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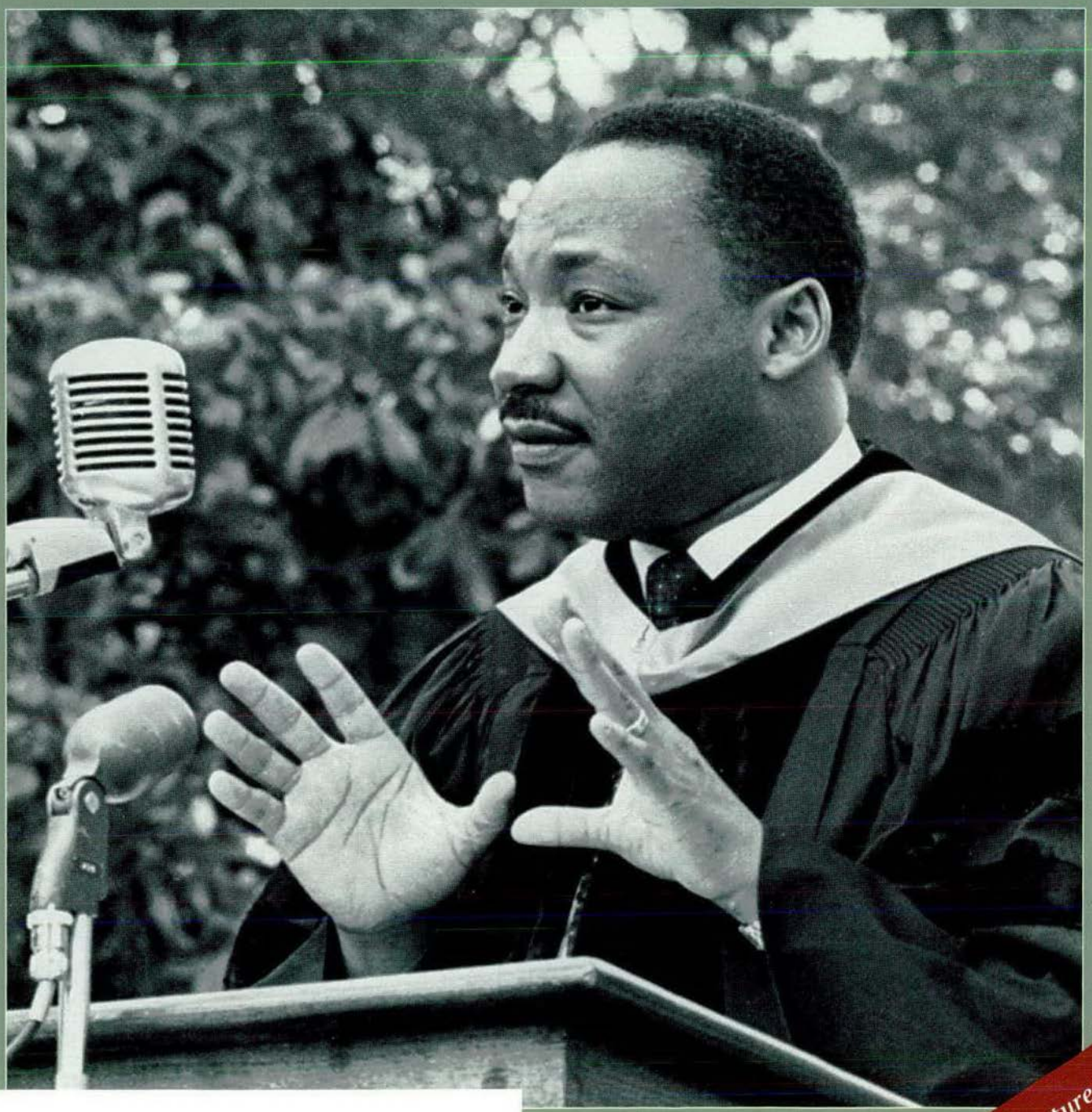

Book Review: The Future of Ideas
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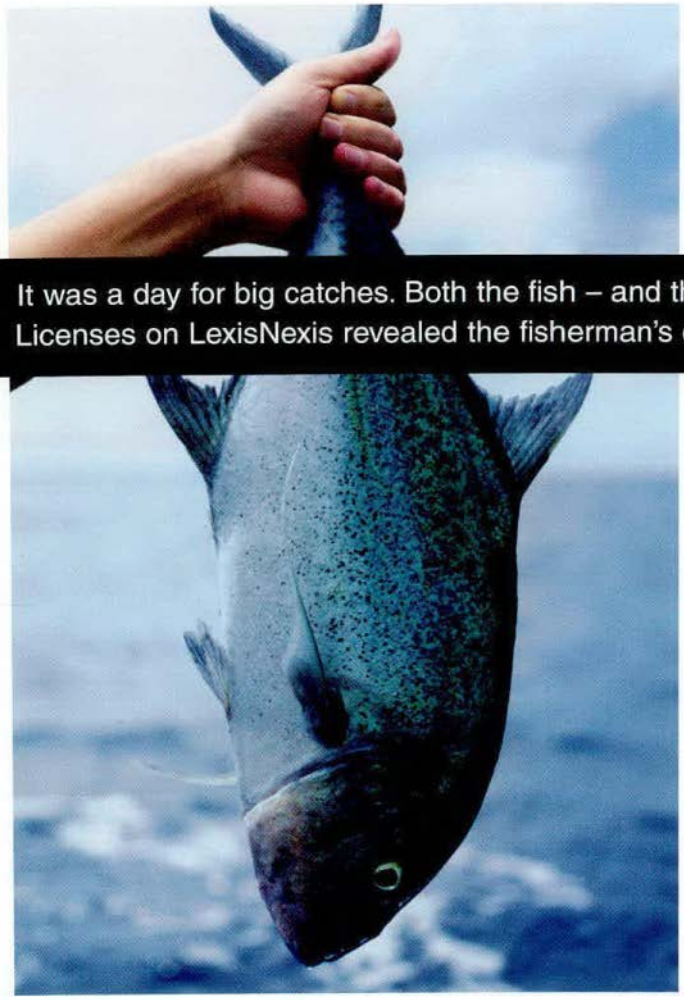
What can an attorney learn from a fish?



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On the cover:
Dr. Martin Luther King Jr. delivers the commencement address at Tuskegee Institute in Alabama on May 31, 1965.
(Photo: AP/ World Wide Photos)

See related announcement on p. 53.

Working together to champion justice

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Readers are invited to submit correspondence and articles. They may be sent via e-mail to comm@wsba.org or provided on disk in any conventional format with accompanying hard copy and sent to *Bar News* Editor, 2101 Fourth Avenue, 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.

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Indian Law

Editor:

I was delighted to see the series of articles on Indian law published in the November 2002 issue of *Bar News*. In writing a new chapter for the book *Washington Legal Researcher's Deskbook*, 3d (2002), on Indian law research in Washington, I found precious little published that could help Washington lawyers with the principles and research tools needed for Indian law issues. These puzzling questions come up frequently in the practice of law in Washington state. Your issue of *Bar News* has helped to educate lawyers in a very significant and important way.

A detailed table of contents for the deskbook mentioned above can be found at http://lib.law.washington.edu/pubs/db3toc.html. In addition, the Gallagher Law Library at the University of Washington School of Law has indexed the materials found in the Western Regional Indian Law Symposium CLE programs from 1987 to 2001, which can be found at http://lib.law.washington.edu/ref/indiancle.html.

Great job, *Bar News*!

Penny Hazelton
Associate Dean for Library and Computing Services, UW School of Law
Seattle

Editor:

Kudos on the November issue of *Bar News*. I wish I had seen it before I wrote my article on tribal court systems for the October 2002 issue of the *Native American Law Digest*.

I'm glad attention is being given to a unique and ever-changing area of the law.

Richard D. Baranzini
Chief of Police, City of Sammamish

Drug-Policy Reform Position

Editor:

I write in response to the article by Ellen Begley with regard to drug policy, that is, policy with regard to drugs such as heroin, cocaine, PCP, methamphetamine and LSD. Some of these drugs are highly addictive, particularly heroin and methamphetamine. Some of them are mind-altering substances that lead people to do crimes and antisocial acts. Heroin in particular leads people to stop being productive members of society and instead devote life to obtaining heroin. This often means stealing and other crimes. These are the reasons why Congress and the various legislatures unanimously made possession of these drugs criminal offenses. While I suppose some drugs are fun and not everyone becomes a drug addict and a robber, it is safe to say that we would be better off without heroin, PCP, methamphetamine, cocaine and other illegal drugs. One might ask: would you want to be on a ship where half the crew was on heroin? Would you want your sister to be a heroin addict? The answer is probably no.

The King County Bar and the board of the state Bar seem to believe there should be no criminal penalties for possession of these drugs. The state Bar's resolution of December 11, 2001, says that "low-level drug crimes should be approached as health and not criminal problems." They also comment unfavorably on the criminal offense of "selling small amounts of drugs to support a drug addiction." They do not say whether they consider selling small quantities of PCP or methamphetamine or heroin to be a "low-level" crime that should be dealt with as a health issue,

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but the implication is that they think it should be a "health issue" and not a crime. Similarly, the King County Bar task force and King County Bar board never directly said there should be no criminal penalties for possession of methamphetamine, PCP, heroin, cocaine and other drugs, but they imply it by saying "violent or other *non-drug-related criminal behavior* (my emphasis) where drug abuse was a factor should not excuse the underlying crime." In other words, criminal penalties for violent or non-drug-related crimes only. They say that civil remedies supported by contempt sanctions should be used for persons who use drugs to the detriment of others. (From board recommendations of November 20, 2001, and December 2001 King County *Bar Bulletin*.) This seems to mean that possession of hard drugs should be legalized with some possible exceptions for court orders for "treatment."

This is a formula for destroying society. It is a formula for creating a vast new world of drug addicts. If the laws against drug possession are abandoned, there will be no bar to experimentation and use, and many persons will become addicts. Those who use already will use more, because of the lack of deterrent. One must remember that drug use is fun, profitable and sociable. One must also remember that many offenders do not want to change regardless of how sincere the bar associations may be in wanting to reform them. One must also remember that many offenders ignore "sanctions," regardless of whether they are backed by "civil sanctions." Drug use will escalate. Aside from everything else, society will be overwhelmed with drug users for whom there can never be enough or adequate rehabilitation experts. It is not easy to rehabilitate a heroin addict or a long-term PCP user or for that matter a crack-cocaine user, especially if they don't want to be rehabilitated. Businesses will move out of Washington, too, because who wants to do business in a state dominated by drug users who have no fear? Who wants to have a work force on crack or heroin that perhaps can't be fired?

Various parties claim that punishment and jail do not work. No one has proved or disproved this in a scientific or experimental way. Nothing works perfectly to modify or manipulate human behavior. A better question is how well does our current system of punishment and treatment work compared to other possibilities? This question is difficult to answer, although ultimately the public and the Legislature have to answer it, but the following are obvious: penalties and jail deter some people to some degree from committing some crimes, and it should be society's purpose to deter use of the drugs I have mentioned.

Jail discourages the offender from committing further offenses, by the threat of future incarceration, and sets an example for others so they will not commit offenses themselves and end up in jail likewise. Deterrence. This is why the police have those blue lights when they stop people on the freeway.

The Bar Association as a regulatory agency should take no position on drug policy issues at all, but in any event it should abandon the resolution of December 11, 2001, influenced by the King County Bar's resolution, which seems to call for *de facto* legalization of possession of hard drugs.

Roger Ley
Seattle

Editor's response: Mr. Ley sometimes is incorrect in his conclusions. The Board of Governors voted to support legislation to adjust the sentencing grid for some lower-level drug offenders, and apply the Department of Corrections' savings to funding drug treatment programs. The board devoted months of study to the matter and it was debated thoroughly. Among others, the proposals were actively advanced by King County Prosecutor Norm Maleng — no softy on the drug question.

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., January 10 for publication in the March 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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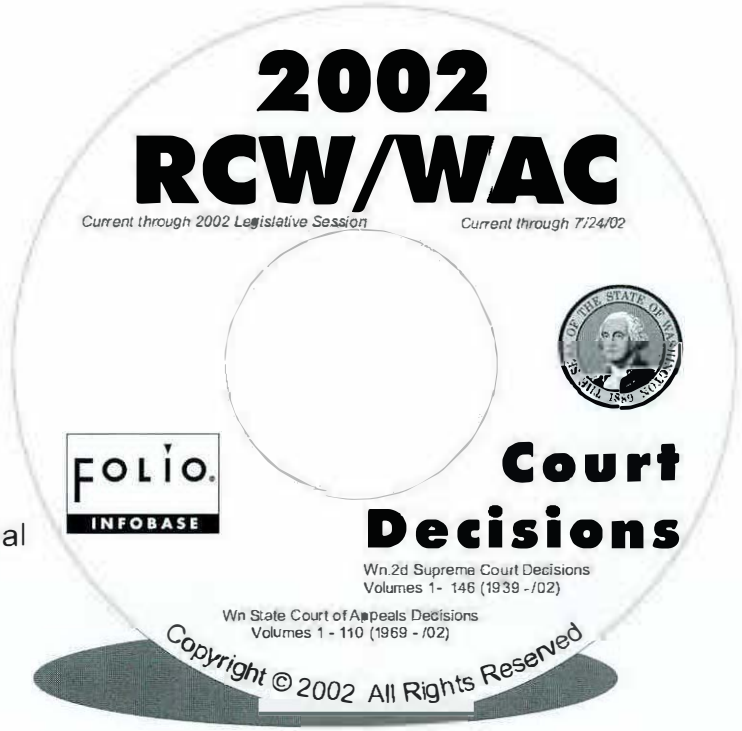

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Unfaltering Resolve

by Dick Manning
WSBA President

The defendant was on trial for first degree murder. The state's star witness testified on direct examination that he had seen the defendant strike the victim in the eye with a slingshot. As the witness testified for the prosecution, the defense lawyer sat with his head back, "... a steady gaze apparently fixed upon one spot of the plain ceiling, entirely oblivious to what was happening around him and without a single variation of feature or noticeable movement of any muscle of his face."

Now it was time for cross-examination. The defense attorney rose. He stood tall and bearded. His facial features were sharp and angular. He approached the prosecution witness:

Q: Did you actually see the fight?
A: Yes.
Q: And you stood very near to them?
A: No, it was 150 feet or so.
Q: In the open field?
A: No, in the timber.
Q: What kind of timber?
A: Beech timber.
Q: Leaves on it are rather thick in August?
A: It looks like it.
Q: What time did all this occur?
A: About 11:00 at night.
Q: Did you have a lamp there?
A: No. What would I want a lamp for?
Q: How could you see from a distance of 150 feet or more, without a lamp at 11:00 at night?
A: The moon was shining real bright....
Q: A full moon?
A: Yes, a full moon.

At this point, the defense attorney drew out of his back pocket a small blue-covered almanac, opened it slowly to the astronomical table for the night in question, and placed it before the witness. He continued his cross-examination:

Q: Does not the almanac say that on August 29 the moon was barely past the first quarter instead of being full?
A: (No answer.)
Q: Does not the almanac also say that the moon had disappeared by 11:00?
A: (No answer.)

Outlining his summation to the jury, Lincoln penned the following note to himself: "Skin the Defendant. Close."

Q: Is it not a fact that it was too dark to see anything from 50 feet, let alone 150 feet?
A: (No answer.)

The defendant was acquitted. The defense attorney? Abraham Lincoln. (Quoted from *Abraham Lincoln, Esq.* by Irving Younger.)

The Compassionate Litigator

Abraham Lincoln was a prodigious litigator, specializing in general trial practice. In appellate work alone, he argued 243 cases in the Illinois Supreme Court. And although he represented the Illinois Central Railroad in 40 lawsuits, he also represented many people of simple means. He was a compassionate man who would take on jury trials for little or no fee. One such case was that of the widow of a veteran of America's War for Independence, who had retained a claim agent to help her collect a widow's pension. When the claim agent kept half the pension without any agreement as to specific fees, Lincoln sued on her behalf. Outlining his summation to the jury, Lincoln penned the following note to himself: "Skin the Defendant. Close."

He abhorred the practice of slavery. Long before his Emancipation Proclamation, he argued in the Illinois Supreme Court in 1841 that a promissory note which had been given in payment for a black girl was unenforceable. To persuade the Court of his position, he argued that the Northwest Ordinance of 1787 forbade slavery in states created in the Northwest Territory (of which Illinois was one), and therefore it should be public policy for the courts of Illinois to refuse to aid anyone who sought to benefit from slavery. The Court adopted his position.

Lincoln was born in Kentucky among the poor and uneducated. His father could not read or write until after he married the woman who would become Lincoln's mother. The family drifted to Indiana and later, Illinois. Lincoln's

mother, a person of exceptional intellect and character, taught him to read early in life. And read he did — voraciously — anything he could find, especially U.S. history and Shakespeare. He worked on riverboats as a deck hand and then as a clerk in a general store. In 1834, at the age of 25, he was elected to the Illinois House of Representatives and admitted to the Illinois Bar in 1836 by "reading the law."

Unfaltering Resolve

The great debates of the century pitted the tall, lanky Lincoln, "...an abolitionist from the back woods of Kentucky and Indiana...," against Senator Douglas of Illinois, the prestigious leader of Congress who sought to extend slavery. Undaunted, Lincoln won two prizes in this David and Goliath match: he won over the conscience and votes of the people on the issue of slavery; and he won the hand in marriage of the woman both he and Douglas had been courting. Lincoln was inaugurated president on March 4, 1861.

Throughout the remainder of his life, Lincoln never faltered in his resolve that slavery would end and the Union would be preserved, even when opposed by those in his own party and administration.

"As the war dragged on in 1862 and 1863, ... it was becoming a prolonged, dismal, fratricidal struggle. In July 1863, New York rioted against the draft.... The Democratic Party in the North sought to win the presidential election on the plea that the war was a failure and should be discontinued.... The tall gaunt man at the White House found himself with defeatists, traitors, dismissed generals, tortuous party politicians and a doubting and fatigued people behind him, and uninspired generals and depressed troops before him..." (*The Outline of History* by H.G.Wells).

Still, Lincoln pressed on. And then, the war ended. Less than two weeks after he returned from Richmond, Virginia, upon General Lee's surrender, he was dead by an assassin's bullet. It was to be another century before a new leader would appear to pick up the baton and force the issue of the plight of people of color.

Another Leader Emerges

If he had lived, Dr. Martin Luther King would be 74 years old today. At the peak of his short-lived career, he was truly a man of courage and heroism. Imagine an "enlightened" nation in the 1950s and early 1960s (when many of the lawyers reading this were not even alive) where a person of color was subjected to abject humiliation and cruelty: where such a person could not dine at most restaurants; was told to sit only at the rear of a bus; could drink only from a drinking fountain, if there was one, or use a restroom, if there was one, not used by Caucasians; was permitted to live only in a segregated part of the community reserved for Negroes; and had to use separate entrances from Caucasians at places of public accommodation such as bus and railroad stations. And imagine the impact this had on the *children* of these people: children who were not permitted to attend any school except those reserved solely for persons of color; and who were treated with the same ignominy as their parents and families.

There was a presence and passion in Dr. King, in the marches he led in the South and Washington, D.C. He walked with and for men and women of all races and creeds who were targets of bigotry and ignorance. He was always at the head of the march, where he would be the first to suffer the taunts of bystanders, the first to expose himself to the batons of local cops,

AP/Wide World Photos

Dr. Martin Luther King Jr., under arrest by Atlanta Police Captain R.E. Little, left rear, passes through a picket line in front of a downtown department store on October 9, 1960.

and the first to face law enforcement's angry dogs straining at the leash. And still, Martin Luther King pressed on.

Detractors among His Own Ranks

To most of the public, Dr. King is best remembered for his "I have a dream..." speech. But most do not remember that — like Lincoln — there were many from his own profession who were unsupportive. While he was in a Birmingham, Alabama, jail in April 1963, he had to contend with those clergymen who denounced him for marching in protest of segregated lunch counters. He wrote them:

> For years now I have heard the word "wait." It rings in the ear of every Negro with piercing familiarity. This "wait" has always meant *"never."* We have waited for more than 340 years for our constitutional and God-given rights. The nations of Asia and Africa are moving with jet-like speed towards gaining political Independence, but we still creep at a horse-and buggy pace toward gaining a cup of coffee at a lunch counter. When you take a cross-country drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading "white" and "colored"; when your first name becomes "nigger," your middle name becomes "boy" (however old you are) and your last name becomes "John," and your wife and mother are never given the respected title "Mrs."; when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tiptoe stance, never quite knowing what to expect next, and are plagued with inner fears and outer resentments; when you are forever fighting a degenerating sense of "nobodiness" — then you will understand why we find it difficult to *wait.*

This is a message that *we must never forget.* Powerful stuff.

And then, in a few years, like Lincoln, his life was snuffed out by an assassin's bullet.

It's up to us to carry on — to wipe the slate clean of the insidious prejudice that by stealth can so easily creep into our lives. We can do that only by first looking into our own heart and mind. Let's never forget these two heroes and their courage — Lincoln and King — whose birthdays we celebrate over the next two months.

> "We have become
> Not a melting pot
> But a beautiful mosaic.
> Different people,
> Different beliefs,
> Different yearnings,
> Different hopes,
> Different dreams."
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> *President Jimmy Carter*

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Two Cents' Worth

by Mark A. Panitch
Bar News Editor

Saying goodbye is among the most difficult things to do for civil human beings. Life is changing, events are coming to an end, friends — and even familiar adversaries — will be missed. Yet life is full of transitions, some voluntary and some forced by conditions beyond our control.

Last summer I went through a time that left me humbled and shaken by my physical, economic and professional fragility. Last May I was struck with an illness that threatened my eyesight. This condition came on suddenly, was completely unpredictable, and was unrelated to any other health problem I have ever had. I am glad to report that my eyesight seems to have survived unscathed. I can't yet say the same about the rest of me.

We all rely on some combination of faith, fate, statistical probabilities and chaos theory to make it through each day.

There is an old joke about the cure being worse than the disease. Like most humor and clichés, there is more than a grain of truth there. In my case the "gold standard" treatment was high doses of powerful steroids for several months. The side effects of this treatment were nearly incapacitating. As a wrestler and weightlifter in college and a sometime sail-racing crew member, I valued my strength, coordination and agility. As an attorney and writer I valued my ability to think on my feet. Suddenly these abilities — and much of what constituted my self-image — were gone.

At first it appeared that a leave of absence from the magazine would provide sufficient healing time. But as the weeks went on it became clear that much of my caseload, along with editing *Bar News*, volunteering at the Spanish-language legal clinic, and supervising a Rule 9 intern, would have to go. In effect, an illness whose name I had never heard before took over my body and my life as surely as if it were some science-fiction creature from outer space using me as an intergalactic incubator. For four months, fighting — and coping — with illness was nearly a full-time occupation. I am told now to plan for at least a year of physical therapy and other rehab activities to recover lost strength and mobility.

I am told that I may carry my newly acquired sense of vulnerability for the rest of my life. This may not be entirely a bad thing. I notice that I am less reckless and more thoughtful, more considerate and more patient. I find myself less enthusiastic about entering the litigation combat arena.

On the other hand, I have less patience with those whose solution for every problem is to tear larger and larger holes in the social fabric while claiming to see waste, fraud and abuse at every turn. This, of course, is nuts, but somehow these claims have acquired a patina of legitimacy. In fact, nothing could be further from the truth. My spouse is a primary-care physician in solo practice. I am an attorney in solo practice. Together our *gross* income looks fabulous, actually verging on wealth. Our *net* is something else entirely. Last year, I paid my paralegal more than I paid myself. The medical practice was supporting an annual overhead in the six-figure range. When I became ill and my practice tanked, we quickly found out how the "other half" lived — from paycheck to paycheck. Except that with no regular income we couldn't even qualify for an extortionate "payday" loan.

The reality is that the vast majority of us — even established professionals with modest but apparently successful practices and no remaining student loans — are only one paycheck away from financial disaster. Alright, by raiding savings and retirement funds maybe a year away. But the point is the same. We are all far more dependent on good health, and far more vulnerable to the economic as well as the physical impacts of illness than we care to admit. The great Negro League pitcher Satchel Paige said, "Don't look back, something might be gaining on you." That used to be humorous. Now it's a little too close to the truth.

We all rely on some combination of faith, fate, statistical probabilities and chaos theory to make it through each day. Some of us spend more time than others thinking about how these concepts affect our daily lives. I hope I can learn to be one of those people.

So where is this going? First, it's an explanation of why you will be seeing a new face on the *Bar News* masthead in the coming months. I had a good run. Two years is a reasonable tenure for what amounts to a highly intense volunteer

job. I have no regrets.

These past two years have opened the world of WSBA participation for me. Watching the Board of Governors slowly become a more democratic and more diverse body has been fascinating. Watching the intensity that BOG members applied to their support for legal services has been an eye opener. After all, this is the Bar "establishment," yet the two topics that seem to occupy disproportionate time are lawyer discipline and making legal services available to our least powerful communities. These used to be topics that were of more concern to people who wore work boots than loafers. Some things do change.

I look back and hope that I've helped make *BarNews* a more lively and interesting publication. I am confident that the next editor will continue to put out a magazine that Washington lawyers look forward to seeing in their mailboxes.

As for me, I look forward to a year of rehab while I rebuild and restructure my law practice. And I look forward to seeing what's in the *Bar News* that shows up in my mailbox around the first of every month.

"Two Things..."

by Jan Michels
WSBA Executive Director

Profile of the Board of Governors

Last month, in preparation for the Board of Governors meeting, we created a profile of the board. The chart below summarizes the demographics of the WSBA and the board.

We are pleased that the demographics of the 14 governors and two officers for 2002-2003 exactly reflect the gender composition of members. Geographic distribution is primarily determined by congressional districts, but the governor-at-large positions do affect it. Given that the board is small compared to the WSBA's 23,100 active members, the geographic distribution is close. The age distribution is not quite as close a match, although the leadership in most organizations probably also reflects this skew toward more senior leaders.

We also examined firm size and non-firm practice. Although many board members do litigate, only 30 percent primarily consider themselves trial lawyers. Only two board members fall into a category which might be termed "downtown Seattle large-firm lawyers," whereas half the board members are in firms with fewer than five lawyers. Twenty-five percent are in non-firm practice, with two representing the public sector and one each representing administrative law and in-house counsel. Survey information from Altman Weil shows this mix corresponds to lawyers' practice in general, although the number of lawyers in solo and small-firm practice may be higher in some areas. The board may be short on representation of family law and limited jurisdiction points of view, although there are board members who do practice in some of these areas. We have no Pacific Islander or Asian American on the board, and there has never been an active prosecutor on the board.

Offering this profile may help members understand and relate to their governor and the board as a whole. This year, four governor positions come open. Groups who may feel underrepresented may wish to consider identifying a candidate for a governor position. Cycling off the board (districts 1, 5, 7-west, and WYLD at-large) will be a representative of government lawyers and a female. Groups can also assign a liaison to the Board of Governors. The board encourages active liaison participation in meetings, since liaison input often influences the board in significant ways.

	WSBA Active Members	WSBA Board of Governors
Gender	69% male 31% female	69% male 31% female
Age	34% under 40 33% 40-50 25% 51-60 7% over 60	19% under 40 25% 40-50 50% 51-60 6% over 60
Non-Caucasian	8%	19%
Lawfirm size	unknown	50% solo/small (under 5) 25% medium (5-15) 25% large (more than 15)
Non-law firm practice	unknown	25% non-law-firm lawyers (in-house counsel, public defender, judge, Attorney General's Office)
Geographic area	11% Eastern WA 25% Western WA (non-King County) 49% King County 15% out of state	20% Eastern WA 38% Western WA (non-King County) 42% King County

Bridging to the Future

On December 5, the Board of Governors, encouraged by the Long-Range Strategic Planning Committee, engaged Stuart Forsyth, "The Legal Futurist," to lead and coach them and the WSBA directors into futuristic thinking about the profession of law. Stuart Forsyth has been a practicing lawyer, a bar association executive, and for five years has re-educated and reinvented himself as a futurist — one who discerns trends, emerging issues, and potential "wild cards" that may affect the future of the profession and its practitioners.

We identified six areas in which to work with members to create our best possible future, to avoid a future driven by outside forces and created by others.

1. Lawyers' relevance to clients. Consumers have access to an incredible amount of information, and they demand individualized/customized products and services. Lawyers need to focus on client desires and needs. The WSBA can offer assistance to members on ways to discern what each client wants, and how to package their services in ways that clients feel are individually cus-

tom tailored. We can also review conduct rules to be sure they support this new way of practicing.

2. **Dispute resolution.** In response to the increasing cost of litigation and decreasing funding, possibly resulting in decreased availability of court time, lawyers need to incorporate a broader spectrum of dispute-resolution techniques into their practice. The WSBA can educate members and the public about these techniques.

3. **Protecting the rule of law.** In response to erosions of the core principals of our rule of law, we all need to make a stand for right to counsel, due process, privacy, and the attorney-client privilege.

4. **The balance between personal, professional and business needs.** In response to increasing pressures on our time, sphere of attention and life goals, we need to develop and promote tools for coping. Problems can range from law-school debt, aging parents, and child-rearing to unrealistic expectations or dissatisfaction with the practice of law.

5. **Managing change.** In response to the exponential speed of innovation and the impact of a global digital marketplace, lawyers can feel increasingly extraneous and lost. We need to understand the impact of these forces on daily practice; see how to add wisdom to the increasingly "commodified" legal practice; embrace technology; and impact changes through legislation and rules of conduct.

6. **The WSBA's relevance to members.** To be a bar association that members find helpful and relevant, the WSBA must be supportive and communicative. As lawyers' "trade association," the WSBA must protect members' interests, as well as the public interest. The WSBA needs to address issues such as practicing across borders and state lines, competing with technology, and offering a full array of services.

The action items will be incorporated into a revised long-range strategic plan and will be detailed on the WSBA Web site in the coming months.

To obtain a videotape of the sessions, contact the executive director's office (janm@wsba.org or 206-727-8244).

by Craig Hemmens

The U.S. Supreme Court and Criminal Law: 2001 Term

(Part One)

During its 2001 term, the U.S. Supreme Court decided a total of 88 cases, issuing 76 signed opinions. These figures are in line with recent terms, the 2000 term having 77 opinions and the 1999 term, 74 opinions. More than 9,100 cases reached the Court, the vast majority being denied review. More than a third involved criminal-justice related issues; several significant death-penalty cases were decided; and a number of important Fourth Amendment rulings were issued.

As usual, there were a significant number of unanimous decisions, and 52 decisions (59 percent) were decided by at least a 7-2 majority. This statistic may lead the casual observer to assume members of the high court are in ideological agreement, but it should be noted that there were 36 cases (41 percent) decided by either a 5-4 or 6-3 margin.

There were a number of bitter dissents filed, from both majority opinions and denials of *certiorari* (the latter being a relatively uncommon practice). There was even a dissent by Justices Breyer and O'Connor, and a reply by Justice Scalia, from the Court's transmission to Congress of proposed amendments to the Federal Rules of Criminal Procedure (the issue was whether allowing the limited use of two-way video transmissions in criminal trials ran afoul of the confrontation clause). The frequency and tone of some of these dissents suggest that members of the Court often do not share the same ideological viewpoints.

Justice O'Connor continues to serve as a crucial "swing" vote, appearing in the majority in 17 of the 21 5-4 decisions. Fourteen of these 21 cases had the familiar alliance pattern of the Chief Justice, and Justices Scalia and Thomas, against Justices Stevens, Breyer, Ginsburg and Souter. Justice O'Connor joined the conservative bloc in 10 of the 14, and joined the liberal bloc in the other four. O'Connor also filed fewer dissents than any other justice; Stevens dissented most often (23 dissenting votes and 13 dissenting opinions, including three solo dissents); and Scalia authored the most opinions (27, including 10 concurring opinions, also the most by any justice). Justices Scalia and Stevens disagreed the most, in 46 percent of all cases. Majority-opinion authorship was very evenly divided, continuing a trend under the leadership of Chief Justice Rehnquist.

There were a number of bitter dissents filed, from both majority opinions and denials of *certiorari* (the latter being a relatively uncommon practice).

Several justices made interesting public statements while away form the Court. Justice Kennedy, in the wake of the September 11 attacks, created a "Dialogue on Freedom" program aimed at teaching high-school students about democratic values. Kennedy said he was inspired to begin the program when he read that students at a Washington-area Muslim school were "unmoved" by the events of 9/11. Justice Scalia, a devout Catholic, publicly criticized the Catholic Church for opposing the death penalty, and called on Catholic judges who believe the death penalty is wrong to resign.

Following is a summary of significant criminal-justice-related decisions of the 2001 term, arranged alphabetically by subject matter. The case history, rationale of the Court, and vote totals are included.

AEDPA/Appeals Generally

***Lee v. Kemma*, 70 USLW 4104 (2002).** Lee was charged with murder in Missouri. He made it known to the trial court that he intended to put on several family members as alibi witnesses who would testify he was with them in California at the time of the murder. Three family members traveled to Missouri for his trial, but were not in the courtroom when the defense began its case. The defense attorney verbally asked for a day's continuance to locate the witnesses, but the trial judge refused, stating he had another trial scheduled to start and that the defendant's family had "abandoned" him. The trial went on without the alibi witnesses, and Lee was convicted and sentenced to life in prison.

On appeal, Lee argued the denial of his continuance motion constituted a denial of due process. The state supreme court ruled that the denial was proper because Lee's attorney failed to make the motion in the correct manner (in writing, with a supporting affidavit). The state court did not address Lee's claim that he had been denied his federal right to due process. Lee filed a federal *habeas* petition, which the district court denied. The 8th Circuit Court of Appeals affirmed the district court, stating that Lee had procedurally defaulted in not complying with state rules by making a written continuance motion at trial.

The Supreme Court, per Justice Ginsburg, vacated the 8th Circuit and remanded the case. The majority acknowledged the general rule that federal courts will not entertain a petition presenting a federal question if the state court's decision rests on "independent and adequate state grounds." The majority also acknowledged that the state rules regarding the proper form of a motion would normally fall into this category. But, Ginsburg asserted on behalf of five other justices, this case was one of a narrow class of cases that are an exception to the general rule. Other Missouri cases did not require perfect adherence to rules of court, the defect in the motion was not noted at trial where it could have been easily corrected, and, most important, Lee had "substantially complied" with the state rules. Given these circumstances, the majority determined that enforcing a procedural bar would be fundamentally unfair. The dissent by Justice Kennedy argued that the majority was creating new law and weakening the principles of federalism and state sovereignty by allowing federal courts to become involved in state court matters. 6-3 decision.

***Carey v. Saffold*, 70 USLW 4558 (2002).**

The Antiterrorism and Effective Death Penalty Act (AEDPA) was enacted by Congress in 1996. The AEDPA requires an inmate seeking federal *habeas* relief to file his petition either within one year after his state conviction becomes final or one year from the date of passage of the AEDPA, but excludes from the one-year period the time during which an application for state collateral relief is "pending."

Saffold was convicted and sentenced in a California state court in 1990 for murder and several other crimes. His conviction became final on direct review in 1992. Saffold filed a state *habeas* petition one week before the federal deadline passed in 1997 (that being one year from the passage of the AEDPA). The state court denied his petition, and five days later Saffold filed a new petition with the state appellate court. This petition was also denied. Almost five months later, Saffold filed a new petition with the state supreme court, which was denied.

One week later, in June 1998, Saffold filed a *habeas* petition in federal court. The district court noted the AEDPA required Saffold to file his federal *habeas* petition within one year of the AEDPA's passage, and that Saffold's petition was not filed within that year. The district court noted the one-year period was tolled while state review was pending, but determined that the intervals between the various filings in state courts were not part of the time period included in the definition of "pending." Thus, the district court determined that Saffold was procedurally barred from filing his federal *habeas* petition because the one-year time period had passed. The 9th Circuit Court of Appeals reversed, stating that the intervals between filings in state court should be considered "pending" so as not to apply to the time limit.

The Supreme Court, per Justice Breyer, upheld the ruling by the 9th Circuit, and held that a petition for state collateral review is "pending" during the periods between a lower court's ruling on the petition and the filing of notice of appeal with a higher state court. The Court noted that a narrow interpretation of the word "pending" would encourage state prisoners to file federal appeals while their state appeals were still pending, which would conflict with the AEDPA's stated goal of reducing federal filings and allowing states to fully review appeals. The dissent by

Justice Kennedy took issue with the majority's interpretation of the California appeals process and argued that the decision would lead to further abuse of the appeals process by inmates. 5-4 decision.

Death Penalty

Kelly v. South Carolina, 70 USLW 4068 (2002). Kelly was convicted of firstdegree murder. During the sentencing phase of his trial, the jury was asked to determine whether any "aggravating factors" existed which would justify imposition of the death penalty. The prosecutor presented evidence that Kelly had made a knife while in prison, taken a hostage in a failed escape attempt, and made several comments which suggested he was a dangerous man.

The Supreme Court, per Justice Souter, narrowly held that Kelly was entitled to a jury instruction stating he would be ineligible for parole if sentenced to life in prison.

The prosecution argued this evidence went to Kelly's character, while the defense claimed the evidence demonstrated his "future dangerousness." Both the character and future dangerousness areas statutorily listed aggravating factors. The defense sought a jury instruction that a capital defendant who faces the possibility of either death or life in prison without the possibility of parole is entitled to a jury instruction informing the jury of just that — that life without parole means defendants will never be released.

The Supreme Court in *Simmons v. South Carolina* (1994) held that such an instruction was constitutionally required when imposition of the death penalty is based on "future dangerousness." The trial court refused to give such an instruction, on the ground that the evidence and comments presented by the prosecutor went not to the issue of future dangerousness, but to the issue of the defendant's character and his ability to adapt to prison life. Kelly was sentenced to death, and the state supreme court affirmed the conviction and death sentence on the ground that future dangerousness was not at issue.

The Supreme Court, per Justice Souter, narrowly held that Kelly was entitled to a jury instruction stating he would be ineli-

gible for parole if sentenced to life in prison. Clearly, future dangerousness — evidence "with a tendency to prove dangerousness in the future; its relevance to that point does not disappear merely because it might support other inferences or be described in other terms" — was in fact at issue. Evidence of a demonstrated propensity for violence is clearly evidence of future dangerousness, as well as evidence of inability to live in prison. Writing in dissent, the Chief Justice argued the prosecution in this case did not argue future dangerousness "in any meaningful sense of the term." 5-4 decision.

***Atkins v. Virginia*, 70 USLW 4585 (2002).** Atkins was convicted of capital murder by a Virginia jury. During the penalty phases of the trial, an expert witness testified that Atkins was "mildly mentally retarded." Atkins nonetheless was sentenced to death, and his sentence was upheld by the state supreme court, which relied on the Supreme Court decision in *Penry v. Lynaugh* (1989) that executing mentally retarded people was constitutional because there was no societal consensus against the practice.

Writing for a 6-3 majority, Justice Stevens held that executing the mentally retarded violates the Eighth Amendment's ban on cruel and unusual punishment. He asserted that there now exists a national consensus that executing retarded people is inappropriate, given their reduced culpability and greater vulnerability to wrongful conviction. Eighteen of the 38 death-penalty states bar the execution of the mentally retarded, up from two states in 1989, when the Court last addressed the question in *Penry v. Lynaugh*. This trend demonstrates the "evolving standards of decency."

Even more significant than the number of states banning the execution of mentally retarded people was the consistency of the trend — no states had passed legislation making it lawful to execute the mentally retarded since 1989; instead states had acted only to outlaw the practice. The Court left the definition of "mentally retarded" to the states. Stevens went on to point out that societal consensus was not the only consideration — other factors supporting a ban on the execution of mentally retarded people were: questions of their competency to stand trial, their ability to assist in their own defense, their lowered moral culpability, and the increased likelihood of wrongful convictions. Justices Scalia, Thomas and Chief Justice Rehnquist dissented, arguing that the evidence did not justify the claim that there was national consensus and that the majority was improperly engaged in lawmaking. 6-3 decision.

***Ring v. Arizona*, 70 USLW 4666 (2002).** Ring was convicted by an Arizona jury of first degree felony murder. Under Arizona law, the sentencing phase of a capital murder trial is conducted before the judge alone, without the jury. The judge is responsible for making all factual determinations regarding aggravating and mitigating factors. After the sentencing phase, the judge concluded Ring was the killer and that several aggravating factors existed. He consequently sentenced Ring to death. On appeal, Ring argued that the capital sentencing scheme violated his Sixth Amendment right to a trial by jury because it entrusted to the judge the finding of a fact (in this case, whether Ring was the actual killer or just a participant) that raised the maximum penalty from life in prison to death. The Supreme Court had previously upheld the Arizona sentencing scheme,

but then held, in *Apprendi v. New Jersey* (2002), that juries rather than judges must find the facts that lead to a sentence higher than the ordinary statutory maximum. The Arizona Supreme Court nonetheless upheld Ring's death sentence.

The high court held that death sentences issued by judges violate a defendant's Sixth Amendment right to a jury trial. Justice Ginsburg wrote the opinion for an unusual alliance of conservative and liberal justices. Ginsburg noted that the decision in the instant case was mandated by the holding in *Apprendi v. New Jersey* (2000), and that the prior Supreme Court decision upholding the Arizona death-penalty statute was effectively overruled by *Apprendi*. The majority determined that capital defendants, like noncapital defendants, are entitled to a jury determination of any fact which results in an increase in the maximum punishment. Justices Thomas and Scalia joined the majority, but also wrote separately to emphasize their belief that the use of so-called "sentencing enhancements" has weakened the right to a jury trial. Justice O'Connor, a dissenter in *Apprendi*, dissented here as well, noting the decision would likely invalidate the death sentences of defendants sentenced by a judge acting alone or on the recommendation of the jury. Five states currently allow a judge or panel of judges to make the decision, while four states allow the jury to make a recommendation to the judge. 7-2 decision.

Guilty Pleas

***United States v. Vonn*, 70 USLW 4181 (2002).** Vonn was charged with several federal offenses, including bank robbery and weapons possession. After being advised by a judge of his rights, including the right to be represented by counsel, he waived his rights. In two subsequent proceedings he pled guilty, first to the robbery and then to the weapons charge. At neither of these later hearings did the judge inform him of his right to counsel at trial. Notification of this right is required by Federal Rule of Criminal Procedure 11.

Several months later, Vonn sought to withdraw his guilty plea on the weapons charge, but the court denied his motion and sentenced him. On appeal, Vonn sought to have his convictions set aside, arguing for the first time that the failure to advise him of his right to counsel at trial constituted reversible error. The 9th Circuit Court of Appeals refused to apply the "plain error" standard for reviewing errors not objected to at the time they are made. The reviewing court instead applied the "harmless error" standard, agreeing there had been error and that Vonn's failure to object was irrelevant.

The Supreme Court, per Justice Souter, held that a district court's violation of Rule 11 may be reviewed only for "plain error" if the defendant fails to lodge a contemporaneous objection to the violation. The court refused to apply the lower court's more generous harmless-error standard. 8-1 decision.

***United States v. Ruiz*, 70 USLW 4677 (2002).** Ruiz was charged with drug possession. The federal prosecutor offered her a reduced sentencing recommendation in return for a guilty plea, waiver of indictment and trial, and, most significantly, a waiver of some disclosure rights. This was referred to as a "fast track" plea bargain. Defendants retain the right, under *Brady v. Maryland*, to disclosure of exculpatory evidence, but waive their right to impeachment-related material. Ruiz refused the fast track plea bargain and pled guilty. She then received the standard sentence rather than the reduced sentence originally offered by the prosecution. She sought the

reduced sentence, but the trial court refused to grant it. On appeal, the 9th Circuit Court of Appeals vacated the sentence on the ground that the U.S. Constitution requires prosecutors to make impeachment evidence available, and that fast-track plea bargains requiring waiver of the right to this information are therefore unconstitutional.

The Supreme Court unanimously reversed the 9th Circuit. Writing for the Court, Justice Breyer held that the Constitution does not require that impeachment material be disclosed by the prosecution prior to the entry of a guilty plea. There is no support in Supreme Court precedent for such a ruling, and a due-process balancing test also favors no such requirement. While the right to a fair trial requires disclosure of impeachment evidence, a guilty plea need only be voluntary, knowing and intelligent. A plea bargain is just that — a bargain, and not something a defendant is compelled to accept. 9-0 decision.

Liability

***Correctional Services Corporation v. Malesko*, 70 USLW 4012 (2002).** Malesko, an inmate in a halfway house operated by Correctional Services Corporation (CSC), under contract with the Federal Bureau of Prisons, was assigned to a cell on the fifth floor of the facility. CSC had a policy requiring inmates in rooms below the sixth floor to use the stairs rather than the elevator, but Malesko was exempted from this policy because he had a heart condition. A CSC employee nonetheless refused to allow Malesko to use the elevator, and while using the stairs Malesko suffered a heart attack and fell, further injuring himself. Malesko then filed suit against CSC, claiming negligence.

The district court treated his lawsuit as a *Bivens* action, which allows individuals to bring suit against federal officials for deprivation of their constitutional rights (similar to a Section 1983 action, which is cognizable against only state actors). The court then dismissed the suit on the ground that a *Bivens* action may only be brought against individuals, not corporate entities. The 2nd Circuit reversed on the public-policy ground that corporations should be held liable under *Bivens* in order to accomplish the goal of *Bivens*— providing a remedy for constitutional violations.

In a 5-4 decision penned by Chief Justice Rehnquist, the Supreme Court refused to extend the *Bivens* cause of action to inmates suing corporations, even when those corporations are acting under color of federal law. While Section 1983 authorizes lawsuits for the deprivation of constitutional rights against state actors and state agents, the Chief Justice noted that the extension of Section 1983-style remedies to plaintiffs suing federal officials has been severely limited to the particular situation in *Bivens*. The Chief Justice, long a critic of *Bivens*, took the opportunity to refuse to extend *Bivens* to corporate defendants contracting with the federal government. The purpose of *Bivens*, Rehnquist noted, was deterrence of the individual federal officer; no such individual deterrence would be accomplished by holding a corporation liable. The dissent by Justice Stevens accused the majority of attempting to narrow the reach of *Bivens* by misreading prior precedents. 5-4 decision.

***Barnes v. Gorman*, 70 USLW 4548 (2002).** Gorman, a paraplegic, was arrested after a dispute in a Kansas City, Missouri, night club. He suffered serious injuries while

being transported in a police van that was not equipped to handle disabled arrestees. He filed a lawsuit against the police, alleging discrimination on the basis of his disability, in violation of the Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973. A jury awarded him both compensatory and punitive damages, but the trial court vacated the 1.2 million-dollar punitive damages award on the ground that such damages were not permitted under the ADA or the Rehabilitation Act. The 8th Circuit reversed, and reinstituted the punitive-damages award, finding the power of federal courts to "award any appropriate relief" available (*Franklin v. Gwinnett County Public Schools*, 1992).

The Supreme Court unanimously reversed the 8th Circuit and held that individuals suing cities for discrimination under the ADA may not receive punitive damages. Justice Scalia wrote an opinion joined by five other justices. He noted that punitive damages were not specifically available through either the ADA or the Rehabilitation Act, and that it would be unfair to allow such remedies against cities which unknowingly exposed themselves to such liability when they accepted federal funding, a condition of which is adherence to ADA requirements. Three justices concurred in the judgment but disagreed with the mode of analysis used to reach the decision. This decision relieves municipalities and police departments from liability for punitive damages under the ADA, but leaves them exposed under alternative causes of action, such as tort. 9-0 decision.

Pornography/Free Speech

***Ashcroft v. Free Speech Coalition*, 70 USLW 4237 (2002).** Prosecution of those engaged in the manufacture, dissemination and possession of child pornography has been a priority for the Justice Department since the Reagan administration. Congress has passed legislation making it a federal crime to possess photographs of underage children engaged in sexual conduct, and this legislation has been upheld by the Supreme Court. The Child Pornography Prevention Act of 1996 (CPPA) went a step further, making it a crime to create, distribute or possess child pornography that "appears to be" or "conveys the impression" of an underage child engaged in sexual conduct. The Free Speech Coalition filed suit alleging the federal statute was overbroad and vague, in violation of the First Amendment freedom of speech. The district court granted summary judgment for the government, but the 9th Circuit Court of Appeals reversed, holding the CPPA overbroad because it banned material that was neither obscene nor the result of exploitation of actual children. This ruling was in conflict with four other circuit courts.

The Supreme Court, in an opinion by Justice Kennedy, upheld the 9th Circuit and struck down the CPPA as unconstitutionally broad, in violation of the free-speech clause of the First Amendment. Justice Kennedy rejected the government's argument that the broad language of the statute was necessary to prevent pedophiles from gratifying their illegal sexual appetites for images of children engaged in sexual activity. The majority opinion also noted that the statute failed to incorporate the "contemporary community standards" test, which requires consideration of the artistic merit of the work as a whole. The statute went beyond prior legislation which banned depictions of children engaged in sexual activity, and banned "the visual depiction of an idea." Writing in dissent, Justice O'Connor ar-

gued that the "appears to be" provision could be construed narrowly to prohibit only images that are "virtually indistinguishable" from actual children while not banning youthful-looking adults. 5-4 decision.

Ashcroft v. American Civil Liberties Union, 70 USLW 4381 (2002). The 1998 Child Online Protection Act (COPA) made it a crime to place material on an Internet Web site available to those under 17 years of age if the material was "harmful to minors." Whether material was harmful to minors was defined by reference to the *Miller v. California* (1973) test for obscenity: whether the average person, applying contemporary community standards, finds the material taken as a whole appeals to a prurient interest in sex. The ACLU and a number of other organizations obtained an injunction against enforcement of the act. The 3rd Circuit Court of Appeals upheld the injunction on the ground that since Web-site publishers could not limit the viewing of their Web site to a specific geographic area, the community standards test would be based on the standards of the least tolerant community in the entire country.

The Supreme Court vacated the decision of the lower courts and remanded the case. There was no majority opinion, but eight justices agreed that the ruling by the lower courts that the COPA violates free-speech rights simply because it relies on "contemporary community standards" to identify what online materials are harmful to minors was improper. The case is likely to return to the Court once the lower court has fully addressed the substantive provisions of the COPA. 8-1 decision.

Prisons

Porter v. Nussle, 70 USLW 4155 (2002). Nussle filed a Section 1983 action claiming correctional officers, among them Porter, had violated his Eighth Amendment rights by using excessive force against him. The district court dismissed Nussle's lawsuit, relying on a provision of the Prison Litigation Reform Act (PLRA) of 1995, which requires inmates to exhaust "such administrative remedies as are available."

Nussle had bypassed the grievance process established by the Connecticut Department of Corrections and instead filed the Section 1983 action. The 2nd Circuit Court of Appeals reversed, holding that the exhaustion of remedies requirement applied only to claims involving prison conditions, not isolated instances of abuse (such as excessive use of force). This decision was in conflict with several other circuits.

The Supreme Court, in a unanimous opinion by Justice Ginsburg, reversed the 2nd Circuit. The Court interpreted the PLRA's exhaustion requirement as applying to all inmate lawsuits about prison life, regardless of whether they involve systemic conditions or isolated acts of wrongdoing. The Court refused to treat excessive use of force claims differently than claims under the PLRA, even though the Court has treated excessive-force claims differently in other situations, such as pleading and *mens rea* requirements. 9-0 decision.

McKune v. Lile, 70 USLW 4502 (2002). Lile was convicted of rape and incarcerated in Kansas. Kansas prison officials created a sexual-offender treatment program, in which participants are required to accept responsibility for crimes for which they have been convicted, as well as any other unprosecuted/undetected crimes they may

have committed. The information obtained from the inmates is not privileged, and may be used in subsequent criminal prosecutions. Lile was told that if he refused to participate in the treatment program he would lose a number of privileges (such as visitation and television) and be transferred to a maximum-security prison. Lile sought an injunction under Section 1983, alleging the required disclosure of his criminal history violated his Fifth Amendment privilege against self-incrimination. The district court granted him summary judgment, and the 10th Circuit affirmed, saying the loss of privileges and possible transfer to another prison for refusing to participate in the treatment program constituted penalties, and that Lile could not be compelled to incriminate himself.

Nussle filed a Section 1983 action claiming correctional officers, among them Porter, had violated his 8th Amendment rights by using excessive force against him.

The Supreme Court reversed the lower courts. There was no majority opinion, although five members of the Court agreed that there was no Fifth Amendment violation. The opinion by Justice Kennedy stated that an inmate's liberty interest must be weighed against the legitimate governmental interest in reducing recidivism among sex offenders, and that the treatment program in question was a key ingredient in recidivism reduction. He proposed a test for determining when compulsion existed based on *Sandin v. Connor* (1995): so long as a prison treatment program "bears a rational relation to a legitimate penological interest, the Fifth Amendment is not violated if the adverse consequences inmates face for refusing to participate are related to program objectives and are not significant hardships."

Justice O'Connor felt the *Sandin* test was too narrow, but the burdens faced were not significant enough to implicate the Fifth Amendment. The four dissenters, led by Justice Stevens, argued that this case represented a major inroad on the protections of the Fifth Amendment. 5-4 decision (plurality opinion).

Hope v. Pelzer, 70 USLW 4710 (2002). Hope, an inmate assigned to an Alabama chain gang, was twice handcuffed to a so-called "hitching post" for an extended period of time for disciplinary reasons. The first time he was handcuffed to the post for two hours; the second time, for seven hours, he was forced to stand in the sun shirtless, given water only twice, and not allowed to go to the bathroom. Hope filed a Section 1983 Action against three correctional officers who had handcuffed him to the hitching post. The district court did not address the constitutionality of the hitching post, instead holding that the officers were entitled to qualified immunity, and dismissed the lawsuit. The 11th Circuit Court of Appeals determined that while the use of the hitching post did violate the Eighth Amendment, the officers were entitled to qualified immunity, thus affirming the dismissal.

In an opinion by Justice Stevens, the high court held that use of the hitching post was punishment, rather than a way of forcing an inmate to work or for safety, and that handcuffing an inmate to a hitching post for an extended period of time as punishment for misconduct was an "obvious" constitutional violation as it involved the "unnecessary and wanton infliction of pain." Additionally, the defense of qualified immunity is not available at the summary judgment phase of a lawsuit.

Qualified immunity is designed to protect officers from suit if it is not clear to them that their conduct is illegal. If they have notice of their illegal acts, then they may be liable. Here the officers clearly should have known they were acting unlawfully. Eleventh Circuit precedent and Alabama DOC regulations made it clear; thus summary judgment was inappropriate. The dissent by Justice Thomas accused the majority of misstating the facts of the case and misinterpreting the 11th Circuit's opinion. 6-3 decision.

The second part of this article will run in the February issue of *Bar News*.

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Enforcing Consumers' and Employees' Legal Rights:
12 Myths about Arbitration

by Keith Maurer

The American Bar Association reports that 100 million Americans are effectively barred from seeking justice by the high cost of lawyers and the lawsuit system.[1] In fact, the *ABA Journal* reported that most lawyers won't take a case worth less than $20,000.[2] The complaints of most consumers don't begin to approach that level. Arbitration gives plaintiffs, who otherwise might have been precluded from receiving any remedy, an opportunity to pursue relief and have their claim heard by an impartial decision-maker.

Justice is enhanced in properly conducted arbitration proceedings, which provide realistic forums for dispute resolution. Arbitration is quicker, less expensive, and more informal than litigation. Conducted under rules that require arbitrators to follow the law, such as the National Arbitration Forum *Code of Procedure*, arbitration provides for all substantive remedies.

In 1925, Congress enacted the Federal Arbitration Act to reverse longstanding judicial hostility by American courts to arbitration agreements, placing such agreements on the same footing as other contracts. The act sets forth a national policy favoring arbitration. The core expression of this policy is Section 2, which provides that a written agreement to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[3] Federal courts, including the U.S. Supreme Court, have consistently upheld this na-

tional policy. The federal policy favoring arbitration has had the effect of encouraging its broad use. Predispute arbitration clauses are now included in thousands of contracts.

The arbitration systems of arbitration providers involve procedures far less complex than those of the lawsuit system. In its wide-ranging support of arbitration, the U.S. Supreme Court touted exactly these advantages in *Allied-Bruce Terminex Co., Inc. v. Dobson*:

> The advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; [and] it is often more flexible in regard to scheduling of times and places of hearings and discovery devices.[4]

Consumer advocates agree. *Consumer Reports* magazine observes: "Arbitration can help consumers settle their disputes faster and cheaper than by litigation. It commonly takes anywhere from two to five years to get a civil case before a judge; an arbitration case can often be resolved within a matter of weeks."[5] Is it any wonder that, understanding the alternatives, parties are contracting for arbitration at an ever-growing rate?

Despite the growing use and acceptance of arbitration, some misconceptions exist:

Myth 1: Arbitration is too expensive.
Truth: Arbitrating a dispute is far less expensive than litigating a dispute to resolution. Filing and hearings fees, and elective attorney fees, are much less than the total cost of litigation expenses and mandatory attorney fees.[6] Further, businesses and employers voluntarily pay, or may be required to pay, for all or part of arbitration costs for their consumer customers and employees.[7]

Myth 2: Litigation is the traditional, time-honored way to resolve problems.
Truth: Arbitration dates back to the Old Testament, predating American lawsuits by several thousand years.[8] Arbitration and judicial systems akin to arbitration are used much more frequently than lawsuits in many countries. Mediation, as well as arbitration, is either suggested or mandated by many judges before a case will be heard in court.[9]

Myth 3: Americans have an absolute right to have their civil disputes resolved by a jury.
Truth: If they choose to go to court, citizens may demand their constitutional right to a jury trial, but also have a right to contract for a different way to seek relief.[10] For those who cannot afford to go before a jury, arbitration may be the only opportunity for vindication.

Myth 4: Arbitration denies parties their substantive rights and remedies.
Truth: Parties are entitled to the same substantive rights and remedies as they receive in a court of law. A party may assert common law, statutory, contractual, and other types of claims in arbitration.[11] An arbitrator has the same power as a judge to award monetary damages, injunctive relief, and other legal and equitable remedies. Arbitration does not restrict available rights or remedies.

Myth 5: Arbitration denies parties due process and other legal rights.

The American class-action rule was adopted as a procedural rule because litigation made it too expensive and complicated for individuals to bring small claims.

Truth: Arbitration organizations and arbitrators follow the same due-process standards that apply to judicial proceedings.[12] Parties have an opportunity to present a case before an arbitrator as they do before a judge, and courts have the opportunity to review arbitration proceedings before and after the arbitration process to make sure due-process standards were followed. The U.S. Supreme Court has held that parties are entitled to all substantive rights in arbitration.

Myth 6: Arbitration does not allow parties to seek discovery from each other.
Truth: Arbitration rules and procedures either specifically authorize discovery requests or allow arbitrators to order discovery at their discretion.[13] The same useful discovery methods available in litigation, including document production and depositions, may be available in arbitration proceedings. Discovery may be properly limited to affordable disclosures of relevant and reliable information.

Myth 7: Arbitrators do not have to follow the law.
Truth: Arbitration rules require arbitrators to follow the law, holding them to the same standards as a judge.[14] Arbitration clauses may also contain this requirement. Courts can review awards to make certain that the arbitrator correctly applied the law.

Myth 8: Arbitration is only for large claims.
Truth: Arbitration procedures exist for claims of all sizes and types, from less than $1,000 to over $1,000,000. Arbitration filing fees begin at $25.[15]

Myth 9: Arbitration denies parties the relief available only in class actions.
Truth: Class-action lawsuits have been necessary because individual parties cannot afford to use a lawsuit to seek relief. Class actions may also be available in arbitrations.[16] The American class-action rule was adopted as a procedural rule because litigation made it too expensive and complicated for individuals to bring small claims. Arbitration readily permits consumers, employees and other individuals with complaints against businesses to recover their losses, including the cost of arbitration. With this relief available, courts have generally held that class actions are unnecessary.

Furthermore, public agencies may pursue class actions and obtain public relief for a class of individuals. Government lawyers can retain private lawyers and work with them on behalf of the public. Class-action rules were implemented at a time when there were few cases being brought by public lawyers on behalf of the public and individuals. Today, it is much more common for the government to sue on behalf of a class of individuals. Private arbitration and public class-action cases can provide comprehensive and effective enforcement of laws.

Myth 10: Arbitration proceedings are conducted in secret.
Truth: Arbitration rules and proceedings are readily available to the public.[17] Arbitration organizations may publish awards

at the request of any party,[18] or as required by law. Awards are also reported when they are confirmed as civil judgments. Judges review arbitration proceedings, hearings and awards in open court.

Myth 11: Arbitration awards cannot be appealed.
Truth: The court of the state or country where the arbitration award is sought to be enforced can review the award to determine if it is legal and enforceable.[19] The court can review *de novo* whether the arbitrator who was compelled to follow the law did so. The Federal Arbitration Act and state arbitration acts permit judges to review arbitration awards.[20]

Myth 12: Lawsuit decisions are more enforceable than arbitration awards.
Truth: An arbitration award must be enforced in a judicial forum unless there is reason for the court to vacate the award.[21] Federal and state arbitration acts require U.S. courts to recognize and enforce awards entered in different states. Treaties require foreign courts to enforce arbitration awards entered in different countries. In a foreign country, it is easier to enforce an arbitration award than a civil judgment.

Mistrust of arbitration procedures rests on an archaic understanding of the arbitration process, which is subject to intense oversight by courts. Arbitration delivers access to justice for millions of Americans who might otherwise find a remedy illusive.

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NOTES

1. Quin Tian, "Public Loses as Lawyers Block Access to Cheaper Legal Help," *USA Today* (Feb. 19, 1999).
2. Jill Schachner Chanen, "Pumping Up Small Claims," *ABA Journal*, p. 18 (Dec. 1998).
3. 9 U.S.C. § 2.
4. Allied-Bruce Terminix Co., Inc. v. Dobson, 513 U.S. 265, 280 (1995) (quoting H.R. Rep. No. 97-542, p.13 (1982)).
5. *Consumer Reports*, August 1999, p. 64.
6. *E.g.*, National Arbitration Forum (NAF) Appendix C at http://www.arbitration-forum.com.
7. Cole v. Burns Int'l Sec Servs., 105 F.3d 1465, 1483-85 (D.C. Cir. 1997).
8. "If only there were someone to arbitrate between us, to lay his hand upon us both, someone to remove God's rod from me, so that his terror would frighten me no more." *Job* 9:33 (NIV version).
9. *E.g.*, Cons. Minn. Gen. R. of Prac. 114.42; Pa Cons. Stat. Ann. §§ 1301-1314; 28 U.S.C. § 471; Wayne Brazil, "A Close Look at Three Court-Sponsored ADR Programs," 1990 U. Chi. Legal F. 303, 303.
10. Johnson v. W. Suburban Bank, 225 F.3d 266 (3d Cir. 2000); Stout v. J.D. Byrider, No. 99-3854, 2000 WL 1269402 (6th Cir., Sept. 8, 2000).
11. Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26 (1991).
12. National Arbitration Forum, Arbitration Bill of Rights at http://www.arbitration-forum.com; Armendariz v. Found. Health Psychcare Srvcs. Inc., 99 Cal. Rptr. 2d 745, 745 (Cal. 2000).
13. National Arbitration Forum Rule 29 – Discovery; David F. Herr and Roger S. Haydock, *Discover Practice* at § 10.3 (Aspen, 3d ed. 2000); Roger S. Haydock, et al., *Fundamentals of Pretrial Litigation*, § 5.1.2, § 5.3.1 (Aspen, 4th ed. 2000).
14. National Arbitration Forum Rule 1 – Arbitration Agreement; Edward Brunet, "Replacing Folklore Arbitration with a Contract Model of Arbitration," 74 *Tul. L. Rev.* 39, 57 (1999).
15. National Arbitration Forum Appendix C at http://www.arb-forum.com.
16. Johnson v. W. Suburban Bank, 225 F.3d 266 (3d Cir. 2000); Stout v. Byrider, No. 99-3854, 2000 WL 1269402 at *7 (6th Cir., Sept. 8, 2000); Bette J. Roth, et al., *The Alternative Dispute Resolution Guide*, §§15.1 15.13 (West Group 1999).
17. National Arbitration Forum at http://www.arbitration-forum.com; Judicial Arbitration Mediation Services at http://www.jamsadr.com.
18. National Arbitration Forum ICANN at http://www.arbitration.forum.com/domains/.
19. 9 U.S.C.A. § 9 (2000); Blanchard and Co. v. Heritage Capital Corp., No. 3:97-CV-0690-H, 2000 WL 1281205 at *3-4 (N.D. Tex. Sept. 11, 2000).
20. Roth, fall citl. 49, § 14.1-14.17, 19.1-19.27.
21. Grenig, fall citl. 38, §§ 20.10-20.49.

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The Board's Work

by Lindsay Thompson
Bar News Editor

EVERETT, December 6-7, 2002 — The Road Show rolled into Everett and, while there, the govs handled the usual sorts of things — reports, appointments, deciding whether to support legislation in Olympia — but mostly they worked on what to do about funding indigent legal services. State funding reductions, falling IOLTA funds and their interest rates, and no inflation adjustments to legal-services funding in a decade, taken together, puts legal services for the poor in a world of hurt.

Various bodies in The Legal System, considering the matter in the last few months as the shortfalls got bigger, more or less concluded through autumn and early winter that no one will escape Governor Locke's budget ax, and there won't be any new taxes adopted for anything. So to hold the line until the economy turns around and state revenues reach their customary levels, and longer-term solutions to court and indigent-services funding can be developed, there has to be a new revenue source for legal services.

The proposed solution? Raise the civil case filing fee to $200, maintaining the current state/county split of filing-fee revenue to the new, higher fee, and dedicating the state share to legal-services funding.

Politics being politics, the logrolling started in December, giving the matter its urgency. Something like this has to have all the major players — courts, WSTLA, defense bar, county clerks, WSBA, county governments and others — singing off the same page.

The question percolating at this meeting was: do the govs sign off on the proposal right then and there, or try and get as much input as they can in a very short time? WSTLA and the King County Bar, through their liaisons, asked the govs to hold off a little while — a week or so — so their governing bodies could think the matter through and maybe offer some alternatives.

One WSTLA idea that floated through the room was that a filing-fee increase will fall most heavily on its members and family law attorneys: maybe an answer fee could be imposed to spread the burden around a bit. That, of course, implicates interests of the defense bar and the Family Law Section, so you gotta go out and ask what they think, too (nobody, mind you, was suggesting *not* consulting around as broadly as possible. The issue was how much can get done in a very short time?). And if you tinker with the state/county split on filing fees, the counties roll into action.

WSBA Legislative Committee Chair **Michelle Radosevich** and WSBA Legislative Director **Gail Stone** laid out the political/budget situations for the board. All the major players support legal services as a state responsibility, they reported. The trouble is there's no dedicated funding source. Governor **Ken Davidson** recalled funding came for years from the Public Safety and Education account, but in the '90s it got shifted to the General Fund, and now is looking at being moved back to PSEA. Even if you have a dedicated fund, there is no assuring it won't get reallocated or moved over time.

The Washington Women Lawyers' representative suggested the filing-fee increase will hit people who can't afford the current fee, and suggested trying to float a graduated fee scale. WSBA Executive Director **Jan Michels** said that **Joan Fairbanks**, WSBA's justice programs manager, is working on a revision of the *in forma pauperis* rules to try and take such issues more into account.

Governor **Jon Ostlund** thought $200 may be too high to sell, and suggested $110 to $150. Davidson — and for that matter, all the governors — said their constituent e-mail broke roughly half and half. Davidson's constituents wrote the longest responses opposing answer fees. Governor **Paul Lehto** said it's inequitable just to charge plaintiffs. He's willing to support an emergency measure but not an increase that will last forever. Stone and Radosevich reminded the board there's a Supreme Court task force on court operations and funding that is looking at the broader issue of how the courts are being strangled by lack of funds, but there's nothing it can come up with as part of a global solution in time to address the legal-services funding crisis.

Governor **Ron Ward**, a WSTLA member, said if he were acting out of self-interest he'd oppose the increase. "But we are supposed to represent the interests of the justice system as a whole. The political reality is that this is the only thing that will likely pass now. The other ideas to spread the burden around will have to come later."

Governor **Bill Hyslop** said his eastern Washington constituents worry the Legislature, having jacked up the filing fee, may decide to move the money earmarked for legal services somewhere else in the future. They expressed concerns that landlord-tenant, family law, and employment/wage-dispute litigants will shoulder the burden of the increase. "This is not lawyers' money. It's clients'."

Attorney **Julian Dewell**, the Access to Justice Board rep, reminded the BOG that people his age could remember when there was, in fact, an answer fee in Washington, so it wouldn't be something new under the sun if one were re-adopted.

After discussion Friday and Saturday, the board voted to have a special meeting December 19 in Seattle to make a decision on whether to endorse the proposed increase.

SEATTLE, December 19, 2002 — The board reconvened at the WSBA office to review the situation. Eight were present in person; the rest participated by telephone. WSTLA president **Steve Toole** and lobbyist **Larry Shannon** presented some financial-impact information developed to see how the increase would hit some types of litigants harder than others, and proposed that in counties with mandatory arbitration, a credit be given in light of the charge of up to $220 counties can levy to help finance MAR programs. Family Law Section liaison **Pete Karademos** argued for exempting antiharassment cases as well.

Others responded that special pleading, however valid, would be one of the quickest ways to kill the filing fee bill. Those opposed to it would be able to latch on to one or another type of filing not being exempted, and use that as a more palatable basis for opposition than coming right out and saying they don't like funding indigent legal services. Gail Stone and Michelle Radosevich expressed concern that a piecemeal approach would also make it easier to splinter the coalition that will be

needed to get a bill through.

Several govs made clear they'd support the filing-fee increase but with some considerable distaste. Paul Lehto likened it to a poll tax and **Andrea Brenneke** worried that jacking up the filing fee to preserve access to justice for some could be seen as creating its own impediment to access to justice for others. State courts administrator **Mary McQueen**, who doesn't speak up often and so gets paid attention to when she does because you know it's important, said she is really afraid for the future of legal-services funding in the current fiscal climate. She urged the board to keep the filing-fee bill simple and let the Legislative Committee and Stone deal with alternate ideas — like the MAR exemption that might come up once the bill is introduced.

The consensus emerged fairly quickly that a solid front behind a simple plan is the best bet — a complicated, nuanced bill that tries to placate every interest will die of a thousand amendments.

After 90 minutes' debate the board voted to support the filing-fee increase with a resolution making clear it is a stop gap, and pledging to work with the courts and Legislature on more equitable, long-term solutions.

The board and the bill now move to Olympia; the governors meet there in January.

Speak Out!

Wanted: Lawyers to volunteer to speak to schools and community groups on a variety of topics.
For information, call Amy O'Donnell at the WSBA Speakers Bureau:
206-727-8213

WSBA Emeritus Status: A Win-Win for WSBA Members and Low-Income Clients

by Sharlene Steele WSBA
Access to Justice Programs Liaison

Are you thinking of changing your WSBA membership status from active to inactive because your career path has changed or because you've basically retired from the practice of law? Will you switch back to active status within three years so that you won't have to take the Bar exam again? Going back and forth between active and inactive in order to retain your license can be nerve-wracking, expensive and time-consuming. If you are maintaining your WSBA active license even though you don't practice much law, paying the full active-member licensing fee and complying with MCLE requirements is also expensive and time consuming.

There should be a more effective way to manage your WSBA membership status, and a less expensive way to practice law in a limited capacity. There is. The WSBA Emeritus Program may be a perfect solution for your situation.

APR 8(e) creates a limited license status of emeritus for attorneys otherwise retired from the practice of law, to provide *pro bono* legal services through a qualified legal-services organization. There are no MCLE requirements (although you may attend optional CLE seminars at no or low cost so that you stay apprised of changes in the law). The license fee for emeritus members is $117 for 2003. Under most circumstances, you can remain in emeritus status indefinitely without having to re-take the Bar exam if you decide to return to active status. Volunteering for a qualified legal services organization allows you to control your own schedule. Most importantly, the Emeritus Program provides an opportunity for attorneys to give something back to their communities by helping those less fortunate.

There are qualified legal-services organizations in most Washington counties. These organizations provide assistance to low-income clients with civil cases, and include Columbia Legal Services, a full-service statewide legal-services program; Northwest Justice Project, a central statewide point of access for clients; and county volunteer-attorney programs. These organizations offer a wide variety of volunteer opportunities such as direct representation, mentoring, advice clinics, self-help clinics, board service, telephone advice and document preparation. Emeritus status also allows for *pro bono* services for criminal cases through some public defender offices.

An emeritus training session is scheduled for April 23 at the WSBA office in Seattle. For more information about the Emeritus Program, the training session, and the logistics of changing your WSBA status to emeritus, please contact Sharlene Steele at 206-727 8262 or sharlene@wsba.org.

The WSBA and the entire Washington State Access to Justice Network extend sincere gratitude and appreciation to the following emeritus members:

oLynn H. Arends, Christine Cole, Dean A. Fournier, William H. Griffies, Tim Ham-lin, Susan B. Hansen, Pamela Harer, Julianne Hirsch, Valen Honeywell, Susan Hufman, Mary Hurley, Kathleen Brame Lemly, Stephen Llewellyn, James C. Lynch, Clare Hodgson Meeker, Janice Mikkelborg, Susan M. Bell Murgatroyd, Hon. Vernon Pearson, Hon. Jack P. Scholfield, Shannon Sedlacek, J. Peter Shapiro, William A. Stiles Jr., Sheila Umlauf and Rudolph Duane White.

The Future of Ideas: The Fate of the Commons in a Connected World

reviewed by Robert C. Cumbow

by Lawrence Lessig; 352 pp. (268 pp. text, 84 pp. notes and index); hardcover, $30. Random House, New York, 2001.

The message of Lawrence Lessig's *The Future of Ideas* is important and urgent: We should not hasten to apply existing regimens of protection to new technologies, but should re-examine the policies such protections are meant to serve, then shape our application of law to reinforce those policies.

Lessig, like many, sees in today's techno-culture a disturbing trend of increasing protection, and thus control, over code, media and content that arguably ought to be more broadly available. We all benefit, he argues, if innovations at every level are free to be tinkered with by others, creating a community (or "commons") of innovation. By contrast, if proprietary protection regimes are exerted to the increasingly extreme degrees we are seeing in today's market, innovation will be delayed if not altogether stifled, and we will be the poorer for it.

He does not maintain that developers of new media and content should not profit from their work, or that works should be freely copied without permission or payment simply because it is easy to do so. What he does argue is that we need to examine carefully what policies are served, in each instance, by exerting greater or lesser controls over such works. New digital technologies invite and enable extremes of both abuse of the property rights of others and the exercise of overbearing control by those same rights holders. How are we to find moderation, and foster a climate of innovation that will benefit all of us in common?

At its best, *The Future of Ideas* is an important book, with some strong warnings about the movement toward over-protectiveness in our increasingly digital culture, and the price we are already paying for it. At its worst, the book suffers from a one-sided and often sloppy analysis of issues that are key to the credibility of Lessig's arguments.

His use of the term "ideas" in the book's title is unfortunate, since Lessig's argument has mostly to do with what he perceives as the over-control of alleged proprietary rights, not of ideas, which are *always* in the public domain, always a part of the "commons," and available to all.

Lessig's style is articulate but dispassionate, lacking in enthusiasm. He hamstrings his message — and sometimes his clarity — with a too-academic writing style and an annoying overreliance on metaphor and jargon. As noted above, he uses the term "idea" inconsistently, sometimes applying it correctly to the unprotected public domain of concepts, other times applying it to the kinds of specific expression or embodiment that may be entitled to copyright or patent protection.

Lessig's language can be irritatingly precious. He too frequently uses "map" and "architect" as verbs, and speaks of various media and software as "platforms." But more alarmingly, his language can be sloppy. He insists upon referring to the Internet as if it were a kind of "space" (he overuses the embarrassingly dated term "cyberspace" as if it actually had meaning) and to the Web as if it consisted of "locations" to be "built" and "visited." He refers to the Internet as "there" and the rest of reality as "here" (178). When he says: "The digital world is closer to the world of ideas than to the world of things" (116), he seems to expect us to believe that digital technology has somehow created a "world" quite literally different from ordinary reality — an "other place" where different rules should apply.

Spatial metaphors are, of course, common in discussing Internet activity; but while they are handy in laymen's parlance or in technology journalism, they have no place in a serious analysis of the intellectual property implications of, for example, application software development or peer-to-peer file sharing. The Internet is not some substantively different "space." It is merely a medium that provides — faster, more accurately, globally, and with searchability — the same kinds of information exchanges formerly done by mail, telephone, publishing, sound recording, broadcasting or reference libraries. It's difficult to accept challenges to contemporary applications of copyright law when they come from someone who apparently believes the fiction that using the Web is "visiting sites," rather than the reality that it consists of *copying* — sometimes with permission, sometimes not — files stored on other computers.

One of Lessig's worst excesses is an extended passage in which he analogizes a Web site to a dorm room (181-2) with posters and other memorabilia (all unauthorized) taped to the walls. His argument that this harms no one cheerfully ignores the fact that dormroom walls are not easily copied by thousands of other people. Ignoring copying as the fundamental feature of Internet activity makes it easy to view copyright as a mere nuisance foisted off by overreaching commercial interests.

Copyright, a subject essential to Lessig's purpose, is treated with an odd mixture of careful erudition and careless inattention. On the good side, he provides an excellent brief tour through the evolution of copyright law in the United States, the policies it is supposed to serve, and how it has been shaped and reshaped by technological developments (from piano rolls to cable TV). On the down side, in discussing the fundamental basis for copyright protection, he uses the terms "originality" and "creativity" interchangeably, as if they were the same thing. He can perhaps be forgiven for this in light of

the fact that many judicial opinions have done the same thing. But the former, not the latter, is an essential condition of copyright protection. More importantly, and less forgivably, he confuses the constitutional limitation on the duration of copyright ("fixed times") with state and common-law provisions for fair use. He mischaracterizes 9th Circuit Judge Alex Kozinski's dissent in *White v. Samsung* as a copyright argument.

His proposal for requiring copyright registration in five-year renewable terms (251) would be very tempting if the United States existed in a commercial vacuum. But the longer terms of copyright and the automatic conferral of copyright protection upon fixation of the work are measures that the United States took to harmonize its copyright practices with those of much of the rest of the world — a crucial measure for a nation that is the world's largest net exporter of entertainment and information technology. Lessig may not approve of this kind of globalism or our country's economic and regulatory response to it, but it is irresponsible of him not even to discuss it when it is so essential a part of the context of our contemporary copyright regimen. The term "Berne Convention" does not appear even once in his book.

For a lawyer who clerked for both Judge Richard Posner and Justice Antonin Scalia, Lessig takes a surprisingly disingenuous view of the market. He says: "[R]ecord companies choose what gets floated in the market; radio stations (in effect) get paid to play what record companies choose.... What gets played on TV is the decision of network owners; what gets broadcast on cable is the choice of cable companies" (111). While there is a kernel of truth to this, Lessig uses it to perpetuate a tired conspiracy theory about media companies, as if the wishes, tastes, and preferences of actual listeners and viewers were no part of the equation. Record companies, radio stations, TV networks and cable companies provide, as they must, only those products and programming that real people are willing to pay for (or to sit through advertising in order to enjoy).

But real people are of no interest to Lessig. He is happier striking blows at imaginary bogeymen: "When the only innovation that will be allowed is what Hollywood permits, we will not see innovation" (217). If he thinks Hollywood has not been a leader in innovation, he doesn't know much about either the art or the technology of movies.

Elsewhere he argues that: "If by resisting the model of perfect control we gain something important, then we should do so" (116). Most market-conscious policymakers would be more likely to say "we should do so" only if we *gain* more than we *lose*, but this sort of analysis doesn't fit Lessig's one-sided view of what constitutes good market policy.

He praises two particular Internet models: the peer-to-peer file sharing community technology of Napster, and the personalized marketing and searchable sales base of Amazon.com. It is troubling that he does not even acknowledge, much less discuss, the obvious difference between the two. Under the Napster model, after a copy is sold once, it can be redistributed free to the rest of the world, making the transactional cost of that first copy astronomical, with devastating economic consequences for the very cre-

ative innovation Lessig is at pains to extol. By contrast, under the Amazon.com model, books, CDs, DVDs, and other embodiments of creative works are still sold, one to a customer, continuing to provide incentive to the creators of what we used to call art, literature, music and film, and what Lessig and others like him now call "content."

Even when you are willing, perhaps eager, to let Lessig persuade you, he cuts you off every step of the way, makes it hard for you to believe in him, insists on preaching to his own ever-narrowing and preselected choir. This is most obvious in the following passage: "Stockholders demand that management maximize its income; we shouldn't expect management to do anything different. But even if this is 'only business' to them, that does not mean it should be 'just business' for us" (146).

It's unclear whether "stockholders" or "management" or both are the "them" he refers to. It's even less clear who are the "us" — especially in light of the fact that the vast majority of Americans who have pension plans, IRAs, 401(k)s and the like are the stockholders whose future security rests on management's ability to "maximize its income." Lessig insists on this "us" and "them" mentality without examining it very carefully. Lessig's often excellent ideas about the respective places of old and new technologies and business models are harmed by a rhetoric that betrays this fundamental bias — a knee-jerk assumption that anything old is necessarily counter-innovative and therefore unequivocally bad (139, 141). He never considers whether the problem might be that "we" don't *value* innovation enough, rather than that "they" prevent it from flourishing.

These many objections, concerns and quibbles of mine are not meant to suggest that Lessig's arguments fail, or that his book is unworthy of attention. He has much of value to offer. He is at his best analyzing and arguing the complex issue of allocation of spectrum and bandwidth, and he proposes what appears to be a workable model for a new approach to that issue. Indeed, near the end of his book he puts his money where his mouth is and proposes specific regimes for protecting varieties of code, media and content to provide creators with incentive while nurturing the innovation that we are currently losing to those who would exert absolute control.

In this context, he persuasively argues that software should not be patentable, and possibly not copyrightable either (210). In so doing, he presents the exciting and relevant insight that copyright and patent are, in fact, not "property rights" at all, but forms of regulation (212, 216). He recommends compulsory registration, renewal, and limitations on copyright; and compulsory licensing and micropayment systems for online music distribution.

Lessig seems to recognize that his proposals are probably too radical — and certainly too contrary to current market-dominating interests — to be adopted. But this only reinforces his conviction that there is an urgent need to re-examine law and policy in light of the cultural and communal benefits that the technology revolution can provide. ✍

Robert C. Cumbow is a shareholder with Graham & Dunn in Seattle, where he practices trademark, copyright, Internet, advertising and media law.

Changing Venues


Kessler


Brown


Gerst


Kirby


Cavanaugh


Griffith

Honors and Awards

Lou M. Baran, of the Vancouver firm Lou M. Baran PS, has achieved board certification as a family trial advocate through the National Board of Trial Advocacy (NBTA). NBTA is dedicated to the identification of attorneys with a history of enhanced skill in trial practice.

The Dayton Chamber of Commerce has named **Terry Nealey** Citizen of the Year. Mr. Nealey has volunteered for Habitat for Humanity, coached school basketball, and advocated for the economic development of Dayton.

Steve Y. Koh has been named to the National Asian Pacific Bar Association's list of "Best Lawyers Under 40." Those selected have achieved distinction in the practice of law; business, civic and charitable affairs; or politics.

Seattle attorney **C. William Bailey** was selected by his peers for inclusion in the 2003-2004 edition of the *Best Lawyers in America*.

The Seattle office of **Lane Powell Spears Lubersky LLP** has won the Seattle Law Firm Cup Challenge, raising more than $7,000 for the American Heart Association through its participation in the annual 3.2-mile American Heart Walk.

Washington Defense Trial Lawyers has awarded the Outstanding Plaintiff Trial Lawyer Award to **Keith L. Kessler**. This is the first award of its kind WDTL has given. The Outstanding Defense Trial Lawyer Award was awarded to **Michael Runyan**; the Outstanding Associate Award went to **John Gagliardi**.

Lora L. Brown has been elected a fellow of the American College of Trust and Estate Counsel.

Movers and Shakers

The Spokane firm Paine, Hamblen, Coffin, Brooke & Miller LLP has hired **Brian K. Gerst** as an associate. His practice emphasizes insurance defense and civil litigation.

Edward G. Johnson has joined Safeco as a staff attorney in the Spokane office.

Patrick Kirby and **Dianne K. Rudman** have joined the Spokane firm Dunn & Black PS as associates. Mr. Kirby concentrates his practice on labor and employment law and litigation. Ms. Rudman focuses on employment, construction law and litigation.

Mark H. Kim has joined Maxey Law Office in Spokane.

Dianne Kullberg has joined the Spokane firm Huppin Ewing Anderson & Paul PS, where her practice includes criminal defense and prosecution, and civil and commercial litigation.

The Markam Group, Inc., PS, of Spokane, has added **Shane McFetridge** as an associate. His practice emphasizes medical malpractice and product liability.

Timothy Blake has been elected to a four-term on the governing board of Arizona's Paradise Valley Unified School District, the third-largest district in the state.

Tacoma lawyer **Ronald Leighton**'s nomination to the federal bench has been confirmed by the U.S. Senate. He will replace U.S. District Court Judge Robert Bryan at the federal courthouse in Tacoma. Mr. Leighton is president of the Washington Chapter of the American Board of Trial Advocates.

Miller Nash LLP has welcomed **Heather K. Cavanaugh** as an associate in the Vancouver office, and **Leslie M. Griffith** as an associate in the Seattle office. Ms. Cavanaugh joined the litigation department, focusing on general business litigation and land use matters. Ms. Griffith joined the business department, focusing on health care and general business law.

Michael D. Daudt has become an owner of the Seattle firm Tousley Brain Stephens PLLC. **Toby J. Marshall, Paul W. Moomaw, Thomas D. Newell Jr.** and **Mary B. Reiten** (a member of the California and Oregon bars) have become associates of the firm. Mr. Daudt concentrates on complex commercial litigation; Mr. Marshall concentrates on commercial and class-action litigation; Mr. Newell focuses on business transactions and commercial litigation; Mr. Moomaw concentrates on commercial litigation; and Ms. Reiten focuses on civil litigation and class-action mass tort litigation.

Roy Umlauf has been elected to the board of directors of the Defense Research Institute, serving as regional director for Alaska, Idaho, Oregon, Montana, Washington and Wyoming. Mr. Umlauf is a past president of the Washington Defense Trial Lawyers.

Foster Pepper & Shefelman PLLC has hired **Jeffery A. Richard** as an associate in the municipal practice group. Mr. Richard's practice emphasizes public finance, municipal law, state constitutional law, and elections.

Mari Horita has joined the Seattle office of Preston Gates & Ellis PLLC as an associate in the real estate department. Ms. Horita's practice includes representing clients in retail and commercial leases, acquisitions and sales of commercial property, and eminent-domain proceedings.

Kenneth E. Hepworth, Karen A. Kalzer, Charles P.E. Leitch and **Tammy L. Williams** have become shareholders in the Seattle firm Lee Smart Cook Martin & Patterson PS. **Frank A. Cornelius Jr., Toni Y. Davis, A. Janay Ferguson, Jason C. Hawes, William R. Kiendl** and **Ketia Berry Wick** have joined the firm as associates.

John P. Ahlers has joined the firm


Umlauf


Richard


Anderson


Danzig


Kayihura


Schug

Short Cressman & Burgess PLLC as partner. Mr. Ahlers, who has focused on construction-dispute resolution for the past 20 years, co-chairs the construction-industry practice group. **Tatyana Gidirimski, Brent Nourse** and **Jennifer Sanscrainte** have joined the firm as associates. Ms. Gidirimski concentrates on business and employment law and litigation; Mr. Nourse focuses on construction law and litigation; and Ms. Sanscrainte, who has joined the environmental, land use and natural resourses section, focuses on environmental, tribal, and land use law and litigation.

The Seattle firm Halverson Applegate has hired **Sara Pirk** (a member of the Oregon State Bar) as an associate. Her practice focuses on environmental law.

Brett N. Anderson has rejoined the Seattle office of Lane Spears Lubersky LLP as an associate in the employment and litigation groups. **Brian J. Danzig** has joined the firm as counsel to the real estate group, where he continues to handle real estate, finance and business matters. **Robert J. Kayihura** has joined as an associate in the complex litigation and commercial litigation practice groups. **Mary K. Schug** has joined the firm as an associate in the litigation group.

Seattle firm Cairncross & Hempelmann has hired **Joong-Bin (J.B.) Im** and **John P. Payseno** as associates. Mr. Im works in the technology and business practice groups; Mr. Payseno works in the land use and business practice groups.


Im


Payseno

Lawyers and the Art of Motorcycle Riding (Part Two)

by Barrie Althoff • *WSBA Professionalism Counsel*

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

This is the second article in a two-part series.

Riding to Live and Living to Ride

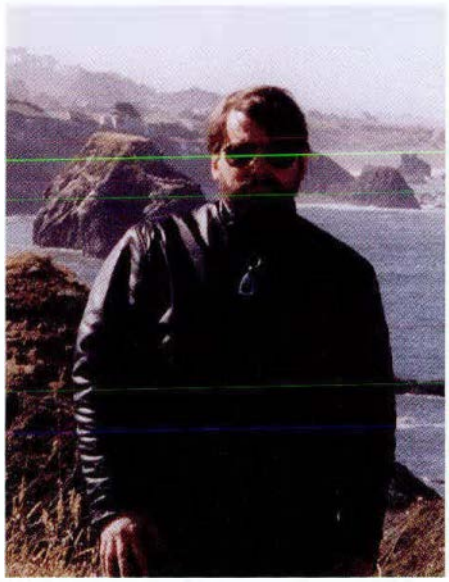
Harley-Davidson riders have a slogan: "Ride to live, live to ride." We ride safely so as to stay alive and so as to enjoy life, and we stay alive so that we can continue to enjoy riding.

We lawyers might adapt the slogan: "Practice to live and live to practice." We practice law because working for justice, the essence of our practices, gives meaning to our lives. We practice ethically so that our professional careers stay alive. And we want to continue living our lives because we know that there is an infinite and ever-renewing need for our efforts to make our communities more just and because we can make a difference in the lives of our clients.

Sitting in the Hot Seat

Motorcyclists and lawyers have to be able to sit in the hot seat. A motorcyclist, particularly of an air-cooled engine, straddles an engine radiating heat, with oil temperatures exceeding 225 degrees. In very warm weather (over 114 degrees in Arizona), riding can become uncomfortable. Riders learn to take the heat, however, if they want to ride. Those who cannot take the heat try to cool down by pushing themselves back onto the passenger seat, or dismounting and letting the engine cool. If the engine is not allowed to cool when needed, it will overheat and the ride will come to an abrupt end.

We lawyers are often in the hot seat. We may represent unpopular clients or causes and be subjected to unfriendly public scrutiny and criticism. Lawyers handling criminal-law or domestic-violence cases, for example, regularly confront violence and encounter threats of personal harm. At great risk to themselves and their families, these lawyers embody the notion that we are a nation of law, not of men. But if we lawyers cannot personally take the heat of our practices, we cannot push ourselves back onto the passenger seat. It is our job as lawyers, not the client's job, to take the heat. If we cannot take the heat, if we cannot adequately represent the client, we need to dismount from our particular representation or practice.



Taking a break at Sonoma Coast State Beach (Northern California)

We may need to change our practice area to one which generates less heat for us. Sometimes it may mean moving from a criminal-law to a civil-law practice, or from litigation to a transactions practice, or from private practice to corporate or governmental practice, or vice versa. We may also find, however, that the friction of a particular representation, client or opposing counsel has generated such heat that we cannot represent the client well. We may need to dismount the representation either temporarily or permanently. If the relationship with the client is very poor, it may need to be cooled or put on ice. Often we serve both the client and ourselves well by promptly terminating a dissatisfying representation, even if we lose money doing so. If we do not recognize when we, our practice, or a relationship is overheating and we do not take action to reduce the heat, we may burn out ourselves, our practices and our careers.

Looking Awesome or Awful

Lawyers and motorcyclists have a public-image problem. Bikers who are lawyers and lawyers who are bikers presumably are worst afflicted. In films, motorcyclists terrorize small towns with their rough ways, unkempt appearances, their bikes' powerful and noisy engines and exhausts, and their disregard for others by dangerous riding. Lawyers do so by rudeness, incivility, not communicating with their clients, sharp practices, legal "tricks," unreasonable fees, and loud mouths. In films, someone (often a misguided fair maiden) usually admits to liking (and even loving!) a motorcyclist, but no one usually admits to liking, let alone loving, a lawyer.

In reality, motorcyclists are largely invisible to the public ("Officer, I never saw the motorcyclist") unless the motorcyclist cuts in front of them, speeds past them (sometimes between lanes), or startles them with noisy exhaust. In reality, lawyers are largely invisible to the public unless a lawyer misbehaves, the public needs a scapegoat, or the client needs legal services. The public reluctantly acknowledges the need for lawyers, may even want their son or daughter to become one, but generally do not trust lawyers, except maybe their own lawyer, and they are not too sure of even that.

Beneath their leathers, dark glasses, helmets and grizzled beards, aside from their rough ways and noisy surroundings,

many motorcyclists have a deep zest and relish for life and a well-grounded appreciation of the need for simplicity (but only after adding that extra chrome to their bikes). Most bikers will readily stop their rides to help others. Beneath the tough, cynical and hardened exteriors of many lawyers, behind all their trappings of legal power and the legal threats they wield, are persons who passionately care about justice and fairness in our communities and who silently, without fanfare, give their time and resources to protect the poor, the oppressed and the vulnerable in our society.

Reaching Out and Touching

Motorcycling and practicing law are essentially solitary activities. Both also attract loners. Many motorcyclists share their enthusiasm for riding by greeting other motorcyclists with a wave of the left hand while keeping their right hand firmly on their motorcycle's throttle. Harley-Davidson riders usually wave below the handlebars, especially to other Harley riders, while other motorcyclists usually wave above the handlebars. Some Harley riders, however, stone-facedly ignore the greetings of other riders, especially non-Harley riders, refusing to greet or acknowledge them. Some riders of touring or cruising motorcycles decline to greet riders of sports motorcycles, and vice versa.

Many lawyers sense a decline of civility in our profession. Too frequently we stone-facedly ignore or rudely treat other lawyers and their staffs in our law journeys. We adopt our clients' enmity as our own and project it on opposing counsel. Big-firm lawyers look down on small-firm or small-town lawyers, litigators look down on transactional lawyers, specialists look down on general practitioners, private practitioners look down on government lawyers (until they tire of private practice and want to become government lawyers), and vice versa, and so on. Too frequently we forget that we share the privilege and burden of being lawyers, of being guardians of the law, of bringing justice to our communities. We need to take the time and effort to cordially greet one another in our daily practices, to relish each others' company, and yet all the while keep one hand on the throttle of our practices to assure that we are moving our clients towards their respective goals.

Watching Out for the Unknown, and, Even More, the Known Dangers

While motorcyclists sometimes ride interstate highways, usually when time is limited and distances great, we far prefer the winding two-lane country roads that promise surprises, sometimes unpleasant, around many a corner. Sometimes we find spectacular mountain or ocean views, or a low cloud teasing a tree top, or a springing buck or doe, and sometimes we find loose gravel or ice that can send us reeling. Riders must be equally prepared for both the expected and unexpected, the known and the unknown. Sometimes we become so used to the known that it becomes the unknown. Four days after completing my 11,570-mile motorcycle journey, I missed a step at home, which I have safely taken thousands of times, and fractured my ankle.

Lawyers and motorcyclists have a public-image problem. Bikers who are lawyers and lawyers who are bikers presumably are worst afflicted.

While we lawyers generally have one or two areas of practice in which we spend most of our time and in which we have developed expertise, we also find pleasure when we step outside our usual area to explore new areas. Sometimes our practices have become so routine that we miss the obvious dangers. We are more likely to commit malpractice and be subject to discipline for conduct in our usual areas of practice than we are when we undertake a new area of practice wherein we are alert to dangers. Thus, even if we have ridden a road, taken a corner, or performed a service a thousand times, we must treat each time as a first time with all the precautions of a novice. Anything less invites an unwanted surprise.

Keeping Vision When Things Go Splat

Motorcycle helmets do not have windshields wipers or washers. Rain, sleet, snow, bugs, road grime and other things that go splat onto a helmet visor can obstruct a rider's vision. A visor opening slightly allows air circulation to remove fog. Rain, road grime and bug debris can generally be ignored by focusing on where you are going rather than what is immediately in front of your face. Sleet and snow must be physically removed by wiping a hand over the visor. Sometimes "splat" accumulations become so obscuring that a rider must stop the ride and clean the visor to assure safe riding.

In practicing law, our visions sometimes become obscured by things that go splat in our faces. These may include disagreeable clients, colleagues or judges. They may include adverse results in a case; or personal, health, financial and family issues. They may include professional disillusionment.

While we need to be observant of and respond to what is immediately in front of us, we also need to stay focused on our personal and professional destinations. We must not let splats so obscure our vision that we are led astray. Sometimes we need merely to lift our visors and get a breath of fresh air to clear our personal and professional vision. Sometimes we need temporarily to step back from our practices and give our full attention to what is obscuring our vision. Sometimes we need to return to our fundamental values to regain clear vision of our destination. If we do not do so, we will come to believe that dealing with the splats is our destination rather than an impedance to them, we will mistake the immediate for the important, and, vision obstructed, we will miss the beauty of the ride.

You Can't Get There Alone or from Here

No matter how skilled and prepared a motorcyclist is, sometimes the motorcyclist cannot get to a particular place without help from others. Tour motorcycling depends on there being unending miles of pavement and innumerable bridges constructed by others. The only way I could get to certain islands on my journey was to take ferries. To reach my destination, I had to temporarily hand over control of my journey to someone else or rely on the work of others.

The rule of law rests on the legal accomplishments of all the lawyers who have gone before us building, as it were, the roads and bridges of justice for us to ride on. In our practices, we rely daily on their accomplishments. But, we also sometimes need to pause and call for help from those next to us. A particular matter may exceed our resources, or it simply may make more sense to call in others to handle it. And sometimes we and our clients have to accept that even with the help of others, we cannot get to where we want to be from where we are.

Maintaining and Servicing Our Rides and Selves

When motorcycling, no matter how delightful or urgent the ride, time must be set aside to maintain and service the motorcycle. It may be simply adding fuel and oil, cleaning off accumulated grime, checking tire pressure or tread depth, letting the engine cool after a long hot ride, doing periodic maintenance, or tending to malfunctioning equipment. Often we can do much of the work ourselves, but sometimes we need to take the motorcycle to experts.

We also need to take the time to maintain and service our law practices. Often we are too close to our practices to clearly view them in perspective. We may need a professional colleague to look at them and give us an objective opinion. We may want to consult the WSBA Lawyer Services Department to review our office procedures and help us tune them up to be more responsive to our clients. We should also consult the best experts on our client services, our clients, by regularly asking them what they wish we would or would not do for them, and then carefully listening to both what they say and do not say to us.

We must also maintain and service ourselves. On my trip around the United States, my motorcycle was far thirstier than I was and demanded fuel far more frequently than I did. The bike's limited mileage forced me to slow down and enjoy the ride more and to accept the natural rhythm of riding. In our legal practices, we sometimes become so engrossed in building our practices or in completing particular projects that we neglect our personal and family needs. We feed our law practices but not our souls. We need to make time in our practices to refuel and service ourselves spiritually, socially, physically and intellectually. If we do not do so, we will find ourselves breaking down or coming, literally, to a dead stop. We must identify our priorities with our families and then fit our practices around those priorities rather than fitting our families and personal interests around our law practices.

Communicating with Our Passengers

Motorcyclists sometimes carry passengers. The passenger may make suggestions on the ride, and may even dictate the route and destination of the ride. But the motorcyclist controls the bike — determining when to start, stop, turn, lean, accelerate and brake. Communicating between motorcyclist and passenger can be difficult over the noise of the wind and engine, unless special efforts are made or helmet intercoms are used.

We lawyers nearly always carry passengers on our rides, namely our clients. They are akin to taxicab passengers who tell the driver their destinations. The driver can

tell the passenger he does not go to that destination and decline the passenger. But if the driver accepts the passenger, the driver must take the passenger to the passenger's specified destination. The driver, however, controls the cab and usually determines what route to take to that destination and consults with the passenger if the proposed route is not the least expensive or most timely. Lawyers, like taxi drivers, usually determine the specific route of a legal service and control the case and means of getting there, but they should also consult with the client if that route is not the least expensive or most timely.

The competent lawyer with good client skills not only has a clear understanding and agreement as to the client's destination, but also communicates well with the client on how he or she proposes to get the client to that destination, and on important views or events along the way. Then, while enjoying the ride, the lawyer timely gets the client to the agreed destination without the client feeling he or she has been taken for a ride.

Conclusion

There are numerous parallels between motorcycling and practicing law, just as there are between practicing law and other activities. While analytically we can separate our lives into segments, all of our accomplishments and defeats, joys and heartaches, collisions and near misses, whether motorcycling or practicing law, meld into our own one unique life.

If our lives are integrated and balanced, the skills and lessons we learn in one aspect of our lives transfer to and enrichen other aspects of our lives. With practice and experience we come to know, whether on our motorcycles or in our law practices or in our personal lives, when and how much we need to slow down, stop, swerve, lean into the corners, accelerate, communicate carefully with our passengers, and maintain ourselves and our rides. We come to know how to handle construction zones. We come to know when it is time to pause and enjoy the exhilaration of the ride. We come to know ourselves, our routes and our destinations. And, when the time comes, we know when it is time for us, and how, to safely dismount.

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 Rules for Lawyer Discipline, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors. For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206 733 5926, leaving the case name and your address.

Disbarred

Richard R. Tassano (WSBA No. 13210, admitted 1983), of Everett, was disbarred effective October 15, 2002, by order of the Supreme Court approving a stipulation. Mr. Tassano did not admit or stipulate to the facts in the stipulation, but agreed that at a disciplinary hearing the WSBA would be able to prove that between July 1998 and December 2000 he used his employer's funds to make personal purchases.

In 1994, Mr. Tassano established the Washington Appellate Project (WAP). WAP provides representation for indigent appellants in criminal cases. Mr. Tassano was employed as the executive director of the WAP from 1994 until July 2001, when he resigned. Between July 8, 1998, and December 28, 2000, Mr. Tassano issued six checks from the WAP account totaling $16,218.72, payable to a camera supply store. In November and December 2000, Mr. Tassano issued two checks from the WAP account totaling $6,008.82 to a computer store. All these checks were for Mr. Tassano's personal benefit and were without legitimate business purposes.

Mr. Tassano's conduct violated RPCs 8.4(b), prohibiting criminal conduct that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and 8.4(c), prohibiting engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Linda Eide and Randy Beitel represented the Bar Association. Leland Ripley represented Mr. Tassano.

Suspended

Dominic T. Santiago (WSBA No. 8560, admitted 1978), of Seattle, was suspended for two years by order of the Supreme Court following a hearing, effective May 8, 2002. The discipline is based on his failure to properly administer his IOLTA account from 1996 through 2001. The sanction in this matter was affected by significant aggravating factors.

In early 2001, the Bar Association audited Mr. Santiago's client trust account (IOLTA) for the period January 1996 through March 28, 2001. During this period, Mr. Santiago failed to maintain client ledgers or check registers sufficient to accurately track client account balances. In several instances, Mr. Santiago failed to pay clients money they were entitled to receive from his trust account. As of March 28, 2001, Mr. Santiago owed his clients $10,319.16 from his IOLTA account. As of this same day, Mr. Santiago's trust account was short $13,104.33 in client funds. Mr. Santiago frequently used a client's funds to advance costs or cover shortages for other clients.

During this same time period, Mr. Santiago commingled his funds with his clients' funds by leaving earned fees in the IOLTA account. Mr. Santiago frequently acted as the escrow agent in real estate transactions, preparing final settlement statements prior to making the final disbursements. The settlement statements were frequently inaccurate. On many occasions, Mr. Santiago overpaid buyer or seller expenses, underpaid escrow fees or costs, or failed to refund excess funds to the buyer or seller.

Mr. Santiago's conduct violated RPCs 1.14(a), requiring lawyers to deposit client funds into an IOLTA account and keep the lawyer's funds out of this account; 1.14(b)(3), requiring lawyers to maintain complete records of client funds and render appropriate accounting to clients; and 1.3, requiring lawyers to diligently represent their clients.

Kevin Bank represented the Bar Association. Douglas O. Whitlock and Joseph J. Ganz represented Mr. Santiago.

Suspended

Brian L. Berkenmeier (WSBA No. 20421, admitted 1991), of Longview, was suspended for four months by order of the Supreme Court following a hearing, effective October 31, 2002. The discipline is based on his violation of court orders and unjustified acts of assault between March 1998 and January 2000.

In October 1998, Mr. Berkenmeier

pleaded guilty to negligent driving in South Pacific District Court. In December 1998, he pleaded guilty to possession of drug paraphernalia in Cowlitz District Court. While on probation from these two charges, in January 1999 and again in October 1999, Mr. Berkenmeier pleaded guilty to domestic violence assault.

During January 2000, Mr. Berkenmeier's probation was revoked on all four charges. While serving the resulting jail sentence, Mr. Berkenmeier failed to provide alternate representation for his clients. As of December 2001, Mr. Berkenmeier had completed all sentencing requirements.

Mr. Berkenmeier's conduct violated RLDs 1.1(a), prohibiting unjustified acts of assault or other acts reflecting disregard for the rule of law; 1.1(b), prohibiting willful disobedience or violation of court orders; 1.1(c), prohibiting violating the Oath of Attorney; and RPCs 1.3, requiring lawyers to diligently represent their clients; and 1.4(a), requiring lawyers to keep clients reasonably informed of the status of their matters.

Eric Lindell represented the Bar Association. Mr. Berkenmeier represented himself. The hearing officer was William E. Fitzharris.

Suspended

Dean W. Hamilton (WSBA No. 19416, admitted 1990), of Centralia, was suspended for 18 months by order of the Supreme Court approving a stipulation. Based on the circumstances in this case, the Court ordered the suspension to begin retroactively from December 10, 2001. The discipline is based on his 2000 conviction for violation of the Uniform Controlled Substances Act.

In May 1999, Mr. Hamilton voluntarily transferred his license to practice law to inactive status. In 2000, Mr. Hamilton's license to practice law was suspended for failure to pay licensing fees. On May 19, 2000, Mr. Hamilton entered an Alford plea to a one-count violation of the Uniform Controlled Substances Act, a felony. In November 2001, Mr. Hamilton submitted an application to transfer from suspended to inactive status. In that application, he disclosed his felony conviction. Mr. Hamilton's application to change his status was denied. He completed his sentence in June 2002.

Mr. Hamilton's conduct violated RPC 8.4(b), prohibiting lawyers from committing criminal acts that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

Leslie Allen represented Bar Association. Mr. Hamilton represented himself.

Suspended

Clifford Stanley Hess (WSBA No. 16554, admitted 1986), of Shoreline, was suspended for two years by order of the Supreme Court approving a stipulation dated August 16, 2002. The effective date of the suspension is retroactive to September 11, 2000. The discipline is based on Mr. Hess's 2000 guilty plea to one count of filing a false tax return.

On June 20, 2000, the U.S. District Court for the Western District of Washington accepted Mr. Hess's guilty plea to one count of filing a false tax return, a felony. The charge was based on Mr. Hess signing his 1992 individual tax return and schedules without examining them to determine that they were true, complete and correct. Mr. Hess's signature on the return constituted a written declaration that he had, in fact, examined his returns and the schedules; however, he had not examined the return and schedules. The false statement involved was his declaration that he had examined the return and schedules. Mr. Hess was interimly suspended on September 11, 2000.

Mr. Hesss' conduct violated RPCs 8.4(b), prohibiting lawyers from committing criminal acts reflecting adversely on their honesty, trustworthiness or fitness as a lawyer in other respects; and 8.4(c), prohibiting lawyers from engaging in conduct involving dishonestly, fraud, deceit or misrepresentation.

Christine Gray represented the Bar Association. Kurt Bulmer represented Mr. Hess.

Suspended

Paul H. King (WSBA No. 7370, admitted 1977), of Seattle, was suspended for two years by order of the Supreme Court approving a stipulation. The discipline is based on his failure to follow a client's instructions, charge a reasonable fee, properly administer his client trust account, and properly file and pay state and federal taxes from 1996 through 2000.

Matter 1: In May 1998, Mr. King agreed to represent two clients in a wage claim against their former employer. On October 1, 1999, opposing counsel made a settlement offer of $14,000. The clients instructed Mr. King to accept the settlement offer. On that same day, Mr. King wrote a letter to opposing counsel stating that he would not accept less than $17,500. On October 7, after speaking with the clients, a member of Mr. King's staff told opposing counsel that the clients would accept the settlement offer. On October 8, opposing counsel wrote a confirming letter and enclosed a copy of the settlement agreement. The clients visited Mr. King's office that day, taking a copy of the settlement agreement and again instructing the office to accept the settlement.

On October 13, Mr. King sent opposing counsel a letter stating that the clients were proceeding to trial. On October 15, opposing counsel received the signed settlement agreement directly from the clients. When the settlement check arrived, Mr. King demanded 50 percent of the gross recovery, instead of the 40 percent stated in the fee agreement. Mr. King told the clients that the check would remain in his trust account until the "fee dispute" was resolved. Worried they would never receive their money, the clients agreed to pay $6,918 in attorney's fees. The clients received $6,293.72.

Mr. King's conduct in this matter violated RPCs 1.2, requiring lawyers to abide by their clients' decisions whether to accept an offer of settlement; 1.4, requiring lawyers to keep clients informed of the status of their matters; 8.4(c), prohibiting lawyers from engaging in conduct involving dishonestly, fraud, deceit or misrepresentation; and 1.5, requiring lawyers' fees to be reasonable.

Matter 2: From January 1999 through May 2000, Mr. King used a credit-union share account for his office checking account, and sub-accounts of this share checking account for his client trust accounts. During this time, Mr. King deposited client funds into his office checking account and paid clients from this account. He did not maintain adequate records of

client funds. Mr. King's nonlawyer assistants were responsible for most trust-account transactions. Mr. King did not provide proper training or supervision.

Matter 3: Mr. King employed a legal assistant, Mr. S. In April 1999, Mr. S accepted a $1,000 cash payment from a client. He placed this payment in the safe in Mr. King's Bremerton office, without any identification or written records. When Mr. King learned of the payment, he made no effort to identify the funds or create written records. At a later date, the funds were removed from the safe. Mr. King was not able to determine when the funds were removed.

Mr. King's conduct in these matters violated RPC 1.14, requiring lawyers to identify and label clients' property, and maintain complete records of client funds and property in the lawyer's possession.

Tax matters: Mr. King did not stipulate to the facts in these matters, but agreed that if they proceeded to a public hearing, there is a substantial likelihood that the Bar Association would be able to prove these facts. From 1996 through 2000, Mr. King failed to file returns and pay business and occupation tax to the Department of Revenue. After the Office of Disciplinary Counsel (ODC) began the investigation, Mr. King filed the returns and paid the taxes and penalties. During this same time period, Mr. King always employed at least one full-time nonlawyer assistant. Mr. King knowingly failed to report his payroll amount to the Department of Labor and Industries. Additionally, Mr. King failed to file federal tax returns for 1996 through 2000. After ODC began this investigation, Mr. King filed returns for 1996 through 1999 and obtained an extension for 2000.

Mr. King's conduct violated RPCs 8.4(b), prohibiting committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation.

Becky Neal and Robert Deutscher represented the Bar Association. Peter Cogan represented Mr. King.

Suspended

Hyon C. Pak (WSBA No. 24238, admitted 1994), of Seattle, was suspended for 15 days by order of the Supreme Court approving a stipulation. Mr. Pak was reinstated to active status effective June 14, 2002. The discipline was based on his failure to diligently represent a client in 2000 and failure to appear for a deposition in the disciplinary investigation in 2001.

In late 1999, Mr. Pak agreed to represent a client in a petition to modify her parenting plan. The client's employer transferred her job out of state, but the parenting plan required that her children attend school in either Bellevue or Auburn, where the mother lived. The client asked Mr. Pak to request that the court modify the parenting plan to allow her to take the children out of state with her. In October 1999, Mr. Pak filed the client's motion, but the court denied it, pending a new guardian *ad litem* report.

In November 1999, Mr. Pak filed a motion for reconsideration of the commissioner's decision. The commissioner's order indicated that her prior ruling did not set up a restriction on the mother's ability to move with the children, but "merely denied her motion without prejudice subject to an interim report from the GAL as to whether the move was in the best interest of the children." Mr. Pak then wrote a letter to the client stating that he did not interpret the court's order as a restriction on moving the children pending resolution of the matter. The letter also suggested that the client ask her employer's in-house counsel to review the court order and request an extension on her relocation date. In reliance on Mr. Pak's letter, the client relocated to Arizona with the children.

In February 2000, following a contested hearing, the commissioner held Mr. Pak's client in contempt and ordered her to pay $2,500 in attorney's fees. In August 2000, the parties settled the parenting-plan issues, but could not agree on child support and other financial issues. The parenting plan required arbitration of these unresolved issues. Mr. Pak sent his client a copy of the arbitrator's letter, asking that she complete a new financial declaration. The client did not respond to this letter. Mr. Pak did not contact the client and did not submit any documentation to the arbitrator.

In September 2000, the arbitrator granted all of the husband's expense requests because Mr. Pak's client did not respond. Mr. Pak did not inform his client of the decision within the 10-day period for reconsideration. In January 2001, Mr. Pak wrote a letter to his client expressing remorse and offering a financial settlement. His client did not respond. In June and July 2001, Mr. Pak failed to respond to the Bar Association's requests for response to the client's grievance. In October 2001, Mr. Pak failed to comply with a subpoena requiring his presence for a deposition.

Mr. Pak's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4(a), requiring lawyers to keep clients reasonably informed of the status of their matters; and RLD 2.8(a), requiring lawyers to cooperate with disciplinary investigations.

Kevin Bank represented the Bar Association. Patrick Sheldon represented Mr. Pak.

Suspended

James J. Rosenberger (WSBA No. 16043, admitted 1986), of Seattle, was suspended for 30 days by order of the Supreme Court approving a stipulation, effective May 29, 2002. The discipline was based on his acting as a lawyer while his license to practice law was suspended during July and August 2001.

On July 25, 2001, the Supreme Court entered an order suspending Mr. Rosenberger's license to practice law for nonpayment of WSBA dues. On July 26, 2001, the Bar Association notified Mr. Rosenberger of his suspension by certified mail. Mr. Rosenberger did not file an affidavit establishing compliance with the provisions of RLD Title 8. Mr. Rosenberger indicated he did not receive the order of suspension or the certified-mail notice of his suspension, and learned of his suspension on August 31, 2001, from U.S. District Court. That same day, Mr. Rosenberger appeared at Bar Association offices and made full payment on his outstanding membership fees, late fees and penalties, and requested that his status be changed to active. Mr. Rosenberger disclosed that he had been practicing law during the period of his suspension. On September 5, 2001, the Supreme Court reinstated Mr. Rosenberger to active status.

Mr. Rosenberger's conduct violated RPC 5.5(a), prohibiting a lawyer from practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; and RLDs 8.2, prohibiting a suspended lawyer from accepting any new retainers, giving any legal advice,or acting as a lawyer in a pending case or legal matter of any nature after the effective date of his suspension; and 8.3, requiring a suspended lawyer, within 25 days after the effective date of a suspension, to file an affidavit stating that he has fully complied with the provisions of these rules.

Becky Neal represented the Bar Association. Paul Burns represented Mr. Rosenberger.

Reprimanded

Charles E. Robbins (WSBA No. 3976, admitted 1967), of Puyallup, received a reprimand on October 18, 2002, following entry of an agreed decision. The discipline was based on his disclosing client confidences in 2001.

In August 2000, Mr. Robbins agreed to represent a client charged with two felonies in Pierce County Superior Court. In February 2001, the client failed to appear for a hearing and the court issued a bench warrant for her arrest. In March 2001, Mr. Robbins filed a motion requesting permission to withdraw from the representation. In the supporting affidavit filed with the court, Mr. Robbins stated: "[The client's] failure to appear was not out of mistake. She was fully aware of her court date. She called my office while I was at the courthouse appearing on her case and indicated to my staff that she was 'too ill' to come to court. She is well aware that my office is open at 7:30 a.m., yet she chose not to contact me at that time. My staff advised [the client] that if she failed to appear for her hearing a warrant out [sic] be issued. [The client] works, or used to work, at Signature Bail Bonds and she informed me during a telephone conversation I had with her later that morning that she knew 'it was no big deal not to appear for her hearing.' "The client did not consent to this disclosure.

Mr. Robbins's conduct violated RPC 1.6, prohibiting lawyers from revealing client confidences or secrets relating to representation without the client's consent after consultation.

Douglas Ende represented the Bar Association. Steven J. Brown represented Mr. Robbins. The hearing officer was James C. Lawrie.

Reprimanded

Ann B. Witte (WSBA No. 6323, admitted 1975) of Portland, Oregon, received a reprimand in August 2001. The Washington Supreme Court imposed reciprocal discipline based on an April 2, 2000, order from the Oregon Supreme Court. The discipline was based on her failure to diligently represent a client in 1999.

In 1998, Ms. Witte agreed to represent the tenants in a lawsuit filed by the landlord for damages caused by the tenants' pet. In January 1999, the arbitrator awarded the landlord $450 plus costs, but denied attorney's fees. Later, the court amended the award to include attorney's fees. Ms. Witte did not inform her client of the attorney-fees award. Ms. Witte also failed to notify her clients that opposing counsel had proposed a payment plan to satisfy the judgment.

Ms. Witte's conduct violated Oregon Code of Professional Responsibility DR 6-101, requiring lawyers to diligently represent their clients.

Felice Congalton represented the Bar Association. Ms. Witte represented herself.

Opportunities for Service

WSBA Presidential Search

Application deadline: May 15, 2003

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2004-2005. Pursuant to Article IV(A)(2) of the WSBA Bylaws, the primary place of business of candidates for 2004-2005 president must be King County. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2004-2005 WSBA president will be accepted through May 15, 2003, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no less than five or more than 10 references. The Presidential Search Committee and the Board of Governors will consider endorsement letters received by May 30, 2003. Applications and endorsement letters should be sent to WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Confidential interviews with the Presidential Search Committee will be conducted May 16-30, 2003, at the WSBA office. Direct contact with the governors is also encouraged. All candidates will have an interview with the full Board of Governors in open session at the June meeting. Following the interviews, the board will select the president.

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

The commitment begins in June 2003 following selection. A one-year term as president-elect will begin at the Annual Business meeting in September 2003. The president-elect is expected to attend the two-day board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national and local meetings. In September 2004, at the WSBA Annual Business Meeting, the president-elect will assume the position of president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time will need to be devoted to communication by letter, e-mail and telephone in connection with these responsibilities.

The duties and responsibilities of the president are set forth in the WSBA Bylaws.

Presidential Search Committee: *Lucy Isaki, chair; Dick Manning, president; Dave Savage, president-elect; and Robert Boggs, Ray Gonzales, Bill Hyslop and Fawn Sharp, governors.*

2003 Notice of Board of Governors Election

Three positions on the WSBA Board of Governors will be up for election this year — the governors representing the 1st,

5th, and 7th-west* congressional districts. These positions are currently held by Kenneth H. Davidson (1st), William D. Hyslop (5th) and Lucy Isaki (7th-west).

The WSBA Bylaws provide that any member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of governor from the congressional district (or geographical region within the 7th district*) in which such member *is entitled to vote*. Nominations are made by filing a statement of interest and a biographical statement of 100 words or less.

Generally, a member is entitled to vote in the congressional district in which the member resides. All out-of-state active WSBA members are eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 5(e), or, if specifically designated to the executive director, within the district of their primary Washington practice.

Nominating petitions are available from the WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; 206-727-8244; and the WSBA Web site (www.wsba.org). The WSBA executive director must receive petitions by 5:00 p.m. March 3, 2003. The Board of Governors determines the official dates of the election. Ballots are usually mailed around the first of June and counted approximately the first of July.

*Note: The biographical statements of nominated candidates will be published in the May issue of *Bar News*.

*The 7th congressional district is divided into three sub-districts: east, central and west. These sub-districts are distinguished by ZIP codes, and each has one elected governor. For the coming year, the west sub-district (ZIP codes are 98013, 98070, 98106, 98107, 98116, 98117, 98119, 98121, 98126, 98133, 98136, 98146 and 98199) will elect a new governor.

Statute Law Committee

Application deadline: January 20, 2003

The WSBA Board of Governors is accepting letters of interest from members interested in serving a six-year term on the Statute Law Committee (which oversees the operation of the Code Reviser's office), commencing April 1, 2003 (two positions). Incumbents are eligible for reappointment and must also submit letters of interest.

This 12-member committee of lawyers seeks to foster accurate publication of laws and agency rules services in a professional and strictly nonpartisan and cost-effective manner. The primary responsibilities are to periodically codify, index and publish the Revised Code of Washington; and to revise, correct and harmonize the statutes of administrative or suggested legislative action as may be appropriate. The committee meets at least twice a year.

Please submit a letter of interest and résumé to WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail barleaders@wsba.org.

WSBA Staff Auction Benefits Charities

The 6th Annual WSBA Staff Holiday Charity Auction raised $4,250 — the largest amount raised to date. Money raised was given to two charities: Noel House and the Make-A-Wish Foundation of Washington State. Noel House provides emergency shelter for single women over the age of 18, the fastest-growing segment of the homeless population. The Make-A-Wish Foundation grants the wishes of children with life-threatening illnesses.

ABA Midyear Meeting

The American Bar Association will hold its 64th Midyear Meeting February 5-11 at the Washington State Convention and Trade Center in Seattle. For program and registration information, see www.abanet.org/midyear/2003/home.html.

Western States Bar Conference

The 55th annual Western States Bar Conference will be held March 19-22 at the Sheraton Kauai at Poipu Beach. The conference includes bar associations from 17 western states. This year's agenda includes a session on negotiation techniques; an update on alternate dispute resolution; and panels on multijurisdictional practice, issues facing new lawyers, and access to justice. For conference registration information contact Diane Minnich at 208-334-4500 or dminnich@isb.state.id.us. To contact the Sheraton Kauai, call 888-847-0208.

Lawyerpalooza

The first annual Lawyerpalooza will be February 10, 2003, at the Four Seasons Olympic Hotel from 6:00 p.m. to 9:00 p.m. The law firms Lane Powell Spears Lubersky, Preston Gates & Ellis, Perkins Coie, William Kastner & Gibbs, Riddell Williams, and Karr Tuttle Campbell will participate in a battle of the bands to raise money for elementary-school music programs in the Seattle School District. The cost of an advance ticket is $15; the cost at the door, $20. For further information, see http://www.lawyerpalooza.com, or call Mike Nesteroff at 206-223-6242.

MCLE Reporting Time

Group 2

Active WSBA members who are in Reporting Group 2 (active members admitted from 1976 through 1983; or in 1992, 1995, 1998 or 2001*) will report CLE credits for activities undertaken in 2000, 2001 and 2002.

**Newly Admitted Members*

Newly admitted members are exempt from reporting CLE credits during their year of admission and the following calendar year. Thus, if you were admitted in 2001, you will not report this reporting period even though you are in Group 2. You will first report at the end of 2005. (New admittees may earn CLE credits, however, starting from their admission date, and those credits may be applied toward their first reporting period.)

CLE Compliance

If you are in Reporting Group 2, please do the following to meet your CLE requirements:

1) Complete approved CLE credits totaling at least 39 general and six ethics for the three-year period (2000 through 2002); at least 30 credits must be live;

2) Submit these credits and attendance to the WSBA either through the sponsor or directly to the WSBA (or, if you are satisfying your CLE requirements through comity, attach a Certificate of Compliance to your C2);
3) Sign the C-2 Compliance Affidavit certifying attendance of the listed courses; and
4) Send the C-2 Compliance Affidavit to the WSBA by February 3, 2003.

Sponsor Attendance Reports
Remember that although sponsors are now responsible for reporting credits from live seminars, each individual attorney attending live seminars is responsible for informing the sponsor of the amount of credit earned for that seminar. If you do not attend the entire seminar, please inform the sponsor, so that the sponsor can report accurate CLE attendance credit data.

Reporting Forms
Your C-2 Compliance Affidavit contains all courses and credits to your record for 2001-2002 CLE activities submitted by sponsors. Please review it carefully and make any necessary changes. Add any live CLE activities you attended that are not preprinted on your C2 affidavit. If you have CLE credits for activities in 2000-2002 that were earned through A/V courses, you must enter this information. You must then sign, under penalty of perjury, that the credit information you submit is true and correct.

MCLE Credit-Tracking System
Through a confidential password you are able to go to your individual record in the MCLE database and make changes to your personal information, add approved CLE activities, apply for course approval, and make corrections to your credit amounts. (For access instructions, see below.) There is online help information to assist you. If you need further assistance, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

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.

License Fee Reminder

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

Address Changes
You can check your address in the WSBA database by going to the online lawyer directory on the WSBA Web site at www.wsba.org/directory. If your address has changed, please notify the WSBA Service Center as soon as possible by e-mailing questions@wsba.org or faxing the change to 206-727-8319.

Fees
In addition to your license fee, per APR 15, the Supreme Court has ordered that all active members must pay a $13 assessment to the Lawyers' Fund for Client Protection (LFCP). To avoid penalties, we encourage you to pay your mandatory fees promptly. If the annual license fee is not paid by March 3, 2003, a 20 percent late payment penalty is imposed. After April 1, 2003, a 50 percent late payment penalty is imposed. If your license fee, penalty assessment or LFCP fee remain unpaid after May 1, 2003, the delinquency will be certified to the Supreme Court, which will enter an order of suspension from the practice of law. In order to be reinstated to your former status after suspension for nonpayment, you must pay double the amount of the combined fee and penalty (triple the original fee). For active members, nonpayment of the LFCP fee is also cause for suspension.

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

NJP Public Meetings

The 2003 quarterly meetings of the Northwest Justice Project board of directors will be January 25, April 26, July 19 and October 25. Meetings begin at 9:30 a.m. The NJP is a 501(c)(3) not-for-profit organization providing civil legal services to eligible low-income people. For more information, contact Lisa Giuffré at 206-464-1519 or 888-201-1012.

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.

Newer Admittees Need Your Lawyering Skills

The WSBA's Lawyer-to-Lawyer Program matches newer admittees with experienced lawyers. Help new lawyers 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.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in December 2002 is 1.316 percent. The maximum allowable interest rate for January 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 is on the WSBA Web site at www.wsba.org/barnews/usuryrate.html.

Law Week 2003

Law Week 2003 is an exciting opportunity for lawyers and judges to bring legal education into the classroom. Each year, Law Week provides an enriching experience to youth through positive interactions with lawyers and judges. Law Week 2003 will take place the week of May 1. To learn more about the program or to participate, visit www.lawweek.org or contact Lisa Harper at 206733-5944 or lisak@wsba.org.

17th Annual Goldmark Awards Luncheon

Friday, February 28, 2003; Noon to 1:30 p.m.
Washington State Convention & Trade Center, Seattle

The Charles A. Goldmark Award for Distinguished Service will be presented to Russell J. Speidel and the Chelan-Douglas County Bar Association at the Legal Foundation of Washington's annual luncheon on February 28. Seth P. Waxman, 41st U.S. Solicitor General and partner at Wilmer Cutler & Pickering, will give the keynote speech.

❑ YES, I would like to honor the work of legal services by attending the luncheon. I will bring _____ additional guests. ($40/person enclosed).

❑ YES, I would like to be a Goldmark donor ($100 enclosed). Two lunches will be provided and a contribution of $20 will help cover luncheon expenses.

❑ NO, I cannot attend the luncheon, but I would like to support the luncheon with a donation of $_____.

Name(s):_____

_____

❑ Indicate if vegetarian meal preferred.

Show your support for access to justice by purchasing an individual ticket to the luncheon or accepting one of the other donation opportunities.

Please return the above information with your check payable to: Legal Foundation of Washington, 500 Union St., Ste. 545, Seattle, WA 98101; phone 206-624-2536, ext. 10; fax 206-382-3396; or visit http://www.legalfoundation.org. The Legal Foundation of Washington is a 501(c)(3)-status institution.

Keep in Touch

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.

BOG Meetings

January 17-18 – Olympia
February 6 – Seattle
April 11-12 – Bellevue

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 Lisa KauzLoric at 206-733-5944 or lisak@wsba.org. The complete BOG schedule is available on the WSBA Web site at www.wsba.org/bog/schedule.htm.

Use *Resources* to Your Advantage

Would you like your name and/or firm listed under your area of practice in the yellow pages of the 2003-2004 edition of the WSBA's Resources annual directory?

Resources is used by thousands of lawyers, and the yellow pages are a valuable one-stop resource for your legal-service needs. Find consultants, paralegals, contract attorneys, business appraisers and more.

The cost of a listing, which may include firm name, individual's name, address, phone, fax, e-mail and Web site, is $35. A toll-free number may be listed in addition to a general number.

To reserve your yellow-page listing in the 2002-2003 *Resources* directory, complete this form, enclose a $35 check payable to the WSBA, and mail by February 28 to:

Washington State Bar Association
Resources Yellow Pages
2101 Fourth Ave., Suite 400
Seattle, WA 98121-2330

If you wish to be listed under more than one category, the cost is $35 for each listing. For more information, contact Allison Parker at 206-733-5932 or allisonp@wsba.org.

Firm/Individual Name _____

Address _____

City/State/ZIP _____

Phone _____

Fax _____

E-mail _____

Web site _____

Category _____

Resources on Sale for Half Price

The 20022003 *Resources* membership directory is now on sale for half-price:

$9.00 – WSBA members ($9.79 in WA)
$18.00 – non-WSBA members ($19.58 in WA)

To order *Resources*, call the WSBA Service Center at 800-945-WSBA or 206443-WSBA, or mail a request to WSBA Order Processing, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330. Payment may be made by check (payable to WSBA), MasterCard or Visa, and must accompany your order.

KCBA Luncheon Honors Martin Luther King Jr.

The 2003 MLK Annual Luncheon will be held at Plymouth Congregational Church in Seattle on January 17. Distinguished Harvard Law School Professor Charles Ogletree will speak on "Remembering Dr. King's Legacy: Promoting Diversity and Promoting Patriotism." General admission is $25; law students, $15. For further information or to register for the luncheon, call Julie Gardner at 206-340-2574 by noon on January 7.

The WSBA Store Is Open

The WSBA online store is open at www.wsba.org/store. Purchase Cutter & Buck polo shirts, twill baseball caps, ball point pens, and brass luggage tags emblazoned with the WSBA logo. The store features secure online credit-card ordering. You may 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 per cent) will be added to orders shipped within Washington.

Learn More about Case-Management Software

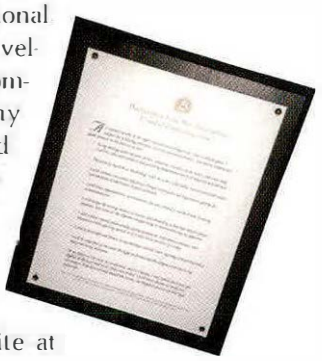
The WSBA Law Office Management Assistance Program (LOMAP) office maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff are available to provide materials, answer questions and recommend options. To make an appointment, contact Pete Roberts at 206-727-8237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

2002 Staff Milestones

The WSBA has many dedicated staff members, and each January we recognize those who have reached significant milestones in the previous year. Congratulations to the following staff members!

15 years — Barbara Harper, Michele Kramer, Sharlene Steele
10 years — Jack Young
5 years — Jonathan Burke, Linda Eide, Christine Gray, Pat Grimes, Betty Harrison, Bobby Henry, Kris Hickman, Joey Horne, Sarah Kolpacoff, Veronica Nations, Rebecca Nerison, Sachia Stonefeld Powell, Jim Roberg and Wen Saeyang.

Creed of Professionalism



The WSBA now has an aspirational Creed of Professionalism. Developed by the Professionalism Committee with input from many members around the state, and approved by the Board of Governors, the creed's purpose is to "inspire and guide lawyers in the practice of law." The full text of the creed can be found on the WSBA Web site at www.wsba.org/creed.

Printed copies of the creed are available for purchase (we have made every effort to keep the cost as low as possible). Printing is in black and gold on heavy cream-colored paper. The creed is available unframed, or mounted on a mahogany-finish wooden plaque. It is our hope that Washington lawyers will display the creed proudly in their offices.

Creed suitable for framing:
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Jeffery A. Richard

Associate

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Shawn M. Farrell
has joined the firm's professional liability defense group as an associate;

Sean K. Griffee
has joined the firm's commercial transactions group as an associate;

Heidi E. Herr
has joined the firm's land use group as a project attorney; and

Katherine A. Walter
has joined the firm's construction defect group as a project attorney.

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has joined the firm as an associate attorney. Mr. Shaw is a recent graduate of Seattle University School of Law.

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Telephone: 425-641-5353
Fax: 425747-0611
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Attorneys and Counselors at Law

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has joined the firm as an associate.

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Telephone: 253-471-7774

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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

Professional Mediation Skills-Training Program
January 11-12 & 25-26 – Seattle. 34 CLE credits, including 2 ethics pending. By UW-CLE; 1-800-CLE-UNIV.

BUSINESS

WYLD: Advising the Small Business
February 20 – Seattle; February 21 – Vancouver. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

COMPUTER

Computer Camp
February 26 & 27 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Professionals

ELDER

Representing Individuals in Need of Long-Term Care, and Related Concerns
January 31 – Seattle. 6.25 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206 443-WSBA.

ENVIRONMENTAL

The Endangered Species Act
January 23-24 – Seattle. 12 CLE credits. By The Seminar Group; 800 574 4852.

ENVIRONMENTAL AND LAND USE

Environmental and Land Use Law Section Winter CLE
February 12 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

Estate and Distribution Planning for Retirement
February 14 – Seattle. 7.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

GENERAL

Sexual Misconduct Liability
February 4 – Seattle. CLE credits TBD. By the Insurance Women's Association of Seattle; 425-376 4912.

IMMIGRATION

Northwest Regional Immigration Seminar
February 20-21 – Portland. CLE credits TBD. By the American Immigration Lawyers Association; http://www.ailaoregon.com.

LITIGATION

Annual Insurance-Law Seminar
January 16 – Spokane; January 17 – Seattle. 6.5 CLE credits. By WSTLA; 206 464 1011.

Products Liability
February 6 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Experts
February 14 – Seattle. CLE credits TBD. By WSTLA; 206-464-1011.

REAL ESTATE

Mold, Mildew and Moisture
February 19 – Seattle. 7 CLE credits, including .75 Ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Classifieds

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

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Downtown Spokane: Spectacular view of Spokane Falls. 3,800 sq. ft., reception area, conference room. See virtual tour at http://www.nclife.com, or call Tom Crain at 509-838-4235.

Downtown Seattle: AV-rated law firm, full-floor tenancy in Two Union Square, has a professional office available. Includes receptionist, conference rooms, library, kitchen, copier, fax and word processing. Contact Sonya Baker at 206-654-2410.

Walk to work, symphony, theaters, shopping: 22nd floor one-bedroom condo offers panoramic views of Seattle marinas, harbor, Olympics, Mt. Rainier. One block from Pike Place Market. $297K. 2nd Avenue & Pike complex includes pool, hot tub, sauna, gym, garage, outdoor gardens, office center, guest suites and doorman. Call Douglas or Vadim at 206-322-3690, ext. 3 or 5.

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.

APPEALS

Margaret K. Dore

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

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

Passed CPA exam in 1982

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Downtown Seattle: Two blocks from new federal courthouse. View office space, 550 sq. ft., and one office of 209 sq. ft. All utilities furnished except telephone and janitorial. Complete kitchen and conference room available on shared basis. Storage available by month or term of lease. Contact Sharlee at 206-467-9777 or mrkcorporation@qwest.com.

Historic Pioneer Square – on car-free Occidental Mall (Burke Building): Large west-side window (operable) office with adjoining small conference room in law firm's elegant custom-designed penthouse suite. Wrap-around deck with views; secretarial stations, library, kitchen/break room; and full services including DSL. Near galleries, sports stadiums, ferry, transit center and fine restaurants. Torrefazione Espresso on ground floor. Additional 3,286 sq. ft. available on 3rd floor, divisible to 2,195 (with three private offices and conference room), and 1,091 sq. ft. (open). Call Joe Cornett, 206-357-2021; hjc@space-solutions.com.

Everett office space: Close to courthouse and post office. $800-1,000 per month. Includes phone, Internet, utilities, storage, parking and more. Please contact NAS Properties at 425-397-0970; kaa@wilsonsecoy.com.

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.

Reflected water view in downtown Seattle high-rise: Two offices remain in suite of experienced attorneys. Good Washington law library, high-speed Internet access, receptionist and other amenities. 206-382-2600.

Pike Market: Two large soundproof offices in suite with kitchen/bath. Exposed brick, 9-foot-plus ceilings, free client parking; $650 and $700/mo., $1,300 for suite. Call Shirley Bonney, 206-264-5001.

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.

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.

Renton: Downtown office space in small office building; optional secretarial space; use of copier, fax, phone system; legal messenger; receptionist. 425-228-8899.

POSITIONS AVAILABLE

Brett & Daugert PLLC: AV-rated 12-lawyer Bellingham firm seeks a business/corporate lawyer to continue building our business and real estate group. The successful candidate will have at least two years' training (preferably with a large firm), good academic credentials, a sense of humor and a love for small-town life. Please send résumé to PO Box 5008, Bellingham, WA 98227.

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

Attorney: Progressive's house counsel office is seeking an experienced attorney to join their Bellevue office. Attorney will defend auto-insurance cases. Candidates must have a minimum of five years' litigation experience with substantial first-chair trial experience and be licensed in WA. Insurance defense background is preferred. To apply for this position, visit us at http://www.jobs.progressive.com. Please search openings for job #R018340 and reference Ad Code 008725. EOE/M/F/D/V.

Medium-sized AV-rated Spokane litigation law firm is looking to hire a litigation-oriented attorney with at least two years' experience. Construction and business litigation is the focus. Law school with academic honors is a requirement. Competitive salary and excellent benefit package. Interested applicants should forward cover letter, résumé and references to lawyers@dunnandblack.com.

Export your legal skills: The Central European and Eurasian Law Initiative (CEELI), a project of the American Bar Association, seeks law professionals with at least five years' experience to develop, coordinate and implement legal-reform projects in Central and Eastern Europe and the former Soviet Union. Positions of various lengths are available throughout the region to work on judicial reform, gender issues, anti-corruption, legal education, criminal law, legal-profession reform, and conflict management. CEELI participants receive a generous support package covering all housing, transportation, and general living expenses. To request an application, please contact Warren at ceeli@abanet.org, or visit our Web site at http://www.abanet.org/ceeli.

New attorney: McKinley & Irvin PLLC seeks associate attorney with at least two years' litigation-practice experience to support and work closely with experienced senior attorneys and firm partners. Experience in family law litigation is preferred. Successful candidate must possess strong academic credentials, superior writing and oral presentation skills, the ability to work and interact effectively with co-workers, and a strong work ethic. Position offers an excellent salary and benefits package. Please forward cover letter, transcripts, résumé, writing sample, and three professional references to mindy@mckinleyirvin.com, or mail to 33801 1st Way S., Ste. 281, Federal Way, WA 98003; http://www.mckinleyirvin.com.

Seattle: Eight-attorney firm, AV-rated, with general civil practice focus within firm, seeks associate attorney with at least two years' experience in family law. Potential long-term opportunity to develop family law practice for firm. Please send résumé to WSBA *Bar*

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., February 1 for the March 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.

News, Box 626, 2101 4th Ave., Ste. 400, Seattle, WA 98121.

Associate attorney for downtown law firm: Carney Badley Spellman seeks litigation associate, minimum five years' experience, for our asbestos department. Products-liability experience preferred. Ideal candidate will have in-depth experience with discovery, depositions, writing briefs, motion/courtroom practice, settlement negotiations as well as trial management. Strong academics, proven communication and writing skills, leadership qualities. E-mail résumé to dillard @carneylaw.com, or mail to Deborah Dillard; 700 5th Ave., Ste. 5800, Seattle, WA 98104.

Preg O'Donnell & Gillett PLLC, a 13-attorney litigation firm, seeks an associate with a minimum three years' experience, preferably in insurance-defense and construction-defect defense. The successful candidate will be highly organized and self-motivated. Please direct your confidential reply to John Hegna, Office Manager; Preg O'Donnell & Gillett PLLC; 1800 9th Ave., Ste. 1500, Seattle, WA 98101.

Position available: Thurston County general-practice firm has immediate opening for an experienced associate. Desired practice areas include: business law, criminal law, estate planning, family law, personal injury and real estate. Mail or fax résumé and cover letter to Taylor/Berg; 6510 Capitol Blvd. SE, Tumwater, WA 98501; fax 360-705-0389.

Attorney wanted: AV-rated commercial-litigation boutique firm seeks attorney with at least two years' experience in commercial or bankruptcy litigation for part-time position. This position offers flexible hours, an exciting, high-quality practice, collegial atmosphere and Pike Place Market office location. Please direct résumé or inquiries to Jerry N. Stehlik, 2003 Western Ave., Ste. 400, Seattle, WA 98121; phone 206-587-0144.

Contract attorney needed: Litigation firm looking for attorney interested in contract work. Will consider flexible schedules. Mail résumé to Hiring Coordinator; Abbott, Davis, Rothwell, Mullin & Earle; 601 Union St., Ste. 1601, Seattle, WA 98101-2301.

Newly forming King County law firm seeks experienced, highly principled and skilled attorneys of various disciplines to create core group of four-to-seven member firm. Emphasis is on careful client matter selection, internal firm cohesion, and practice satisfaction. Respond to WSBA *Bar News* Box 625, 2101 4th Ave., Ste. 400, Seattle, WA 98121-2330.

Litigation attorney: Two-plus years' insurance-defense litigation attorney needed for medium-sized downtown Portland, Oregon, law firm. We are looking for an attorney for our SW Washington practice group. Come to Portland – we have less rain, less traffic, more opportunities. WSBA membership required, Oregon Bar membership a plus. Competitive salary and benefits, team-oriented atmosphere. If you are looking to change your venue to Portland, please send cover letter and résumé to Managing Partner; Smith Freed & Eberhard PC; 1001 SW 5th Ave., Ste. 1700, Portland, OR 97204. Visit our Web site at http://www.smithfreed.com.

Director of academic personnel and medical staff appointments – University of Washington (UW) Dean's Office/School of Medicine (SOM): The UW SOM invites applications for the position of director of academic personnel and medical staff appointments, #PL19466. This position oversees appointments, promotions, compensation tracking and credentials verification for 28 academic departments, and will routinely advise the SOM academic leadership and departmental administration on academic personnel policy/procedures. It will coordinate policy development and implementation for an array of academic personnel matters (i.e., entity governing documents, contractual arrangements and affiliation agreements). It will oversee SOM involvement in key faculty adjudications and academic personnel litigation. A successful candidate must have JD, MBA or MHA with a minimum of five years' experience in management roles in an academic environment with working knowledge of academic personnel; and be a clear analytical thinker possessing strong organizational skills, proven problem-solving abilities, and a refined sense of diplomacy, along with effective leadership skills and strong written/oral communication skills. Submit résumé and cover letter with salary requirements to Director UW AMC; Box 358220, University of Washington, Seattle, WA 98105-9950; e-mail lrlawles@u.washington.edu. The University of Washington is an affirmative action/equal opportunity employer.

Litigation attorney: Small Seattle area firm seeks an associate with at least three years' civil litigation experience. Contract work also possible. Excellent research and writing skills required. Jury-trial experience a plus. Practice areas include civil rights, products liability, personal injury, land use and real estate. Fax résumé to 206-275-0880.

Executive director: Commission on Judicial Conduct is seeking a person with experience in public administration and with a background in law. For a copy of the announcement, contact the commission at PO Box 1817, Olympia, WA 98507; call 360-753-4585; or visit http://www.cjc.state.wa.us.

Litigation associate: Downtown litigation firm with regional practice involving professional liability defense, complex litigation, coverage and general liability defense seeks litigation associate. Good working environment and interesting cases. Strong academic credentials required. Mail résumé to Hiring Coordinator; Abbott, Davis, Rothwell, Mullin & Earle; 601 Union St., Ste. 1601, Seattle, WA 98101-2301.

Associate attorney: Adler Giersch PS is seeking an associate attorney with at least two years' experience. The successful candidate will be client focused, teamwork oriented, compassionate with clients, and passionate about advocacy. Exceptional oral and written communication skills are needed, along with the desire to work hard and be successful. Professional integrity, excellent organizational skills, ability to manage time and multiple tasks are also prerequisites. This position offers a special opportunity to join a dynamic, established plaintiffs' personal injury practice with an excellent reputation in the insurance and legal communities. The successful candidate will work closely with experienced personal-injury attorneys in an environment that fosters personal and professional growth. The firm invests heavily in technology that helps us work smarter and be better advocates. This is a special work environment with an exceptional staff. Adler Giersch offers a competitive salary and benefits package. If you are looking for a long-term professional home in which to grow, prosper and have fun along the way, send your résumé, writing sample and references to Patrice Roney, Legal Administrator; Adler Giersch PS; 333 Taylor Ave. N., Seattle, WA 98109; or e-mail proney@adlergiersch.com.

Teamsters Local Union No. 117: The largest Teamsters local in the Pacific Northwest is growing, and seeks an attorney with labor and employment experience and/or interest in working with the union's general counsel on arbitrations, agency hearings, organizing strategies, and litigation for a diverse and growing membership. Excellent academic credentials, and written and oral communication skills are essential. The union provides an excellent compensation and benefits package. Please send cover letter and résumé to Spencer Nathan Thal, General Counsel; Teamsters, Local 117; 553 John St., Seattle WA 98109; e-mail spencer@teamsters117.org.

Tax attorney: Enjoy the four seasons in the beautiful state of Idaho! Located in Boise, Idaho's capital city; small-town ambience; abundant recreational, cultural, educational opportunities. Consistently rated one of the last best places to live. Sophisticated tax and estate planning firm; Northwest regional client base; national profile. Prefer background/experience in partnerships, corporations, tax controversy and tax planning. LLM required; excellent academic credentials. Attorney Search; PO Box 7156, Boise, ID 83707-1156.

First-party insurance coverage attorney: The Seattle office of Bullivant Houser Bailey PC, a full service West Coast law firm, is looking for an associate with at least three years' experience. Ideal candidate should have strong research and writing skills, an interest and experience in insurance-policy interpretation, preparation of coverage opinions and coverage litigation, including extra-contractual litigation. For consideration, please mail, fax or e-mail your résumé to Jennifer Engman, Recruiting Coordinator; 1601 5th Ave., Ste. 2400, Seattle, WA 98101-1618; fax 206-386-5130; e-mail jennifer.engman @bullivant.com.

ESCO Corporation, with worldwide operations, has an opening for corporate counsel in Portland, Oregon. Come be a part of an established environment that offers a competitive salary and great benefits. This position is situated in a fast-paced environment working with internal clients and ESCO's general counsel. Primary responsibilities include preparing and reviewing a broad range of legal documents such as supply contracts, license agreements, dealer agreements, and nondisclosure agreements; monitoring and ensuring legal compliance; providing risk-management advice; and working with outside counsel. Minimum qualifications are: law degree with a license to practice in Oregon; at least four years' experience (firm or in-house) with broad knowledge of business, contract and corporate law; and ability to manage time, handle a variety of responsibilities, and meet deadlines without supervision. The successful incumbent will be detail-oriented, possess proven communication and organizational skills, and inspire confidence from internal clients and management. For consideration, send résumé and salary history to ESCO Corp.; Attn: Recruiting Manager; 2141 NW 25th Ave., Portland, OR 97210; fax 503-778-684; e-mail rod.staben@escocorp.com; http://www.escocorp.com. ESCO is an EOE.

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

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

Huppin Ewing Anderson & Paul PS, a medium-sized law firm, has an opening in its family law department for an experienced family law attorney. Our firm offers full medical benefits, profit-sharing, 401(k) and a great place to practice law. Interested attorneys should send résumé to Patrick Delfino; Huppin Ewing Anderson & Paul PS; 221 N. Wall St., Ste. 500, Spokane, WA 99201; e-mail pdelfino@huppinlaw.com.

ERISA/employee benefits attorney: Song Mondress PLLC seeks ERISA/employee-benefits attorney for partnership-track position in its tax and technical compliance practice group. ERISA or tax experience is necessary. We will mentor the right candidate who has outstanding academic credentials and work references. We have a sophisticated ERISA tax, fiduciary and litigation counseling practice in a small-firm environment, representing major corporate, multi-employer and governmental benefit plans and institutional service providers. All inquiries will be kept confidential. Please submit cover letter and résumé to Hiring Committee; Song Mondress PLLC; 720 3rd Ave., Ste. 1500, Seattle, WA 98104; or sm@songmondress.com.

Growing downtown Seattle firm seeks attorney with minimum five years' litigation experience to join our practice in intellectual property, securities, health care and complex litigation. Superior credentials a must. Excellent salary and benefits. Fax résumé to 206 4052825.

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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SEEKING

Seeking copy of manual for Profit$ource 2.1, a billing program. Lost ours in a fire. Program manufacturer advises that program has been discontinued and that it has no remaining copies of manual. We'll purchase yours outright or pay for costs to reproduce. Contact Charlie at 509-529-2200.

WILL SEARCH

Frank R. Novak Sr., Bellevue, WA, believed to have signed new will prepared by an attorney on the Eastside after January 1991. If you have any information or are the attorney who prepared his latest will, please contact M. Kathrine Julin, 425885-4066.

Searching for the will of Michael Chicklo dated after June 10, 1993. Please contact L. E. Gustafson at wadeinn@my-netlink.com or call 425-778-8418.

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Hard of hearing and deaf matters: Michael J. Izak is available for consultation, association or referrals. Fax 253-630-1375; e-mail mizak@worldnet.att.net.

Contract attorney: All aspects of litigation and appeals, including research. Former name partner in small litigation firm. 11-plus years' experience. Have conducted numerous civil jury trials, including complex litigation. Reasonable rates; variable per type of work. Pete Fabish, 425-377 8296.

Carter Huth legal document drafting service. Specializing in hearing examiner and land use issues including transcription. Accurate and responsive. References available. 360-379-8563.

Plaintiffs' attorneys: Venture capital now available to cover your costs in contingent-fee cases. Professional; confidential. Repayment contingent on recovery. $25,000 to $5,000,000. SK Litigation Funding Corp., 360-690-1182; e-mail litigationfund@aol.com.

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

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Oregon accident? Unable to settle the case? Associate an experienced Oregon trial attorney to litigate the case and share the fee (proportionate to services). OTLA member; references available; see Martindale, AV-rated. Zach Zabinsky, 503-223-8517.

Contract attorney: Experienced, accomplished trial and appellate attorney available; 20-plus years' experience. Litigation and writing emphasized. References; reasonable rates. M. Scott Dutton, 206-324-2306; fax 206-324-0435.

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MISCELLANEOUS

Public notice – magistrate judge: The current term of office of U.S. Magistrate Judge Gilbert H. Kleweno at Vancouver, WA, is due to expire March 23, 2003. The U.S. District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new four-year term. The duties of the magistrate judge position include the following: (1) conducting regular calendars involving charges of traffic offenses and violations of park regulations; (2) conducting initial appearances in criminal cases. Magistrate Judge Kleweno serves Mount St. Helens, the Veteran's Hospital, Gifford Pinchot National Forest, and other facilities in the Vancouver area. Comments from members of the Bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court and should be directed to Bruce Rifkin, Clerk; U.S. District Court; 215 U.S. Courthouse, 1010 5th Ave., Seattle, WA 98104. Comments must be received by January 31, 2003.

Persian rugs: Sale of private collection of 200-plus genuine Persian rugs woven in Iran. Many sizes and styles. New, antique, semi-antique. University Plaza Hotel, Seattle (45th & I-5), February 1, 10 a.m.-6 p.m. For presales e-mail schaferjk@attbi.com.

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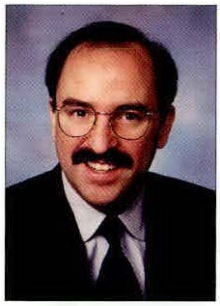

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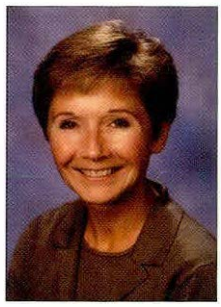

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