeatedly that the campaign's briefing on three of the four justiciabilility issues is "inadequate," runs the risk, like the pot, of calling the kettle black when it first declines to decide those issues on that account, and then in a footnote simply asserts that "[i]n any event, it is clear that most, if not all,

of the respondents have standing and [that] their claims are justiciable."[8] Well, is it all or most? And why? If it is most, which ones? And on what grounds? The court is silent.

Moreover, the court, in the same section, ruminates on the question of whether standing is a question that may be raised at any time, acknowledging that it has previously held that it must be raised for the first time in the trial court, but conceding that the court has also flirted with the idea that concerns about separation of powers may justify permitting the issue to be raised for the first time on appeal. The court, having raised the possibility that it might need to harmonize or at least clarify its prior decisions on this issue, abruptly ends the discussion by announcing that "we need not resolve the issue in this case."[9] Why not, one wonders? And if the answer to that question is so clear that it need not even be articulated, why raise the question in the first place?

Inadequate reasoning is presumably no more acceptable from a court of last resort than inadequate briefing is from the litigants who appear before it. But at least the court can always demand additional briefing. Disappointed litigants have no such recourse when the court offers *ipse dixit* rather than answers rooted in an elaboration of constitutional text and precedent.

Unfortunately, the quality of the court's opinion does not improve when it turns to the three substantive constitutional issues that concern it. The first of those issues is whether I-695 violates §19 of Art. II. That section requires that a "bill" must embrace a "single subject," which the court says must be clear from the title of the initiative.

The court insists that an initiative is a bill and that its constitutionality must thus be judged by the constitutional standards applicable to bills. Justice Sanders, in his lonely dissent,[10] disputes the court's conclusion on this point and implores his colleagues to require further briefing on the question. His fellow justices do not even deign to reply to his argument that the "initiative equals bill" rule is 1) inconsistent with the plain meaning of the relevant constitutional text; 2) unsupported by a fair reading of the court's own precedents; and 3) unprincipled. Instead of offering a thoughtful analysis on this issue, the majority is content to throw out a series of statements that read like black-letter rules of law, supported by string citations. The critical facts of the cases cited are seldom compared or contrasted to the facts of the I-695 case, so that these sections of the opinion read more like a hornbook than an analysis of the case before the court.

Its hornbook summary is that a bill must deal with a single subject, all parts of which must evidence "a rational unity." The court itself concedes that "cases where violations of the single subject rule have been found have varied"[11]— an inevitable result, since the rational-unity criterion is scarcely self-defining. One might thus have expected the court to explore how such variances might be reconciled. It does not.

Instead, the court, after once again summarizing rather than analyzing the arguments of the parties to the case, selects *Wash. Toll Bridge Auth. v. State*[12] as the determinative law on the meaning of the single subject/rational unity criterion. The court then asserts that the critical factual similarity between *Toll Bridge* and I-695 is that each had two purposes. The validity of the court's argument depends, of course, on whether the underlying facts reveal two purposes in the I-695 case, as did the facts in *Toll Bridge*. Once again the court offers no detailed analysis on this point. It merely shoehorns the facts of I-695 into the verbal categories, "not continuing in nature" versus "continuing in effect," articulated in *Toll Bridge*.

One can understand the court's reluctance to explore the campaign's argument that it had to subject future tax increases to referenda in order to prevent the legislation from simply increasing other taxes to replace those lost through repeal of the license-tab fees. The claim that political realities established a rational unity between the two provisions is not on its face a fatuous argument. At the same time the requirement that the Legislature must ask the people for their approval every time they raise or impose a new tax is not necessarily consistent with the concept of representative government, as the court subsequently argues. The difficulty of reconciling practical realities with theoretical principles is not an excuse, however, for avoiding the challenge. That is what judges are elected and paid to do.

The second constitutional issue was whether I-695 violated the §19 requirement that the subject of the initiative must be expressed in the title. This issue, the court insists, is whether the term "tax" in the I-695 referendum has a "traditional" or "broad" meaning, a distinction without a difference, since the "traditional" meaning of the term "tax" is quite broad: "a charge imposed by legislative or other public authority upon persons or property for public purposes."[13]

By playing word games and relying once again on *ipse dixit*,[14] the court avoids the extraordinarily difficult challenge of articulating guidelines that reconcile the need to inform voters of the choice before them with the equally important need to treat the subject matter of the referendum with appropriate specificity. That challenge is especially acute where the subject matter involves taxation, which inevitably raises both theoretical and practical problems; but the court seems resolutely determined to avoid any discussion of these problems, as its recent, essentially summary opinion in the I-722 initiative case suggests.[15]

Interestingly, a cursory study of recent state Supreme Court cases involving challenges to state statutes on the grounds that their legislative titles violate the single-subject requirement reveals that the court applies the single-subject/rational-unity criterion rather more leniently when reviewing those challenges. In *Washington v. Cornejo*,[16] for example, the court saw no violation where the legislative title was an "Act Relating to Violence Prevention," even though it conceded that the statute dealt with a number of issues including public health, firearms and other weapons, public safety, education, employment and media. Writing for the court, Justice Tal-

The court insists that an initiative is a bill and that its constitutionality must thus be judged by the constitutional standards applicable to bills.

madge (a former legislator who is doubtless more sympathetic to the realities of the legislative process than to the realities of the initiative process) breezily concluded:[17]

> [So long as] as a few well-chosen words [suggest] the general subject stated ...any subject reasonably germane to such title may be embraced within the body of the bill.

In these and similar cases, the court implies that the designation of the legislation as an "omnibus bill" justifies such leniency. Apparently the court will not cut citizen-legislators, acting through the initiative process, any such slack.

The third constitutional issue was whether the I-695 requirement that the Legislature had to submit any future tax increase to the people violated Art. II, §1(b), which grants the Legislature discretionary authority to refer measures that it passes to the people for their approval. The court concluded that I-695 was unconstitutional because it 1) deprived the Legislature of that discretion; and 2) imposed a universal referendum procedure in violation of the requirement that at least four percent of the voters had to demand one. Responding to the state's assertion that I-695 only established a condition precedent to the implementation of any new tax statute, the court rejected the idea that the people, through referenda, can impose any such condition because it "unconstitutionally delegates legislative power in violation of Art. II, §1."[18]

In response to the argument that a principal (i.e., the people) may always control the acts of its agent (i.e., the Legislature), the court answered that the people "expressly surrendered much of that sovereignty to the state government when they adopted the constitution."[19] Even if the court's sweeping generalization were true, the court had previously conceded in its opinion that the Washington State Constitution did not expressly prohibit conditional legislation; and the black-letter rules it repeatedly extracts from case law include the oft-repeated maxim that the people are acting as legislators when they use the referendum process. Why then can't they, too, acting in their legislative capacity, impose a condition precedent to the implementation of any new legislation? It may be too much to say that in the space of two paragraphs the court eviscerated its own argument; but it is not too much to say that the premises upon which it builds its argument appear to be somewhat contradictory.

The passage most revealing of the court's thinking on this issue in particular and I-695 in general may perhaps be gleaned from the further statement, one so important the court italicized its words lest their import go unnoticed by the reader:[20]

> Under our form of government, ultimate sovereignty, so far as the state is concerned, rests in its people, and so long as the government established by them exists, that sovereignty remains with them, *except in so far as they have* expressly surrendered it to a higher sovereignty.

Perhaps the citizens of Washington will be delighted to learn that there is a higher power in their state, and that it is the Legislature. The court's characterization of the state as possessing a sovereignty greater than that of the people is, however, inconsistent with the doctrine of popular sovereignty, the foundational principle of the American doctrine of limited government.[21]

The court's concern that the people, if permitted to impose resort to them before new laws could take effect, might be able to remove "all, or nearly all areas of legislation...from the Legislature's authority"[22] may be more fanciful than realistic. It is nevertheless a legitimate concern to consider. That consideration, however, calls for an extended exploration of both the principles and practicalities of representative government in 21st century America in general, and Washington in particular. The American republic has been steadily "democratized," beginning with the "Age of Jackson"; and the initiative process is a child of the Progressive Movement, one of those periodic outbursts of enthusiasm for direct democracy that occur when the sleeping sovereign — the people — awakes and decides to exercise its power. The court seems uninterested in exploring the issue in that context. Unfortunately, string cites and the invocation of black-letter "rules" that march in pairs of complementary opposites are not an adequate substitute for that analysis.

The court closes its discussion of the third constitutional issue with an offhand observation on the possible application of its reasoning to an issue not before the court: can the state impose a requirement for local voter approval? The court answers yes, explaining: "The power to tax does not exist in a municipality absent a legislative grant of authority."[23] The court betrays no embarrassment that it has just ridiculed and rejected, as providing no justification for the I-695 referendum requirement of popular approval for future tax increases, the analogous argument that the power to tax does not exist in the state, absent a grant of authority by the people.

The court must nevertheless have had some subliminal sense that it was treading into waters too deep to fathom, because it negated its offhand speculation on this point in a subsequent footnote, cautioning "that it [did] not want "to leave the impression that all local tax approval statutes would be constitutionally permissible. There may be circumstances where a local approval provision would not pass constitutional muster...."[24] Presumably, the citizens of the state will have to wait until the court has had time to think about what those circumstances might be before they can determine whether this bit of obiter is just judicial flotsam or a stage-left hint to tax-initiative opponents that foreshadows future refinements of the law, which will permit the court to strike those initiatives.

The truly interesting question raised by the court's opinion in I-695 is why a court as distinguished as the Washington State Supreme Court would issue such an opinion. One feels especially pained for Justice Madsen, an able and conscientious judge, who is listed as the author of the opinion. She almost certainly had the unenviable task of holding together a majority, perhaps united in its distaste for I-695, but unable or unwilling to articulate a common rationale for that result. In those circumstances, it would have been fairer to Justice Madsen if the majority had issued a *per curiam* opinion. Justice *per curiam*, after all, doesn't have to stand for re-election.

It is equally curious and a matter of regret that Justice Talmadge did not write a concurrence. It is clear from his written and oral comments, since retiring from the

bench, that he has thought long and hard about the constitutional parameters of the initiative process.[25] Anyone familiar with his formidable intellect and tenacity in argument, as well as his willingness to dissent or concur whenever he deems the majority opinion inadequate, would have expected him to write separately. Moreover, a concurrence would have given him one last opportunity to cross swords with his *bête noire*, Justice Sanders, whose intellect and tenacity match Talmadge's. There is little doubt that, had Talmadge accepted the gauntlet Sanders threw down, the important issues in this case would have been more thoughtfully explored. Unfortunately, that exploration will have to wait for another day.

Until that day comes, the court will have to excuse the perhaps unfairly cynical but understandably disappointed advocates of these measures who may feel that the court majority prefers to leave this area of the law unclarified so that they can sustain those initiatives they deem "progressive" (i.e., liberal) and strike those they consider "populist" (i.e., conservative).[26]

Indeed, the court recently confirmed that perception in the "son of I-695" case, *Amalgamated Transit Legislative Council v. State*. The court faced this question: Did the Legislature, when it enacted a law to reduce the license-tab fee to $30, also intend to eliminate local license fees? The five-person majority said no, the Legislature intended no such thing. Justice Owens reached this conclusion despite the fact that the average voter who supported I-695 must have thought that his license fee would be reduced to $30 if the initiative passed; and legislators repeatedly assured angry voters that the license-tab bill would reverse the court's I-695 decision.

To reach its conclusion, the court must have assumed that it was more likely that the average voter said to himself as he left the polling booth: "Thank God for little things. Now all I'll have to pay are the special (i.e., local) excises." Alternatively, it may have assumed that terrified legislators, who feared the wrath of irate voters if they didn't overturn the court's I-695 decision, chuckled to themselves as they hawked the license-tab bill as doing just that: "Those dumb voters won't even notice when they renew their tabs that they're paying more than $30!" As Justice Madsen, freed of the need to accommodate all her fellow justices, acerbically observed in her dissent:

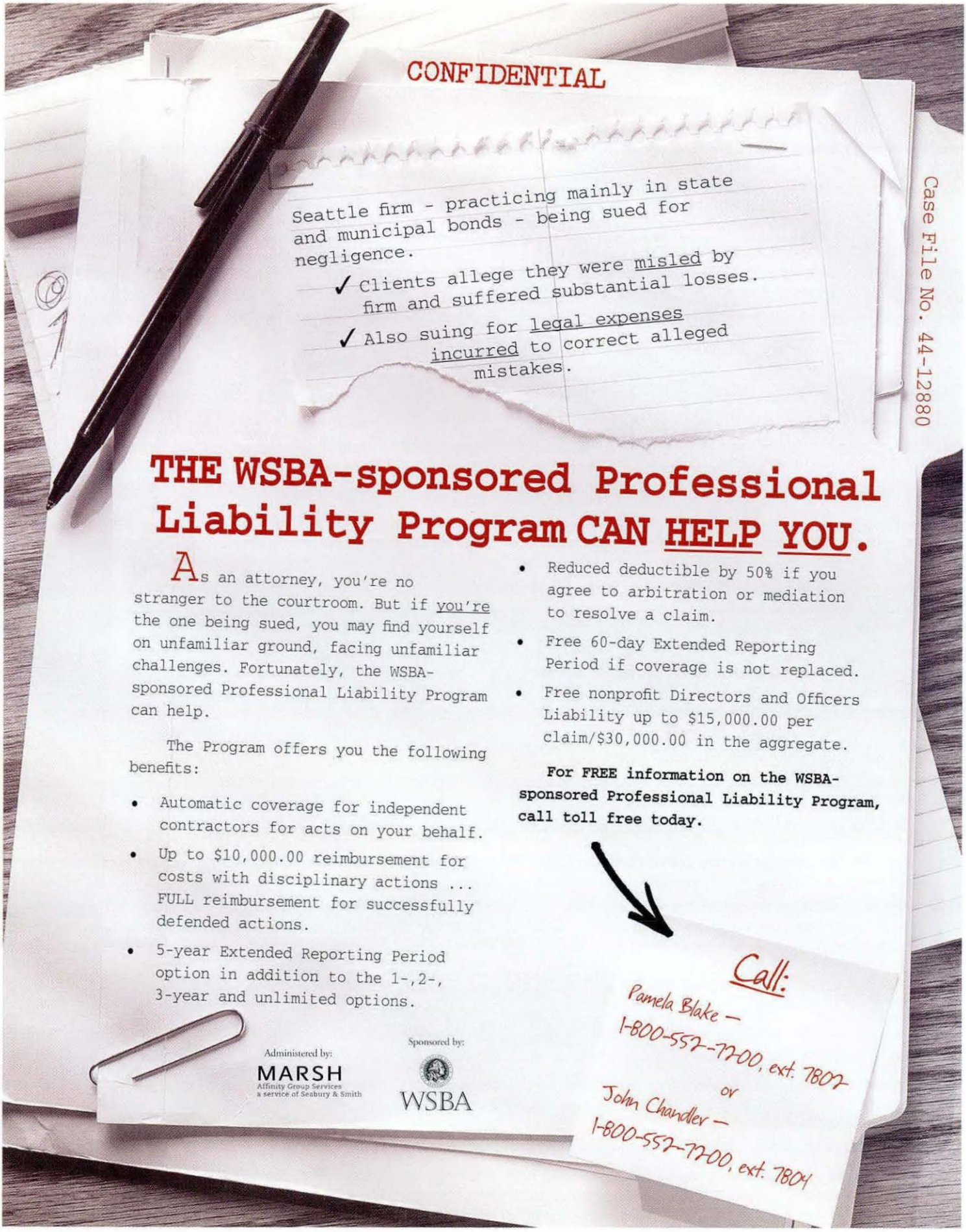
> The majority's absurd result is also an unnecessary result. The highly interconnected statutory scheme which existed prior to repeal of the MVET makes it abundantly clear that the special excise tax of RCW 35.58.273 was a part of the total MVET. The more reasonable conclusions are that the MVET and the special excise tax have always been interconnected, the special excise tax was a portion of the MVET allocated to local public transit programs if the local municipality opted to levy and collect the tax, and the act repealing the MVET is clearly inconsistent with and repugnant to the continued existence of the special excise tax and therefore impliedly repealed as well.[27]

Progressives will doubtless applaud the court's decision as preserving the government's authority to tax so that it can generate revenues, which they believe are desperately needed to fund government programs. Populists will simply wonder who they need to throw out — the justices or the legislators — if they are ever going to get control of what they (quaintly?) think of as "their" government.

James Bond served as dean of the University of Puget Sound School of Law from 1986 to 1993, and of Seattle University School of Law from 1995 to 2000. He is the author of numerous legal books and articles, and teaches an annual seminar for state and federal judges.

NOTES

1. *E.g.*, I-316: Shall the Death Penalty Be Mandatory in the Case of Aggravated Murder in the First Degree (1975). But *see* State v. Manussier, 129 Wn.2d 652 at 659, 921 P.2d 473 at 476, 921 P.2d 482 (1996) (I-593: Shall Criminals Who Are Convicted of "Most Serious Offenses" on Three Occasions Be Sentenced to Life in Prison without Parole? (1993)).
2. *E.g.*, Geberding v. Munro, 134 Wn.2d 188, 949 P.2d 1366 (1998) (I-573: Shall Candidates for Certain Offices Who Have Already Served for Specified Periods in those Offices Be Denied Ballot Access?).
3. *E.g.*, Amalgamated Transit Union Local 587 v. State, 142 Wn.2d 183, 11 P. 3rd 762 (2000); City of Burien v. Kiga, 144 Wn.2d 819, 31 P.3d 659 (2001). Cf. ATU Council of State v. State, 2002 WL 220629, 40 P.3d 656 (Wash 2002).
4. *Ibid.*
5. *See generally*, Campbell, *In the Eye of the Beholder: The Single Subject Rule for Ballot Initiatives, The Battle over Citizen Lawmaking: The Growing Regulation of Initiative and Referendum* 131 (M. Dane Waters, ed. 2001).
6. *See generally*, Even, *Direct Democracy in Washington: a Discourse on the Peoples' Powers of Initiative and Referendum*, 32 Gonz. L. Rev. 247 (1996-7).
7. *Compare*, Denny, *Initiatives — Enemy of the Republic*, 24 Seattle L. Rev. 1023 (2001); and Marlowe, *Direct Democracy Is Not Republican Government*, 24 Seattle L. Rev. 1032 (2001).
8. Amalgamated Transit at 142 Wn.2d. at 203, 11 P.3rd at 779 (footnote 4).
9. Amalgamated Transit at 142 Wn.2d. at 203, 11 P.3rd at 779 (footnote 4).
10. Amalgamated Transit at 142 Wn.2d. at 258-280, 11 P.3rd at 806-818.
11. Amalgamated Transit at 142 Wn.2d. at 211, 11 P.3rd at 783.
12. Wash. Toll Bridge Auth. v. State, 49 Wn.2d. 520, 304 P.2d 676 (1956).
13. Amalgamated Transit at 142 Wn.2d. at 219, 11P.3rd at 787.
14. It is scarcely "clear," for example, that "license fees, impact fees and permitting fees" are not "charges upon persons or property for purposes," as the Court confidently asserts. If no public purpose justifies their imposition, why are they imposed?
15. City of Burien v. Kiga, P.3d (2002), 31 P.3d 659 (2001).
16. 130 Wn.2d 553, 925 P.2d 964 (1996).
17. *Id.* at 566, 925 P.2d at 971.
18. Amalgamated Transit at 142 Wn.2d at 237, P.2d at 976, 142 Wn.2d. at 238.
19. Amalgamated Transit at 142 Wn.2d at 237, 11P.2d at 796, 142 Wn.2d. at 238.
20. Amalgamated Transit at 142 Wn.2d at 237, 11 P.3rd at 796, 142 Wn.2d. at 238.
21. Justice Souter has explained that fundamental principle in these terms: "The American development of divided sovereign powers, which 'shattered the categories of government that had dominated Western thinking for centuries'...was made possible only by the recognition that ultimate sovereignty rests in the people themselves." Seminole Tribe v. Florida, 517 U.S. 44, at 151 (1996) (dissent).
22. Amalgamated Transit at 142 Wn.2d at 242, 11 P.3d at 799.
23. Amalgamated Transit at 142 Wn.3d at 245, 11 P.3rd at 800.
24. Amalgamated Transit at 142 Wn.2d at 245, 11 P.3rd at 800 (footnote 19: "We do not wish to leave the impression that absent the constitutional infirmities under Art. II, §§1, 19 and 37, section 2 would be valid as to voter approval for all local tax measures. There may be circumstances where a local voter-approval provision would not pass constitutional muster for reasons other than addressed in this opinion.").
25. Talmadge, *Initiative Process in Washington*, 24 Seattle L. Rev. 1016 (2001).
26. Cf. Miller, *Courts as Watchdogs of the Washington State Initiative Process*, 24 Seattle L. Rev. 1049, 1071-1080 ("...the Washington Supreme Court in Amalgamated Transit was playing the watchdog baring its teeth, and signaling to Populists like Tim Eyman that it will resist their battering rams.").
27. ATU Legislative Council v. State, 2002 WL 220629, 40 P.3d 656, 668. ATU Legislative Council not published in the official reporter as of 4-9-02.



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Is It More Than an 1,800-Page Doorstop? A Resounding "Yes"!

by James H. Hopkins

The Fair Labor Standards Act (FLSA)
Ellen C. Kearns, editor-in-chief
BNA Publications
1999; 2001 Cumulative Supplement

Ellen C. Kearns's treatise on the Fair Labor Standards Act (FLSA) is to wage-and-hour law as Grossman is to discrimination law. Ms. Kearns is supported by a prominent group of contributing editors, including WSBA members Thomas W. McLane, who contributed to "Hot Goods Violations," and Timothy J. Pauley, who contributed to "Record-Keeping." I heartily recommend this volume to firms that enforce, defend or prosecute the FLSA and its attendant regulations established by the Wage and Hour Division of the U.S. Department of Labor.

Originally published in 1999, this book includes a 2001 cumulative supplement, current through the latter part of 2000, published under the guidance of Editor-in-Chief Monica Gallagher. Although the material contained in this volume may be obtained through different sources, it is notable that the editors have compiled the information under one roof, saving readers much effort.

When this work was commissioned, the Labor and Employment Section of the American Bar Association stated its goals in the foreword of the cumulative supplement: (1) "to be equally balanced and nonpartisan in their viewpoints"; and (2) "to ensure the book is of significant value to the practitioner, student, and sophisticated non-lawyer."

The book begins with a historical perspective, moves into a general overview, and ends with specific discussions of the various portions of the FLSA. A general plus of the volume is that the editors have cited cases from a variety of circuits, giving perspective to practitioners in various areas around the country. Since the FLSA does not pre-empt the field, various state statutes and case law are relevant to the practitioner. While using this book, attorneys must be cognizant of this, and should apply its information in coordination with these statutes. The editors have done a good job of keeping the reader apprised of this situation.

Great detail is given to the nuances of the act, and areas the daily practitioner may not often encounter. One example is the exemption established for home workers who make wreaths, as long as the wreath is made up of "natural holly, pine, cedar or other evergreens." If the editors have found this obscure exemption, we may feel safe that they have included those that practitioners use on a regular basis.

I have often struggled with determining the "regular rate" of pay to use for calculating overtime compensation. In its "Determining Overtime Compensation" chapter, this book does a good job of explaining the fine distinctions of this knotty problem. In addition, examples explain the administration of the different calculations.

Child labor is a topic that is very much in the news, especially as it applies to industries that move operations to other countries and place themselves in the position of using child labor. It has been less than a 100 years since the Triangle Shirtwaist Factory fire in New York City, where 146 women and children between the ages of 13 and 23 died. It is difficult to believe that the FLSA, the definitive answer to child labor in the United States, was not passed by Congress until 1937 — 26 years after this tragedy. Nor did the U.S. Supreme Court overrule its previous decision overturning a child-labor statute until 1941. With this in mind, are other countries' attitudes regarding child labor that far behind the United States? The editors provide a historical perspective of the various sections of the statute, lending an under-

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standing of the "why" to help practitioners administer the "what" more effectively.

The editors are so thorough they have even included a short chapter aptly called "Homework." Before parents become too concerned, let me explain that this refers to a ban on work performed at home in an attempt by companies to circumvent the FLSA. In 30 years of working in this area, I have not needed to refer to this section, but it is an example of the attention to detail paid by the editors, and could become a larger issue in this era of cyberspace.

The volume contains a solid briefing on the FLSA's record-keeping requirements. Assuming that an employer's records reflect compliance with the act, following these guidelines will keep employers out of trouble. The editors have stated: "The regulations do not establish any single acceptable system of record-keeping." A sample of maintaining straight-time, overtime and regular hours worked would have been a helpful addition to the appendix. However, the chapter on "Record-Keeping" provides enough detail on the types of records to keep and the duration for retention that anyone should be able to develop an adequate record-keeping system.

The chapters "Enforcement and Remedies" and "Litigation Issues" comprise approximately a quarter of the volume, and offer insight into remedies ranging from administrative review to criminal sanctions. As an example, in a situation where an employee has a calendar reflecting times worked and the employer has kept no record, the administrative agency or hearing court must rely on only one set of documents, and the burden is on the employer to prove that the employee's documentation is inaccurate. A situation such as this clearly illustrates the importance of the record-keeping chapter, and adherence may prevent the employer from a *required* review of the "Remedies" and "Litigation" chapters.

I give *The Fair Labor Standards Act* an enthusiastic two thumbs up.

James H. Hopkins, JD, SPHR, is a principal in the law firm Skellenger Bender, PS in Seattle. His practice emphasis is on employment and construction issues. He may be reached at 206-623-6501 or jhopkins@skellengerbender.com.

Changing Venues


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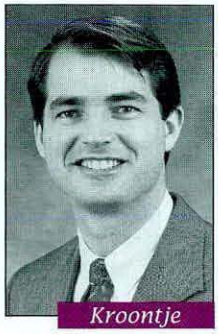
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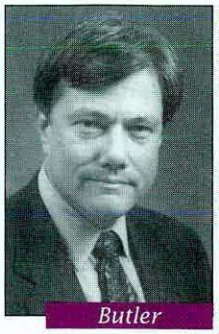

Butler

Honors and Awards

James S. Rogers has received the WSTLA President's Award for outstanding contribution to the civil justice system. Mr. Rogers practices personal injury law with the Seattle firm Rogers and Fleck PLLC.

Judge **Craig Matheson** has received the WSTLA Judge of the Year award for his leadership in the civil justice system. Judge Matheson serves in Benton/Franklin County Superior Court.

Daniel M. Caine has been re-appointed to the Small Business Improvement Council by Governor Gary Locke. The council makes recommendations to the governor and Legislature about policies and regulations affecting small businesses.

Gabriel S. Galanda has been elected president of the Northwest Indian Bar Association, a nonprofit organization composed of Indian lawyers working to improve the legal and political landscape for the Northwest Indian community. Mr. Galanda is an associate with the Seattle firm Williams, Kastner & Gibbs PLLC.

King County Superior Court Judge **Deborah Fleck** has assumed the presidency of the Washington State Superior Court Judges' Association. She has served on the superior court bench since 1992 and is chief judge at the King County Regional Justice Center.

Seattle lawyer **Joel Cunningham** has been named Trial Lawyer of the Year by the Washington chapter of the American Board of Trial Advocates. He has also been granted membership in the Inner Circle of Advocates.

Tom A. Alberg, **Gary D. Gayton**, **Peter Greenfield** and **Christopher E. Mathews** have become life fellows of the American Bar Foundation.

Okanogan County lawyer **Richard B. Price** has received an award for professionalism from the Okanogan County Bar Association.

Movers and Shakers

Maury A. Kroontje has been elected to the board of directors of Betts, Patterson

In Memoriam

Deborah Arron died April 14 at age 52 from complications related to a bone-marrow transplant. In 1976, Ms. Arron became the first female associate at the Seattle firm Williams, Kastner & Gibbs. Later, she founded Arron & Zeder. She eventually carved a niche as an author and career counselor to lawyers. Her books, *What Can You Do With a Law Degree?* and *Running From the Law: Why Good Lawyers Are Getting Out of the Legal Profession*, struck a chord throughout the legal community, making her a frequent speaker to lawyer groups. Memorials may be made to Childhaven (316 Broadway, Seattle, WA 98122).

Gig Harbor District Court Judge **Tom Farrow** died April 3 at age 47. He returned to the bench last June following two liver transplants and five surgeries related to hepatitis C. He was elected to the bench in 1990 and had been re-elected twice. Judge Farrow was actively involved in the Peninsula School District, and spent months compiling a report to the Gig Harbor community on a bond-issue controversy, indicating that while district administration may have managed money poorly, they did not misspend it. District administrators believed that report was crucial in helping rebuild trust with the community.


De Lanoy


Duff


Stokke


Maguire

& Mines PS in Seattle. He is a member of the firm's complex litigation practice group.

Dean Butler has joined Carney Badley Spellman as a shareholder. He leads the firm's estate planning, probate and trust department.

Daniel M. Caine has joined Ryan, Swanson & Cleveland as of counsel focusing on bankruptcy and creditors' rights.

John W. Creighton has joined the Seattle office of Preston Gates & Ellis as of counsel in the firm's emerging business practice group. **Mark C. Lamb** and **Vincent A. Ricci** (a member of the New York State Bar) have joined joined the firm as associates. Mr. Lamb represents health care and technology companies in corporate, transactional and compliance matters. Mr. Ricci is a member of the firm's business department and focuses on corporate finance, and mergers and acquisitions.


Emch

Bethany Thompson (a member of the Hawaii and District Columbia bars) has joined the Seattle firm Short Cressman & Burgess as an associate concentrating on construction and real estate litigation.

John S. De Lanoy, Gregory J. Duff and **John P. Stokke** have become partners in the Seattle firm Cairncross & Hempelmann PS. Mr. De Lanoy is a member of the firm's real estate group, and chairs the affordable housing and tax-credits industry group. Mr. Duff chairs the firm's hospitality, travel and tourism practice. Mr. Stokke is a member of the firm's corporate finance group.

Lisa N. Benado has joined Speckman Law Group in Seattle. She provides patent prosecution counseling and strategic planning in intellectual property transactions.

Stephanie M. Hicks has joined the Seattle office of Williams, Kastner & Gibbs PLLC as of counsel focusing on real estate, land use and environmental law. **Mario D. Parisio** has joined the firm's Tacoma office as of counsel concentrating on business transactions and corporate finance.

Peggy Maguire has been promoted to assistant vice president and senior associate general counsel in the legal division of Regence BlueCross BlueShield.


Hoff


Johnson

Annette Sandberg has been selected deputy administrator of the U.S. Department of Transportation's National Highway Safety Administration.

Antonio Ginatta has been appointed executive director of the state Commission on Hispanic Affairs. He will lead the commission in advising the governor, Legislature and state agencies on policies and programs that affect the state's Latino population.

Douglas S. Palmer Jr. has joined the Seattle firm Hillis Clark Martin & Peterson as of counsel concentrating on real estate matters.

Mark A. Wilner has joined the Seattle firm Mundt MacGregor as an associate in the litigation department.

Christopher G. Emch, Bradley W. Hoff, Sarah Kirstine Johnson, Nancy V. Stephens and **Kevin W. Teague** have been elected members in the Seattle office of Foster Pepper & Shefelman PLLC. Mr. Emch conducts complex civil litigation emphasizing business and technology law. Mr. Hoff represents policyholders in insurance coverage disputes and related litigation. Ms. Johnson focuses on intellectual property protection including trademark, trade-dress and copyright-infringement suits, misappropriation of trade secrets, and securities fraud. Ms. Stephens focuses on intellectual property, with an emphasis on trademark matters. Mr. Teague concentrates on land use and environmental law, including endangered species, natural resources and water law.

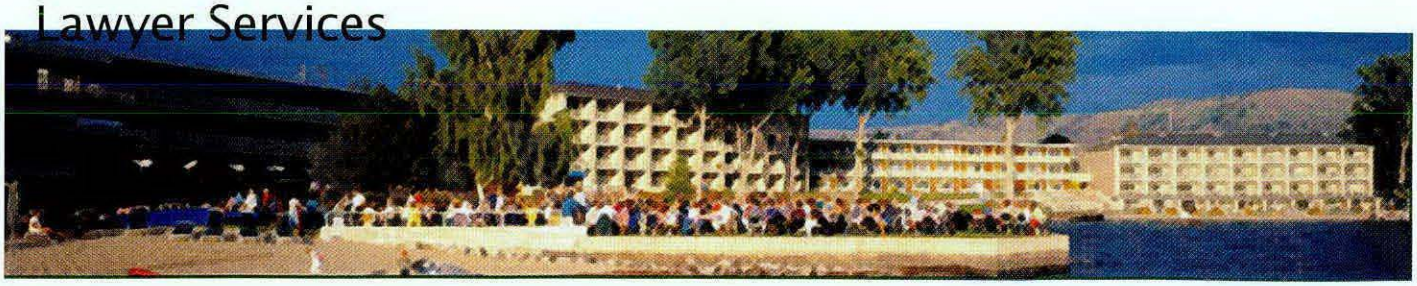

Stephens


Teague

Has your address changed? Want to register for a CLE seminar? Have questions about licensing? Need information about joining a section? Not sure who to call?

Call the WSBA Service Center. We're here to help.

800-945-WSBA ▪ 206-443-WSBA
E-mail: questions@wsba.org



The LAP/LaSD 5th Annual Statewide Conference:
Putting Knowledge to Work

by Erika Wilson • *Lawyer Services Coordinator*

It was during Jerry J's dinner speech that the realization really struck me: This man has been in recovery from alcohol since before I was born. (Only by a couple of months, but hang onto your slide rules, folks — 1977 was 25 years ago.) Jerry and many of his colleagues at the Lawyers' Assistance Program/Lawyer Services Department 5th Annual Statewide Conference (held April 5-7 in Chelan) have served their clients, the WSBA, and the legal profession even longer than that. By and large, the lawyers who attend the LAP/LaSD conference are truly an experienced group. By my calculation, their average number of years in practice is 25. Multiply that by about 60 attendees, and you've got 1,500 years of experience and service in the law, all in one classroom at Campbell's Resort.

Why do these lawyers get together for an annual conference in Chelan when they've already attended so many CLE events over the years? Some of them are retired and don't even need the credits. (One attendee explained to me with a smile that he had "CLEs to burn.") What could a group who has seen it all possibly learn from yet another conference?

One way to answer that question is to note that a majority of the conference-goers are peer counselors with the WSBA Lawyers' Assistance Program, which means they volunteer their time and experience toward the goal of assisting their colleagues through the difficulties of addiction and recovery, depression, and other challenges. The network of peer counselors covers most of Washington, and helps to bring counseling and treatment referral to members living outside Seattle. These counselors and other interested lawyers come to the conference to learn more about themselves and to gain insight into helping others.

Presentations at the conference, orchestrated by the Lawyer Services Department, are aimed at addressing mental health and law-practice issues. Department staff include Director Barbara Harper, Erika Wilson (LaSD coordinator), Ellen Begley (LAP addictions counselor), Jean Johnson and Rebecca Nerison (LAP psychotherapists), Chris Sutton (professional responsibility counsel), Talia Clever (ADR coordinator), Peter Roberts (LOMAP advisor) and Allison Durazzi (LOMAP coordinator). The conference began with an evening dessert reception on Friday, April 5, lasted a full day on Saturday, and featured a brunch presentation on Sunday.

Carol Vecchio, director of the Centerpoint Institute for Life and Career Renewal in Seattle, started the Saturday sessions with an engaging talk about the seasonal cycles of change. Challenging the notion that our lives are fixed on an inflexible linear path, Ms. Vecchio explained that rather than moving from youth to age in a straight trajectory, we instead experience seasonal cycles in many aspects of our lives — career, relationships, self-development, family. Not only are such major life changes necessary, they are opportunities for self-knowledge and growth.

Dr. Adrian Hill, executive director of Canada's Legal Profession Assistance Committee, brought to light the issue of gambling addiction, which is quickly becoming a major concern in the legal community. The ubiquity of gambling in our culture, from seemingly "harmless" lottery tickets available in any convenience store, to online casino betting, has contributed to ever-higher rates of addiction. Gambling is especially insidious because debts can be hidden until the gambler has lost all of his assets — from a home and car to children's college funds.

Lending his perspective from the field of medicine, Dr. Ray Baker discussed the dangers of "hidden" disabilities such as depression and burnout, which often result from overwork, and are endemic in professional fields such as law and medicine. He emphasized that maintaining balance in life is a challenge for those whose careers depend on consistently high demands and workloads, but also offered strategies to relieve stress and keep priorities such as family in perspective.

From the WSBA Lawyer Services Department, Professional Responsibility Counsel Chris Sutton and Law Office Management Assistance Program Advisor Peter Roberts discussed hands-on practice strategies. Mr. Sutton explained that the billable hour is by no means the

The WSBA Lawyer Services Department offers:

- The Lawyers' Assistance Program (LAP): 206-727-8268
- The Law Office Management Assistance Program (LOMAP): 206-733-5914
- The Professional Responsbility/Ethics Program: 206-727-8284
- The Alternative Dispute Resolution Program (ADR): 206-733-5923

Please visit www.wsba.org/lasd for more information.

only way to secure fees. He discussed how other methods, such as flat fees, contingency fees and value billing, can better serve the needs of lawyers and clients, as well as meet the ethical standards for billing set out in the Rules of Professional Conduct. Mr. Roberts wound up the afternoon with a presentation on "e-lawyering," a quickly growing aspect of practice involving the integration of case-management software and a Web presence in law-office management. Using examples of software and successful firm Web sites, he demonstrated that technology is not at odds with the humanist tradition of the law, but is rather an excellent tool for conducting daily business and marketing a firm to the wider world.

Daniel Caine, of Ryan Swanson & Cleveland in Seattle, brought the conference to a close with his view of civility in the legal profession. Noting that the profession has changed dramatically, he offered personal observations and anecdotes about the growing number of lawyers in Washington, about the public's perception of the legal system, and about the difficulties facing all attorneys today, from young associates to veteran practitioners.

Along with the other speakers, Mr. Caine left his audience with a great deal to think about — a fine goal for any conference.

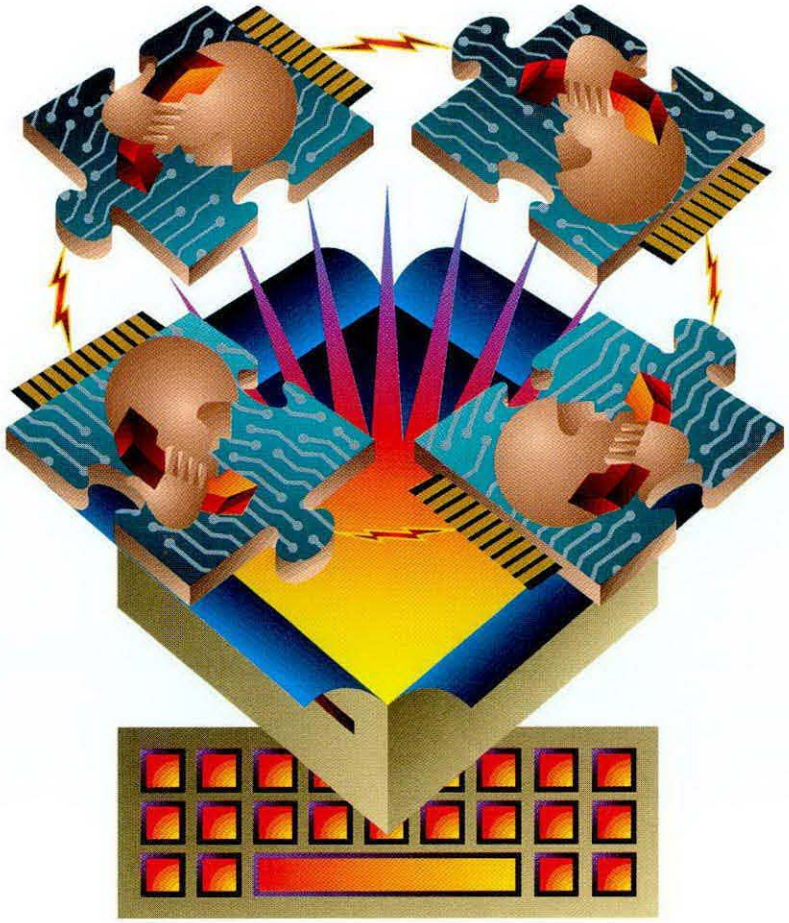
LOMAP's Spring Roadshow a Success!

The LOMAP Spring Traveling Seminar (roadshow) recently returned from visiting Bellingham, Bremerton, Colville, Oak Harbor, Port Angeles and Spokane, April 22 to May 8. The four-credit (one ethics) presentations included material about law-office management, administration and ethics. Members appreciated the opportunity for CLE credit nearer their hometowns, and learning about benchmark income norms for solo and small firms.

The Law Office Management Assistance Program (LOMAP) offers a wide range of materials, software, consulting and book services to members. See www.lomap.org or contact Peter Roberts (206-727-8237 or peter@wsba.org), or Allison Durazzi (206-733-5914 or allisond@wsba.org). We look forward to assisting you.

Yes, We Have No Bananadwidth

by Greg Lawless



Last November we decided to take our small firm to the next level in technological sophistication. Until then, I had been the computer-maintenance person, and we had a system that worked pretty well. We had a sophisticated document-assembly program, computer-based legal research, e-mail, a Web site, and an interoffice network system. What we didn't have was the ability to access our office computers from home, which we viewed as a desirable function.

We hired a computer consulting firm, which, for purposes of this article, we shall call Dorks.com. Thanks to their excellent efforts, after four months of intense work and expense, we now have no e-mail, no Web site, and are still unable to access our computers from home. I am worried about what the future holds, because our "tech" has recently been commenting about how the antique 1912 Royal typewriter in my office is "really cool."

I have learned from many of my clients that our experience is not unique. Why do we tolerate it? Why do we accept truly awful service? Why is it okay for computer companies to sell products that break down daily and we accept it as the norm? It is because of an ancient fable.

The Ancient Fable

The story, first told in 486 BC, is familiar to many of you. A couple lived in a 400-square-foot shack. The wife complained to the husband, "Herbert, I hate this tiny, dirt-floored, vermin-infested, no-cable-connection hovel. Do something!"

The husband consulted the wise man in the village, who advised the husband to bring a dog into the house, which the husband did. On successive days, the wise man had the husband bring into the hut a chicken, a goat, a horse, Shamu the killer whale, a wooly mammoth, and an Amway salesperson.

On the 30th day, the wise man had the husband get rid of all the animals. The husband was astounded at how his tiny shack now seemed like a spacious palace — in part because all the animals were gone, and in part because Shamu ate his wife (hence the name "killer whale").

Tragically, the computer industry has latched onto that fable and made it their business plan. I know in our case, after a few more months of agony, my system will be almost as good as it was before they "fixed" it, and I will be delighted. "This is great," I will say. "Now it's only a little worse than it was a year ago." Who could ask anything more?

Realizing the path I am on, I've decided it's time to fight back. I have recognized that one of the primary reasons I have fallen into the mentality of the man in the fable is that when our tech explains a problem with our system, I have no idea what he is talking about, so I smile and nod and attempt to at least appear that I am following the conversation. Does this sound like something at your office?

Greg: The computer doesn't work.
Tech: Well, the static IP isn't configured for a DSL, so the sonic wall is routing to a different ISP, which can't recognize the POP address or the roving IP.
Greg: That's a relief. For a while there I thought the computer didn't work. (We both laugh at my stupidity.) Still — the computer doesn't work.

I've decided to fight fire with fire, and so have created a list of error messages that sound very technical, so when I need to report a problem, I can communicate just as poorly as our tech. If we customers could universally use this same system (making sure the computer industry doesn't have access), we can confuse them as much as they do us. Here are my error messages:

Error Messages

1. We have a fibulating nonconducting triumpherate data connector.
2. Standard error 686.37, loop system interface.
3. System pink, system pink, system pink.
4. Our Shamu is white-side up.
5. We have a power interrupt socket megawire triton conducting cable out of alignment with the two- or three-prong cavity wall fixator.
6. I think people can see me through the monitor, and they are poisoning me with microwaves and fluoride.
7. I can't get our check-writing program to work.

Actual Meaning

1. The computer doesn't work.
2. The computer doesn't work.
3. The computer doesn't work, you're making me sick, and I spilled Pepto-Bismol on the keyboard.
4. The computer doesn't work, and you can take your fable and read it to a dead fish.
5. The computer doesn't work, so I unplugged it. Can you figure out how to plug it back in?
6. The computer doesn't work, and you'd better fix it fast because I've lost my mind.
7. There's some advantage to the computer not working. Your invoice will look like parchment before it gets paid.

Solutions

1. Fix the computer.
2. Fix the stupid computer.
3. Fix the miserable, stupid computer.
4. Fix the miserable, stupid, wretched computer.
5. Fix the miserable, stupid, wretched, stinking computer.
6. Fix the miserable, stupid, wretched, stinking, slimy computer.
7. I can live with this.

Greg Lawless practices law with his wife, Janine, in the Ballard area of Seattle. He is former chair of the King County Bar Association Real Property and Probate Section, and the editor of the Real Property Section Washington Lawyers' Practice Manual. *Mr. Lawless plays the banjo in his bluegrass group, the Weavils.*

Disciplinary Notices

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

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

Suspended

Mark D. Bantz (WSBA No. 7790, admitted 1977), formerly of Spokane, has been suspended for two years by order of the Supreme Court approving a stipulation effective March 4, 2002. The discipline is based on his failure to diligently represent three clients and failure to return unearned fees upon termination of representation from 1996 to 1998.

Matter 1: In 1999, Mr. Bantz agreed to file a lawsuit for a client against an automobile dealer for a flat fee of $750. During October and November, Mr. Bantz refused to give the client his law office phone number, making it difficult for the client to contact Mr. Bantz after January 2000. In April 2000, when no lawsuit had been filed, the client asked Mr. Bantz to return his fees and original papers. After the client called the WSBA, Mr. Bantz returned the original papers, but did not return the fees. In a bankruptcy proceeding, Mr. Bantz discharged the debt to the client.

Matter 2: In August 1998, Mr. Bantz agreed to substitute as counsel for plaintiffs in a lawsuit set for trial in January 1999. The clients paid a $2,700 advance fee deposit. Although the clients instructed Mr. Bantz to proceed to trial in January, the trial was indefinitely continued. The clients learned from the court administrator that Mr. Bantz told the court not to reschedule the trial until the court heard from him. Mr. Bantz failed to return the clients' calls from January through May 1999. In May, the clients fired Mr. Bantz and asked him to return their advance fee deposit. When Mr. Bantz did not return the fee, the clients filed a complaint in small-claims court, but were unable to locate Mr. Bantz for service. In a bankruptcy proceeding, Mr. Bantz discharged the debt to the clients. In April or May 2000, Mr. Bantz stopped practicing law in Washing-

ton and moved to Alaska.

Matter 3: In 1993, Mr. Bantz agreed to represent a personal representative (PR). In October, beneficiaries of a will filed a petition contesting the will. After the court dismissed the will contest, the PR prepared a final accounting and inventory, and prepared to distribute the remaining estate assets. Mr. Bantz failed to take any action to close the estate; however, he paid himself $39,500 in fees from the estate.

One of the beneficiaries filed a petition to compel the PR to file the final report and distribute the remaining assets. Mr. Bantz did not respond to the petition or inform the PR of the petition; the court awarded attorneys' fees against the PR. The client fired Mr. Bantz after the court issued a show-cause order asking why the client should not be removed as PR. The PR's new counsel closed the estate and satisfied the court's judgment.

The court ordered Mr. Bantz to return $23,500 of the $39,700 in attorney's fees. The client filed a civil complaint against Mr. Bantz for negligence. Mr. Bantz agreed to a stipulated judgment of $17,275.27, but then discharged the debt in bankruptcy.

Mr. Bantz's conduct violated RPCs 1.3 and 3.2, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to keep their clients informed of the status of their matters; 1.15, requiring lawyer to refund unearned fees when representation is terminated; and 1.5(a), requiring lawyers' fees to be reasonable.

Anthony Butler represented the Bar Association. Mr. Bantz represented himself.

Suspended

David E. Grashin (WSBA No. 19609, admitted 1990), of Seattle, has been suspended for 12 months by order of the Supreme Court effective March 4, 2002, following a hearing. This discipline is based on his failure to avoid conflicts of interest in 1997.

In early September 1997, Mr. Grashin agreed to meet a client to make some minor changes to his existing will. The original will left one-third of the client's estate to the following three organizations: United Services Organization, Jewish Welfare Board and Mason Relief Organization Grand Lodge of Washington State. The client, who intended that the new will leave $10,000 per year to each of two children, died September 12.

The new will that Mr. Grashin had drafted included large gifts to a school and a synagogue that had not been included in the original will. Mr. Grashin's children attended the school, his family attended the synagogue, and he had served on both boards. The new will also left one-time gifts of $10,000 each to the two children mentioned in the first will. The hearing officer found that Mr. Grashin intentionally failed to draft the will in accordance with the client's stated intentions, did not explain his personal interests in these institutions to the client, and did not read the names and amounts of these bequests to the client during the will-signing.

Mr. Grashin's conduct violated RPCs 1.2 and 8.4(c) by failing to abide by the client's decisions concerning the representation; and 1.7(b), prohibiting lawyers from accepting representation of a client if the representation may be materially limited by the lawyer's own interests, unless the client consents in writing after a full disclosure.

Becky Neal represented the Bar Association. Kurt Bulmer represented Mr. Grashin. The hearing officer was Lee Kraft.

Suspended

Dan P. Evich (WSBA No. 5615, admitted 1974), of Edmonds, was suspended for 30 days by order of the Supreme Court effective January 3, 2002. Mr. Evich was reinstated on February 10, 2002. This discipline was based on Mr. Evich's willful failure to comply with a disciplinary-costs order.

In 1997, a hearing officer recommended that Mr. Evich receive an admonition. In June 1997, the Disciplinary Board entered an order assessing $1,337.57 against Mr. Evich. Although Mr. Evich had sufficient funds, he failed to pay the assessed costs. The Office of Disciplinary Counsel filed a new disciplinary action based on Mr. Evich's failure to pay the ordered costs.

In May 2001, Mr. Evich sent the WSBA a check for $1,337, requiring that the Association place the money in a holding account until the disciplinary matter was resolved. The hearing officer found that Mr. Evich willfully failed to comply with the order assessing disciplinary costs against him.

Mr. Evich's conduct violated RLD 5.7(i). Jonathan Burke represented the Bar Association. Mr. Evich represented himself. The hearing officer was Michael L. Lewis.

Consumer-Information Pamphlets

Provide a valuable service to your clients by offering them consumer information pamphlets! Published by the WSBA as a public service, these pamphlets educate consumers about their legal rights and responsibilities, answer frequently asked questions, and explain basic aspects of Washington laws. The information, of course, is general and not intended as legal advice or as a substitute for a lawyer's services. Pamphlets available are:

- *Alternatives to Court*
- *Bankruptcy*
- *Buying and Selling Real Estate*
- *Criminal Law*
- *Dissolution*
- *Elder Law*
- *Landlord/Tenant Rights*
- *Lawyers*
- *Lawyers' Fund for Client Protection*
- *Legal Fees*
- *Marriage*
- *Parenting Act*
- *Probate*
- *Revocable Living Trusts*
- *Signing Documents*
- *Thinking about Law School?*
- *Trusts*
- *Wills*

For price information or to place an order, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or send an e-mail to questions @wsba.org.

Opportunities for Service

WYLD President-elect Nominations

Application deadline: June 17, 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 members 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 17, 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.

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, WYLD Liaison, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Notice of Deadline for Filing WSBA Resolutions

Pursuant to WSBA Bylaw Article VII, Section F – Resolutions, any 10 active members of the Washington State Bar Association may present a written resolution to the Board of Governors for consideration at the WSBA annual business meeting. This year's meeting will be held September 12 at 6:00 p.m. at the W Seattle Hotel, 1112 Fourth Ave., Seattle.

Resolutions must be filed with the WSBA executive director at least 90 days before the annual meeting (by 5:00 p.m. on June 17, 2002), and must be accompanied by a written report explaining the resolution. The resolution and explanatory report together shall not exceed a total of 1,000 words. Send resolutions to Executive Director, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

The Board of Governors will refer any resolutions addressing issues within the purposes of the WSBA to the WSBA Resolutions Committee. Those purposes are set forth in Article I of the WSBA bylaws and General Rule 12 of the Washington Court Rules. Not more than 11 nor less than seven days before the annual meeting, the Resolutions Committee will hold a public hearing at the WSBA office. Proponents and opponents of resolutions may attend the hearing in person or present their views in written form for consideration by the committee. Proposed resolutions will be published in the August 2002 issue of *Bar News*, along with the date of the Resolutions Committee meeting and a list of committee members.

For further information, please contact WSBA General Counsel Robert D. Welden at bobw@wsba.org or 206-727-8232.

Mark Your Calendar: 2002 WSBA Annual Awards Dinner and Business Meeting

The WSBA annual awards dinner and business meeting will be held Thursday, September 12 from 6:00-9:00 p.m. at the W Seattle Hotel, 1112 Fourth Ave., Seattle. Future issues of *Bar News* will contain detailed information about the event.

Chelan County District Court Judges Receive Creed of Professionalism Plaques

In a ceremony at the Chelan County Courthouse in Wenatchee on March 19, district court judges were presented with copies of the WSBA Creed of Professionalism. Participants were (left to right) lawyer Steven W. Woods, court clerk Sherrill Keller, Judge Alicia H. Nakata, Judge Thomas C. Warren, Deputy City Prosecutor Randy L. Thies and Deputy County Prosecutor Stephen D. Funderburk. Seated are Chelan-Douglas Counties Bar Association President Russell J. Speidel and lawyer Donald C. Bell.

Rules for Enforcement of Lawyer Conduct Published for Comment

The April 16, 2002 advance sheet of Washington Reports published the proposed Rules for Enforcement of Lawyer Conduct for comment through July 15, 2002. If adopted, these proposed rules will replace the Rules for Lawyer Discipline. The online version is available at www.courts.wa.gov/rules/proposed/2002mar/word/ProposedELC.doc.

2002 Edition of WSBA-CLE *Washington Life Insurance Trust Deskbook* Goes to Press

A new edition of the *Washington Life Insurance Trust Deskbook*, edited by Paul R. Willett, will be released later this month. This deskbook includes three model trust forms (on diskette), drafted in light of Washington community property and trust law, and extensively annotated with references to applicable IRS cases and rulings. This one-volume sourcebook for Washington estate planners sells for $85. As with all WSBA deskbooks, purchasers who sign up for the Automatic Update Service will receive a 10 percent discount on their purchase. To order, call 206-733-5918 or go to www.wsba.org/cle/catalog/form.htm.

New Online Resource for Court Decisions and Other Related Information

There's a new Web site you'll want to bookmark: www.LegalWA.org. This site contains Washington State Supreme Court opinions from 1939 to present, and published Court of Appeals opinions from 1969 to present. It also includes links to the full text of the RCW, WAC, and 70 Washington city and county municipal codes.

LegalWA.org was created cooperatively by the Washington State Bar Association, Municipal Research & Services Center, and the Washington Office of the Code Reviser to provide free public access to case law.

The site has been designed for ease of use. The full text of court decisions is searchable by keyword, and navigation around the site is simple and straightforward. The site, which also contains useful links to other legal resources, is updated weekly.

Third-Party Liability Information

If your client is involved in a personal injury case and has received or is receiving medical-assistance payments for his medical care, you are required to contact the Department of Social and Health Services (DSHS). RCW 43.20B.060 places a lien for the reimbursement of the medical bills that have been paid by public assistance against any settlement of judgment your client receives from a third party responsible for your client's injuries. Before settling your client's claim with the third party and/or their insurance company, please contact the COB Casualty Unit of DSHS at 800-562-6136 or COB Casualty Unit, PO Box 45561, Olympia, WA 98504-5561 to supply the information that DSHS requires. Failure to pay any lien imposed by the department may subject you to personal liability for funds improperly distributed (RCW 43.20B.070).

Fulbright Scholar Grants in Law Available for 2003-04

The Fulbright Scholar Program is offering 114 lecturing and research awards, ranging from two months to an academic year, to attorneys and law faculty for the 2003-2004 academic year. The application deadline is August 1, 2002. For information, see http://www.cies.org or contact the Council for International Exchange of Scholars, 3007 Tilden St. NW, Ste. 5L, Washington, D.C. 20008; 202-686-7877; e-mail apprequest @cies.iie.org. The program is sponsored by the U.S. Department of State's Bureau of Educational and Cultural Affairs.

Newer Admittees Need Your Lawyering Skills

The WSBA's new Lawyer-to-Lawyer Program matches newer admittees with experienced lawyers. Help them get a head start on learning those lawyering skills that are not in any textbook. The program is not a structured mentoring program and does not supplant any similar programs of local bars. We connect lawyers with similar practices in the same geographic area for mutual information-sharing and goodwill. For more information, contact Peter Roberts at 206-727-8237 or peter@wsba.org.

Informal Ethics Opinions Now Online

We are pleased to announce that informal ethics opinions are now available on the WSBA Web site at http://pro.wsba.org/io/search.asp. You can search by subject, key word(s), opinion number, year issued or authority.

Informal ethics opinions are issued by the WSBA RPC Committee, which researches and prepares responses to written ethical inquiries submitted by WSBA members. Informal opinions have not been approved by the Board of Governors, nor do they reflect the official position of the WSBA.

To discuss ethical questions about your own prospective conduct, phone the WSBA ethics line at 206-727-8284 (or

800-945-WSBA, ext. 8284). Your inquiry is considered confidential. If you have a question about the ethical conduct of another lawyer, please call 206-727-8235.

BOG Meetings

June 7 – Yakima
July 26-27 – Ocean Shores
September 13-14 – Seattle

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.

CASA Volunteers Needed

King County Superior Court is seeking volunteers to serve as court-appointed special advocates. Volunteers receive extensive training to represent children involved in custody and visitation disputes in family law cases. They conduct interviews, write reports, and testify in hearings or trials. For more information, call 206-296-9320.

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. For bar leader 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.

Online MCLE Credit-Tracking System

The 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.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in May 2002 is 1.893 percent. The maximum allowable interest rate for June is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988-June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date appears at http://www.wsba.org/barnews/.

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.

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.

World Peace Through Law CLE Seminar

The WSBA World Peace Through Law Section and the Seattle Chapter of the United Nations Association are sponsoring a two-credit CLE seminar on June 13 from 7:00 p.m. to 9:00 p.m. at the WSBA office (2101 Fourth Ave., Suite 400, Seattle). Gonzaga law school professor Father Robert Araujo, S.J., will present "The International Criminal Court — The Option for Dealing with Terrorism." The cost is $10. For more information, contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Creed of Professionalism Plaques Presented to Okanogan County Judges

Okanogan County Bar Association President Karl Sloan and Peg R. Callaway of the WSBA Professionalism Committee presented judges Jack Burchard, Christopher E. Culp and David S. Edwards the WSBA Creed of Professionalism for their courtrooms. The Okanogan County Bar Assocation also presented Richard B. Price with a certificate of appreciation for epitomizing the ideal of professionalism. Pictured L-R: (front) Richard B. Price, Peg R. Callaway, Karl Sloan; (back) Judge Christopher E. Culp, Judge David S. Edwards, Judge Jack Burchard.

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.

Washington Estate Tax News

For deaths occurring January 1, 2002 and after, Washington has different estate tax reporting requirements than the federal government. Federal estate tax law changes, enacted after January 1, 2001 by the "Economic Growth and Tax Relief Reconciliation Act of 2001," do not apply to the filing and reporting requirements of Washington's estate tax. The state of Washington operates under RCW 83.100.020 (15), which references the Internal Revenue Tax Code as it existed January 1, 2001. For more information, contact the Washington State Department of Revenue at 360-753-5547 or 360-753-7518.

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 percent) will be added to orders shipped within Washington.

"You Have Rights. Lawyers Protect Them" Radio Spots and Airport Signs

As one of the projects undertaken by the Proud to Be a Lawyer Task Force formed by 2000-01 WSBA President Jan Eric Peterson, we purchased rights to use a series of ads originally created for the Virginia Bar Association. These ads have been used successfully by several bar associations around the country, including Oregon. We adapted the ads for use on the radio, and also reformatted them into large signs.

Working cooperatively with the King County Bar Association's Public Information Committee, spots were broadcast on KIRO radio during the weeks of April 29 (to coincide with Law Week) and May 13. We plan to expand radio advertising into other areas in the state.

At the Seattle-Tacoma International Airport, four back-lit signs are in highly visible areas (including baggage decks and near a security area). These signs will be in place through the end of July.

Photo Bar Cards Available

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.
- You may submit a black-and-white or color photo, however all photos will be printed in black and white.
- 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.
- If you're e-mailing an electronic photo, mail the completed order form with your payment. If paying by credit card, you may fax the order form.

If you have questions, please contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA or questions@wsba.org.

YES! I would like to order a photo bar card. _____

Select one of the following:

❑ Photo submitted electronically $ 10.00
(If in Washington, add WA state sales tax @ 8.8%.) .88
Total $ _____

❑ Hard-copy photo enclosed $ 15.00
(If in Washington, add WA state sales tax @ 8.8%.) $ 1.32
Total $ _____

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.

❑ check enclosed (payable to WSBA)
❑ MasterCard ❑ Visa

No. _____
Exp. date _____
Name as it appears on card _____
Signature _____

Please send to:
Member and Community Relations Department
Communications Division, WSBA
2101 Fourth Ave., Ste. 400
Seattle, WA 98121-2330

Name _____
Address _____
City _____ State ___ ZIP _____

WSBA office use only: 1-40199-180
date _____ check no. _____ amount

Announcements

MARSTON & HEFFERNAN, PLLC

is pleased to announce that

Linda L. Foreman

(formerly of Foster Pepper & Shefelman, PLLC)

has joined the firm as a partner, where she will continue her practice representing policyholders in insurance coverage disputes.

MARSTON & HEFFERNAN, PLLC
Attorneys at Law
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16880 NE 79th Street
Redmond, Washington 98052-4424
Telephone: 425-861-5700
Fax: 425-861-6969

SEED I.P. LAW GROUP

welcomes

Kevin Costanza.

As the newest partner in the firm's mechanical engineering group, Mr. Costanza brings expertise in prosecuting international and domestic mechanical patents. He also has extensive experience in counseling clients on intellectual property strategy, trademarks, domain-name disputes and licenses.

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701 Fifth Avenue, Suite 6300
Seattle, Washington 98104
Telephone: 206-622-4900
www.seedlaw.com

Calendar

Please check with providers to verify approved CLE credits. To announce a seminar, 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

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

ARBITRATION

Arbitration: Winning with the New Law
June 14 – Seattle. 6.25 CLE credits, including .5 ethics. By WSTLA; 206-464-1011.

Advanced Mediation
June 17-18 – Seattle. 13 CLE credits, including 1 ethics pending. By UW-CLE; 800-CLE-UNIV.

BUSINESS LAW

Business Law Section Midyear
May 31-June 2 – Yakima. 10.25 CLE credits, including 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

Employment Law Litigation
June 13-14 – San Francisco; June 20-21 – Washington, D.C. 12 CLE credits, including 1 ethics pending. By National Employment Law Institute; 303-861-5600.

ESTATE PLANNING

Nuts and Bolts: Estate Planning/Probate
June 26 – Seattle. 3 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Skills Training for Estate Planners
July 8-12 – Atlanta, GA. CLE credits pending. By ALI-ABA; 800-CLE-NEWS.

ENVIRONMENTAL & LAND USE

Construction Law Midyear
June 14 – Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

Elder Law Seminar
June 14 – Location TBD. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Nuts and Bolts: Family Law
June 19 – Seattle. 3 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Family Law Section Midyear
June 28-30 – Wenatchee. 13.5 CLE credits, including 2 ethics. By WSBA-CLE and Family Law Section; 800-945-WSBA or 206-443-WSBA.

Nontraditional Approaches to Problems Facing our Youth
July 17 – SeaTac. 5.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

GENERAL PRACTICE

Brownfields and Superfund Reform
June 3-4 – Seattle. 11 CLE credits. By The Seminar Group; 800-574-4852.

Nuts and Bolts: Business Law (a.m.); Civil Litigation (p.m.)
June 5 – Seattle. 3 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Representing Nonprofits
June 7 – Seattle; June 27 – Lacey, Mt. Vernon, Spokane (video replay). 6.75 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Nuts and Bolts: Criminal Law (a.m.); Bankruptcy (p.m.)
June 12 – Seattle. 3 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Venture-Capital Financing
June 13-14 – Seattle. 10.5 CLE credits. By The Seminar Group; 800-574-4852.

Damages
July 18 – Spokane; July 24 – Seattle. 4 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Boot Camp for Associates
July 23-24 – Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LAW-PRACTICE MANAGEMENT

Pacific Rim Computer and Internet Law Institute
June 7 – Seattle. 6.75 CLE credits, including .25 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

"If You Build It, They Will Come": Building a Successful Solo or Small-Firm Practice
June 13 – Seattle. 6.5 CLE credits, including 1.25 ethics. By King County Bar Association; 206-340-2578.

Nuts and Bolts: Practice Management
June 26 – Seattle. 3 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LITIGATION

Litigation Section Midyear
June 21 – Seattle. 6.25 CLE credits, including .5 ethics. By WSBA-CLE and Litigation Section; 800-945-WSBA or 206-443-WSBA.

Building Trial Skills
June 22-30 – Berkeley, CA. CLE credits pending. By National Institute for Trial Advocacy; 800-225-6482.

Evidence (with Judge Dean Morgan)
July 31-August 1 – Seattle. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

REAL ESTATE

Nuts and Bolts: Residential Real Estate
June 19 – Seattle. 3 CLE credits pending; ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

REAL PROPERTY

Real Property, Probate & Trust Section Midyear Meeting and Seminar
May 31-June 2 – Stevenson. 11.5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

How to Successfully Handle Commercial Leasing and Commercial Closing Matters
July 10 – Mount Vernon; July 24 – Seattle. 5.5 CLE credits; ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LEGAL MALPRACTICE and DISCIPLINARY ISSUES

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

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E-mail: jganzesq@aol.com

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Seattle, WA 98104
206-624-6271

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

MEDICAL OR DENTAL MALPRACTICE

John J. Greaney
is available for consultation and referral of plaintiffs' claims of medical or dental malpractice against health-care providers and hospitals.

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William B. Knowles
is available for consultation, referral and association in cases involving employment discrimination, wrongful termination, wage claims, unemployment compensation and federal employee EEOC or Merit System Protection Board appeals.

206-441-7816

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Patrick C. Sheldon,
former member of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings.

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James E. Lobsenz
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cases in the Washington Supreme
Court, including *Washington
State v. Stein*, 144 Wn.2d 236,
27 P.3d 184 (2001).

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Seattle, WA 98121-2330

Positions available are also posted by telephone at:
206-727-8261
and online at www.wsba.org/jobs

FOR SALE

Law books for sale: Two complete volume sets of Revised Code Washington Annotated, $750 each. Volume 1-16 Washington Practice, current, $600. Volume 1-13A Washington Practice, current through 1996, $150. Complete set Washington Digest, current, $600. West's Washington Reporter, vol. 297-303 P2d. 4/26/56 through volume 832-834 P2d. 5/11/92, $250. Will sell separately or all for $2,700. 360-642-2332.

For sale: Complete set of RCWA, Wn.2d, and Wn. App. All current through April 30, 2002. Excellent condition. $3,250. 425-771-4266.

SPACE AVAILABLE

Single office for rent in multi-attorney firm, located in downtown Everett. Receptionist, conference room, secretary, library/research and other amenities are available and negotiable. Contact Bill Tri or Larry Jelsing at 425-258-2688.

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

Shoreline: Office space available for attorney practicing primarily in the area of family law. Reception, secretarial space available. Convenient Northend location. Call Paul Reni at 206-542-1840.

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 August 1. Contact Allen Bentley at 206-343-9391 or e-mail abentley@concentric.net.

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.

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

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.

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.

Congenial and professional attorneys in downtown high-rise suite seek subtenants for two to four offices. We provide receptionist and other amenities. Rent and length of lease negotiable. 206-382-2600.

Office space to sublet in downtown Seattle for one attorney. Located on the 16th floor of the Pacific Building. Rent negotiable. For more information, please call 206-625-1212.

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., July 1 for the August 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.

Tired of downtown? Move to upscale Montlake. Five large offices plus parking, kitchen, library and large reception area. Close to UW law library, I-5/520 interchange; 10 minutes to courthouses. Building is 3,476 sq. ft., plus 625 sq. ft. of storage. Dinner for 10 at Café Lago (on same block) if leased by July 1! Call Richard Hesik, 206-268-3310.

Space-sharing: Shared reception, copy/fax and conference areas. Four to six offices in downtown Tacoma. Two offices in downtown Seattle. $700 ea./month. Contact Jody Gilbertson at 253-627-1835.

Large, bright partner-sized office located in Logan Building, 500 Union, Ste. 645; heart of Seattle; kitchen, reception, mail, fax, copier; $900/month. Contact David Roth at 206-447-8665.

Downtown Seattle, class-A building: Three attorney offices; support staff spaces. Receptionist and other amenities available within a small law firm. Call Maggie at 206-343-6362.

Skagit County: Share office with established attorney. Unique and attractive remodeled house. Referrals possible. Two blocks from courthouse. Conference room, fax, copier, phone system, kitchen, messenger, ample free parking for self and clients, other amenities. 360-363-3400; marymc@fidalgo.net.

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POSITIONS AVAILABLE

Luce, Lombino & Riggio PS is seeking a full-time attorney with extensive background in traffic issues. Must have excellent time-management skills. Please fax résumé to Personnel, 253-922-2802.

Land use attorney – Snohomish County Prosecuting Attorney, Civil Division. The civil division of the Snohomish County Prosecuting Attorney's office seeks a land-use attorney with at least five years' experience in advising clients in areas relating to land use and environmental regulation including zoning, state Environmental Policy Act compliance, Growth Management Act compliance and Endangered Species Act compliance. Experience with the Land Use Petition Act, land-use damages claims, and administrative hearings board is desired, as well as excellent writing and oral communication skills. Experience in computer-aided research and word processing is extremely desirable. Salary dependent upon qualifications. Generous fringe benefits and leave package. To apply, please submit a letter of interest, résumé, writing sample and references to Barbara Dykes, Snohomish County Prosecuting Attorney's Office, 2918 Colby Ave., Ste. 203, Everett, WA 98201. Position open until filled. Snohomish County is an equal opportunity employer.

Staff attorney: The staff attorney will work closely with in-house client groups on a wide range of legal issues including general corporate and commercial, contracts, intellectual property and licensing transactions. Will assist general counsel and company managers, as needed, in additional legal matters. Essential duties and responsibilities include: performs various legal assignments; acts as counsel to managers, directors and technical employees; drafts, reviews and negotiates various contracts, agreements, licenses and leases; provides proactive and preventive legal training for company employees (as needed); prepares corporate forms and resolutions; communicates frequently with other members of the legal department; coordinates activities of outside counsel (as needed); anticipates and guards against legal risks involving the company; manages internal discovery processes. Qualifications include: minimum of at least three years' experience as a corporate attorney; previous large law-firm or in-house legal department experience helpful; outstanding research and writing skills; strong oral communication skills; sound judgment, problem-solving and client-management skills; experience in meaningful transaction responsibility is a requisite; ability to work independently, as well as in a team environment is essential; will be detail-oriented and have excellent time-management and organization skills. JD from an ABA-accredited law school, outstanding academic credentials and at least three years' relevant experience as a practicing attorney in either a law firm or corporate environment. WSBA admission in good standing required. Please apply online at http://www.vulcan.com or send résumé to MA, c/o HR, 505 5th Ave. S., Seattle, WA 98104. Position is located in Seattle, WA.

Transactions attorney: Large AV-rated Spokane business law firm invites applications from established attorneys who are interested in joining our business transactions practice group. Applicants should have at least three years' experience in complex real estate, corporate finance, business acquisitions and/or other commercial transactions. The successful candidate will be highly motivated; have a demonstrated commitment to developing a successful business practice; and possess excellent legal, technical and interpersonal skills. We are a 70-lawyer firm with a sophisticated business practice and an emphasis on interdisciplinary cooperation and exceptional client service. Please send résumé with references to Philip S. Brooke III, Hiring Partner; Paine, Hamblen, Coffin, Brooke & Miller LLP; 717 W. Sprague Ave., Ste. 1200, Spokane, WA 99201.

Well-established Social Security disability law firm in Everett seeks fourth attorney to represent claimants at federal administrative hearings. Candidates should be experienced in Social Security disability or related areas of law, and interact well with clients. Excellent salary, benefits and long-term opportunity for motivated individual. Send cover letter and résumé to Hiring Partner, 3410 Broadway, Everett WA 98201; rafnmi@aol.com.

Alaska Airlines, Seattle, WA. Principal duties and responsibilities: This position will act as lead company counsel on labor-contract arbitrations and grievance negotiations. This attorney will handle labor arbitrations at every stage, from grievance receipt through the preparation, hearing and briefing of the case. This attorney will be responsible for any necessary post-arbitration counsel and review with the operational client. He or she shall provide any other client assistance as may be required, and shall provide the interpretation and oversight for the implementation of arbitration decisions. Required knowledge skills and abilities: experience in arbitration (preferably labor) and /or litigation (preferably labor.) Strong written and verbal communication skills required. Education and experience: Juris Doctor from ABA-accredited law school. At least five years' experience as an attorney required, particularly trial/hearing experience. Labor law experience highly desired. Please submit a cover letter and résumé along with salary expectations to Alaska Airlines, PO Box 68900-SEAHE, Seattle, WA 98168-0900; http://www.jobs.alaskaair.com. Equal opportunity employer.

Exciting new opportunities – two new positions in land use: Snohomish County Prosecuting Attorney, Civil Division. In response to ever-increasing demands, the civil division of the Snohomish County Prosecuting Attorney's office is adding two new land-use attorneys. Seeking attorneys with at least three years' experience. Knowledge of laws relating to land use and environmental regulation including zoning, state Environmental Policy Act compliance, Growth Management Act compliance and Endangered Species Act

compliance preferred. Experience with the Land Use Petition Act, land-use damages claims, and administrative hearings board is desired, as well as excellent writing and oral communication skills. Experience in computer-aided research and word processing is extremely desirable. Competitive salary dependent upon qualifications. Generous fringe benefits and incredible leave package. To apply, please submit a letter of interest, résumé, writing sample and references to Barbara Dykes, Snohomish County Prosecuting Attorney's Office, 2918 Colby Ave., Ste. 203, Everett, WA 98201. Snohomish County is an equal opportunity employer.

McKinley & Irvin PLLC seeks attorney with a minimum of five years' experience and at least 50 percent of practice focused on complex divorce and family law litigation. M&I's established and growing family law practice maintains offices in Federal Way and downtown Seattle. Successful candidate must possess superior writing and litigation skills, an affection for family law practice, the ability to work and interact effectively with co-workers, and a strong work ethic. Position offers a generous salary and benefits package for the right candidate, as well as opportunity for career growth. Please forward cover letter, résumé, writing sample and three professional references to mindy@mckinleyirvin.com; or mail to 33801 1st Way S., Ste. 281, Federal Way, WA 98003.

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

Need experienced attorney to assume retiring partner's duties in two-person real estate, litigation, business-oriented practice in Auburn. Send inquiry/résumé to don@donryanlaw.com.

Associate position: Attorney sought by established general practice firm with offices in Lewis and Thurston and serving surrounding counties (Spanish speaking a plus). Must be aggressive self-starter and team player. Potential for growth available. Send résumé to Don A. McConnell and Associates, 207 W. Main St., Centralia, WA 98531; http://www.lewiscountylaw.com.

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

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Stanislaw Ashbaugh LLP seeks an associate attorney with at least two years' experience to join its policyholder insurance coverage and construction-defect litigation practice group. Experience in those areas preferred. Strong writing and advocacy skills required. Qualified applicants should send résumé and writing sample to the attention of Michlen Manning via e-mail, michlen@stanislawashbaugh.com, or fax 206-344-7400.

Small Spokane law firm seeks attorney to work in the areas of elder law, Medicaid, estate planning and probate. Send résumé and cover letter to WSBA *Bar News* Box 620, 2101 4th Ave., Ste. 400, Seattle, WA 98121-2330.

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

An attorney for Wenatchee AV-rated firm to do civil litigation, legal research and writing. Contact Dale Foreman, 509-662-9602 or dalef@fadv.com.

Associate attorney: Busy Seattle firm practicing family law seeks associate attorney. Applicant must have a desire to work directly with clients, have at least two years' litigation experience, and be computer literate. Our work environment is friendly and our compensation competitive. Please send résumé and cover letter to Hiring Attorney, Goldberg & Jones PLLC, 2200 Sixth Ave., Ste. 1200, Seattle, WA 98121.

Associate position — business and real estate litigation: Hanson Baker Ludlow Drumheller PS (HBLD), an AV-rated firm serving the Eastside and the greater Puget Sound for nearly 40 years, is seeking a highly qualified associate attorney. HBLD is a seven-attorney firm committed to the highest-quality legal representation in its core areas of expertise, including real estate and commercial litigation, construction, land use, estate planning, and business and corporate transactions. The associate will interact directly with dynamic clients in a supportive environment to develop the highest-caliber legal skills. Successful candidates must have superior academic credentials, and proven written and oral communication skills; law review or clerkship experience is preferred. Responsibilities will be in the areas of commercial litigation, and business and real estate transactions for individuals and businesses of all sizes. At least two years' commercial litigation experience preferred. Please send cover letter and résumé to John T. Ludlow, Hanson Baker Ludlow Drumheller PS, 10777 Main St., Ste. 300, Bellevue, WA 98004; jludlow@hbld.com. See our Web site at http://www.hbld.com.

Wilson Smith Cochran Dickerson, a medium-sized Seattle litigation firm, seeks an associate attorney with at least two years' civil litigation experience. Experience in personal injury, medical malpractice, or pharmaceutical litigation a plus. Applicants must have high academic achievement and excellent writing skills and references. Please send résumé and two writing samples to Hiring Partner, Wilson Smith Cochran Dickerson, 1215 4th Ave., Ste. 1700, Seattle, WA 98161.

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Associate position available in small Tacoma general practice firm. Practice areas include real estate, family law, business/commercial law. Send résumé and cover letter to Blado Stratton PS, 3408 S. 23rd, Tacoma, WA 98405.

Estate planning, transaction and creditors' rights attorneys: We are a 12-lawyer, AV-rated firm in Eugene fortunate to represent several of Oregon's largest privately held companies, and enjoy a growing and sophisticated estate planning and business transaction practice. We seek two lawyers for these practice areas, each with at least five years' experience. The estate planning attorney should have experience in planning for large estates. The business transactions attorney should have experience in complex real estate, business acquisition and other commercial transactions. We also seek an attorney with approximately three years' experience in creditors' rights, bankruptcy and commercial litigation. If you are a highly motivated lawyer with superior technical and interpersonal skills who wants to do interesting and challenging legal work in a friendly, collegial environment, please send your résumé with references in confidence to Rohn Roberts, Arnold Gallagher Saydack Percell Roberts & Potter, PO Box 1758, Eugene, OR 97440-1758.

Small Central Washington law firm, in business for 55 years, seeks a lawyer to engage in the general practice of law with an initial emphasis on family law. Inquiries should be made by sending your résumé to Peters & Fowler, Inc., PS, PO Box 160, Selah, WA 98942; fax 509-697-5368; kevinnaught@yakima.net.

Small AV-rated firm concentrating on representing plaintiffs in construction-defect claims seeks attorney with at least four years' experience. Strong academic background and superior writing skills. Please fax résumé to Levin & Stein at 206-521-8614.

Luce, Lombino & Riggio PS has an immediate opening in its municipal department. A minimum five years' experience representing municipalities, and excellent legal and interpersonal skills required. Please fax résumé to Personnel, 253-922-2802.

WILL SEARCH

Searching for lost will and/or missing heirs of Lester C. Rowland; died January 12, 1979. He was a resident of Lynnwood and owned real property there. Aurora J. Stayman, a creditor of his, has been appointed administratrix of his estate. Anyone having information concerning a document purporting to be the last will and testament of Lester C. Rowland, or having any knowledge of any people who are his heirs, is advised and requested to contact Roger E. Lageschulte, 1155 N. 130th, Ste. 310, Seattle, WA 98133; phone 206-368-8656; fax 206-368-8658; attorney for PR.

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Contract attorney at your service! Legal research and writing for Washington lawyers. I draft briefs, memoranda, CLE materials; near UW law library. Many satisfied clients. Elizabeth Dash Bottman, 206-526-5777; e-mail bjelizabeth@qwest.net.

New York/Connecticut legal matters: New York City law firm with affiliated Connecticut office ready to assist you and your clients with New York or Connecticut litigation/transactional/real estate needs. Experienced counsel; rates and alternative fee arrangements appealing to Washington clients. WSBA member. Contact Gary Hoppe at 212-688-0400 or hoppe@thgllp.com.

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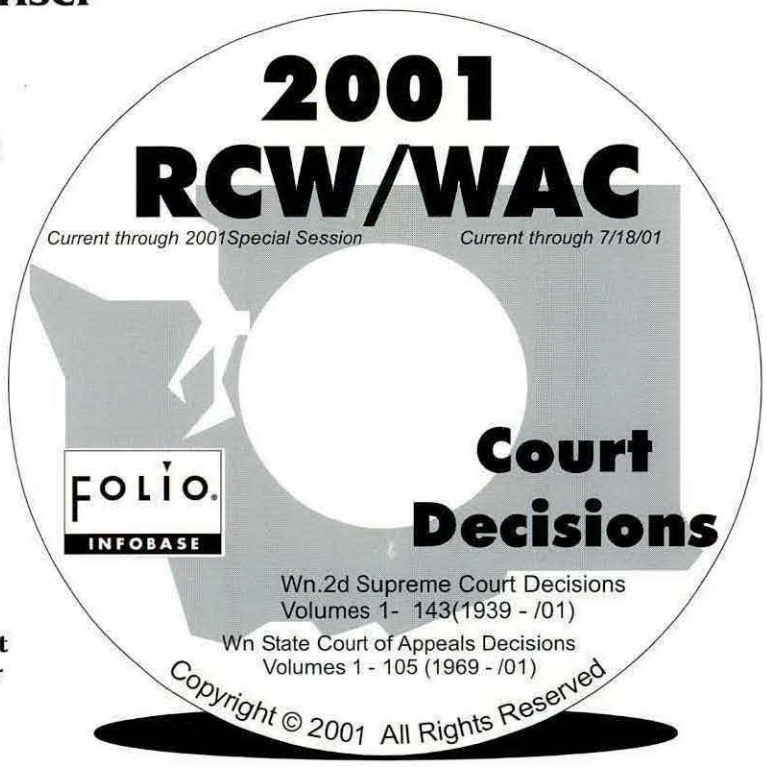

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