Vol. 56 No. 9

Washington State

BarNews

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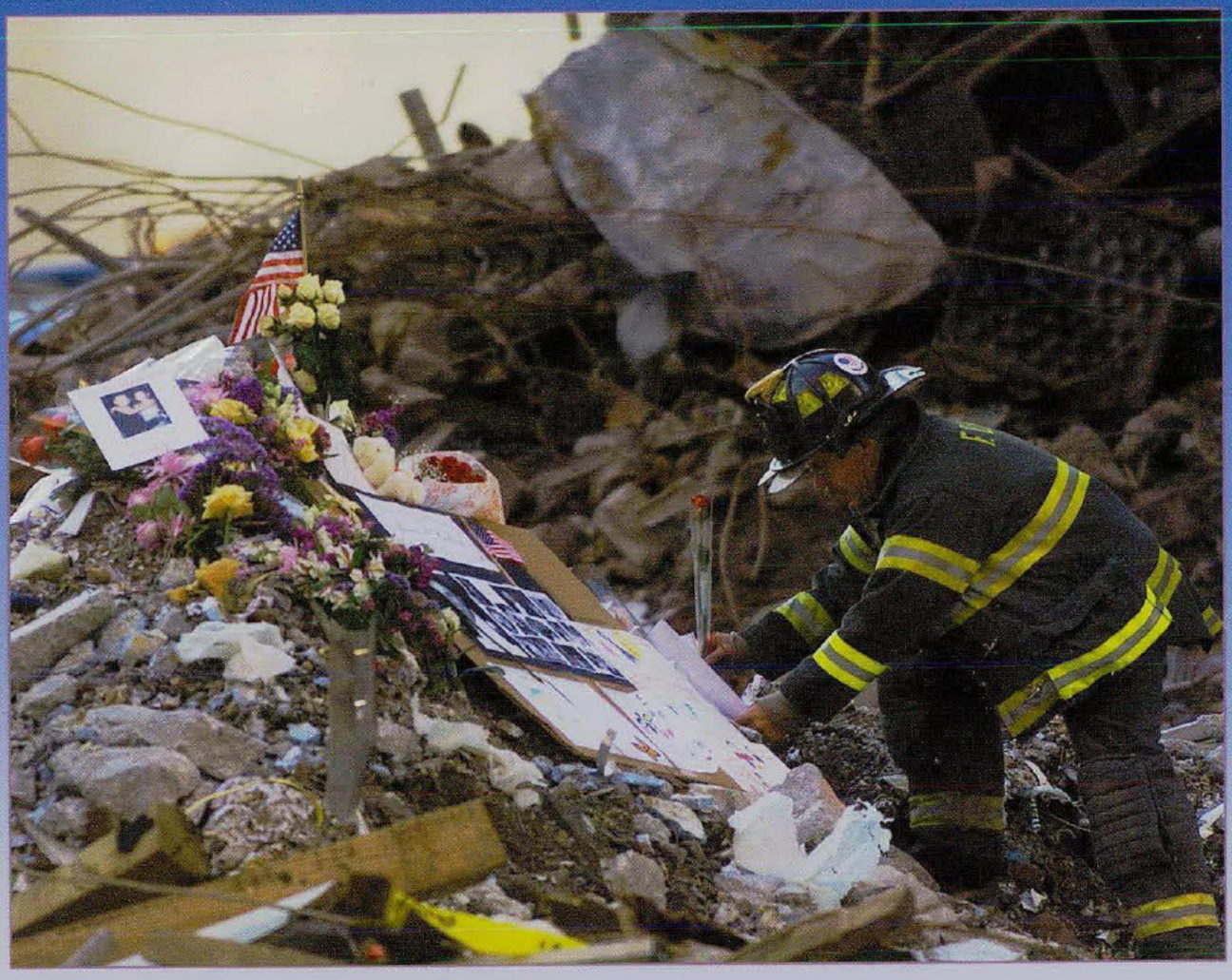
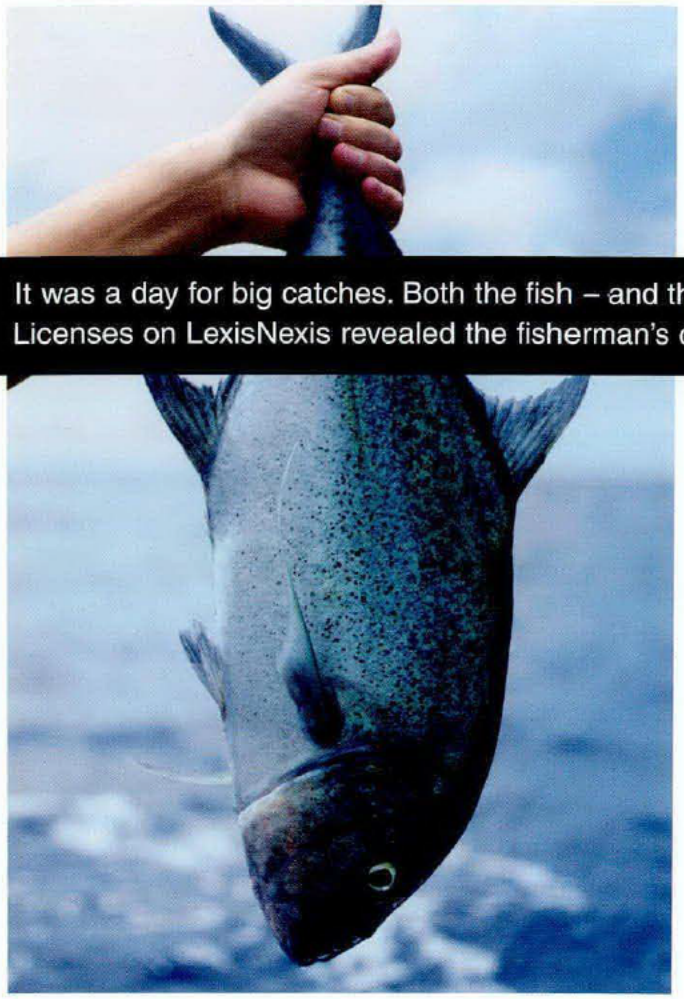


In Memoriam: September 11, 2001

A Call to Service to Recognize 9/11 P. 13

What can an attorney learn from a fish?



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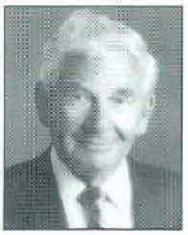

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Working together to champion justice

Submission Guidelines

Readers are invited to submit correspondence and articles. They may be sent via e-mail to comm@wsba.org or provided on disk in any conventional format with accompanying hard copy and sent to *Bar News* Editor, 2101 Fourth Avenue, Suite 400, Seattle, WA 98121-2330. Article submissions should run approximately 1,500 to 3,500 words. Graphics and photographs are welcome. The editor reserves the right to edit articles as deemed appropriate.

BarNews

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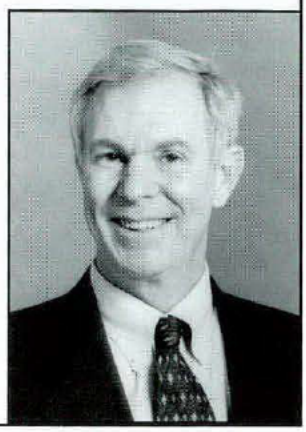
And, welcome to our newest member ... **R. Joseph Wesley,** former King County Superior Court Judge.



Letters

Talmadge Speaks to Judicial Restraint

Editor:

My friend Shawn Newman, in the August edition of *Bar News* (p. 7), accuses Justice Phil Talmadge of writing an opinion in *CLEAN v. State*, 130 Wn.2d 782, 928 P.2d 1054 (1996), holding that "the Legislature had the unilateral right to trump the citizens' referendum power through use of emergency clauses on legislation." There are at least a couple of things to say about Shawn's criticism.

First, Justice Alexander wrote the majority opinion in that case; Justice Talmadge wrote a concurrence that Justice Dolliver signed. Second, the thrust of Justice Talmadge's opinion was to uphold the tradition of judicial restraint. The court is a co-equal branch of government, not a superior branch, and the court's mere disagreement with a legislative determination does not give it the power to overturn that determination, as Shawn would have it when he doesn't like something the Legislature does. Third, Shawn seems to think that there are two separate, warring entities — the citizenry and the Legislature. That is the sentiment of the disenfranchised. I think he is flat wrong. We are the Legislature and the Legislature is we. If we don't like what they are doing, we can vote them out of office. If the people were so outraged by the use of the emergency clause in the legislation creating the public funding mechanism for the Mariners stadium, they would have risen as one and voted the miscreants in the Legislature who supported the measure out of office at the next election.

The issue Justice Talmadge spoke to in *CLEAN v. State* was judicial restraint, a constant touchstone of his during his six years on the Washington State Supreme Court. See Philip A. Talmadge, *Understanding the Limits of Judicial Power: Judicial Restraint in General Jurisdiction Court Systems*, 22 Seattle U. L. Rev. 695 (1999). I think most of us would prefer our judges to be respectful of the limited role courts were intended to play in the American form of government, rather than grant them a roving charter to enact by judicial fiat whatever political or socioeconomic agenda they happen to hold.

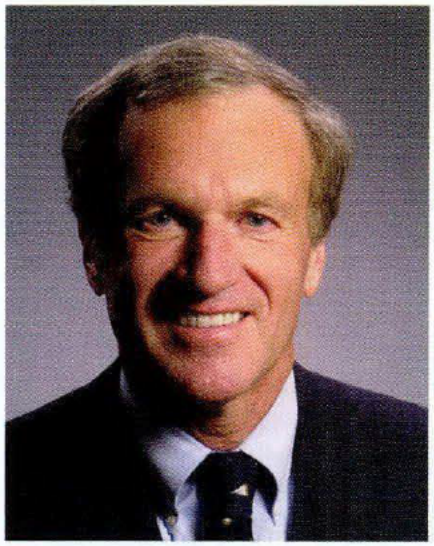
Bernie Friedman
Olympia

Member Input Missing from Facilities Committee Decision

Editor:

I am disappointed the WSBA's Facilities Committee did not ask for input from WSBA members before deciding that WSBA headquarters should stay in downtown Seattle. In about 1992 or 1993, the WSBA president spoke at a meeting of the Lewis County Bar Association, and spoke about the Bar's financial problems. The question was asked if the Bar could save money by relocating outside downtown Seattle. He responded that this was an interesting suggestion, but the Bar had just entered into a long-term lease and couldn't consider this now. Jan Michels' article in the July *Bar News* notes the Bar entered into another long-term lease in 1996. I'm not sure if any input was asked of members about the wisdom of that lease, but I recall reading about it after the fact in the *Bar News* back then. My impression is that most states' bar headquarters are in that state's capital. The Illinois bar is in Springfield, not Chicago; and the New York State Bar is in Albany, not New York City. Although Oregon's bar association is in Lake

Jim Johnson for Justice



Jim is a Washington Native.

He was born in Seattle and graduated from Ingraham High School. He received his B.A. from Harvard and his J.D. from the University of Washington. Jim and his wife Kathy live in Olympia, they have two grown daughters. Jim enjoys distance running, sailing, hunting, fishing and opera.

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Jim Johnson has the experience we need on the Supreme Court. He's argued over 70 appellate cases before the U.S. Supreme Court, the State Supreme Court, three federal appeals courts and the Washington Courts of Appeals.

Jim Johnson served 20 years in the State Attorney General's Office. During his career he served as the Chief of the Special Litigation Division, Counsel for the Environment and the Senior Assistant Attorney General for the Fish and Wildlife Division.

In private practice Jim Johnson has defended several of the state's most significant initiatives before the State Supreme Court, and he authored property tax initiative I-747.

A defender of the Constitution and our Legal System.

Jim Johnson has made the defense of our state and federal constitutions the focus of his legal career. Currently he's protecting our constitutional voting rights on behalf of the Washington Grange in the federal blanket primary case.

Jim Johnson knows Washington State.

Jim has tried cases in over half of Washington's counties. He knows Washington and our issues because he's represented diverse interests in his 30 years as an attorney. Currently Jim represents tens of thousands of small landowners in the Indian shellfish case and thousands of Washingtonians in the Common Sense Salmon Recovery Coalition's ESA case.

For more information go to www.jimjohnsonforjustice.org

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Oswego and not Salem, I note it is not located in Portland's expensive commercial core. I would be interested to know if the committee even explored the possibility of relocating the Bar to the Olympia area, and what other members think, before this decision is made irreversible by another lease or building purchase.

Richard A. Paroutaud
Chehalis

Maintain Separation of Church and State

Editor:

In *Newdow v. U.S. Congress* (9th Cir. 2002), two judges held that adding the phrase "under God" to the Pledge of Allegiance violates the establishment clause of the U.S. Constitution. Whether or not you believe in God, you should hope that this decision stands. The court has interpreted the First Amendment so that there is only one way to allow such government-sponsored language — to render it publicly meaningless.

Courts have allowed the national motto, "In God We Trust," to survive constitutional scrutiny. The motto survives because it is a "purely patriotic or ceremonial" expression. In *Aronow v. U.S.*, the 9th Circuit said that the "motto has no theological or ritualistic impact." In other words, the motto is only constitutional because it is publicly meaningless. It may have personal meaning by its "spiritual and psychological value" and "inspirational quality," but it cannot have a public meaning. To have a public meaning would involve government sponsorship of religion. If the phrase has only private, and no public meaning, it does not belong in a public statement.

If God can be acknowledged only by removing the meaning from his name, we should not say it. Indeed, the Christian is prohibited from saying it in vain. Neither should we ask the court to save our pledge by any means necessary. America will be better off when it is honest with itself about its rules for the separation of church and state, and the rules for public discourse. It does not matter whether you think America is actually "under God," or whether the church and state are separate spheres of authority. We can only comply with the current constitutional standards by rendering the phrase publicly meaningless. No person of integrity should wish for such an outcome.

Aaron V. Rocke
Seattle

Comments on Cooperative Federalism

Editor:

I read with interest the article written by Qwest's national trial attorney and corporate counsel on the notion of "cooperative federalism" (http://www.wsba.org/barnews/2002/05/goodnight-adkins.htm). Qwest's article was brought to my attention as one of several attorneys representing Oregon cities in a challenge filed by the corporation after the 9th Circuit's ruling in *City of Auburn v. Qwest Corp.*, 260 F.3d 1160 (9th Cir.2001), cert. denied, 122 S.Ct. 809 (2002).

Overall, the article represented a triumph of advocacy over thoroughness. While Qwest has pursued a litigation strategy of attacking local government regulation throughout its 14-state local service territory, its article was only a partial account of how this strategy has fared. For example, in discussing the *Auburn* deci-

sion, Mr. Goodnight and Mr. Adkins describe the 9th Circuit as interpreting federal law to restrict cities to actual cost recovery for use of local streets by telecommunications providers. Your membership may be interested to learn that this description is flawed on several levels.

While the article claims that the issue of cost-based v. gross revenues-based fees was decided by the 9th Circuit, it did not mention how this issue was briefed to the 9th Circuit. In fact, Qwest advised the 9th Circuit in *Auburn* that Washington municipalities are "entitled to impose a gross receipts tax provided the tax is consistent with state law." Brief of Appellant US WEST Communications, Inc., United States Court of Appeals for the 9th Circuit at 22, n. 29. Qwest also stated that it was not challenging "ROW [Right-of-Way] fees based on gross revenues." Reply Brief of Appellant US WEST Communications, Inc., U.S. Court of Appeals for the 9th Circuit at 2, n. 3.

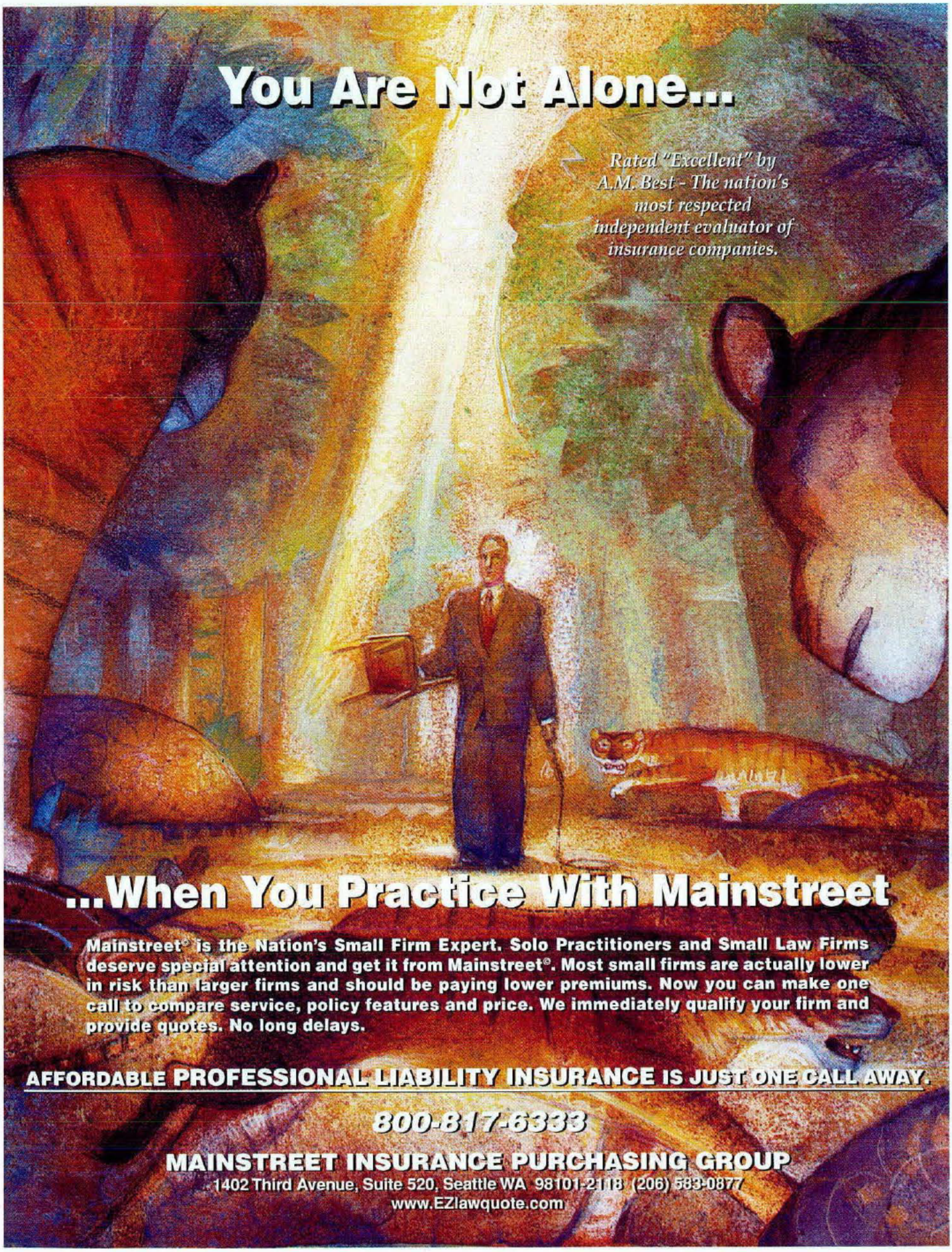
In two opinions issued subsequently to *Auburn*, both an Oregon appellate court and a federal district court found the interpretation attributed by Qwest is not compelled by the 9th Circuit's decision. *Qwest Corp. v. City of Portland*, 200 F.Supp. 2d 1250, 2002 WL 834051 (D. Or. March 2002); *AT & T Communications of the Pac. Northwest, Inc. v. City of Eugene*, 177 Or. App. 379, 410, 35 P.3d 1029, 1048 (October 2001). It is curious that the article omitted mention of both these decisions.

These cases both involved direct challenges by Qwest to the legitimacy of gross revenues-based fees for use of the rights of way, as well as to gross revenues-based taxes on telecommunications providers. Both courts concluded gross revenues-based fees and taxes may be imposed consistent with federal and state law. These decisions are also consistent with the weight of the law nationwide. These decisions reflect a bedrock principle of "cooperative federalism": The federal government cannot commandeer local or state property in order to advance the private profit interests of companies such as Qwest.

Finally, it turns out that almost all of the cases Qwest relies upon in its article did not actually reach the merits, or have been vacated. The failure to provide a complete review of relevant judicial interpretations of the federal statute taints the article as unabashed cheerleading, rather than dispassionate commentary for the general information and education of the Washington Bar's membership.

Benjamin Walters
Deputy City Attorney
Portland, OR

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., September 10 for publication in the November issue. Letters to Bar News *will usually be published, unless the writer specifically asks to withhold publication. The editor reserves the right to edit letters as deemed appropriate.*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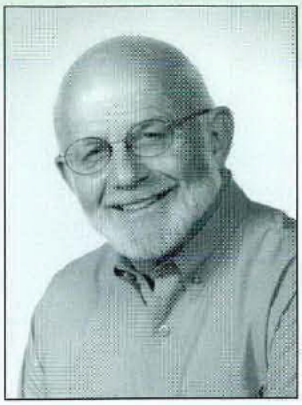

Thank You to Our Tireless Volunteers, and Bar Staff

by Dale L. Carlisle
WSBA President

This is my last column as WSBA president, and it is important to me to thank those people who are responsible for the success of the Bar, for keeping it relevant to members, and fulfilling member needs. There are several categories of people who fit this description, many of whom often go unrecognized.

The first group is the WSBA staff who fulfill day-to-day functions. Executive Director **Jan Michels** is extraordinary in her service and dedication. I am thankful to all staff members, and wish to mention two persons who have demonstrated their value. Director of Lawyer Services **Barbara Harper**, who has taken on new duties, was instrumental in the Member Benefits Task Force giving members a health plan, and has shown success with the WSBA's emphasis on member benefits. Another staff member with new responsibilities is **Gail Stone**, director of legislative affairs, who fights our never-ending funding battles in the Legislature with enthusiasm and resolve. Her work on the "portability" amendment was a credit to our association.

Committees and sections include volunteers who also do the day-to-day "in the trenches" work, spending significant time helping us all. Chairs spend an even greater amount of time than members, and lead in important projects. A good example of committee work is the Legal Services to the Armed Forces Committee. Chair **Ken Luce** and committee members recognized the need for legal services to lower-grade military members in state court. Knowing that military lawyers admitted in other states but stationed in Washington could fill that need, the committee proposed a rule that the Supreme Court adopted, allowing this practice.

Committees and sections include volunteers who also do the day-to-day "in the trenches" work, spending significant time helping us all.

The Professionalism Committee, under the leadership of **Harry McCarthy**, took on a hard task two years ago in working to author and adopt a Creed of Professionalism for Washington lawyers. This year's chair, **Marijean Moschetto**, and her committee members have begun distribution and publication of the creed, with great success. I congratulate and thank them. I also thank all who serve on Bar committees for their volunteer efforts.

A special thanks to our Disciplinary Board Chair **David**

A Call to Service to Recognize 9/11

We have a tremendous need for *pro bono* legal services in our state, and there are many programs where your volunteer time would be greatly appreciated and valued (see the WSBA Web site at www.waaccesstojustice.org/atj/support). In honor of the many individuals personally affected by the 9/11 tragedy, I am asking WSBA members to pledge at least two hours per month over the next year in *pro bono* service.

We ask that you complete the pledge form at right and mail or fax it to the WSBA. We will tally the number of members responding and the number of hours pledged, and will publish this information in *Bar News* and on the WSBA Web site.

Please join your fellow members of the Bar in honoring the many victims of 9/11 by serving those in our communities who are in need.

Pledge Form

I pledge to donate ____ hours of *pro bono* legal services over the next year in honor of those personally affected by the 9/11 tragedy.

Name (optional) _____

Please clip (or photocopy) and return to:

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Personal Reminder

I have pledged to donate ____ hours of *pro bono* legal services over the next year in honor of those personally affected by the 9/11 tragedy.

Cullen and to board members. This year marked the heaviest work load on record, and they devoted many more hours than anyone can imagine to meeting the challenges and moving toward finally clearing the discipline backlog. Volunteer hearing officers also helped in this process.

Nearly 70 percent of our members belong to one or more sections, a growing segment of the Bar. Since section membership is not only voluntary but includes a small cost, this is a true "volunteer-plus" effort. We no longer have annual conventions, but the section meetings and CLE programs are the most fertile ground for meeting with colleagues and sharing practice problems. Section chairs and executive committees, along with staff support, are what keep the sections running and providing valued benefits to WSBA members. The Elder Law Section, previously chaired by **Michael Longyear**, established a program to assist in *pro bono* services to certain programs serving seniors. This program, which was recognized this year with an ABA award, demonstrates what sections can do.

Through a significant effort by **Adam Karp**, an Animal Law Section was created this year and has approximately 90 members. This new section received significant press coverage, favorable to lawyers and the WSBA, including a recent front-page story in the *The News Tribune*.

There are also many volunteers serving on task forces and boards. This year, a Practice of Law Board was formed under the leadership of two long-time Bar volunteers, **Steve Crossland** (chair) and Judge **Paul Bastine** (vice chair). We expect this board to become a national model. Our Access to Justice Board and its many volunteer members is already a national model, and the current chair, **Michele Jones**, and the incoming chair, **Scott Smith**, deserve our thanks for their many hours of service overseeing this board's varied efforts.

We no longer have annual conventions, but the section meetings and CLE programs are the most fertile ground for meeting with colleagues and sharing practice problems.

I cannot personally thank all our employees; and committee, section, task force and board members. I hope each of our members takes time to personally thank someone they know who serves the Bar as an employee or volunteer, just as I thank them in this column for their continuing service.

I cannot complete this tribute without mentioning the Board of Governors. As volunteers, the governors give a heavy time commitment not only for service on the board, but as liaisons to certain committees and sections, and also as members of BOG committees. Currently the BOG has 14 members, plus the president-elect and the president. I particularly wish to name my "classmates" on the BOG as representing the dedication and devotion of all governors in filling this important volunteer position in our organization: **Jenny Durkan**, **Steve Henderson**, **Brooke Taylor** and **Vicky Vreeland**. Each of them has served with distinction in this significant and time-consuming position.

With your help this year it's been a great ride, with a few challenges along the way. The Bar Association will only remain successful if the dedicated and hard-working volunteers and leaders in the nature of those mentioned in this column continue to serve. I expect it will.

Superlawyers, Truth, Justice and the American Way

by Patricia Novotny
Guest Editor

As a child I was an ardent comic-book fan, so I take the appellation "super" quite seriously. In the world populated by The Flash, Spiderman, Wonder Woman and, of course, Superman, there are heroes and there are superheroes — the latter distinguished by the possession of extraordinary powers used in battle with equally extraordinary villains. The means by which you came to possess the powers that made you "super" were varied; it could be the fact of your birth on another planet (Krypton), or exposure to radiation, or in Batman's case (the exceptional self-made superhero), immense ingenuity, mechanical acumen and wealth. One thing is certain — it was a status never conferred by nomination.

Lawyers need to make a living like everyone else. But I object to pretending that the superlawyer list accurately reflects merit.

Consequently, when I received word from *Washington Law & Politics* that I had been nominated to join the ranks of "superlawyers," there was a certain disconnect. I was pleased, of course — even thrilled in a childish sort of way at the thought of becoming "super" — but at the same time I was aware that, as with superheroes, you either are a superlawyer or you are not. It's simply not something a "Blue Ribbon Panel" of lawyers can decide. (Did I miss that day in law school when they gave out the blue ribbons?)

My point is not about word inflation; what would be the point of talking to lawyers about that? Rather, my concern is authenticity, or perhaps you could call it ego inflation. One lawyer I know calls *Washington Law & Politics* "Washington Vanity & Extortion." I confess to not reading the magazine since my free introductory subscription ran out. Life is already too short to do all the reading that sits staring at me from piles in every room of my home and office. (Did you know you can do an actuarial calculation of how many novels you can read before you die?) *Law & Politics* seemed mainly a vehicle for advertising driven by an impulse for self-promotion among lawyers. While I have no quarrel with advertising, I do object to advertising that portrays itself as something else.

The superlawyer contest is advertising, plain and simple. The selection process (see http://www.superlawyers.com) reminds me of the survey on "Horses Used for Work" recently circulated by a neighborhood sixth-grader. That is, the methodology is bogus if intended to identify the lawyers who excel in their profession.

For example, the implied response rate (5,000 votes cast of 6,500 surveys mailed) exceeds the wildest dreams of the most optimistic sociologist. For all we know, those 5,000 votes have been cast by 10 (very busy) people. The same question arises from the description of last year's survey, with its "poll of 8,000 lawyers." Does that mean that last year *Law & Politics* mailed 8,000 surveys to 8,000 lawyers, or that 8,000 lawyers voted last year, or that eight lawyers voted a thousand times? Whoever voted last year, their votes were added to the votes this year (double-counting certain voters?) to produce the superlawyer list, a tabulation method perhaps only Floridians would understand. The only apparent effort to ensure quality of measurement (the discounting — by an unstated amount — of same-firm votes) seems as likely to undermine quality of measurement (since lawyers who practice with one another might be in the best position to assess each other's work).

I guess the fact that the final arbiters are described as a "Blue Ribbon Panel" (the capital letters being a nice touch) is the most obvious clue to a lack of rigor in the survey. Certainly, nothing in the selection-process description should inspire confidence in either the validity or reliability of the measurement. It is clearly not a random survey. (I asked for a sample of last year's survey, to see what kinds of questions were asked, and was assured I would be included in the upcoming poll.) Indeed, the selection-process description seems merely an effort to give the appearance of reliability, without ever going to the actual trouble of being reliable. It didn't assuage my skepticism when a superlawyer friend told me you had to pay $600 if you wanted a profile of yourself to appear with the designation; otherwise, only your name is listed. Business and competition being what they are, that's a hard offer to refuse. Nor did it help when I learned from *Law & Politics* that they don't preserve samples of their "ballots," so I couldn't learn what kinds of questions were asked or

verification required. I was too scared to ask if Arthur Andersen did their auditing.

Again, I pick no bone with advertising. Lawyers need to make a living like everyone else. But I object to pretending that the superlawyer list accurately reflects merit. Which is not to say that some of the superlawyers are not indeed terrific lawyers. But without a banner disclaimer in the magazine and on the Web site (e.g., "This list is both underinclusive and overinclusive and does not purport to be a listing of the best lawyers in Washington."), the magazine is perpetrating a hoax.

Who are the best lawyers? Unfortunately, I think we often answer that question with as much methodological integrity as *Law & Politics*. That is, we answer with the well-known lawyers, an attribute with a variable relationship to skill and professionalism. I'm sure we've all noticed the tendency to equate name familiarity with quality. Indeed, some theorize that elections can be won through name repetition alone. Reputations frequently are built on the same nonsubstantive premise (e.g., "I've heard of him/her."). *Law & Politics* did not create this condition; it merely capitalizes on it. Still, it is ironic in a profession that attends in most other contexts to reliability and authenticity of evidence. I suggest that to ignore those requirements in more and less formal perpetuations of reputation is corrosive in its effect on our profession.

We should be more careful, that's all. We should insist, in ourselves and in others, on more precision in our assessments of attorney merit. The fact that we see someone's name repeatedly may mean nothing more than that person really gets around (not always a good thing). When someone tells us that so-and-so is a good lawyer, we should accord that information exactly as much weight as any hearsay. Perhaps most importantly, when pronouncing on another lawyer's skills, we should make certain that we are applying the right criteria. In particular, we should resist the tendency to apply the wrong criteria, such as who agrees with me, who will scratch my back, who will enhance my access to power or advance my own ambitions, who ruled in my favor. *Law & Politics* encourages that tendency when what is needed is assistance in applying the appropriate criteria.

Most of us agree we have problems in this profession. We are perceived by the public as liars (remember Jim Carrey?), sometimes because our role is misunderstood, but often because we do lie. We overbill. We take on the antipathies of our clients, rather than guide them to a solution. We fan the flames. We encourage litigation because we need the work. We treat each other as if we were enemies, rather than representatives in a civil dispute, engaging in a "take no prisoners" litigation style. We think the ends justify the means, for example, ignoring the rule that requires us to tell the judge if there is contrary authority on point. We press for victory by increasing the pain of litigation as a way to avoid a resolution on the merits. We interpret advocacy to mean anything goes; the only limit on what we will argue and how is whether we are being paid enough.

Being a superlawyer means putting your ego and ambition in its place, a place that is subordinate to the more important governing principle: integrity.

Many of these tactics are symptomatic of our own lack of faith in the justice system, our own cynicism. We submit our clients' lives to judges who vary in degree of skill and knowledge, who may be overworked and lacking critical staff support. Judges may preside over substantive areas of the law totally unfamiliar to them, or may hardly have practiced law at all. We may view some judges as having achieved their position by electoral lottery or by political influence unrelated to judicial qualifications (the reputation thing gone awry again). Indeed, some judges may seem to care more about their political careers than about the law. Like many lawyers, their responses to a case may often depend more on their responses to the litigants and/or their lawyers than on the law. Sometimes, as if to prove axioms true, judges lose a sense of the limits on their own authority; they lose the humility that should season the exercise of their power. Litigants, encountering such abuses of power (for which there are no effective remedies) naturally take a view of the judicial system as a crooked game. Lawyers sometimes share or even encourage this view. Points can be won, after all,

by throwing cluster bombs of irrelevant argument at even a hard-working judge. The system's weaknesses can be exploited if all that matters is winning.

But that's not all that matters. Most of us probably chose law over, say, dentistry, because we wanted to do a particular kind of good in the world. In ways that may seem incredibly naive to us now, we believed the word "justice" belonged in "justice system," and not just as another example of false advertising. Maybe now, as lawyers, not law students, we view our profession more as *Law & Politics* does — a world of artifice and advertising, driven by our ambitions, not by our allegiance to the law as a credible mechanism for sorting out disputes.

We can and should do better. When I hear clients' excruciating frustration with their treatment in the system, I remind them it is not perfect because all the moving parts are human. Lawyers and judges today, as well as litigants, are prey to the same foibles as those pilloried by Shakespeare and Dickens. For many lawyers, *Bush v. Gore* was the last straw, confirming the law as nothing but an elaborate power play.

But humans are more than the sum of our weaknesses. The fact that the system is flawed or that our colleagues behave badly does not excuse us from our duty, a duty to make the system work as well as possible. Justice, after all, is an aspiration, not a reality; it is a goal we will never reach and a goal we must daily try to reach.

Superlawyers are lawyers who make that critical effort. They are the ones opposing counsel believe they can trust. The ones who leave their clients feeling good about lawyers, win or lose. The ones whom judges view as candid, well-prepared, and helpful in finding a correct outcome. Being a superlawyer means putting your ego and ambition in its place, a place that is subordinate to the more important governing principle: integrity. After all, there's only one person in this whole wide world who can tell me whether I'm living in accord with what I know is right and wrong, and she doesn't have a blue ribbon.

Patricia Novotny, a Seattle attorney, practices appellate law in state and federal courts. In addition, she teaches courses on law, gender, sex and sexuality in the UW Women Studies Department and the School of Law.

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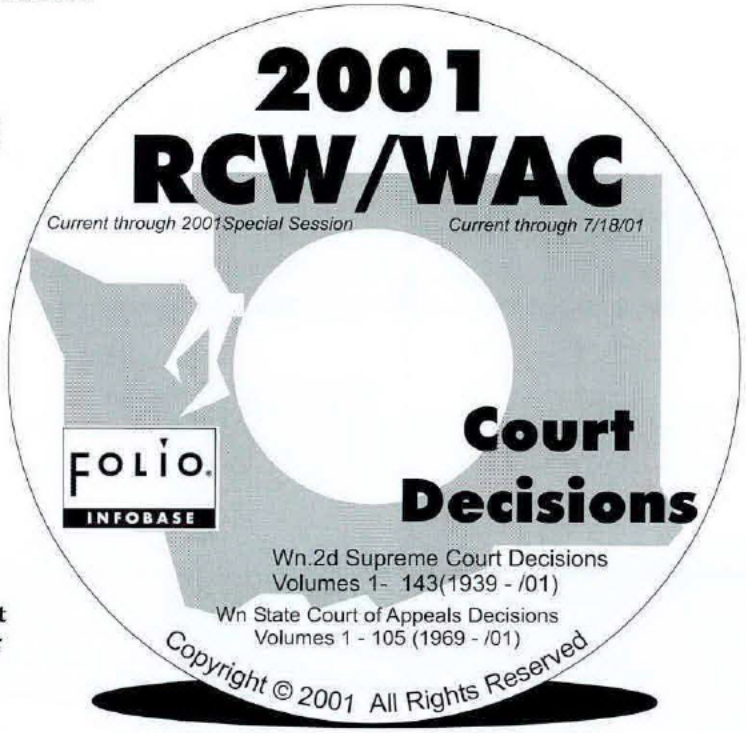

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The Board of Governors' Planning Retreat, or...

Why You Should Care Who Governs the WSBA

by Jan Michels
WSBA Executive Director

In the annual report (p. 51), you will read about the many accomplishments of "Bar Year 2001-2002." In the president's column and annual awards roster, you will read about the people who made these accomplishments happen. I will focus on the stage we're setting for next year and the influence of the BOG in moving 2002-2003 action plans forward.

On July 25, the BOG invited governors-elect, key Bar staff, five former governors, and one past-president to meet at a planning retreat. The framing question for the day was: "What should the WSBA focus on in 2002 and 2003?"

Background materials included the 1999-2003 Long-Range Strategic Plan, summaries of comments from listening sessions with members, and a progress assessment on the 2001-2002 WSBA Operational Plan. Governor Ken Davidson (8th District), chair of the Long-Range Planning Committee, facilitated the day. After a brainstorming discussion drew out areas of concern, the group broke into discussion groups to study the issues raised and develop recommended action plans. The group then prioritized nearly 25 action recommendations. The governors, individually and as a board, will set final priorities and steer the association toward accomplishing our goals.

Many of the discussion topics and action recommendations have a direct bearing on the practice of law, the image of the profession, WSBA governance and member relations. We have learned that most members support the concept of self-regulation of lawyers by the WSBA, and most agree that the WSBA should also provide member services. However, there is wide breadth to these parameters. One overreaching goal of the BOG is that members are invited to understand and participate in this direction and policy-setting.

Law School Education, Admissions, and Professional Development of New Lawyers

This area will be a presidential focus in 2002-2003. The BOG will delve back to high-school career counseling, college-aptitude testing, law-school disclosures about the realities of practicing law, law-school curricula, the possible need for internships or apprenticeships, revisions to the bar exam, character and fitness screening, and, finally, reconsider how we orient new lawyers to the profession.

The Practice of Law and Professionalism

With the increasing use of technology that supports and even replaces some in-person contact, more lawyers are becoming sole practitioners; many are practicing from their home. Law firm and private practices that require an increasing numbers of work hours can lead to isolation and lack of time for involvement in the promotion of the profession's higher ideals. The BOG will continue to foster professionalism and work to enhance the image of lawyers to the public.

Secondly, the BOG intends to work with neighboring states on multijurisdictional practices, closer alignment of professional-conduct rules, and more convenient and accessible CLEs and admission courses.

Finally, the BOG will support the important work of the new Practice of Law Board in reviewing nonlawyer practices for potential prosecution or for regulation in specific areas identified as appropriate for nonlawyers.

Governance and Administration

The BOG wants to be sure it has strong communication with members. The BOG intends to examine electronic communication; a special online version of *Bar News*; and ways to disseminate information, news, and descriptions of available services more meaningfully.

Member Relations

The BOG recognizes that the average member is quite removed from the WSBA, and may identify more closely with a specialty or minority bar association. The BOG desires to support and communicate with these bar associations, and encourage their organized participation in WSBA policy development and leadership.

Access to Justice

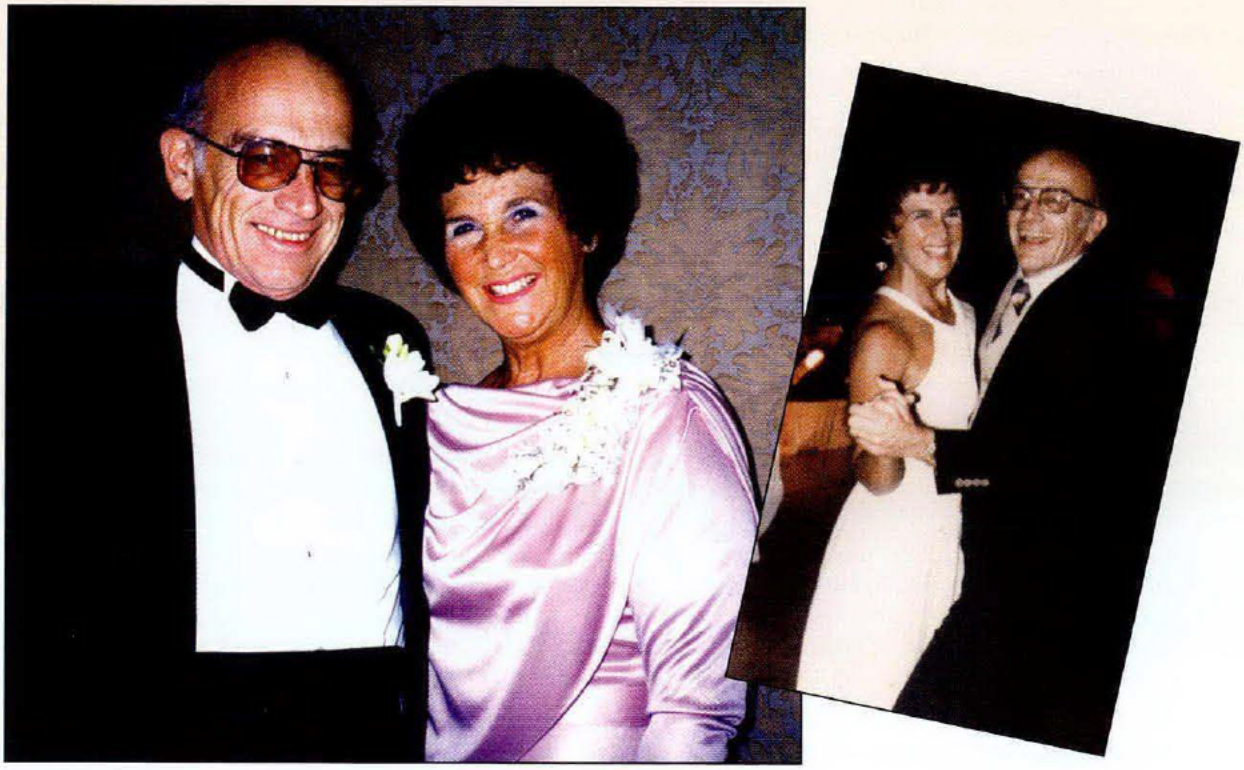
There is a crisis in the funding and delivery of civil legal-justice services to low-income persons. The board plans to work in conjunction with the Supreme Court's Civil Legal Services Funding Task Force, the Access to Justice Board, the Equal Justice Coalition and others, to develop common strategies and funding sources. The board will also probe defense issues from an access-to-justice point of view.

These important directions for the coming year will be broken into action steps. Governors and their constituents' feedback will chart the course for the future of the profession.

Congratulations!

Mom & Dad, thank you and get well soon.

John Presley Mucklestone -'52 WSBA #266
Patricia J. Shanahan Mucklestone - '48 WSBA #265



Congratulations for 50 years each in the WSBA!

Thank you for your professionalism, and for your love and dedication to your family.

Dad, thanks for taking care of Mom since her accident;
she still improves every day. We are wishing you a speedy recovery from your surgery.

We love you both very much and are extremely proud of you!

Jeannie P. Mucklestone - '90 WSBA #19467
John Patrick Mucklestone -'90 WSBA #19468
James M. Mucklestone - '91 WSBA #20549

Mucklestone & Mucklestone (AV)

Mucklestone

Proud to Be a Lawyer

From Afghanistan to Zimbabwe — Serving Those in Need

by Julia M. Bolz

I have worked for smaller organizations that focus on legal issues such as human rights, women's rights and democracy, as well as legal clinics that focus on legal literacy.

As I walked through the market in Mazar-e-Sharif, the peace shattered. People scrambled under stalls and into stores, and an Afghan colleague quickly shuffled me to safety. Another face-off had occurred between Afghan troops and local men carrying rocket-propelled grenade launchers. The skirmish lasted only minutes; then people resumed their bartering. It was just another day in Afghanistan.

A few years ago, I couldn't have imagined that I would be living and working in a war zone where there was a $200,000 bounty on the heads of American aid workers. My "former" life as a partner at Ryan, Swanson & Cleveland in Seattle was safe, secure and predictable. Volunteer work kept me involved in the Seattle community, and, as president of the Washington Chapter of the American Immigration Lawyers Association, my professional activities were rewarding.

Yet something called me to reach for challenges and new experiences outside my comfortable "box." My interest in international affairs and work with immigrants steered me toward our global community and humanitarian issues in developing countries. I wanted to see more, learn more, and do more — firsthand. I decided to take a two-year unpaid sabbatical to work in the developing world.

Since my journey began in 1998, I have been in 28 countries across five continents. I have slept in African townships with families living without heat or refrigeration; a convent with fearless nuns challenging government corruption; mud huts without running water or electricity; tents with lions and hippos eating voraciously nearby; dormitories with students studying communism and atheism; and bed and breakfasts, with authors and diplomats discussing AIDS, peace and reconciliation. I have eaten things I can't describe. I have traveled by canoe, moped, bus and elephant. I have worn clothes of all shapes and fabrics, including a burka. You name it; I have tried it. It has been a memorable, eye-opening four years.

The author poses with children at a clothing distribution in the Dawlatabad District in north central Afghanistan, where World Concern is assisting 40 villages.

Since experienced lawyers are extremely rare in the developing world, my legal services have been in high demand. Consequently, I have been able to pick and choose both my clients and assignments. Most of my clients have been international or local nonprofit organizations that focus on relief and development. Like large for-profit corporations, these entities are parties to multimillion-dollar contracts. They also oversee substantial assets, hire dozens of workers, and face complex business and political challenges. In addition, I have worked for smaller organizations that focus on legal issues such as human rights, women's rights and democracy, as well as legal clinics that focus on legal literacy.

Although I call myself a legal/business consultant, I am a jack-of-all-trades. From a legal perspective, I have prepared business agreements, incorporation documents, personnel manuals, leases and governance documents. From a business perspective, I have analyzed and restructured

Thirty years of civil strife, a three-year drought, and devastating earthquakes have resulted in more internally displaced persons and refugees than any other country in the world.

nonprofits, participated in dispute resolution, formed partnerships, drafted various business policies and procedures, and prepared strategic business plans. This work has been extremely interesting, challenging and rewarding.

Admittedly, at first I was nervous about working on such diverse projects, especially since my work had become so specialized over the years. But with the help of other lawyers, the Internet, and a few good libraries, I found the resources to complete even the most obscure assignment. I also found much of my basic legal training to be invaluable. Identifying issues, researching and analyzing, thinking creatively, resolving conflicts, and recommending practicable solutions are needed to get projects — of any kind — off the ground.

My average assignment lasted just a few weeks. Other projects required more time, mostly because of lack of infrastructure. (Unlike most of our U.S. clients, foreign nonprofits rarely have electricity, computers and printers, photocopiers or office supplies. Moreover, they work in political climates that are extremely challenging.) In Zimbabwe, for example, I spent almost one year researching foreign banking, commercial and debt-collection laws. Then I prepared and implemented an operations manual for Opportunity International, one of the world's largest microlending institutions, which grants small loans to the poor. This work was extremely gratifying because the money helped men and women develop their own incomes, and I could actually see it transform their lives — economically, socially and politically — over the year.

One does not leave behind security, friends and family, personal freedoms, and the comforts of home without a strong sense of purpose. My calling has been to empower the poor, particularly women, so they can live more secure, productive and healthy lives. I also feel called to build bridges and break down barriers between cultures. Our world is interconnected, and the lives of people on one side of the world can clearly affect those on the other side. Friends and colleagues have asked me about my most recent trip to Afghanistan. They've asked: "Why did you go?" Last fall there were several news stories showing an angry Pakistani protestor waving a sign that read, "Americans, Think! Why are you hated all over the world!" I was deeply moved. I wanted to know more.

I learned that Afghanistan is at the top of the United Nations' list of poor countries. Statistically, it has one of the world's highest rates of infant and maternal mortality, malnutrition, and landmine victims. Thirty years of civil strife, a three-year

drought, and devastating earthquakes have resulted in more internally displaced persons and refugees than any other country in the world. Afghanistan also has been listed as one of the most oppressed countries in the world. During the Taliban rule, women were not allowed to leave their homes without a male relative; attend school; or work, listen to music, or laugh. Even today, Afghanistan still has strict codes regarding dress and conduct. Women continue to wear burkas, a tarp-like garb that covers them from head to foot, because they fear persecution and harassment.

Ironically, Afghan politicians portray America as the oppressors. They see us using military and economic clout to manipulate world policy, and capitalism to destroy the environment and keep the poor disenfranchised. They also are influenced by the media we export. Given that "Bay Watch" and "World Wrestling" are two of the most-watched programs in the developing world, it is not hard for images of American culture to be distorted as overly loose, self-centered, materialistic and corrupt.

In January, I left Washington for Central Asia. I chose to work with Seattle-based World Concern, one of the leading international relief and development organizations in Central Asia. It has been actively working in Afghanistan for 22 years. My primary job was to expand World Concern's current relief efforts into the central region of northern Afghanistan. This included setting up an office in Mazar-e-Sharif, and researching and writing a grant proposal to the U.S. government. The proposal sought assistance for 28,000 people in Balkh Province by addressing their lack of food and job security, health and well-being, and education. This assignment gave me a chance to learn about Muslim views of America, and experience Afghanistan's harsh living conditions. It also gave me a first-hand opportunity to meet local Afghans, UN officials, and hundreds of foreign aid workers.

Whether in Afghanistan or Zimbabwe, I have been inspired and encouraged by the relief and development workers I have met abroad. Representing all sectors of our society, they are helping to alleviate poverty and despair — one small gesture at a time. Their smiles and acts of kindness are putting another face on America, which has clearly been misunderstood in the non-Western world. Their displays of leadership are demonstrating that educated girls and working women can play an important role in mending society. And their hearts and minds, which are interested in learning about other cultures and beliefs, are implicitly teaching the virtues of peace and democracy. These are no small accomplishments. Such efforts are the seeds of change and the building blocks of long-term peace and stability.

My life also has been forever blessed by the poor. The families with whom I have lived and worked have completely changed the way I look at life, as well as the way I think and act. They have taught me invaluable lessons about generosity, compassion, dignity, simplicity, humility, suffering, relationships and spirituality.

In many ways, I am no different than other members of the Washington State Bar Association. I worked hard through school; I worked hard to get good jobs and to make partner at a well-respected law firm. I looked for fulfillment in my work, in titles, and in the salary I earned. But I never gained the same sense of satisfaction and purpose that I did from my direct involvement with the poor. My work in this arena is clearly the highest prize of my professional career.

Lawyers are among America's best and brightest. We are highly capable leaders. We have the education, skills and motivation to serve as effective advocates and counselors. In Washington or overseas, nonprofit organizations serving the poor can definitely use our help.

In the business community, we often talk about return on investment. Without reservation, I guarantee you will be rewarded for your time and energy. Each new project and each new trip returned 150 percent more to me than I ever gave.

In 1998, Julia Bolz left her partnership in Seattle to provide pro bono *legal and business services to nonprofit organizations in the developing world. If you are interested in volunteer opportunities or Julia's latest project (building two elementary schools in Afghanistan), e-mail juliabolz@msn.com. For more information about World Concern's work in Afghanistan, see www. worldconcern. org.*

Domain-Name Registrations and Online Trademark Infringement

by Kristina Tung Kitts and Cindy L. Caditz

The Internet has presented a new frontier of commerce, information and opportunity. Unfortunately, every new frontier also spawns associated problems, and trademark infringement on the Internet has plagued trademark owners. This new medium of trademark infringement should be considered and evaluated by trademark owners using the same cost/benefit factors that have guided trademark owners prior to the advent of the Internet.

Federal law requires that a trademark owner enforce the exclusive right to use the mark that can be rightfully claimed only by a single owner of the mark. This obligation is essential to the purpose and policy underlying the entire structure of trademark law. Consumers must be able to rely upon a trademark as an indication of the nature, characteristics and source of a product or service. If use of the mark is not controlled, then consumers will be deceived when purchasing the product or service. Without control of the use of a mark, consumers will pay for a product or service that they did not intend to purchase. For this reason, trademark law requires that trademark owners stop use of their trademark or any other trademark that is confusingly similar to their trademark in association

with goods or services that consumers are likely to believe may originate from a single source.

Trademark owners are finding that their Web sites are being "linked to" by various parties; their Web pages, logos, names, trademarks or stories are being "framed" into the Web pages of others; and domain names are being registered by third parties for their similar or exact marks, solely or primarily for the purpose of diverting customer traffic.

Because the Internet has presented a plethora of new infringement in a new medium, this article attempts to provide some factors for consideration by the trademark owner when faced with an infringement on the Internet.

I. Policing the Internet — The Trademark Owner's Burden

Trademark owners have an affirmative duty to police their trademarks. Failure to police a trademark diligently can result in a finding that the trademark owner has abandoned the trademark. Policing is not intended to impose an unreasonable burden on the trademark owner, and no case law specifically obligates a trademark owner to police the Internet.[1] However, trademark infringement on the Internet must be included in an overall policing strategy.

II. The Impact of the Registration of Domain Names Similar to a Trademark Being Considered for Selection and Adoption

A. "Use"

Trademark rights are established by the *use* of a word, term, name, symbol or device (or any combination thereof) in commerce to identify the source of the goods or services being sold. The Lanham Act defines "use in commerce" as follows:

> "Use in commerce" means a *bona fide* use of a mark in the ordinary course of trade (1) on goods when (a) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, and (b) the goods are sold or transported in commerce; and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce.[2]

Registration of a domain name without use of the domain name cannot constitute the basis for a claim of rights in a trademark.[3]

Conversely, mere registration of a domain name that includes a trademark without use of the domain name may not constitute trademark infringement. If the registration is being offered for sale or is the subject of other activity that may cause injury to a trademark owner, the law allows the trademark owner to obtain an order requiring transfer of the domain name or cancellation of the domain-name registration. 15 U.S.C. Section 1125. Use of the domain name as a trade name or as a trademark may constitute trademark infringement under statutory and common law.

B. Risk of opposition against trademark application or cancellation of registration

The prior use of a domain name as a trademark or trade name creates rights under common law and statutory law to the same extent as the prior use of any other trademark or trade name. The fact that the trademark or trade name is also a domain name does not alter the evaluation of the relative rights of the parties.

The U.S. Patent and Trademark Office does not consider any common-law uses of names or marks when evaluating the registrability of marks, and thus a finding of registrability will not include consideration of prior rights that may have been established by uses of the same or similar names or marks on the Internet. The owner of any such prior rights may oppose a pending trademark application or seek cancellation of the registration during the first five years after issuance.

C. Likelihood of confusion

The rights of a trademark owner include the ability to stop use of confusingly similar marks on products that are sold in the same channels of trade in which the trademark owner has used its mark. 15 U.S.C. §§ 1051-1128. In addition, some courts have found that the exclusive rights of a trademark owner extend to channels of trade in which the trademark owner has not actually used the mark, but in which the use of a similar mark may cause confusion among customers. For example, prior use of a trademark in association with the sale of skis may be sufficient to stop use of a similar mark by another party in association with clothing. Although skis and clothing are sold in different channels of trade, use of the same or similar marks by two separate companies may cause customers to mistakenly believe that the products originate from the same source.[4] The basic factors to evaluate in determining whether there is a "likelihood of confusion" between the marks at issue was articulated by the 2nd Circuit in *Polaroid Corp. v Polarad Elecs. Corp.*[5] The eight non-exclusive factors included in the *Polaroid* test are:

1. the strength of the plaintiff's mark;[6]
2. the degree of similarity between the two marks;
3. the proximity of the party's products;
4. the likelihood that the plaintiff will bridge the gap;
5. actual consumer confusion;
6. the defendant's good faith in adopting his/her mark;
7. the quality of the defendant's product or service; and
8. the sophistication of the consumers in question.[7]

The 9th Circuit employs a very similar eight-factor test for analyzing the "likelihood of confusion" issue.[8] In addition, the 9th Circuit test considers the "marketing channels used by both parties" in lieu of the *Polaroid* factor of the quality of the defendant's goods or services.[9] The 1st, 3rd, 4th, 6th and 7th Circuits all employ similar tests for determining "likelihood of confusion." Thus, similarity of the marks alone will generally not support a claim of likelihood of confusion, unless the mark is famous. (See endnote 6.)

III. Avenues Available for Attacking Registration of an Infringing Domain Name

As in all cases of infringement, the first course of action should be to explore the possibility of a negotiated resolution. Assuming all other settlement attempts have failed, there are two major avenues available to attack the registration of an infringing domain name: (1) an administrative action under the Uniform Domain Name Dispute Resolution Policy (UDRP); or (2) the filing of a lawsuit pursuant to the U.S. Anti-Cybersquatting Consumer Pro-

tection Act (ACPA), or, if the facts warrant, pursuant to federal infringement or anti-dilution laws. The key requirement of both the UDRP and ACPA is proof of bad faith on the part of the domain-name registrant. Therefore, plaintiffs who are not certain they can establish bad faith on the part of the domain-name registrant are best advised to pursue alternative causes of action such as a lawsuit claiming trademark infringement or dilution under the Lanham Act. (See Section II, C above.)

A. UDRP

Implemented October 24, 1999, the UDRP sets out the legal framework for the resolution of disputes between a domain-name registrant and a third party over the abusive registration and use of an Internet domain name in the generic TLDs such as .com, .net, .org, .info, .biz and .name (gTLD); and those country code TLDs (ccTLD), such as .jp for Japan, .uk for United Kingdom, and .br for Brazil, that have adopted the UDRP on a voluntary basis.[10]

The UDRP is incorporated by reference into all gTLD domain-name registration agreements. This includes domain names in these TLDs that were registered at any time in the past. These agreements require a domain-name registrant to submit to a mandatory administrative proceeding under the UDRP in circumstances where a complaint is filed regarding the domain name.

In order to succeed in a complaint under the UDRP, a complainant must provide written submissions and documents or other evidence which meet the following criteria:

1. The domain-name registered by the domain-name registrant is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
2. A domain name registrant has no rights or legitimate interest in respect of the domain name in question; and
3. The domain name has been registered and is being used in *bad faith*.[11]

B. ACPA

The Anti-Cybersquatting Consumer Protection Act (ACPA) was adopted in 1999. 15 U.S.C. Section 1125. Actions under this act must be instituted in federal court. The ACPA provides relief to the trademark owner in those cases where a domain name has been registered in *bad faith* with intent to profit, traffic in, or use a domain name that:[12]

1. is identical or confusingly similar to a mark that was distinctive when the domain name was registered;
2. is identical or confusingly similar or dilutive of a mark that was famous when the domain name was registered; or
3. infringes marks and names protected by statute such as the Olympic Symbol or Red Cross.

C. ACPA versus UDRP

Administrative proceeding vs. court action

The main difference between an ACPA proceeding and a UDRP proceeding is that the ACPA is a civil proceeding which must be the basis of a federal court action, and the UDRP procedure is an administrative arbitration proceeding that is not binding on federal courts. The main advantage of the UDRP administrative procedure is that it is a more efficient and cost-effective way to resolve a dispute regarding the abuse

of registration and use of an Internet domain name than going to court. The UDRP procedure is considerably less formal than litigation, and the decision-makers are experts in such areas as international trademark law, domain-name issues, electronic commerce, online commerce, and dispute resolution. The UDRP procedure is also international in scope, and provides a single mechanism for resolving a domain-name dispute regardless of the location of the registrar, the domain-name holder, or the complainant.

Because there is no mechanism for conducting discovery in a UDRP action, the trademark owner must state and establish all necessary facts in the initial complaint. Thus, this forum is effective only for complainants with clear-cut cases who seek only to have a domain name transferred or cancelled. For more complex cases, or where the element of bad faith must be proven by facts that may be contested, an action under the ACPA is more effective.

Remedies

The remedies provided by the UDRP include only cancellation or transfer of the domain name(s) at issue. The remedies provided by the ACPA are much broader, and include cancellation or transfer of the domain name; compensatory damages or statutory damages between $1,000 and $100,000 per domain name, as the court deems just; attorneys' fees; costs; and injunctive relief.

D. First Amendment and fair-use exceptions

Although the UDRP and ACPA have generally proven helpful to trademark owners, traditional trademark infringement and unfair competition principles have generally not been helpful to the trademark owner faced with "fan" or "gripe" Web sites and associated derogatory domain names. Such trademark owners must show that use of the domain name or site would cause likelihood of confusion of source or sponsorship. This is frequently difficult, because such domain name or Web site owners do not make use of the domain name to identify any goods or services.

Cybersquatter case law under the Federal Anti-Dilution Act is also of little assistance to the trademark owner in these situations. Because the mere reservation of a domain name and attempt to sell it to an owner causes no blurring of the trademark in the minds of the consumer, courts generally stretch notions of "fame" and "commercial use" in order to address problems of cybersquatting. Such domain-name cases often involve trademarks that are not "truly famous" and defendants that make no "commercial use" of a plaintiff's trademark.[13]

The ACPA is a bit more helpful in addressing fan or gripe Web sites and derogatory domain names. Pre-ACPA case law held that the use of a company name or mark in a domain name or on a Web site used solely to criticize the goods or policies of a company is a fair use that does not constitute infringement.[14] The ACPA's "safe harbor" element somewhat affirms this principle and tends to permit the use of another's mark in a domain name where the use is solely in the exercise of valid free-speech rights to criticize a target product or company symbolized by the mark. However, Congress cautioned that the "safe harbor" factor is not intended to create a loophole that could swallow the act by allowing a domain-name holder to evade liability merely by putting up a seemingly innocent site under an infring-

ing domain name. House Judiciary Committee Report on HR3028, Hr Rep. No. 106-412, p. 11 (October 5, 1999); Senate section-by-section analysis, Congressional Report, S14713 (November 17, 1999).

Congress specifically noted that the ACPA gives courts the flexibility to weigh appropriate factors in determining whether the name was registered and/or used in bad faith, and it recognizes that one such factor may be the use the domain-name registrant makes of the mark.[15]

Therefore, unless derogatory domain names are linked to a site conducting activity against which the trademark owner would normally take action, or bad faith can be established, trademark owners must simply tolerate such use. Many companies realize that no person looking for a legitimate Web site would expect to find it through any such derogatory domain names, and therefore avoid taking action against such domain names and/or fan or gripe sites because they do not want to implicate First Amendment issues, especially with all the attendant bad press that may result.

E. Trademark owners' objectives

If a trademark owner wants to send a strong deterrent message to cybersquatters, then federal litigation under the ACPA or, if warranted, the infringement or anti-dilution laws should be utilized because the remedies are significantly more expansive. If, however, a trademark owner merely wants to acquire the domain name at issue, then the UDRP provides sufficient relief.

F. Trademark infringement or anti-dilution litigation

Many cases of online infringement constitute trademark infringement or dilution and therefore can be effectively addressed through the initiation of a conventional federal court infringement action. The nature and scope of this litigation is beyond the scope of this article, but this "garden variety" litigation is more generally known to practitioners.

G. How broadly and aggressively should the owner of a trademark attack registration of infringing domain names or online infringement?

The most basic answer to this question is

established by the duty of the trademark owner to police its mark as discussed above. Failure to stop infringement in any medium, including the Internet, may result in a finding that the trademark owner has abandoned its rights in its mark. Beyond this very basic requirement, the scope of enforcement to be undertaken against online infringement will turn upon the available resources and the value of the mark. The degree of aggression taken against online infringement need not be any broader or any narrower than that implemented in other cases of infringement. A trademark owner should implement a consistent enforcement campaign and treat any act of infringement, in any medium, with the same degree of attention.

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NOTES

1. Playboy Enters. v. Chuckleberry Publishing Inc., 486 F.Supp. 4414 (S.D.N.Y. 1980). The court stated that a trademark owner is not obligated to police every conceivable related use in order to protect a definable area of primary importance.
2. 15 U.S.C. § 1127.
3. Brookfield Communications, Inc. v. West Coast Entertainment Corp., 174 F.3d 1036, 1051 (9th Cir. 1999) (registration of the domain name "moviebuff.com" with NFI does not in itself constitute use for purposes of acquiring trademark priority).
4. *See* Recot, Inc. v. Becton, 214 F.3d 1322, 54 U.S.P.Q.2d 1894 (Fed. Cir. 2000) on remand 56 U.S.P.Q.2d 1859 (T.T.A.B. 2000) (on remand, the board found a likelihood of confusion between the senior mark FRITO LAY used for snack foods and the junior user's FIDO LAY for dog treats).
5. 287 F.2d 492 (2d Cir. 1961).
6. If the mark is famous, see the Federal Dilution Act of 15 U.S.C. § 1127. "Dilution" is defined as the lessening of the capacity of a famous mark to identify or distinguish goods or services, regardless of the presence or absence of (1) competition between the owner of the famous mark and the other parties; or (2) likelihood of confusion, mistake or deception...
7. 287 F.2d at 495.
8. *See* Brookfield Communications, Inc. v. West Coast Entertainment Corp., 174 F.3d 1036, 1054 (9th Cir. 1999).
9. *See* AMF, Inc. v. Sleekcraft Boats, 599 F.2d 341, 348-49 (9th Cir. 1979).
10. *See* http://arbiter.wipo.int/domains/cctld/ for a listing of the ccTLDs in which the World Intellectual Property Association offers arbitration services.
11. Paragraph 4(b) of the UDRP sets out examples of circumstances that will be considered evidence of bad faith.
12. *See* 15 U.S.C. § 1125(B)(i) of the ACPA for a non-exclusive list of nine factors that a court can examine to determine the existence or non-existence of bad faith.
13. *See* Sporty's Farm LLC v. Sportsman's Markets, Inc., 202 F.3d 489 (2nd Cir. 2000) 489, 495-496, cert. denied, 530 U.S. 1262 (2000).
14. *See* Bally Total Fitness Holding Corp. v. Faber, 29 F.Supp.2d 1161, 50 U.S.P.Q.2d 1840 (CD Cal. 1998) (defendant registered bally sucks.com). The court stated that no reasonably prudent Internet user would believe that ballysucks.com is the official site or is sponsored by Bally.
15. *See* Shields v. Zuccarini, 87 F.Supp.2d, 634, 54 U.S.P.Q.2d 1166 (EDPA 2000) (ACPA violation found and preliminary injunction granted). A defendant who was making a bad-faith use of a plaintiff's mark, upon being sued, opened a Web page criticizing the trademark owner's product. The court rejected the safe-harbor defense: "We conclude that defendant's claim of good faith and fair use is a spurious explanation cooked up purely for this suit and we reject it out of hand."

by David C. Brody

A Report on the Washington State Judicial-Performance Evaluation Pilot Project

"The quality of our justice in America patently hinges, in large measure, on the quality of our judges."[1] The human dimension judges with diverse judicial philosophies and personalities bring to the bench is an asset to the American system of justice. It is the public's faith in the wisdom, common sense and integrity of individual judges that is the backbone of the judiciary. Unfortunately, these very qualities can prove a liability when it comes to judicial elections.

In addition to Washington, 30 states use popular elections to select at least a portion of their judiciary. While selecting judges through popular elections does make a judge accountable to the people, it also presents many dangers. It can make judges shy away from rendering decisions and acting as they would without the presence of electoral pressures. Making anti-majoritarian decisions, developing innovative practices and procedures, and standing by one's beliefs — qualities we want from our judges — can make a judge liable to electoral challenges based on unfair characterization, innuendo and attack by special interests. This fact, when coupled with the dearth of information provided to voters in judicial elections, has been cause of great concern across the nation for many years.

In an effort to combat this situation, since the 1970s, states around the nation have been developing and implementing programs to systematically evaluate the performance of both appellate and trial-court judges. These programs, which are growing in use in states that require judges to stand for retention elections, are state-sponsored and administered, and are designed not only to offer the public information for use in voting in judicial elections, but, more importantly, to provide feedback to sitting judges for self-evaluation and improvement.

Despite its progressiveness in many areas, Washington does not operate a government-sponsored judicial-performance evaluation (JPE) program. In 1999, the Washington Chapter of the American Judicature Society established a committee to design and test a judicial-performance evaluation program for superior court judges in Washington that would foster judicial self-improvement and provide information to voters in judicial elections. This article discusses the results of this pilot study.

Despite its progressiveness in many areas, Washington does not operate a government-sponsored judicial-performance evaluation (JPE) program.

History of Judicial-Performance Evaluation Programs

The first state-sponsored judicial-performance evaluation program was established in Alaska in 1975. In 1985, the American Bar Association (ABA) developed a set of proposed guidelines for the implementation and operation of such programs. Since that time, a number of states have instituted similar programs with varying components and purposes. While such programs are relatively new, independent research has shown several of them serve the purpose for which they were designed and do not have a negative impact on judicial independence or behavior.

Shortly after the ABA developed its JPE guidelines, discussion began in Washington about the development of a JPE program. In 1985, Washington's Judicial Performance Evaluation Task Force was established with Justice Robert Utter serving as chair. Over the next several years, the task force designed and field-tested evaluation instruments in district, municipal and superior courts. In the end, the District and Municipal Court Judges' Association and the Superior Court Judges' Association decided against implementation of the program due to concerns about confidentiality.

In 1995, the Walsh Commission was established with the charge to examine and suggest improvements to the judicial-selection system in Washington. Among the nine recommendations made by the commission was the recommendation that "[a] process for collecting and publishing information about judicial performance shall be created under the authority of the Supreme

Court."[2] Since the release of the Walsh Commission Final Report in 1996, there has been minimal, if any, state action with regard to the development of a JPE program.

The American Judicature Society Pilot Evaluation Project

The JPE program operationalized in the pilot study was predicated on two aims: fostering judicial self-improvement; and providing relevant, reliable and unbiased information to the public for use in judicial elections.

A primary goal of all judicial-performance evaluation programs is to foster self-improvement of individual judges. Periodic review and evaluation of a judge's effectiveness can provide information that offers the judge insight into his or her performance and how others perceive it. JPE programs are uniquely able to accomplish this for several reasons:

- Information can be obtained from a variety of relevant broadly based sources.
- Information obtained is anonymous.
- Information is solicited only from people who appeared before the judge in a scientifically reliable manner that facilitates trust and acceptance of the information obtained.

Having multiple sources of information provides greater richness in feedback to the evaluee than single-source performance evaluations or bar polls. In the case of evaluations of judges, obtaining critiques from three disparate groups of observers — lawyers, witnesses and jurors — provides varied information for judges to consider. When conducted with assured anonymity, judges can be told of both positive and negative perceptions and observations that they would be unlikely to hear otherwise.

The second goal of the program is to provide voters with reliable information on a judge's performance that can be used in judicial elections. While the Washington State Constitution provides for the election of judges, less than a third of eligible voters take part in voting for them. This low participation is present nationwide in judicial elections. Research has consistently shown that the chief reason behind the low rate of participation is the lack of relevant information possessed by voters regarding candidates for judgeships. Sadly, voters in most judicial elections are provided very little information about judicial candidates.[3] Moreover, the information provided to voters during a campaign is often biased, distorted, based on isolated cases or issues, or funded by special-interest groups.

The lack of relevant information impacts judicial elections in several ways. When at the polls, voters in concurrent nonjudicial contests who lack knowledge about judicial candidates are much less likely to vote in judicial elections.[4] The end result is that a small minority of the electorate, many of whom do not have a rational basis for their vote, often decides contested judicial races.[5] Moreover, the less informed voters are, the more susceptible they are to deceptive and/or negative campaigning.[6] This reality discourages a sizable number of well-qualified, exemplary attorneys from entering the judiciary.

Just as importantly, voters who do cast votes but lack relevant information upon which to base their votes often vote on the basis of inappropriate cues such as a candidate's name, ethnicity, gender or position on the ballot.[7] So, while popular elections would seem to further the democratic ideal, it has been astutely noted, "...democracy is a poor name for a system in which voters routinely vote for people they know nothing about."[8]

Compounding the problems associated with judicial elections is the role the judiciary has in the American system of government. The judiciary was designed by the founding fathers largely to protect individuals from oppression by the government and improper majoritarian demands. Consequently, it is routinely the duty of judges to render decisions contrary to the will of the people. Unfortunately, opportunistic politicians, potential or actual electoral challengers, and special-interest groups can use such decisions to mount an effective electoral challenge to a sitting judge. That is exactly what has been happening (increasingly so) over the last two decades.

Proponents of JPE programs contend that sanctioned evaluations of judges actually increase judicial independence. They argue "judicial independence is the independence of judges in their judicial capacity from control by inappropriate external forces, pressures, or threats."[9] Consequently, providing voters with relevant, unbiased information about a judge's performance derived from both attorneys and laypersons defuses negative campaign tactics. As stated in a recent law-review article by former Tennessee Supreme Court Justice Penny White (a notorious victim of negative campaign tactics which led to her defeat in the 1996 elections),[10] "...[m]uch of the success of those who seek to destroy judicial independence results from the lack of available information upon which to base one's decisions in judicial elections."[11]

Proponents of JPE programs contend that sanctioned evaluations of judges actually increase judicial independence.

Moreover, voters surveyed in states that use JPE programs to inform the public reported the information given them to be helpful in voting in retention elections. They also stated they would be more likely to vote in a judicial election because of the information provided.[12] It is believed that the same would be true of JPE programs operating in states with direct elections.

The Implementation of the Pilot Project

Ten superior court judges volunteered to participate in the pilot study. The judges were selected on the basis of the location and size (based on population and number of superior court judges) of the jurisdiction in which they sit, the length of time they have served on the superior court bench, and their gender. Demographically, the judges looked as follows:

4 judges from large counties
4 judges from mid-sized counties
2 judges from small counties
6 judges from west of the Cascades
4 judges from east of the Cascades
5 male judges
5 female judges

Time on the bench ranged from six months to over 20 years.

Attorney Survey

Gender	Male	76%
Race	White	94%
Ethnicity	Non-Hispanic	99%
Years in Practice	1-5	16%
	6-10	20%
	11-20	36%
	Over 20	29%
	Range	1-50 years
	Average	15.63 years
Practice Area	Criminal defense	18%
	Prosecution	13%
	Private civil matters	65%
	Other	4%
Type of Office	Sole practitioner	28%
	Private firm, 2-5 attorneys	23%
	Private firm, more than 5 attorneys	22%
	Prosecutor/AG office	15%
	Public defense office	12%

Judges' Ratings (on a scale of 1-5, with 5 being the highest rating)

	1	2	3	4	5	6	7	9	10
Legal Ability	4.21	3.68	4.26	3.74	3.31	4.64	4.38	4.50	4.21
Integrity	4.34	4.09	4.44	3.81	3.90	4.59	4.29	4.53	4.40
Professionalism	4.08	4.01	4.24	3.97	3.80	4.57	4.38	4.61	4.33
Administration	4.02	3.8	4.10	4.15	4.1	4.58	4.24	4.55	4.30
Communication	3.86	4.77	4.17	3.94	3.17	4.51	4.13	4.38	4.22

Judges were guaranteed anonymity with regard to evaluation results, and only the author knows evaluation results and feedback for each participating judge.

Judges were evaluated via written surveys distributed to attorneys, witnesses and jurors who appeared before the judge during the evaluation period. The surveys used multiple questions to measure the respondent's perception of the judge's actions in four (witnesses and jurors) or five (attorneys) areas: communication skills, legal ability, demeanor, administrative skills, and integrity.

Surveys were mailed to 588 attorneys who had appeared before a participating judge during the designated time period. Of the 588 attorneys, 317 (53.9 percent) returned completed questionnaires. The demographic breakdown of attorney respondents, as shown at left, is not dissimilar to the membership of the WSBA.

While overall the attorneys viewed the judges positively, significant variance was exhibited on two dimensions. Scores in terms of individual questions and categories varied among judges. Additionally, ratings given for individual judges for specific questions and categories varied significantly (see left). This result indicates that the survey instrument was specific enough to measure different opinions on specific areas of interest. In terms of judicial self-improvement and the utility of the results for the judges, this variance, which indicates the presence of judge-specific information, is critical.

In addition to attorneys, 177 jurors and 66 witnesses returned completed questionnaires.

Both jurors and witnesses viewed the judges significantly better than did attorneys. In fact, jurors and witnesses had uniformly positive responses to judges' performances, with overall ratings hovering above 4.7 on the 1-5 scale.

While quantitative information is an important aspect of a performance evaluation, from the perspective of the judge being evaluated, written comments provide the best information for judicial self-improvement. In all, 95 attorneys, 54 jurors and 21 witnesses provided written comments.

Roughly 75 percent of the comments from attorneys were positive and laudatory, and 25 percent could be characterized as "constructively critical." It is these critical comments that are likely to be the most beneficial for the individual judges being evaluated. Two examples of such comments are:

- Judge's knowledge and legal skills are impressive, but his/her people skills need improvement. His/her control of the courtroom would be no less effective if he/she would speak louder. The control technique of almost whispering is both annoying and insulting.
- He/she does not treat lawyers with as much respect as other judges do. He/she clearly sees lawyers as lower in the hierarchy of the court and treats them that way.

Although such comments are clearly critical, they also address items that, if true, are 1) not the type of information an attorney would feel comfortable conveying to a judge; 2) items the judge should be made aware of; and 3) items which can be addressed, if necessary, by the judge.

Not surprisingly, the comments provided by jurors and witnesses were overwhelmingly positive. They do, however, provide insight into the important role a judge plays in shaping the community's attitude about the state's judicial system as illustrated by the following comments:

- Felt my time spent as a juror was very worthwhile.
- Judge maintained a level of personal (as opposed to aloof) communication with the jury. We of the jury became very much a part of our judicial system and were made aware of our importance to the proceedings.
- This was definitely one of the most positive and interesting experiences of my life. I have a new respect for _____ County Superior Court.

Witnesses, several of whom were also litigants, submitted similar comments:

- I was very impressed with his/her preparation, intelligence, and grasp of the facts. He/she seemed to have a good knowledge of the law and was willing to check anything he/she wasn't sure about. After several discouraging experiences in family court with commissioners, the judge was a welcome change. He/she restored my faith in the court system as he/she followed the rules and gave each party time to have a say. I trusted him/her to make a fair decision based on the facts and the law.
- The judge was very professional yet understanding and compassionate toward the jurors and people involved in the case. It was a pleasure to be a part of the judicial system in his/her courtroom.

When these attitudes are held by lay people, even when generated on a case-by-case basis during limited dealings with a court, the way the court system and attorneys are viewed by society as a whole is likely to be enhanced as well.

Feedback from Participating Judges

In assessing an evaluation program, it is important to look at whether the program's participants accept the program's purpose and design and are satisfied with the information obtained. To do this, participating judges were provided with tabulations of responses as well as written comments provided by respondents who participated in their evaluation. Additionally, each judge was given a one-page questionnaire to facilitate the receipt of feedback from the judges regarding the pilot project. The observations of the seven judges who completed the questionnaires were predominantly positive.

Each judge stated that the JPE process was beneficial to him or her. Their sentiment, in general, was that:

- the information obtained is useful;
- the procedure is a good vehicle to let litigants, witnesses and jurors "vent" and give feedback to the system; and
- the information given to the judges had not previously been available.

The judges did have several insightful suggestions for improving the JPE process used in this study. Two of these items are:

- Provide more specific information about negative perceptions by respondent. For example, if a number of respondents said that a judge treated people unfairly, provide information about whether this is based on race, gender, income, etc.
- Provide space for comments after each section to encourage more written feedback.

The positive response of the Washington judges is similar to the response of judges in other states with evaluation programs similar to the one used in the pilot study.

What Did We Learn from the Pilot Study?

Several months after the completion of data collection, participating judges were provided with tabulations of responses and written comments pertaining to them. Judges were also given a one-page questionnaire asking them to provide feedback to the committee about the pilot project. Of the seven judges who returned the questionnaire, their comments were extremely positive. (Please contact the author at brody@wsu.edu for a copy of the report.)

While a great deal was learned from the study, there are a number of relevant items the study did not address and are therefore not discussed in this report. The project did not consider the means currently used to evaluate judges and inform voters that are conducted at the county level. Such programs serve a function, and were not considered in evaluating the pilot program. Additionally, while the program tested means of obtaining information that could be used by voters in judicial elections, it does not address or consider the means and form by which such information would be communicated.

That said, the design, implementation and analysis of the judicial-performance evaluation pilot project produced an abundance of useful information for attorneys, judges, scholars and policymakers to consider. Highlights of what was learned include:

- Attorneys view judicial performance differently than witnesses and jurors.
- Attorneys across the state are willing to participate in an evaluation program in a meaningful manner.
- Judges received information from attorneys, jurors and witnesses that they otherwise would not have.
- Judges found the information informative and helpful.

In short, we learned that judges who participated in the JPE program believe it was beneficial. It is hoped that the pilot project will provide citizens and policymakers of the state substantive material to consider in looking at maintaining the excellence of the Washington judiciary.

David Brody is assistant professor in the criminal justice program at Washington State University Spokane.

NOTES

1. Special commission of judicial performance, American Bar Association Guidelines for the Evaluation of Judicial Performance, at I (1985).
2. Walsh Commission, Walsh Commission Final Report: *The People Shall Judge, Recommendation 3* (1996).
3. Marie Hojnacki and Lawrence Baum, *Choosing Judicial Candidates: How Voters Explain Their Decisions*, 75 Judicature 300 (April/May 1992).
4. Nicholas P. Lovrich, John C. Pierce and Charles H. Sheldon, *Citizen Knowledge and Voting in Judicial Elections*, 73 Judicature 28 (June/July 1989).
5. Peter Webster, *Selection and Retention of Judges: Is There One "Best" Method?* 23 Fla.St.U. L.Rev 1, 24 (1995).
6. Robert L. Brown, *From Whence Cometh Our State Appellate Judges: Popular Election Versus the Missouri Plan*, 20 U. Ark. Little Rock L.J. 313 (1998).
7. Phillip Dubois, *Voting Cues in Nonpartisan Trial Court Elections: A Multivariate Assessment*, 18 Law & Soc'y Rev. 395 (1984).
8. Joel Achenbach, *Why Reporters Love Elections*, 49 U. Miami L. Rev. 155, 158 (1994).
9. Penny J. White, *Judging Judges: Securing Judicial Independence by Use of Judicial Performance Evaluations*, 29 Fordham Urb. L.J. 1053, 1076 (2002).
10. *See* Traciel V. Reid, *The Politicization of Judicial Retention Elections: The Defeat of Justices Lanphier and White*, 83 Judicature 68 (1999).
11. White, *supra*, note 9 at 1059.
12. Kevin Esterling and Kathleen M. Sampson, *Judicial Retention Evaluation Programs in Four States: A Report with Recommendations* (1997).

The Board's Work

by Judith Berrett
Director of Member and Community Relations

The Board of Governors met in Ocean Shores on July 26-27, following their annual planning retreat. All governors-elect (**Andrea Brenneke**, **Howard Graham**, **Joni Kerr** and **Ron Ward**) were in attendance, in addition to current BOG members.

Task Force on Defense

Starting the public meeting was a presentation by Governor **Jon Ostlund**, Whatcom County public defender; **Robert Boruchowitz**, president of the Washington Defender Association (WDA); **Christie Hedman**, executive director of the WDA; and **William Jaquette**, director of the Snohomish County Public Defender's Office. Governor Ostlund began by stating that the issues facing public defense are access-to-justice issues, and that public defenders and the ATJ community are serving the same people, the majority of whom have special needs. Many accused of crimes receive inadequate representation, resulting in the conviction of innocent people, individuals being incarcerated for too long, and the clogging of jails and the court system. Lack of funding for public defense is a very serious issue — caseloads are so high that defenders often are unable to provide effective representation. For example, in Whatcom County, each public defender will handle 230 cases this year (there are approximately 230 working days in the year).

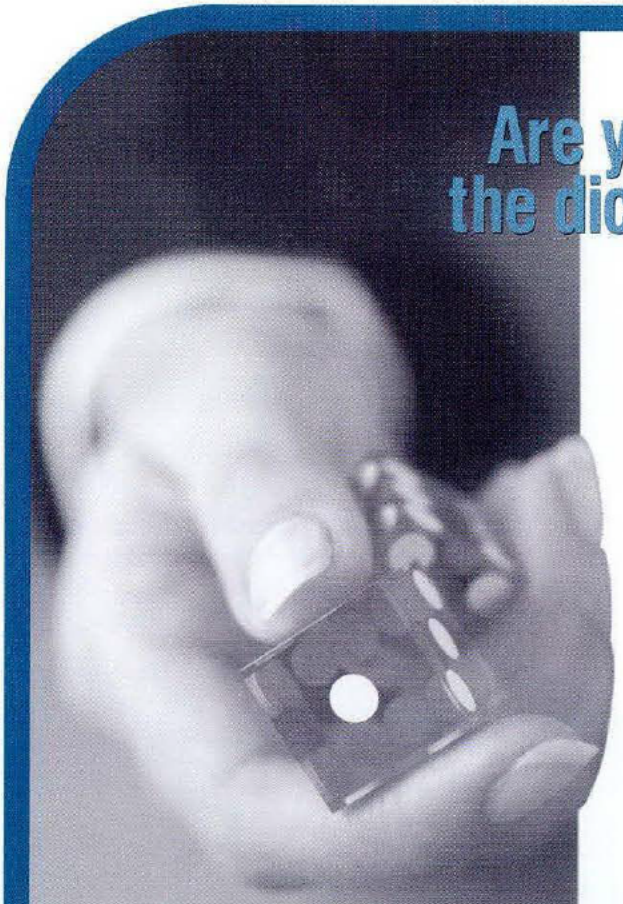
Hedman told how the WDA was created in 1983 to provide training to public defenders statewide. Current standards were developed 13 years ago, and not all cities and counties have adopted them. The WDA is in the process of developing new standards, which they will bring to the BOG within the next year. Jaquette highlighted problems regarding caseloads, investigative staff, supervision, training, experience and salaries. Since 2000, his office has had a 61 percent turnover in lawyer staff. He asked for moral leadership from the WSBA.

Boruchowitz, who has 28 years of experience doing public-defender work, said that there has always been a budget crisis, but this is the worst he's seen. He recommended the following: (1) establishment of a task force within ATJ that addresses public-defense issues; (2) development of a CLE program on ways to provide defense; (3) leadership on the adoption and promotion of adherence to the standards; (4) support on legislative issues; (5) reinvigoration of the death-penalty study; and (6) support in revising the standards.

Governor **Jenny Durkan**, stating that the legal community must address criminal-defense rights and begin talking about these issues in terms of access to justice, moved that the BOG create a Task Force on Defense, to work with the ATJ community and other organizations in examining the problems. The motion passed unanimously.

Voluntary Reporting of *Pro Bono* Work

Gail Smith, chair of the Pro Bono and Legal Aid Committee (PBLAC), presented a recommendation from the committee that RPC 6.1 (*Pro Bono Publico* Service) be modified to more closely follow the ABA's model rule. The proposed amendments (which, if approved by the BOG would then go to the Supreme Court) would accomplish the following: (1) codify the current goal of at least 30 hours annually of



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pro bono legal service; (2) provide a more specific definition of *pro bono* and ways to fulfill *pro bono* responsibility; (3) provide for voluntary reporting of *pro bono* hours; and (4) provide for recognition of attorneys who contribute at least 50 hours of *pro bono* legal services in a year. Smith made it very clear that the proposed amendments call for voluntary — not mandatory — reporting, and the committee does not recommend mandatory reporting.

The governors, while fully supporting *pro bono* work, voiced several reservations about the proposed change. What would be the cost of entering the data? Would it be appropriate for all our members? Would this alienate some members? Some governors liked the idea of voluntary reporting; others felt that while it is important to encourage members to do *pro bono* work, this isn't the way to do it. A motion made by Governor Ostlund to adopt the proposed amendments to RPC 6.1 was tabled until the October meeting, as there was consensus that the governors first wanted to hear from members before taking action. (Note: The BOG is seeking member input. Please see article on page 43 for additional information.)

Student-Loan Crisis

Governor **Ken Davidson** moved that the president appoint a special 10-14-member Student-Loan Crisis Task Force to "develop action recommendations to lessen the unfavorable impacts student-loan burdens have on areas such as access to justice, specific practice areas, *pro bono* service, and professional development." The motion passed unanimously. The special task force will include representatives from WYLD, public defenders, prosecutors, the attorney general's office, a law-school dean or delegate, a law-school student leader, a BOG liaison and others, to assure expertise and diversity. The task force will be requested to make recommendations to the BOG by the July 2003 meeting.

Technology Update

WSBA Executive Director **Jan Michels** and Director of Information Technology **Maureen Sunn** presented an overview of the WSBA's technology systems, including hardware, software, and network infrastructure, and associated costs. The WSBA's network has been strengthened, as recommended by the auditors. A new financial-management system has been selected and is scheduled for installation this fall; the governors unanimously approved purchase of the financial package. A new membership system will be selected this winter. Comprehensive requests for proposal (RFPs) were developed for both new software systems, and these projects are being tightly managed. A grievance module is also required, which may require a separate application to be purchased or developed. Sunn discussed the components of the "project management triangle" — scope, budget and schedule — and explained how a change in one side of the triangle affects the other components.

2002-03 Budget

Treasurer **Brooke Taylor** led the board through the recommended budget for the October 2002-September 2003 fiscal year. The budget restores the targeted reserve of eight percent by the end of the fiscal year. The budget was adopted unanimously. (For detailed information, see the WSBA Web site at www.wsba.org/finances.)

WSBA Awards

The board approved the recommendations of the Awards Committee to award the Outstanding Judge Award to Judge **James Murphy** of Spokane County Superior Court and to Judge **Michael Hurtado** of the Municipal Court of Seattle. President **Dale Carlisle** received board confirmation of his selection of **Walt Krueger** for the President's Award. This year's Awards Committee was chaired by Governor **Lucy Isaki.**

Court-Funding Task Force Members Appointed

The two WSBA members on the Court-Funding Task Force are **Ron Ward** (governor-elect from the 8th District) and Seattle attorney **Kirk Johns**. This task force is being convened by the Supreme Court.

Professionalism Committee

Professionalism Committee Chair **Marijean Moschetto** and BOG Liaison **Steve Henderson** gave an update on the com-

mittee's activities. The committee has focused on dissemination of the Creed of Professionalism. Working cooperatively with county bar associations, Creed of Professionalism plaques are in place in nearly 50 percent of Washington's 39 counties.

WSBA Facility Update

Representing the Facilities Committee, commercial real estate attorney **Ellen Dial** gave the board a very comprehensive presentation on the committee's work. The WSBA's lease expires in 2006, and the committee has developed a set of criteria and has been examining leasing and ownership options. The BOG unanimously voted to accept the preliminary conclusions of the committee: (1) staying in the downtown Seattle corridor; (2) not building a facility; (3) emphasizing parking, in-house CLE or CLE and other teleconferencing and accessibility; and 4) entertaining ownership only if it is at the same approximate long-term cost (but continue to look at ownership options).

Court Rules and Procedures

Court Rules and Procedures Committee Chair **Moses Garcia** characterized this year as one the committee spent responding to rule suggestions from the Supreme Court, BOG and others. The BOG voted to defer action on Criminal Rules (CrR) 4.2, 4.7 and 4.1 (new) until September, so defenders would have a chance to respond. The BOG had decided to defer Rule of Evidence (ER) 412 to September, so that members of the Civil Rights Committee and all governors could be in attendance. Governor **Bryce Dille** made a motion to send the Rules Committee recommendation to amend General Rule (GR) 14 concerning universal citations to the Supreme Court; the motion passed. The BOG approved the committee's request that a special subcommittee be formed to overhaul the RALJ and writ procedures.

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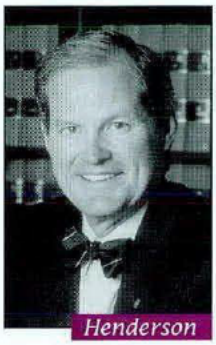
Changing Venues

Honors & Awards


Henderson


Toole


LePley


Darvas


Rice

WSBA governor **Stephen J. Henderson** has received the Thurston County Bar Association's Bigelow Award. The award, which is given annually in recognition of professionalism and outstanding community service, is named after pioneer lawyer Daniel R. Bigelow.

WSBA governor **William D. Hyslop** has received the Washington State University Alumni Achievement Award. He served as president of the WSU Alumni Association in 1991-1992, and served as volunteer alumni director in Spokane for eight years. He also co-chaired WSU's legislative network, which supports state legislation benefiting higher education.

Mark S. Davidson has been appointed to the board of directors of the Alzheimer's Association of Central and Western Washington. He is a member in the Seattle office of Williams Kastner & Gibbs PLLC.

Yemi Fleming Jackson has been elected vice-president of the Loren Miller Bar Association. She has also been elected to the board of trustees for the Washington Defense Trial Lawyers.

Jeffery P. Robinson has been elected to the board of directors for the National Association of Criminal Defense Lawyers. He is the current president of the Washington Association of Criminal Defense Lawyers.

Steven G. Toole has been elected 2002-2003 president of the Washington State Trial Lawyers Association (WSTLA). The following have received WSTLA awards: **Patrick H. LePley**, Trial Lawyer of the Year; **Andrea A. Darvas**, Professionalism Award; **Janet L. Rice**, President's Award.

Maggy Bailly has become an honorary initiate of the University of Washington Order of the Coif.

Brooks E. Harlow has received the Distinguished Service Award from the Federal Communications Bar Association (FCBA). He recently completed a two-year term on the FCBA executive committee.

Scott A. Smith has been elected chair of the Washington State Access to Justice Board. The nine-member board promotes access to the civil justice system for low- and moderate-income people in Washington.

Christopher S. Marks has been named a founding member of the William L. Dwyer Inn of Court. The Inns of Court is


Bailly


Harlow


Asplund


Ward


Leibow


Capello

a national organization that matches experienced lawyer and judge mentors with new lawyers and law students. William L. Dwyer Inn students are studying at Seattle University and the University of Washington law schools.

Mark J. Asplund has been elected president of the Bellevue Philharmonic board of directors. He has been a board member for two years.

Movers and Shakers

Blake A. Ilstrup has joined Venture Law Group as an associate. He practiced in the firm's Menlo Park, CA, office before joining the Kirkland office.

William R. Connors has joined the labor, employment and regulatory department in the Seattle firm Miller Nash LLP. His practice focuses on business, energy, natural resources, and regulated utilities.

Sandra Blair Hernshaw and **John P. Zahner** have joined the Seattle office of Foster Pepper & Shefelman PLLC. Ms. Hernshaw is of counsel, and concentrates on estate planning and probate, including complex estate, gift and generation-skipping tax planning, formation of private foundations, and other forms of charitable gift planning. Mr Zahner is an associate in the litigation practice group, focusing on insurance matters.

Rachael M. Ward has joined the Seattle firm Betts Patterson & Mines PS as an associate in the business group, concentrating on estate planning, probate, business transactions and corporate law.

F. Dayle Andersen Jr. and **Gary L. Shenkle** have joined the Spokane firm Keith S. Douglass & Associates LLP, focusing on medical malpractice and personal injury.

Lance E. Olsen has been named a member of Routh Crabtree Fennell, a full-service mortgage banking law firm. He has also been named chief operations officer of Northwest Trustee Services. Mr. Olsen concentrates on bankruptcy, creditors' rights and related litigation.

Wendy Beth Oliver has joined the Seattle firm Graham & Dunn PC, focusing on corporate law, corporate finance, contract negotiation, real estate and insolvency.

Whitney H. Leibow has joined the Seattle firm Cairncross & Hempelmann as of counsel. He is part of the firm's technology transactions, and creditors' rights and bankruptcy groups.

Stephanie R. Haug has joined the tax practice group at Paine, Hamblen, Coffin, Brooke & Miller LLP in Spokane.

Danette M. Capello has joined REI as senior counsel. She is responsible for developing and negotiating real estate agreements for REI's retail operations.

Benjamin R. Sligar has joined the Tacoma firm Davies Pearson as an associate focusing on workers' compensation, personal injury and Social Security disability.

Jennifer D. Bucher, Andrea D. Orth and **Gary D. Swearingen** have become owners in the Seattle firm Garvey Schubert Barer. Ms. Bucher has been with the firm since 1996, and concentrates on labor and employment advice and litigation. Ms. Orth has also been with the firm since 1996, and focuses on general business litigation. Mr. Swearingen joined the firm in 1994. He focuses on the transfer and protection of intellectual property rights.

In Memoriam

Frederick V. Betts, co-founder of the Seattle firm Betts, Patterson & Mines, died July 4 at age 94. A Seattle native, Mr. Betts was born in a Queen Anne house where he lived until last year. He earned his law degree from the University of Washington in 1933 and practiced law in Seattle ever since. Until his death, Mr. Betts traveled to his downtown Seattle office four days a week, and his last trial was conducted when he was 85 years old. During his long career as a trial attorney handling mostly insurance-defense cases, he represented clients and tried cases in virtually every courtroom in Washington. Memorial donations may be made to the Frederick V. and Arline E. Betts Memorial Music Endowment at Plymouth Congregational Church (1217 Sixth Ave., Seattle, WA 98101), or Children's Hospital (PO Box 5371, MS CL-04, Seattle, WA 98105).

In Memoriam

Katie L. Hill, of Seattle, was tragically killed in Washington, D.C., on August 9. She was 36. An avid collector of fountain pens, Ms. Hill was in Washington for a fountain-pen convention. In addition to pens, she enjoyed antique cameras, charm bracelets, hats and French culture. Prior to her legal career, Ms. Hill worked in marketing for WRQ and Avenue A Incorporated. She was a 1999 graduate of Seattle University School of Law.

Long-time Tacoma lawyer **Valen H. Honeywell Jr.** died July 24 of complications following heart surgery. He was 86. Mr. Honeywell was a partner in the Tacoma firm Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, from which he retired in 1991. Before joining the firm in 1952, he served as chief civil deputy in the Pierce County prosecutor's office. Mr. Honeywell served on the Bench-Bar-Press Committee, the Tacoma Public Library board, and was a member of the Tacoma-Pierce County Bar Association. He was an avid reader who also enjoyed golf, tennis, bridge and crossword puzzles. His son Mark and grandson Matthew are attorneys.

Arthur J. Lambo, of Kirkland, died April 22 of heart failure. He was 81. Mr. Lambo served in the Army from 1942 to 1945 during World War II. Following the war, he attended the University of Washington and Gonzaga University School of Law. For 30 years, he served as corporate counsel for the American Automobile Association (AAA), and rose to the level of general manager of all offices in Washington. Though he retired in 1981, AAA continued to seek his counsel, keeping an office and staff available to him for many years. Mr. Lambo was a member of the Good Roads Association, and enjoyed boating and traveling.

Seattle activist and lawyer **Michelle L. Pailthorp** died July 31 at age 61 after suffering an aneurysm. Ms. Pailthorp worked for environmental, political and women's causes in Washington for more than 30 years. She was instrumental in the 1972 referendum campaign that narrowly ratified the state Equal Rights Amendment. In the 1970s, Ms. Pailthorp served as legislative director of the ACLU of Washington, and was a Washington delegate to the 1977 National Women's Year convention. She served on the judicial-candidate screening committee of Washington Women Lawyers, and was an active member of the Washington State Trial Lawyers Association. Memorial donations may be made to The Nature Conservancy (4245 N. Fairfax Dr., Ste. 100, Arlington, VA 22203), or 1000 Friends of Washington (1617 Boylston Ave., Ste. 200, Seattle, WA 98122).

Michael Reese died July 26 of cancer at age 59. Mr. Reese joined the WSBA in 1970 and began working for the King County Medical Society (KCMS). For the last 23 years, he had served as executive director of the KCMS. During his tenure, the society became one of the largest associations of its kind in the country. Mr. Reese had a passion for flying, and often spent weekends flying family and friends around the Northwest.

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.

Board of Governors Seeks Member Input as It Considers Proposed Revision of RPC 6.1 (*Pro Bono Publico* Service)

by Gail Smith
Chair, WSBA Pro Bono and Legal Aid Committee[1]

The Board of Governors (BOG) is seeking input from all WSBA members on a proposed revision to RPC 6.1 (*Pro Bono Publico* Service). The WSBA Pro Bono and Legal Aid Committee (PBLAC) has recommended the adoption of a rule that mirrors the ABA rule, reaffirming every lawyer's professional responsibility to provide *pro bono* legal services, and identifying an objective of at least 30 hours of *pro bono* activity by every attorney. The proposal also calls for the voluntary reporting of *pro bono* hours. The proposed rule change will be considered by the BOG at its October 2002 meeting.

Indicative of the problem is that participation on formal *pro bono* panels in our state is stagnant — and has been for a number of years — despite an annual increase in the number of new lawyers.

The WSBA has a long, impressive history of demonstrated commitment to improving access to the justice system for low- and moderate-income people, and vulnerable populations. Central to this commitment has been the WSBA's strong leadership in encouraging its members to provide *pro bono* public service to those of limited means. In 1994, the BOG adopted the Volunteer Attorney Legal Services Action Plan (VALS Action Plan),[2] which proposed strategies for removing barriers that make it difficult for attorneys to provide volunteer legal services, and encouraged attorneys to provide these services. The BOG delegated the implementation of this plan to its Pro Bono and Legal Aid Committee, which has, for the past eight years, focused almost exclusively on key initiatives that advance the goals of the plan.

One of these initiatives has been the development of proposed amendments to RPC 6.1, the ethical rule that addresses a lawyer's professional responsibility to provide *pro bono* public service to those of limited means.[3] Given the ongoing legal-services funding crisis in our state and the

RPC 6.1: *Pro Bono Publico* Service

I. Current RPC 6.1

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

II. Proposed Amendments to RPC 6.1

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should render at least thirty (30) hours of *pro bono publico* legal services per year. In fulfilling this responsibility, each lawyer should:

A. provide a substantial majority of the thirty (30) hours of legal services without fee or expectation of fee to:
(1) persons of limited means; or
(2) charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

B. provide the remainder of the thirty (30) hours of *pro bono publico* legal services through:
(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; or charitable, religious, civil, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
(2) delivery of legal services at a substantially reduced fee to persons of limited means; or
(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Pro bono services may be reported on the annual fee statement furnished to the WSBA. Lawyers rendering a minimum of fifty (50) hours of *pro bono* service shall receive a recognition award for such service from the WSBA.

attendant loss of capacity of the civil equal-justice delivery system to provide legal services, PBLAC has determined that direction and a clear message from the WSBA and the Washington State Supreme Court regarding the responsibility of attorneys to provide *pro bono* services is critical.

Indicative of the problem is that participation on formal *pro bono* panels in our state is stagnant — and has been for a number of years — despite an annual increase in the number of new lawyers. The Legal Foundation of Washington (LFW) tracks the level of *pro bono* participation by private attorneys through the LFW-funded *pro bono* programs in the state. In 2000 and 2001, the state's *pro bono* programs reported a total of 1,865 and 1,934 attorney volunteers, respectively. This represents just under nine percent of all active members for both years. While there is anecdotal information that many attorneys provide *pro bono* legal services to low-income clients outside these formal structures, there is no mechanism to track those contributions.[4]

The proposed amendments to RPC 6.1 address these concerns as follows:

(1) Formalizes the current suggested 30-hour *pro bono* contribution. On November 18, 1989, the BOG adopted a resolution recommending that each attorney spend "at least 30 hours each year providing public interest legal services." On May 8, 1992, the BOG adopted a similar resolution, again recommending 30 hours. On September 15, 1996, the BOG passed a resolution encouraging attorneys to provide "voluntary *pro bono publico* legal services," without specifying the number of hours.

These resolutions are not made available as a matter of course to WSBA members. Even if they were, the apparent conflict between the resolutions in specifying/failing to specify an aspirational number of hours would not send a clear message to attorneys regarding the BOG's expectations. Formalizing the 30-hour suggested contribution by including it in the Rules of Professional Conduct is a powerful vehicle for ensuring that attorneys have a clear benchmark for fulfilling their professional responsibilities, as well as for teaching professional responsibility in law schools.

(2) Defines *pro bono* legal service. The proposed amendments are nearly identical to Revised ABA Model Rule 6.1, adopted by the ABA in 1993, excluding the voluntary reporting provision. Significantly, the ABA House of Delegates recently added the following introductory language to Model Rule 6.1: "Every lawyer has a professional responsibility to provide legal services to those unable to pay." PBLAC also recommends adoption of that language. To date, 14 states have adopted similar versions of the ABA revisions.[5]

The proposed amendments recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the entire 30 hours be discharged through the provision of legal services to low-income people and groups that serve low-income people. The remainder of the 30 hours should be devoted to free or low-cost services for those of limited means; the organizations that serve them; and participa-

tion in activities for improving the law, the legal system, or the legal profession. Since attorneys are the only professionals licensed to provide legal services, it stands to reason that their professional obligations should be discharged by providing services to those who otherwise would go unrepresented.

(3) Provides a vehicle for the voluntary collection of information on *pro bono* legal services. A voluntary *pro bono* reporting system makes attorneys aware of, and encourages them to fulfill, their professional responsibility to provide legal services and to make financial contributions to the poor. It focuses attention on RPC 6.1 and adds incentive for compliance with the objective of at least 30 hours of *pro bono* service. The data collected through *pro bono* reporting can reveal the number of attorneys performing *pro bono* service during a given time period, the number of hours served, and details about financial contributions made to *pro bono* and legal-services programs.

The information can also facilitate recognition of contributing attorneys, enhance the public image of the legal profession, and improve the coordination of statewide *pro bono* delivery efforts. Experience in other states with voluntary reporting suggests that such reporting has increased the level of *pro bono* participation. To date, 17 states have adopted, or are considering adopting, a voluntary reporting policy.[6] The proposed reporting of *pro bono* work would be completely voluntary, free from penalty for failure to comply.

(4) Provides recognition for those attorneys who provide at least 50 hours of *pro bono* legal services per year. Although most legal services and *pro bono* programs have their own awards and recognition events, the WSBA can send a powerful message about the importance of *pro bono* legal services if it institutionally recognizes and applauds these contributions. This recognition can take the form of certificates of appreciation, *Bar News* recognition, and other low-cost yet compelling and highly visible means. Currently the WSBA annually recognizes only one of its members for outstanding *pro bono* legal services.

(5) Provides that a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means. Because the provision of *pro bono* services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in *pro bono* services. At such times, a lawyer may discharge the *pro bono* responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided.

In addition, at times it may be more feasible to satisfy the *pro bono* responsibility collectively, as by a firm's aggregate *pro bono* activities. Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct *pro bono* services or making financial contributions when *pro bono* service is not feasible.[7]

The BOG would appreciate comments from WSBA members on the proposed amendments to RPC 6.1 for consideration at its October 18-19, 2002 meeting in Silverdale. If approved, the proposed amendments will be sent to the Washington State Supreme Court for consideration and adoption. Please send your comments by October 1, 2002 to Jan Michels, Executive Director, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or janm@wsba.org.

NOTES

1. The WSBA's Pro Bono and Legal Aid Committee deals with issues with respect to (1) supporting activities that assist volunteer attorney legal services programs and organizations, and encouraging *pro bono* participation; (2) addressing the administration of justice as it affects indigent persons throughout the state; and (3) cooperating with other agencies, both public and private, interested in these objectives.

2. The VALS Action Plan is available at http://www.waaccesstojustice.org/generalassets/probono pubs/1994plan.

3. RPC 6.1: A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

4. Of note is that the state Supreme Court's Task Force on Civil Equal Justice Funding, established in November 2001, is interested in assessing the nature and extent of *pro bono* legal services contributions by attorneys. This information, in conjunction with the data being collected through the task force's Civil Legal Needs Study, will help inform planning for the optimal distribution of resources statewide to address identified client needs.

5. Arizona, Colorado, Florida, Georgia, Hawaii, Kentucky, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Mexico, Utah and Virginia.

6. States with voluntary reporting are Arizona, Georgia, Hawaii, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, New Mexico, Texas and Utah. States considering voluntary reporting are Michigan, New Hampshire, New Jersey and Vermont.

7. ABA Comment to Revised Model Rule 6.1.

Disciplinary Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 11.2(c)(4) of the Washington State 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.

(Note: In the August Disciplinary Notices, censured attorney David W. Hubert is to be distinguished from David Talbert Huber of Seattle; WSBA No. 19933.)

Disbarred

Sharon Bartu (WSBA No. 17080, admitted 1987), of Vancouver, was disbarred by order of the Supreme Court effective March 13, 2002, following a default hearing. This discipline is based on her failing to diligently and competently represent two clients, charging unreasonable fees, and making misleading statements about her services in 1998.

Matter 1: In 1998, Ms. Bartu agreed to represent a husband and wife (Mr. and Mrs. J) and the husband's brother (FJ) in becoming residents of the United States and obtaining green cards. Mr. J paid Ms. Bartu $3,900 and FJ paid her $2,600. In November and December 1998, Ms. Bartu filed a cancellation of removal pleading for the clients. This pleading requested relief that is only available to aliens after a charging document has been filed with the immigration court by the Immigration and Naturalization Service (INS), vesting jurisdiction in the immigration court. The INS had not filed charges against Ms. Bartu's clients, so filing this pleading had no effect on the clients' immigration proceedings. Ms. Bartu's office filed an application to renew all three clients' employment authorization cards, but Ms. Bartu took no further action on the clients' cases.

Matter 2: In 1998, Ms. Bartu agreed to assist an Iranian citizen in obtaining permanent residency status in the United States. The client, whose student-visa status had expired in 1997, paid Ms. Bartu $3,000. In October 1998, Ms. Bartu filed an application for cancellation of removal. The relief requested in this application is available only after deportation proceedings have begun; however, the client had not been placed in deportation proceedings. Ms. Bartu took the client on a tour of the immigration court in Portland, then took no further action on the client's case. In early 2000, the client contacted the INS and learned that Ms. Bartu had filed the wrong form. The client made an appointment with Ms. Bartu to discuss his case, but she failed to appear. The client asked that Ms. Bartu explain how she planned to proceed on his case, or return his money. She did not respond to his requests.

Ms. Bartu's conduct violated RPCs 1.1, requiring lawyers to competently represent their clients; 1.3, requiring lawyers to diligently represent their clients; 1.7, prohibiting lawyers from making misleading statements about their services; and 1.5(a), requiring lawyers' fees to be reasonable. The sanction imposed in this matter included consideration of significant aggravating factors.

Russell D. Garrett and Kevin Bank represented the Bar Association. Ms. Bartu represented herself. The hearing officer was Dennis W. Lane.

Suspended; Disbarred

Richard K. Clyne (WSBA No. 21556, admitted 1992), of Seattle, was suspended for two years by order of the Supreme Court on March 13, 2002, following a hearing, and then disbarred effective June 19, 2002, following a second hearing. This discipline is based on his misappropriating funds; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; failing to deposit client funds into a trust account from 1997 to 1999; and failing to diligently represent clients from 1999 through 2000.

Suspension matter 1: In August 1999, Mr. Clyne agreed to represent the father in a parenting plan modification matter. The client's wife had obtained a protective order limiting his visitation with their children. Mr. Clyne failed to appear for the client's December 7, 1999 hearing. On the same day, the client signed pleadings to begin a dissolution proceeding. On December 14, Mr. Clyne told the client that the dissolution pleadings had been filed and that the mother would be served immediately. Later, the client told Mr. Clyne that he wanted a separation instead of a dissolution, and Mr. Clyne indicated that he would change the paperwork. The mother was served with a dissolution petition in March 2000, but Mr. Clyne did not file a petition for dissolution or a petition for separation.

In March 2000, the client asked Mr. Clyne to file a motion for contempt against his wife for violation of the current parenting plan. Mr. Clyne told the client the contempt hearing was scheduled for April 4, 2000, so the client flew from California to Seattle to attend. When the client called to verify the time of the hearing, Mr. Clyne told him that the hearing date was not confirmed and the motion would have to be refiled, although Mr. Clyne actually filed the motion on April 4, 2000.

Suspension matter 2: In March 2000, Mr. Clyne agreed to represent a client in a family-law mediation. The parties did not reach agreement at the mediation, and the opposing party set a superior court hearing for May 25, 2000. On the day of the hearing, Mr. Clyne told the client that the date had been changed to June 7. On the day prior to the hearing, the client called Mr. Clyne to review her response, but Mr. Clyne did not have it prepared. At the hearing, the client was found in contempt of court and sanctioned $1,000. Mr. Clyne prepared a motion for revision, but missed the 10-day deadline for filing the motion. The client requested that Mr. Clyne send a letter to opposing counsel regarding therapy for her child, but Mr. Clyne did not send the letter. The client retained substitute counsel.

Mr. Clyne's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to keep their clients reasonably informed of the status of their matters; and 8.4(c), prohibiting lawyers from engaging in conduct involving misrepresentation.

Disbarment: On May 27, 1998, Dr. E contacted a law firm (the firm) for assistance with an ongoing domestic-relations dispute. Mr. Clyne was the lawyer directly responsible for representing Dr. E. Between May 1998 and March 1999, Dr. E made seven fee deposits to the firm totaling $5,000, which were deposited into the firm's trust account. Advanced fees were drawn from the trust account as services were provided. As of May 5, 1999, Dr. E had a trust account balance of $220.71. No

further time entries were made by Mr. Clyne on Dr. E's case. A September 7, 1999 statement reflected a small photocopy charge and an adjusted balance of $212.91.

On or about May 24, 1999, Dr. E forwarded a $1,000 check payable to Mr. Clyne for an advance fee deposit. Mr. Clyne deposited the check into his personal account. In September 1999, Dr. E requested a $1,000 refund from Mr. J, the partner who handled billing inquiries. Mr. J found no record of a deposit and asked Dr. E to forward a copy of the canceled check. On September 23 or 24, Mr. J told Mr. Clyne about the inquiry, and Mr. Clyne made no comment about the check. On September 27, Mr. Clyne submitted his resignation to the firm.

On or about September 28, 1999, Dr. E faxed Mr. J a copy of the canceled check with a note. Mr. J was on vacation from September 25 through 29. When he returned, he noted there was no fax from Dr. E, as expected. During the week of October 1, 1999, Mr. J asked Mr. Clyne about Dr. E's inquiry and Mr. Clyne responded that it "had been taken care of," that Dr. E was mistaken about sending a check, and that the trust account records were correct.

On October 5, Mr. Clyne forwarded a check for $1,000 to Dr. E, written on his personal account. On October 6, Mr. J received a call from Dr. E about his money. Mr. J passed the phone to Mr. Clyne, who told Dr. E that it had been "taken care of." Following the telephone conversation, Mr. Clyne told Mr. J that Dr. E wanted to transfer his remaining firm trust-account funds to the departing Mr. Clyne; however, Dr. E had not indicated such a desire to anyone. The firm transferred the remaining $212.91 to Mr. Clyne, who deposited it into his trust account.

In mid-October, Mr. Clyne's check to Dr. E bounced. On October 16, not realizing Mr. Clyne had left the firm, Dr. E sent an e-mail about the bounced check to the firm. On October 18, Mr. J responded to the e-mail by calling Dr. E. Mr. J requested copies of the September 28, 1999 fax and Mr. Clyne's October 5, 1999 personal check. After reviewing these documents, Mr. J forwarded two checks to Dr. E for the $1,000 deposit and the $212.91 balance. On October 23, Mr. Clyne telephoned Dr. E to discuss representation in the ongoing case. Dr. E told Mr. Clyne that he would continue to be represented by the firm. Dr. E never negotiated the checks from the firm, because Mr. Clyne subsequently reimbursed Dr. E for those amounts.

Mr. Clyne's conduct violated RPCs 8.4(b), prohibiting lawyers from committing crimes which reflect adversely on a lawyers' honesty, trustworthiness, or fitness as a lawyer; 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and 1.14, requiring lawyers to deposit all client funds paid to them in a trust account.

Linda Eide represented the Bar Association. Kurt Bulmer represented Mr. Clyne. The hearing officer was George S. Lundin.

Disbarred

Daniel J. Rodriguez (WSBA No. 27321, admitted 1997), of Tacoma, was disbarred by order of the Supreme Court effective June 19, 2002, following a hearing. This discipline is based on his committing acts

of moral turpitude, lack of diligence, and charging unreasonable fees to clients.

Matter 1: In March 2000, Mr. P retained Mr. Rodriguez to represent him in a criminal appeal, paying Mr. Rodriguez $4,000. On June 30, 2000, Mr. Rodriguez filed a notice of appeal on behalf of Mr. P. Mr. Rodriguez did not pay the filing fee, nor did he file a request for an order of indigency.

On August 7, 2000, Mr. Rodriguez filed a motion to extend the deadline to submit the filing fee or to file a request for an order of indigency. On August 15, 2000, the court of appeals granted an extension of time to August 21, 2001. On that date, Mr. Rodriguez filed a letter with the court of appeals stating that he would file a motion for an order of indigency, but he did not do so, nor did he pay the filing fee. Mr. Rodriguez failed to inform Mr. P that he had neither paid the filing fee nor requested an order of indigency.

On October 12, 2000, the Court of Appeals determined the appeal had been abandoned and remanded the case back to Kitsap County. Mr. Rodriguez did not refund any of the $4,000 to Mr. P, and failed to cooperate with the disciplinary investigation.

Matter 2: In or about the spring and summer of 1999 and in August 2000, Mr. Rodriguez engaged in sexual contact and sexual intercourse, as those terms are defined by law, with ST. This conduct violated RCW 9A.44.079 (rape of a child in the third degree) and RCW 9A.44.089 (child molestation in the third degree). In January 2001, the Pierce County prosecutor charged Mr. Rodriguez with three counts of child rape and three counts of child molestation in the third degree. Mr. Rodriguez did not respond to the notice and summons for his arraignment on January 31, 2001. After a warrant was issued for his arrest, he left the area. On January 29, 2001, Mr. Rodriguez was asked to respond to a grievance regarding these criminal charges, but failed to cooperate with the disciplinary investigation.

Matter 3: Mr. Rodriguez represented GE in a civil rights case set for trial on January 22, 2001. Mr. Rodriguez did not timely file several required pretrial pleadings, including jury instructions and a trial brief. The court issued a number of orders requiring Mr. Rodriguez's client to file specific pleadings by certain dates. Mr. Rodriguez did not comply fully with these orders. In February 2001, the court dismissed GE's case for failure to prepare for trial.

Matter 4: Mr. Rodriguez represented JE in an appeal of a criminal conviction. On January 30, 2001, the court dismissed the appeal "as it appears to have been abandoned." The dismissal resulted from Mr. Rodriguez's failure to pay a sanction required by court order for late filing of clerk papers.

Mr. Rodriguez's conduct violated RPCs 1.3, requiring lawyers to act with reasonable diligence; 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters; 1.5, requiring lawyers' fees to be reasonable; 3.2, requiring lawyers to make reasonable efforts to expedite litigation; and 8.4(d), which states it is professional misconduct for lawyers to engage in conduct that is prejudicial to the administration of justice; RLD 2.8(a), requiring lawyers to promptly respond to any inquiry or request made

pursuant to the rules for information relevant to a grievance; RCW 9A.44.079, rape of a child in the third degree; and RCW 9A.44.089, child molestation in the third degree.

Anne Seidel represented the Bar Association. Mr. Rodriguez represented himself. The hearing officer was Preston L. Johnson.

[redacted]

[redacted]

[redacted]

[redacted]

Non-Disciplinary Notices

Interim Suspensions

Jeffrey R. Bunch (WSBA No. 21790, admitted 1992), of Spokane, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order approving a stipulation entered May 28, 2002 and effective on May 31, 2002.

Interim suspension is pursuant to RLD title 3 and is not a disciplinary sanction.

Harold E. Norwood Jr. (WSBA No. 19268, admitted 1989), of Lacey, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered May 30, 2002.

Interim suspension is pursuant to RLD title 3 and is not a disciplinary sanction.

Trenidad Hernandez (WSBA No. 25849, admitted 1996), of Yakima, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered March 7, 2002.

Interim suspension is pursuant to RLD title 3 and is not a disciplinary sanction.

Nelson C. Fraley II (WSBA No. 26742, admitted 1997), of Lakewood, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered June 25, 2002.

Interim suspension is pursuant to RLD title 3 and is not a disciplinary sanction.

Washington State Bar Association

2002 Annual Report

Board of Governors

Left to right, front row:
S. Brooke Taylor, District 6
Carl J. Carlson, District 7-Central
J. Richard Manning
President-elect
Dale L. Carlisle, President
Lucy Isaki, District 7-West
Kenneth H. Davidson, District 1
Bryce H. Dille, District 9

Left to right, back row:
David W. Savage, At-large
Jon E. Ostlund, District 2
Zulema Hinojos-Fall, At-large
William D. Hyslop, District 5
Robert M. Boggs, District 4
Stephen J. Henderson, District 3
Victoria L. Vreeland, District 8
Jenny A. Durkan, District 7-East
Paul R. Lehto, At-large
(Young Lawyers Division)

Standing Committee Chairs

Alternative Dispute Resolution
Lisa E. Schuchman
Amicus Brief,
Kenneth W. Masters
Character and Fitness Board
Larry E. Juday
Civil Rights, Maria Fox and
Michael C. Subit
Consumer Protection
Nancy C. Ivarinen
Continuing Legal Education
Martin T. Silver
Court Improvement
James (Kirk) Johns
Court Rules and Procedures
Moses F. Garcia
Disciplinary Board
David D. Cullen
Diversity, Bonnie J. Glenn and
Rafael A. Gonzales
Editorial Advisory Board
Paula C. Littlewood
Electronic Communications
(EC 2), Joseph J. Lopez
Interprofessional
Gail M. Lundgren
Judicial Recommendation
Lucinda S. Whaley
Law Clerk Board
John W. S. Acheson III
Law Examiners
Frank V. Slak Jr.
Law Office Management
Assistance Program
Samuel J. Elder Jr.
Lawyers' Assistance Program
George P. Haldeman
Lawyers' Fund for Client
Protection, Richard M. Holt
Legal Assistants, Michael F. Fitch
Legal Services to the Armed
Forces, Kenyon E. Luce
Legislative, Keith G. Baldwin
Pro Bono and Legal Aid
Gail R. Smith
Professionalism
Marijean E. Moschetto
Rules of Professional Conduct
Gail A. McMonagle
State Board of Continuing
Legal Education
Terri W. Malolepsy

Section Chairs

Administrative Law
Judith A. Endejan
Animal Law, Adam P. Karp
Antitrust, Consumer Protection
and Unfair Business Practices
Susan E. Foster and
John A. Tondini
Business Law, Brian J. Todd
Construction Law
Arnold R. Hedeen
Corporate Law Department
Meredith L. Lehr and
Jeffrey A. Christianson
Creditor/Debtor, Richard J. Hyatt
Criminal Law
James Hershey and
Francisco A. Duarte
Dispute Resolution
Lawrence R. Mills
Elder Law
Elizabeth Turner Smith
Environmental and Land Use
Charles R. Wolfe
Family Law, Peter S. Lineberger
General Practice
Gregory S. Morrison
Health Law, Roger F. Chase
Indian Law, Thomas P. Schlosser
Intellectual Property
Bruce Kaser
International Practice
Stefan Biberfeld
Labor and Employment Law
Thomas T. Bassett,
Michael B. Harrington and
Joyce L. Thomas
Law Practice Management &
Technology
Mark L. Wheeler Jr.
Litigation, Maureen A. Hart
Real Property, Probate & Trust
Barbara C. Sherland
Senior Lawyers, Robert A. Berst
Taxation Law, Steven C. Frol
World Peace Through Law
Paul A. Schlossman

Young Lawyers Division
Sherri L. Jefferson

Financial Highlights for Fiscal Year 2001

The Washington State Bar Association ended the fiscal year (October 1, 2000 through September 30, 2001) slightly better than budget. The budget provided for expenses to be in excess of revenues, in order to use some of the net assets accumulated in previous years before needing an increase in member license fees or other sources of revenues. We received an unqualified opinion on our financial statements from our auditors.

The WSBA has a strategic goal to be fiscally responsible – to operate a well-managed and financially sound association, be accountable to members and the public, and use our resources wisely in ways that accomplish our mission. The accumulation over time of revenues in excess of expenses is called net assets, or reserves. In order to maintain sound reserves, as recommended by our auditors, about every three years the WSBA forecasts and sets member license fees required to fund the WSBA's activities. License fees for 2001 were set in 1999.

Financial Results

The excess of expenses over revenues of $306,000 was less than the budgeted target of $331,000. The general fund, which represents all WSBA programs except CLE, sections, and the Lawyers' Fund for Client Protection, ended the fiscal year with expenses in excess of revenues of $374,000, compared to the budgeted amount of $340,000.

The general fund net assets at year-end of $451,000 were five percent of general fund operating expenses; our target is to achieve at least eight percent by the end of FY 2003. To meet this goal, 2002 and 2003 license fees were set and budgets approved.

CLE programs and products ended the year about break-even — CLE had expenses over revenues of $1,000, short of the budgeted amount of $84,000 of revenues in excess of expenses. This amount was fully funded by CLE net assets built up in previous years. Providing CLE opportunities for members is self-funded by seminar registration fees and sales of deskbooks and other publications. CLE net assets at year-end were $450,000. No member license fees were used to support CLE activities.

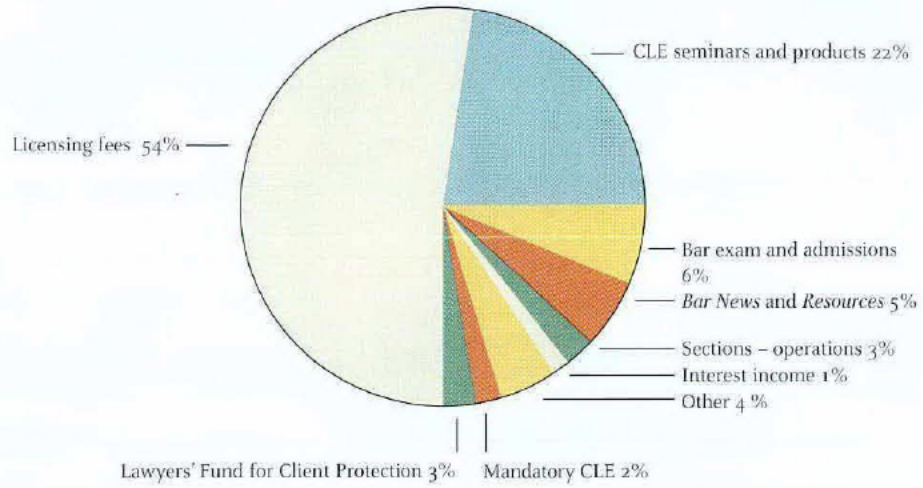
The WSBA's 23 sections ended the fiscal year with expenses over revenues of $33,000, compared to the budgeted amount of expenses over revenues of $132,000. The sections' combined net assets were $531,000. Sections are a voluntary activity for WSBA members and are fully self-supporting through section dues and fees for section products or services. No member license fees were used for section activities, and all net income from sections is carried forward in each section's net assets for use by that section in future years.

The Lawyers' Fund for Client Protection (LFCP) ended the year with revenues over expenses of $102,000, which was in excess of the budgeted amount of $58,000. The LFCP has net assets of $352,000, which is available for use in future years.

The revenue chart shows the percentage of revenues collected from various sources. The expense chart shows the percentage of total expenses used for each regulatory activity and member service we perform. Regulatory activities such as discipline and fee arbitration, random audits of trust accounts, mandatory continuing legal education administration, licensing of members, office administration, and support of the Board of Governors are funded by member license fees. The chart identifies major programs that are entirely or substantially self-funded, including CLE seminars and products, *Bar News* and *Resources*, the bar exam and admissions, and section activities.
The statement of activities lists revenues and expenses by program.

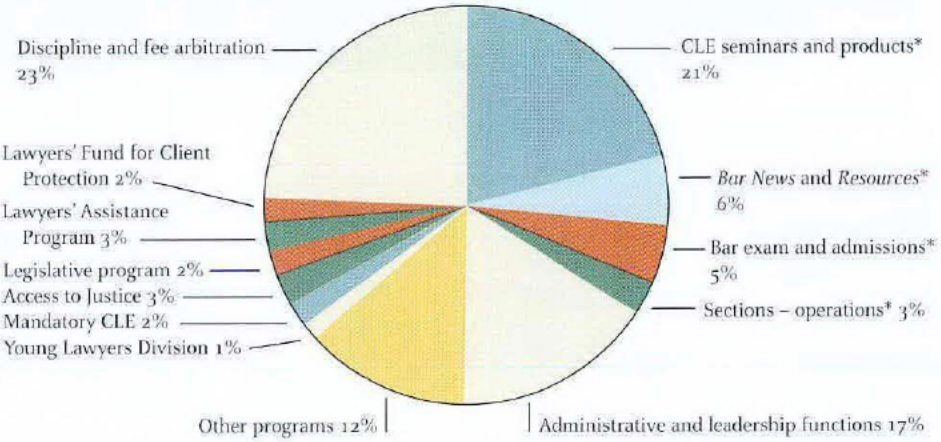
Financial information, including the budget, is available on the WSBA Web site at www.wsba.org/finances. A complete copy of the audited financial statements and auditor's report is available on request; e-mail patd@wsba.org or call 206-727-8241.

Percentage of 2001 Revenues Collected from Various Sources



Percentage of 2001 Expenses Used by Activity

(*activity is self-funded)



Statements of Activities

	Year ended September 30, 2001			Year ended September 30, 2000		
	Revenues	Expenses	Revenues over (under) expenses	Revenues	Expenses	Revenues over (under) expenses
Unrestricted						
Licensing fees	$6,986,097	$ –	$6,986,097	$6,219,674	$ –	$6,219,674
Access to Justice	32,055	351,768	(319,713)	22,048	316,713	(294,665)
Administration	173,600	1,367,926	(1,194,326)	199,044	1,431,080	(1,232,036)
Bar examination and admissions	834,028	699,229	134,799	834,338	695,518	138,820
Audits (random and for cause)	–	99,838	(99,838)	–	118,797	(118,797)
Bar News	516,005	679,658	(163,653)	474,900	609,390	(134,490)
Communications	29,178	278,841	(249,663)	13,463	272,972	(259,509)
Convention – Celebration 2000	–	–	–	231,286	288,013	(56,727)
Court rules	–	–	–	–	14,589	(14,589)
Discipline	75,783	3,173,964	(3,098,181)	66,545	3,080,220	(3,013,675)
Alternative Dispute Resolution Program	3,400	72,603	(69,203)	–	57,897	(57,897)
Human resources	–	175,417	(175,417)	–	–	–
Lawyers' Assistance Program	38,913	344,758	(305,845)	31,602	303,846	(272,244)
Law Office Management Assistance Program	91,054	152,244	(61,190)	20,702	143,004	(122,302)
Leadership	10,004	424,162	(414,158)	–	334,418	(334,418)
Legislative	–	253,302	(253,302)	–	213,964	(213,964)
Local bar support	39	190,276	(190,237)	–	88,017	(88,017)
Mandatory continuing legal education	261,060	205,206	55,854	238,496	188,629	49,867
Membership records	57,292	432,349	(375,057)	50,967	524,611	(473,644)
Office of General Counsel	–	241,645	(241,645)	–	–	–
Professional Responsibility Program	–	117,520	(117,520)	–	94,683	(94,683)
Public Legal Education	17,099	102,069	(84,970)	–	87,778	(87,778)
Resources directory	137,638	62,132	75,506	132,216	63,356	68,860
Sections – administration	133,524	121,175	12,349	159,864	121,372	38,492
Technology Bill of Rights	35,714	35,714	–	–	–	–
Young Lawyers Division	22,007	147,774	(125,767)	19,545	132,479	(112,934)
Web site	2,400	92,810	(90,410)	–	–	–
Other	–	8,754	(8,754)	4,720	10,782	(6,062)
Unrestricted – General	$9,456,890	$9,831,134	$(374,244)	$8,719,410	$9,192,128	$(472,718)
Unrestricted – sections operations	$373,672	$406,354	$(32,682)	$433,549	$418,882	$14,667
Continuing Legal Education – publications	$714,295	$625,460	$88,835	$732,742	$667,687	$65,055
Continuing Legal Education – seminars	2,087,626	2,177,514	(89,888)	1,912,120	2,027,582	(115,462)
Unrestricted – Continuing Legal Education	$2,801,921	$2,802,974	$(1,053)	$2,644,862	$2,695,269	$(50,407)
Temporarily Restricted Lawyers' Fund for Client Protection	$333,401	$231,337	$102,064	$313,354	$146,002	$167,352
Total	$12,965,884	$13,271,799	$(305,915)	$12,111,175	$12,452,281	$(341,106)

The Year in Review

by Dale L. Carlisle, President and Jan Michels, Executive Director

The annual report is our opportunity to talk about the year's accomplishments. The WSBA's 1999-2003 Long-Range Strategic Plan (LRSP) provides continuity to our work and a structure for members to use in tracking our progress. This plan is organized around 11 strategic goals and is the roadmap for our work. (The LRSP and the 2001-2002 Operational Plan that details this year's specific objectives are on the WSBA Web site at www.wsba.org/c/lrsp.)

Goal 1: Improve member benefits and services.
In response to the number-one member-requested service from solo practioners, small firms, and lawyers in eastern Washington, the Member Benefits Task Force has developed a WSBA-endorsed medical-benefits plan that is available to all members statewide.

The WSBA also enhanced the WSBA Service Center, began to offer logo merchandise, and developed an optional service where members can supplement their listing on the online lawyer directory with a link to their Web site. WSBA discipline counsel, professionalism counsel, and the Law Office Management Assistance Program offered more than 130 local seminars and programs to members in all parts of the state. The Board of Governors continued "listening lunches" with local lawyers when meeting in their area to stay in touch with members from around the state.

Goal 2: Conduct a public education program to broaden legal-system knowledge.
The WSBA was instrumental in establishing the Council on Public Legal Education, which met for the first time in early 2000 and is now developing a comprehensive, long-term strategy for making sure all Washington citizens are informed about their legal rights and responsibilities. The group plans to build partnerships with school districts, community groups, state agencies and other organizations that are already involved in educating the public, as well as take on new projects such as a gateway legal information Web site. The council is co-chaired by Judge Marlin Appelwick of the Washington State Court of Appeals, and former State Superintendent of Public Education Judith Billings; other members include lawyers and judges as well as representatives from education, the community and the media.

This year, the WSBA committed funds to a radio broadcast and airport-sign campaign in support of the activities of the Proud to Be a Lawyer Task Force, begun under Past-President Jan Eric Petersen. With the theme of "You have rights. Lawyers protect them," these efforts are geared at demonstrating the good lawyers do, and explaining that lawyers protect rights and help assure justice.

Goal 3: Improve the professional development of new lawyers.
Through the efforts of the Washington Young Lawyers Division (WYLD), the WSBA has increased support to new lawyers through special orientation/courthouse training of lawyers in conjunction with swearing-in ceremonies. The Board of Governors will consider a WYLD-proposed rule requiring specific new-lawyer orientation classes to fulfill MCLE requirements in the first two years of practice. The Lawyer-to-Lawyer Program provides new lawyers the opportunity to learn those things not learned in law school, while developing a relationship with an experienced attorney in their area of practice. This program is run by the Law Office Management Assistance Program. The WYLD also has developed a "Bridging the Gap" seminar for new lawyers, to assist then in acquiring the professional and business skills they need in the practice of law.

Goal 4: Promote civility and professionalism in the practice of law.
Last year, the WSBA adopted a Creed of Professionalism. This year, the Professionalism Committee worked together with local bar associations to present copies of the creed mounted on plaques to judges across the state. The plaques could be a wonderful addition to every lawyer's office, and are available at a very affordable price from the WSBA Web site store (www.wsba.org/store) or by contacting the WSBA Service Center (800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org).

Goal 5: Address external influences and market pressures.
The WSBA is a national leader on many future issues such as multistate reciprocity, multijurisdictional practice, the definition of the practice of law, technology in the practice of law, and interstate cooperation. The new Practice of Law Board, with Steve Crossland as chair and Judge Paul Bastine as vice-chair, has been appointed by the Supreme Court, and began its work in August.

Goal 6: Provide responsible, accountable and timely regulatory services.
We are nearing the end of a nearly 10-year effort to reduce the disciplinary backlog and assure that our discipline system operates in compliance with our aspirational guidelines. The high number of public proceedings created from eliminating the investigation backlog should work their way through the system by year's end and return the entire discipline system to "real time" — meaning that investigations and complaints are processed when received. In 2002, the Board of Governors forwarded revised Rules for Lawyer Discipline (RLDs), called Enforcement of Lawyer Conduct Rules (ELCs), to the Supreme Court.

Goal 7: Provide leadership and support to programs and initiatives for the benefit of access to justice.
Access to Justice has had a good year with many significant achievements, including the adoption by the Supreme Court of a Family Law Facilitator Rule; proposing an unbundled legal-services rule; allowing military lawyers to offer *pro bono* services in Washington through a rule change; a successful grassroots effort to maintain funding for civil equal justice; the establishment and oversight of a successful Greater Access and Assistance Program (GAAP) (reduced-fee panels for low income clients), in conjunction with the Young Lawyers Division; the establishment of the Supreme Court Task Force on Civil Equal Justice Funding, which currently is overseeing as one of its tasks the first comprehensive civil legal-needs study in Washington; strong progress on developing an Access to Justice Technology Bill of Rights (to assure equal access to justice in the information age); and the hosting of its seventh annual (and most well-attended) Access to Justice Conference.

Goal 8: Be a leader in using and promoting technology.
The WSBA's Electronic Communications Committee (EC2), the Law Office Management Assistance Program (LOMAP), and the Law Practice Management and Technology Section have been active in keeping the WSBA in the forefront of technology and technological innovations which assist lawyers in their practices. Very significantly, a new Web site that provides free public access to case law, LegalWA.org, was launched. This site contains Washington State Supreme Court opinions from 1939 to the present, and published Court of Appeals opinions from 1969 to the present. LegalWA.org was created cooperatively by the WSBA, Municipal Research & Services Center, and the Washington Office of the Code Reviser.

Internally, we have strengthened the WSBA's network infrastructure. We have also conducted an extensive needs-analysis,

resulting in requests for proposal (RFPs) being issued for financial and member database applications. New technology throughout the WSBA offices will enable us to better support our regulatory functions and members' desires for information and access.

Goal 9: Support the independence of the judiciary and court improvements.
Working together with the Board for Judicial Administration (BJA), we took the lead in securing passage of a constitutional amendment allowing for "portability" of judges, to reduce occurrences of trial continuances. President-elect Dick Manning, Governor Ron Ward and legislative staff have been appointed to the Supreme Court's Court Funding Task Force, which will be chaired by Past-President Wayne Blair to deal with the crisis in court funding caused by the erosion of local and state revenues.

Goal 10: Promote diversity and equality in the courts, legal profession and the Bar.
Since adding three at-large members, the Board of Governors more closely reflects the diversity of our members, establishing broader and more diverse WSBA governance. The Board of Governors has also worked closely with minority and specialty bar communities and the Glass-Ceiling Task Force to assure relevancy and representativeness on all committees and task forces.

Goal 11: Be fiscally responsible.
The WSBA continues to earn an unqualified opinion on our financial statements from our auditors, which demonstrates our sound fiscal practices. Although the WSBA suffered significant reductions in interest earnings, we continue to meet our annual fiscal reserve targets, and this year increased the reserve toward the eight percent reserve we plan to achieve by the end of 2003. We accommodated a necessary five percent reduction in force, and will propose restrained license-fee increases of two percent per year for 2004, 2005 and 2006 to the Supreme Court. The Facilities Committee is exploring options to avoid any dramatic increases in facility costs when our lease expires in 2006.

2001-2002 was a year of tremendous gains for members and the public. It took a lot of work by staff and volunteers alike, and members can be proud of the achievements of their association!

2002 Annual Award Winners

The WSBA is pleased to announce the winners of the 2002 Annual Awards: **Matthew Geyman**, *Pro Bono*; **Walt Kreuger**, President's Award; **Jerald Hamley**, Angelo Petruss Award for Lawyers in Public Service; **Lise Olsen**, Excellence in Legal Journalism; **Steve Crossland**, Award of Merit; **William Jaquette**, Courageous; Justice **C.Z. Smith**, Special Lifetime Service; **Smithmoore P. Myers**, Professionalism; Judge **Michael Hurtado**, Outstanding Judge; Judge **James Murphy**, Outstanding Judge.

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. To make your reservation, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. The deadline for reservations is September 3.

Online Resource for Court Decisions and Other Related Information

There's a new Web site you'll want to bookmark: http://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 contains links to other legal resources, and is updated weekly.

The WSBA Welcomes Mark Sideman

The WSBA is delighted to welcome Mark Sideman as the new director of continuing legal education. Prior to joining the WSBA, he was the CLE & IS director at the King County Bar Association. His experience includes working as a child and family therapist, and as a consultant in private business, including training, staff development, training curricula, "train-the-trainer" programs, and personal-growth seminars.

NJP Board to Meet Quarterly

The Northwest Justice Project board of directors will hold its final 2002 meeting on October 19. The public meeting begins at 9:30 a.m. For site information, contact Lisa Giuffré at 888-201-1012 or 206-464-1519.

WYLD Bridging the Gap Conference

The WYLD Bridging the Gap Conference will be held in Seattle September 20-21. This two-day conference will include skills training on subjects like brief-writing and arguing motions. For more information and the registration form, go to www.wsba.org/wyld.

Informal Ethics Opinions Online

We are pleased to announce that informal ethics opinions are 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 consid-

ered confidential. If you have a question about the ethical conduct of another lawyer, please call 206-727-8235.

Find Your Court Date Online

The Washington State Administrative Office of the Courts (AOC) has unveiled a newly automated program to find appearance dates for cases in Washington district and municipal courts. Located at http://www.courts.wa.gov/calendars, the program enables the public to locate future proceeding dates by entering a valid name or case number. This new program utilizes information from the Judicial Information System, which provides case-management automation to Washington courts. The program includes systems for appellate, superior, limited jurisdiction and juvenile courts.

Learn More about Case-Management Software

The WSBA Law Office Management Assistance Program (LOMAP) office maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff are available to provide materials, answer questions and recommend options. To make an appointment, contact Pete Roberts at 206-727-8237 or peter@wsba.org.

Keep in Touch Via E-mail

The WSBA uses e-mail to communicate with members quickly, efficiently and inexpensively, and increasingly it is becoming the preferred method of communication among committees and sections. Please consider providing us with your e-mail address. Contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA, or questions@wsba.org. Representatives are available Monday through Friday, 8:00 a.m. to 5:00 p.m.

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 not found in any textbook. The program is not a structured mentoring program and does not supplant any similar programs of local or specialty bars. We connect lawyers with similar practices in the same geographic area for mutual information-sharing and goodwill. For more information, contact Pete Roberts at 206-727-8237 or peter@wsba.org.

Notice of Meeting Date Change: Legal Foundation of Washington Public Meeting

The trustees of the Legal Foundation of Washington (LFW) will meet on September 19 (date changed from September 13) at the LFW office in Seattle. The public may appear to comment on the foundation's activities between 9:00 and 9:30 a.m.

U.S. District Court Fax Noticing Now Available

The U.S. District Court for the Eastern District of Washington has begun faxing orders, judgments and notices to lawyers. To learn more about this new service, go to http://www.waed.uscourts.gov. Lawyers who choose to participate authorize the court clerk to fax copies of orders, judgments and notices entered in civil and criminal cases directly to their firm fax numbers in lieu of mailing copies of the documents.

Changes in Professional Liability Program

Liberty International Underwriters has been selected to replace Great American Insurance Company in the WSBA-sponsored professional liability insurance program. Liberty has committed to continuing the current program's focus on broad coverage at competitive rates. They have also agreed to maintain all of the current policy features such as claims expense outside the limits of liability, an aggregate deductible providing first-dollar defense, broad prior-acts coverage, and a 50 percent reduction in deductible for early claims reporting. The WSBA program continues to be administered by Marsh Affinity Group Services. For more information about the carrier change, contact Pamela Blake at 206-613-7802 or John Chandler at 206-613-7804.

Join the Northwest Indian Bar Association

The Northwest Indian Bar Association (NIBA) is a nonprofit organization of Indian attorneys, judges and advocates in Alaska, Idaho, Oregon, Washington, British Columbia and the Yukon Territory. The association aspires to improve the legal and political landscape for the Pacific Northwest Indian community. For more information about joining NIBA, contact Gabriel S. Galanda at 206-628-2780 or ggalanda@wkg.com.

Support for "You Have Rights. Lawyers Protect Them" Campaign

The WSBA gratefully acknowledges the Kennewick firm Rettig, Osborne, Forgette, O'Donnell, Iller & Adamson LLP for their donation to the "You have rights. Lawyers protect them" campaign. This campaign, which was one of the projects undertaken by the Proud to Be a Lawyer Task Force formed by 2000-01 WSBA President Jan Eric Peterson, has run on radio stations in Seattle, Spokane, Wenatchee and Yakima. For more information, contact Allison Parker at allisonp@wsba.org or 206-733-5932.

WSBA-CLE Introduces New Edition of *Washington Life Insurance Trust Deskbook* at September 18 Seminar

The 2002 edition of WSBA-CLE's *Washington Life Insurance Trust Deskbook* is now available. It includes three model trust forms on disk (one entirely new), each with extensive annotations to applicable IRS cases and rulings, plus expert commentary on planning techniques, a comprehensive review of Washington trust law, and the estate tax, gift tax and income tax provisions of the Internal Revenue Code. The *Washington Life Insurance Trust Deskbook* was edited by Paul R. Willett, chair of the estate planning, probate and trust administration group at the Seattle firm Short, Cressman & Burgess. To order the deskbook, call 206-733-5918 or e-mail OrderF@wsba.org. For seminar information, call 800-945-WSBA or 206-443-WSBA, or go to www.wsba.org/cle/2002/02456.htm.

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.

BOG Meetings

October 18-19 – Silverdale
December 6-7 – Everett
January 17-18 – Olympia

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.

Changes to King County Superior Court Local Rules

Several King County Superior Court local rules have changed. They are: LR 4, 4.2, 4.3, 5.7, 40, 41, 94.04, 98.40; LCrR 5.1, 7.1; and LjuCR 7.3 and 7.15. Copies of the changes are available in cross-out and underline form on the clerk's Web site at http://www.metrokc.gov/judicial/lrmenu.htm.

Online MCLE Credit-Tracking System

Using the online MCLE Credit-Tracking System, you can do the following:

- 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 and click on the Member tab. 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.

Web Site Links from Lawyer Directory

A link to your Web site can be added to your directory listing, so current and potential clients can find out more about you and your practice at the click of a button.

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

The WSBA Store Is Open

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

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

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

Court Rules and Procedures Committee Review

When it reconvenes later this year, the WSBA Court Rules and Procedures Committee is scheduled to review the Rules of Evidence and the Infraction Rules for Courts of Limited Jurisdiction. Please send any suggestions for rule changes to the Supreme Court of Washington, Temple of Justice, PO Box 40929, Olympia, WA 98504-0929, or e-mail Lisa Bausch at lisa.bausch@courts.wa.gov.

LOMAP On the Road

The WSBA Law Office Management Assistance Program (LOMAP) kicks off its annual traveling seminar series in October. Under the theme "Smart Strategies for Improving Efficiency," topics will include case-management software, client management, and career transitions. The course offers 4.0 CLE credits, including 2.0 ethics credits (CLE credits pending at press time). "LOMAP on the Road" will visit Pullman (October 21), Walla Walla (October 22), Kennewick (October 23), Yakima (October 24), Vancouver (November 5), Aberdeen (November 6) and Olympia (November 7). The cost is $69. For more information, visit www.lomap.org or contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Please reference event code LOM1102.

Goldmark Award Nominations

The Legal Foundation of Washington is accepting nominations for the 2003 Goldmark Award. The award is given annually to an exceptional individual or organization that, by their vision, leadership and creativity, has provided meaningful access to Washington's civil justice system. Nomination forms are available by calling 206-624-2536, or by e-mailing dtheories@legalfoundation.org. Nominations are due by September 6, 2002.

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.

GORDON • EDMUNDS • ELDER PLLC

is proud to announce the formation of the partnership of

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Wesley N. Edmunds, Jr.
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Samuel J. Elder, Jr.

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Bellevue, Washington 98004
Telephone: 425-454-3313
Fax: 425-646-4326
E-mail: attorney@gee-law.com

The Law Firm of

LAWRENCE & VERSNEL PLLC

is pleased to announce that

James E. Carlson

has joined the firm as an associate.

Mr. Carlson will concentrate his practice on civil litigation.

5511 Key Tower
700 Fifth Avenue
Seattle, Washington 98101-5013
Telephone: 206-624-0200
Fax: 206-903-8552

MCKINLEY & IRVIN, PLLC

is pleased to announce that

Paul F. Eagle

has joined the firm as a senior associate, where he will continue his practice representing clients in divorce and family law litigation, criminal defense, and general civil litigation.

MCKINLEY & IRVIN, PLLC
Washington Park Building
33801 First Way South, Suite 281
Federal Way, Washington 98003
Telephone: 253-838-7003

City Center/U.S. Bank Centre
1420 Fifth Avenue, Suite 2202
Seattle, Washington 98101
Telephone: 206-625-9600

Consultation and meeting offices in Bellevue and Puyallup.

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Attorney Jeffrey H. Smith, former shareholder at Smith Roberson Walsh, is pleased to announce the opening of his new law firm.

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Fax: 206-624-1767
E-mail: jeff@jeffsmithlaw.com

www.jeffsmithlaw.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.

ADR

Training to Be a Professional Mediator
September 12-13 – Seattle. 21.5 CLE credits, including 2.5 ethics (20-hour course). By Alhadeff Mediation Services; 206-281-9950.

Training to Be a Professional Mediator
September 24-27 – Seattle. 35.5 CLE credits, including 2.5 ethics (40-hour course). By Alhadeff Mediation Services; 206-281-9950.

Professional Mediation Skills Training
October 4-6 & 19-20 – Seattle. 34 CLE credits, including 2 ethics pending. By UW-CLE; 800-CLE-UNIV.

CRIMINAL LAW

Criminal Justice Institute
September 25-26 – Seattle. CLE credits TBD. By WSBA-CLE and Criminal Law Section; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

Affirmative Action Briefing
October 3-4 – Seattle. CLE credits TBD. By National Employment Law Institute; 303-861-5600.

ESTATE PLANNING

Estate and Gift Tax Returns
September 5 – Mt. Vernon; September 12 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Navigating the Maze: A Checklist Approach to Land Use, Permitting Approval
October 4 – Seattle. CLE credits TBD. By WSBA-CLE and RPPT Estate Planning; 800-945-WSBA or 206-443-WSBA.

WYLD: How to Draft Wills
October 10 – Seattle; October 17 – Vancouver, WA. CLE credits TBD. By WSBA-CLE and Washington Young Lawyers Division; 800-945-WSBA or 206-443-WSBA.

Usury Rate: The average coupon equivalent yield from the first auction of 26-week treasury bills in August 2002 is 1.589 percent. The maximum allowable interest rate for September is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988-June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date appears at www.wsba.org/barnews/usuryrate.html.

WYLD: How to Probate an Estate and Handle Post-Mortem Issues
October 11 – Seattle; October 18 – Vancouver, WA. CLE credits TBD. By WSBA-CLE and Washington Young Lawyers Division; 800-945-WSBA or 206-443-WSBA.

RPPT Estate Planning
October 25 – Location TBD. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ETHICS

Ethics, Professionalism and Civility: The Hard Questions
September 20 – Seattle. 3 CLE ethics credits. By WSBA Professionalism Committee; 800-945-WSBA or 206-443-WSBA.

Ethical Dilemmas
October 16 – Yakima; October 23 – Tacoma; October 30 – Vancouver, WA; Spokane. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

Elder Law Section Annual Meeting
September 20 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Adoption: How to Solve Problem Areas
September 20 – Seattle. 5.5 CLE credits estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Adoption Law and Procedure: Dealing with New Frontiers and Old Stumbling Blocks
October 11 – Spokane. 5.5 CLE credits estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Washington State CASA's 10th Annual State Conference
October 11-13 –Yakima. 8 CLE credits, including 2 ethics. By Washington State Association of CASA/GAL Programs; 206-667-9716.

Family Law/Military Matters
October 24 – Everett; October 29 – Tacoma. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

GENERAL PRACTICE

Americans with Disabilities Act Workshop
September 6 – Seattle. CLE credits TBD. By National Employment Law Institute; 303-861-5600.

Breakfast with the Judges
September 10, 17, 24 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Moderated Video Replay: Auto Cases
September 20 – Kennewick. 6.75 CLE credits, including .5 ethic. By WSTLA; 206-464-1011.

21st Annual Civil Service Conference
September 25-26 – Yakima. CLE credits TBD. By Foster, Pepper & Shefelman; 206-447-8985.

Tort Law
September 25 – Seattle. CLE credits TBD. By WSTLA; 206-464-1011.

Advanced Negotiation Strategies
September 27 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Pre-existing Conditions
October 10 – Seattle. CLE credits TBD. By WSTLA; 206-464-1011.

Mental Illness and the Law
October 18 – Seattle. CLE credits TBD. By UW-CLE; 800-CLE-UNIV.

Pacific Legal Technology Conference
October 18 – Vancouver. CLE credits TBD. By Law Society of British Columbia; 800-903-5300.

Moderated Video Replay: Reciprocity
October 24-25 – Seattle. 17 CLE credits, including 2 ethics. By WSTLA; 206-464-1011.

INDIAN LAW

15th Annual Indian Law Symposium
September 19-20 – Seattle. CLE credits TBD. By UW-CLE; 800-CLE-UNIV.

INSURANCE LAW

Insurance Issues
October 2 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LABOR & EMPLOYMENT LAW

2nd Annual Labor and Employment Law Section Meeting and Seminar
October 18 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LAW PRACTICE MANAGEMENT

Winning Strategies
September 19 – Seattle. CLE credits TBD. By WSBA-CLE and Law Practice Management; 800-945-WSBA or 206-443-WSBA.

Computer Camp
October 9-10 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LOMAP On the Road — LOMAP Traveling CLE Presentations
October 21 – Pullman; October 22 – Walla Walla; October 23 – Kennewick; October 24 – Yakima. 4 CLE credits, including 2 ethics credits By LOMAP; 800-945-WSBA or 206-443-WSBA. Reference event code LOM1102.

LITIGATION

Presentation Skills
September 10 – Tacoma; September 25 – Seattle. 4 CLE credits estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Trial Advocacy: Courtroom Performance
September 12 – Seattle; September 13 – Mt. Vernon. 5.5 CLE credits estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Appellate Writing
September 20 – Seattle; September 27 – Olympia. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Effective Use of Technology in Litigation Practice
September 26 – Seattle. CLE credits TBD. By The Seminar Group; 800-574-4852.

Effective Legal Writing *(with Judge Rideout)*
October 16 – Seattle; October 30 – Bellingham. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Valuation and Litigation
October 23 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

REAL ESTATE

Real Estate Workshop
September 5 – Seattle (Residential, a.m./Commercial, p.m.). CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Utilizing Real Estate Development Incentives in Washington State
September 12 – Seattle. 5 CLE credits. By The Seminar Group; 800-574-4852.

Professionals

LABOR AND EMPLOYMENT LAW

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

ETHICS & LAWYER DISCIPLINE

25 Years' Experience

Leland G. Ripley,
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E-mail: leland.ripley@verizon.net

APPEALS

James E. Lobsenz
handles both civil and criminal appeals in state and federal courts. He has argued over 25 cases in the Washington State Supreme Court, including *Washington State v. Stein*, 144 Wn.2d 236, 27 P.3d 184 (2001).

CARNEY BADLEY SPELLMAN PS
700 Fifth Ave., Ste. 5800
Seattle, WA 98104
206-622-8020
E-mail: lobsenz@carneylaw.com

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MEXICAN MATTERS

Spanish-speaking attorneys in Seattle and Mexico work together to address real estate, business, litigation, and immigration matters.

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(in Seattle)
E-mail: matthew@metzlaw.net
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011-52-55-52-54-68-77
(in Mexico)
E-mail: info@calderonrosen.com
www.calderonrosen.com

APPEALS

Margaret K. Dore

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

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

Passed CPA exam in 1982

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

APPEALS

Philip A. Talmadge
Former justice, Washington State Supreme Court; fellow, American Academy of Appellate Lawyers

Cleveland Stockmeyer
Former law clerk, Washington State Supreme Court

Anne Watson
Former law clerk, Washington State Supreme Court

Available for consultation or referral on state and federal briefs and arguments.

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Tukwila, WA 98188-4630
206-574-6661
Fax: 206-575-1397

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E-mail: maggybailly@hotmail.com

APPEALS

Michael T. Schein
and
Douglas W. Ahrens
are available for referral, consultation or association on all issues relating to appeals and the appellate process.

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Seattle, WA 98104
206-624-6271

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Joseph J. Ganz
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Seattle, WA 98121
206-448-2100
E-mail: jganzesq@aol.com

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Reply to WSBA *Bar News* Box Numbers at:

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2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330

Positions available are also posted by telephone at:

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

FOR SALE

CLE preferred pass: Six passes left. Will sell for $500 obo. Contact Tia at 905-523-9140.

For sale: Eight-foot round cherry conference table, copy board, almost new copier, 16 conference-room chairs, telephones, reception station, bookshelves, file cabinets, office tables, couch and other custom-designed office furniture at severely discounted prices. 206-281-9950.

For sale – view condo, Seattle's Queen Anne: One-bedroom condo with sweeping Lake Union, mountain view. Hardwood floors, granite tile, parking. Prestigious 1800 Taylor Ave. N., top of Queen Anne east. Walk or 10-minute bus ride to downtown. $199,950. For photos and details, e-mail kelaw@lawofficeofkenlawson.com; 206-632-1085; fax 206-632-1086.

SPACE AVAILABLE

For sublease: Two spacious offices in small suite on the 22nd floor at 1111 3rd Ave., Seattle. One with full western exposure; one with northern exposure (ideal for paralegal or support staff). Reception and other amenities provided. 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: $150 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.

Nice law office for rent: Approximately 1,700 sq. ft. Will accommodate two attorneys and staff. Located in Tacoma near Hwy. 16 and Fircrest. $2,400/month. Call Mark at 206-460-3265 or 888-279-2002.

Renton: Office sharing available. In prime location off Highway 167 for one or two attorneys and staff. Possible hire of shared associate. Call Gary O. Olson at 425-251-9313.

North Seattle office: First month free. Usual amenities. Overflow/referrals available. $500. Call Scott at 425-271-8900 or Peter at 206-440-0879.

Reflected water view in downtown Seattle high-rise. Congenial and professional attorneys have two to four offices available for subtenants. First month free with year or more lease. Receptionist and other amenities provided. Call 206-382-2600.

Mercer Island view office: View of lake and park; excellent easy-access location. Seeking compatible attorney for shared amenities including clerical space, copier, fax, legal support services. Call 206-275-0770.

Mount Vernon downtown office: Two blocks from courthouse. Receptionist, conference room, DSL, computer network, library, copier and fax, phone system and voice-mail, furnished/unfurnished, kitchen. Call Tom at 360-428-7900.

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

Downtown Seattle: Two offices and legal assistant's space available. Western view. Shared receptionist and amenities. Offices are networked with high-speed Internet connection. 1402 3rd Ave. Contact Quentin Steinberg at 206-622-5510 or qs@seattlelawyer.com.

New Class-A Seattle office space in Mt. Baker: 10 minutes from downtown at 1414 31st. Ave. S. Great access to freeways. 2,100 RSF available. Free street and leased garage parking. Call Douglas at 206-322-3690, ext. 3.

POSITIONS AVAILABLE

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

Minzel and Associates, Inc. is a temporary and permanent placement agency for lawyers and paralegals. We are looking for quality lawyers and paralegals who are willing to work on a contract and/or permanent basis for law firms, corporations, solo practitioners and government agencies. If you are interested, please call 206-328-5100 or e-mail mail@minzel.com for an interview.

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To Place a Classified Ad:

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

Deadline: Text and payment must be received (not postmarked) by the first day of each month for the issue following, e.g., October 1 for the November 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.

Send cover letter and résumé to Commander, 70th Regional Support Command, Attn: AFRC-CWA-JA (Staff Judge Advocate); 4570 Texas Way W., Fort Lawton, WA 98199-5000.

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Contract attorney, immigration law: Law Offices of Carol L. Edward & Associates, PS, is seeking a contract attorney to assist in overflow casework with potential of permanent employment. Two years' immigration-related experience required. Background in business law, criminal law or litigation helpful. Bilingual applicant preferred. Applicants must possess excellent research and writing skills, commitment to client services, and a desire to work as part of a team. WSBA membership required. Confidential inquiries to Carol Edward; 500 Denny Way, Seattle, WA 98109; phone 206-956-9556; fax 206-956-4025; celaw@seattle-immigration.com.

Eastern Washington opportunity: Solo practitioner seeking quality associate attorney for general practice with emphasis on municipal law. Applicants must possess outstanding credentials, have strong work ethic, and desire to live in small eastern Washington community (Ephrata). E-mail letter and résumé to foianini@bentonrea.com.

South Snohomish County law firm seeks associate attorney for civil litigation and business transactional practice. A minimum of two years' experience in civil litigation required. Candidate must be a current member of the WSBA and possess basic computer literacy. Competitive salary and benefits. Please send résumé, cover letter and writing sample to Managing Partner; 16504 9th Ave. SE, Ste. 203, Mill Creek, WA 98012.

Small Seattle law firm seeks associate with at least two years' experience to represent labor unions, their members, and joint labor-management benefit funds. Experience in labor and/or ERISA preferred but not required; demonstrated commitment to social justice a must. Forward résumé to Todd A. Lyon; Davies, Roberts & Reid LLP; 101 Elliott Ave. W., Ste. 550, Seattle, WA 98119; e-mail todd@drrlaborlaw.com.

Raugust and Hahn, a small Spokane law firm, needs one or two associates to practice in the areas of personal injury, family law, bankruptcy, immigration, and/or criminal defense. Experience preferred but not required. Ethics are a priority. Send résumé and cover letter to Dale Raugust; Raugust and Hahn PLLC; 606 S. Pines Rd., Spokane, WA 99206.

Liberty Northwest Insurance Company seeks a paralegal with at least three years' litigation experience for its Bothell office. Insurance defense experience preferred. Please send résumé to Steven L. Abel; Abel, Maloney & Bowers; 3330 Monte Villa Pkwy., Ste. 200, Bothell, WA 98021-8972.

Risk-management attorney: Geonerco, Inc., a privately held single-family home-building company, seeks an attorney to join our three-person legal department in our Seattle corporate office. Under the direction of our in-house corporate counsel, the successful candidate will analyze, formulate and manage the company's legal position in the areas of product liability, general liability, risk management and subcontractor agreements as those areas relate to the construction of single-family homes and associated property-development matters. Interested candidates must have a license to practice law in either WA, OR, CA, CO or UT; a minimum of two years' practical experience in product liability or risk-management matters; and superb verbal communication and writing skills. This position requires occasional air travel to our home-building companies in the western U.S., and proficiency with Microsoft Office 2000 applications. Send résumé and cover letter in confidence to Geonerco, Inc.; Attn: HR-Attorney; 1300 Dexter Ave. N., Ste. 500, Seattle, WA 98109.

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Creditors' rights attorney: Seattle law firm with national bankruptcy practice seeks an associate with at least two years' consumer bankruptcy experience. Successful candidate will be knowledgeable in consumer bankruptcy issues and able to multi-task and handle diverse matters quickly and efficiently. Multiple-state bar memberships a plus. Please forward résumé and references to mjm@wtrlaw.com.

King County – public defender: Salary $95,191-120,072 (2002 rate). King County Department of Community and Human Services in Seattle is seeking an experienced criminal justice attorney to manage the Office of Public Defender. Provide indigent defense services for over 50,000 clients in the most effective manner possible while ensuring that constitutional rights are protected. Develop and implement policies, standards and guidelines for public defender operations. Plan, develop and implement a multi-million-dollar budget for the Office of Public Defender including contracts in excess of $28 million with public defender agencies. Work collaboratively with other criminal-justice agencies and county departments to improve local service provision and management. Must either be a licensed attorney in Washington or capable of being licensed in Washington. Must have experience in public-defense management. Detailed description and application packet available from tom.olson@metrokc.gov or call 206-205-6337. King County prohibits discrimination on the basis of race, color, religion, creed, national origin, sex, sexual orientation, marital status, disabled veteran status, Vietnam-era veteran status, or disability status.

Anderson Hunter Law Firm in Everett seeks an experienced attorney to join its litigation practice group. Send résumé to Angela Stahl, Administrator; PO Box 5397, Everett, WA; or e-mail astahl@andersonhunterlaw.com. See our Web site at http://www.andersonhunter law.com.

Wagner, Luloff & Adams PLLC, an AV-rated Yakima law firm, seeks an associate with at least two years' litigation experience. Areas of practice include insurance defense, and business and commercial litigation. Exceptional opportunity for someone who can step in and immediately contribute in all areas

of the firm's litigation practice. Please fax or mail résumé to Wagner, Luloff & Adams PLLC; 110 N. 5th Ave., Ste. 200, Yakima, WA 98902; phone 509-248-5020; fax 509-248-4970.

Liberty Northwest Insurance Company seeks an attorney with at least three years' litigation experience for its Bothell office. Insurance-defense experience preferred. Please send résumé to Steven L. Abel; Abel, Maloney & Bowers; 3330 Monte Villa Pkwy., Ste. 200, Bothell, WA 98021-8972.

Sussman Shank LLP, a Portland law firm, seeks applications from experienced commercial litigation attorneys who desire to become contributing participants in the continued growth of a dynamic litigation practice. Applicants should have at least four years' experience in commercial litigation. Construction, environmental or employment litigation desired. Admission to practice in Oregon is required. Admission in Washington is a plus. Competitive compensation and benefits. Please send letter of application and résumé to Administrator; Sussman Shank LLP; 1000 SW Broadway, Ste. 1400, Portland, OR 97205.

Litigation: A 14-attorney firm in downtown Seattle (AV-rated) is seeking a full-time associate and/or contract attorney with a minimum of two years' experience. The firm's practice is high-level commercial and white-collar criminal litigation, largely in federal court. We enjoy what we do; value a respectful work environment; and want an energetic, well-rounded attorney to share our practice. For more information regarding our firm, please see our Web site at http://www.yarmuth.com. Please send résumé and cover letter to Richard Yarmuth at Yarmuth Wilsdon Calfo PLLC; 1201 3rd Ave., Ste. 3080, Seattle, WA 98101.

SEEKING

Seeking WSBA member to enforce a "sister state" judgment from CA in Redmond, WA. Please e-mail clark8708@msn.com to discuss fees.

Attorney seeks office share/space in Renton, WA. Areas of concentration are bankruptcy, real estate and elder law. 425-235-1718.

WILL SEARCH

Searching for any last will and testament or codicil of Richard B. Moore executed after January 22, 2002. Richard B. Moore died on May 19, 2002, in King County, WA. Anyone having information concerning any such document is request to contact John H. Hertog; 520 Pike St., Ste. 1350, Seattle, WA 98101-4023; 206-587-6556.

Seeking will of William Elton Griffin of Tukwila, who died on September 19, 2000. Contact Vivien Chang, attorney for daughter, at 206-521-6524.

Searching for last will and testament of Gladys E. Edwards, resident of Seattle. Contact Florence K. Deleranko, attorney for personal representative, at 206-682-2333.

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