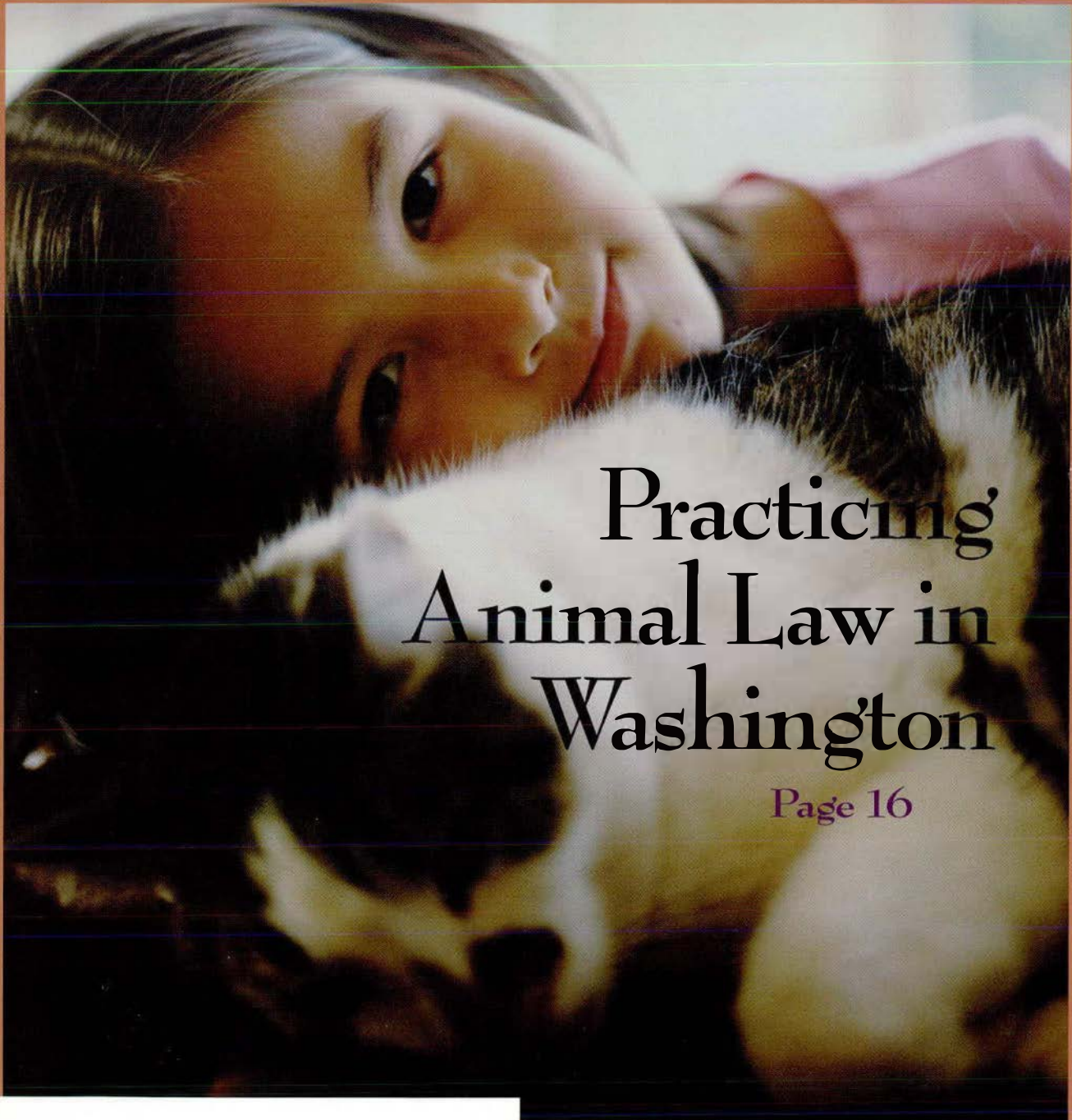


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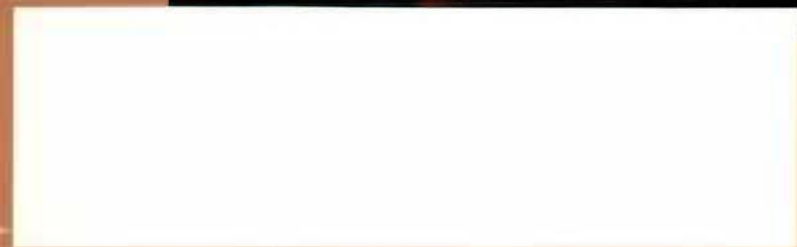
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The Official Publication of the Washington State Bar ■ FEBRUARY 2003




Practicing Animal Law in Washington

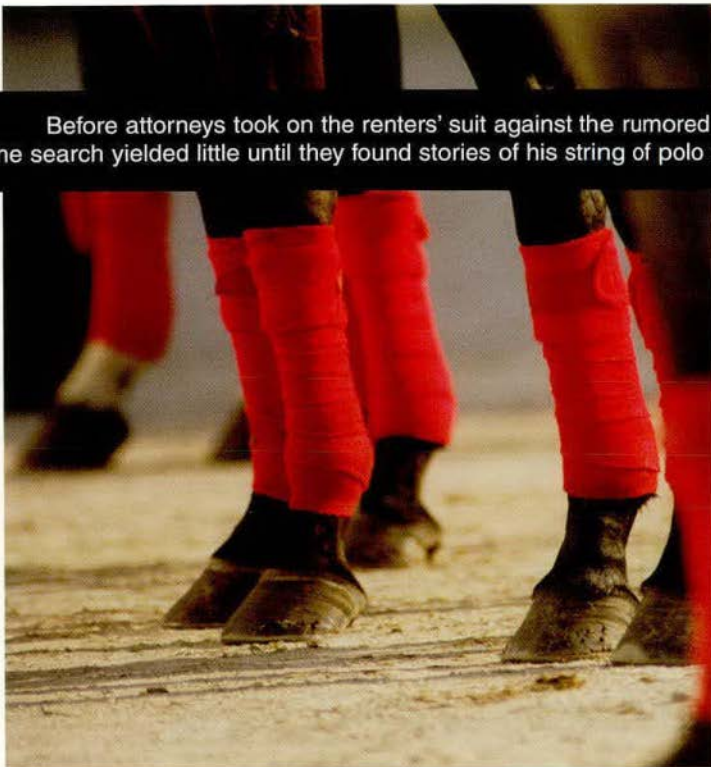
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Uncovering the landlord's hidden assets was as easy as reading the sports page.



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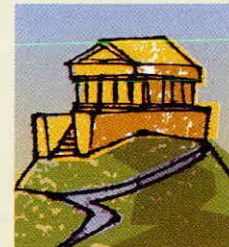
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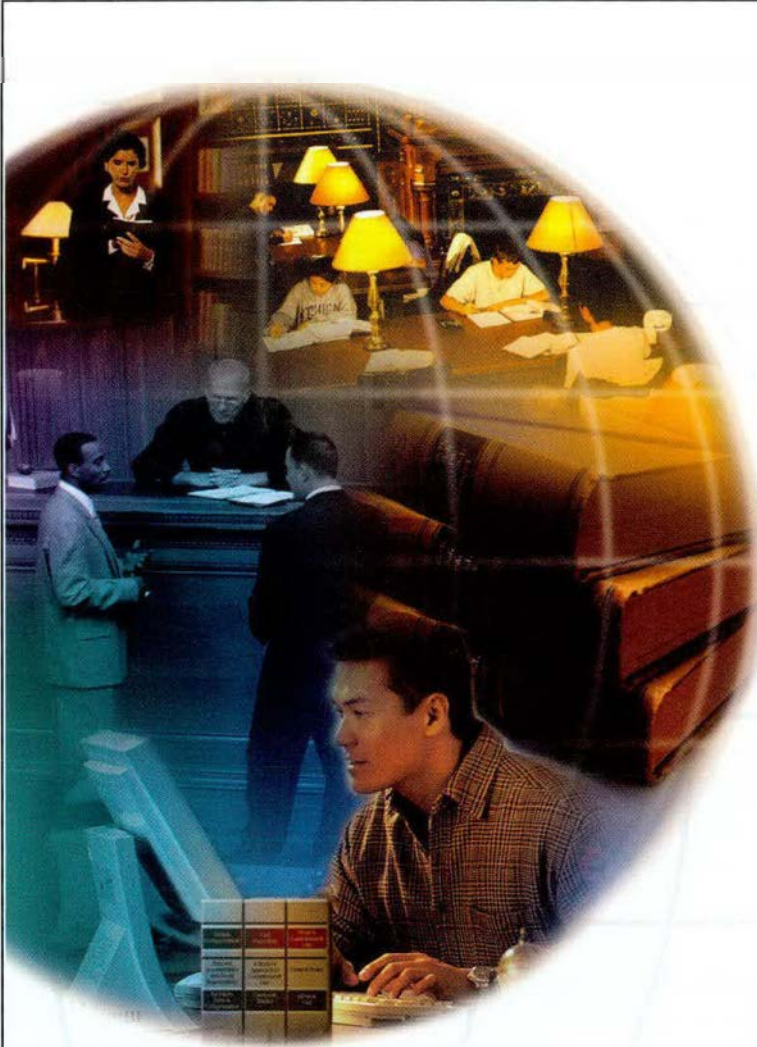
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Letters

Unintended *Pro Bono* Should Count, Too

Editor:

I have about 20 years' experience as a lawyer.

Five of those years were spent as a deputy prosecuting attorney. Another nine have been spent as a contract defender in juvenile court, without retirement benefits, medical/dental insurance, or even scheduled vacations, not to mention the "employer's" share of Social Security. To put the matter bluntly, I have not prospered practicing law.

Do not speak to me of mandatory *pro bono* if you want a friendly conversation. I have made, and continue to make, my contribution on an uncompensated basis to the public weal, and to the provision of uncompensated legal services for the poor.

John Jay
Yakima

Don't Tell Us to Do What We're Already Doing

Editor:

Small-town lawyer: Unless this lawyer charged a "substantially" reduced fee, the first hour does not count. Who decides? The call for the neighborhood association would not count unless it was an organization "primarily addressing the needs of persons of limited means." Unlikely. Coaching softball surely does not count — schools can't be said to "primarily" address the needs of persons of limited means. Nor would reviewing the coach's contract be counted unless he is a person of limited means. Actual *pro bono* time under the new rule: 0.

Prosecutor: Unless the newly formed community organization passes the test noted above, this hour would not count. Actual *pro bono* time: 1 hour.

Jane: Unless Jane has no expectation of additional fees, the initial consultation does not count. Partial fees or reduced fees may not qualify as "substantially" reduced. Helping friends and neighbors won't count unless all those friends and neighbors are persons of limited means. Unlikely. Actual *pro bono* time per week: 0.

Diane: Serving on a local bar executive committee hardly qualifies as service to an organization "primarily" addressing the needs of persons of limited means — al-

though it may if the WSBA continues to give away our time. As with the activities noted above, writing articles, advising others of their legal rights (even if for no fee), or suggesting potential legal action on family law or landlord-tenant matters will only count if each person advised is a person of limited means. What is the standard? Who will monitor compliance? Actual *pro bono* time: time spent at the nursing home, if it primarily serves persons of limited means.

Andy: Age is no assurance that a person is of limited means, as suggested by

this anecdote. If pension benefits and a family residence are involved, it is unlikely that this woman qualified, but what is the test? Actual *pro bono* time: 0.

Martha: Domestic violence is not limited to persons of limited means. Unless this shelter assists "primarily" those of limited means, time spent there will not count. Actual *pro bono* time: 0.

Ms. Michels' column (December *Bar News*, p. 15) serves only to reinforce the contention of those opposed to the rule that many attorneys provide service to their communities without a mandate or



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Washington lawyers can get a **FREE** copy of this report by calling **1-800-562-4627** (a 24-hour free recorded message), or by visiting Ward's web site at <http://www.davidward.com>

reporting requirement. Unfortunately, the examples chosen also point out the infirmities in the rule.

Robert G. Deveny
Portland, Oregon

Everybody Doesn't Get to Go to Everything Every Time

Editor:

I wish to respond to John W. Chessell's letter in the December 2002 issue of *Bar News* (p. 9) proclaiming the unfairness of groups putting on CLEs and then restrict-

ing who should be allowed to attend. Perhaps the absurdity of his views would have been more apparent if Mr. Chessell's letter included how his own profession, deputy prosecuting attorney, handles its CLEs.

Although I am now in private practice, I remember fondly the days when I was a deputy prosecuting attorney and could attend the CLEs put on by the Washington Association of Prosecuting Attorneys (WAPA). Those were indeed the days, when I could get 15 to 16 hours of CLEs

for the outrageous sum of \$10 to \$15, not to mention obtaining *per diem* and expenses. Now I spend close to \$1,000 a year. The funny thing was, when I attended those CLEs, there was not a defense attorney in sight. Given that the quality of those programs was quite good, there had to be some other reason there were no defense lawyers. I believe the reason was, if memory serves correct, that they were excluded.

I do not hear Mr. Chessell criticizing the exclusion of defense lawyers from WAPA-sponsored CLEs; he appears only to criticize when defense CLEs exclude prosecutors. He suggests, by innuendo, that if the truth does not hurt, then these defense CLEs must deal with untruths. That assertion is ridiculous.

If Mr. Chessell wishes to have some credibility, then he should also have taken WAPA to task for its exclusion of nonprosecutors. Personally, I like things the way they are and have no problem with certain CLEs limited to certain types of attorneys.

George A. Steele
Shelton

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CLE Espionage

Editor:

John Chessell's objection to a criminal defense seminar excluding prosecutors and law enforcement personnel is unfounded. What possible interest could a prosecutor have in attending a defense seminar other than to "eavesdrop" on the techniques that will be used by the defense? The purpose of such attendance would not be to further the prosecutor's own knowledge of the law but simply to enjoy a reconnaissance mission on what the other side is up to.

The presence of prosecutors at a defense seminar, or the presence of a defense lawyer at a prosecutors' seminar inhibits, if not precludes, the free exchange of ideas that truly enhances a practitioner's ability to practice his or her craft.

While I might relish the thought of being a fly on the wall at a prosecutors' seminar, I certainly understand and respect a prosecutor's desire not to have me present. But then as a practical matter the general bar is never informed of when or where prosecutors' seminars are occurring. I, for one, learn a great deal from my col-

leagues at seminars that I attend or at which I teach. I doubt that I would learn nearly as much, if any at all, from a prosecutor.

I am certain personal injury lawyers feel the same way about insurance defense lawyers and vice versa. The purpose of our seminars should be first and foremost to improve our ability to defend our clients, not to enhance the opposition's ability to convict them.

*Douglas Cowan
Bellevue*

All Horseradish and No Jam

Editor:

As a result of the review of *The Emperor of Ocean Park* (December *Bar News*, p. 29), I certainly won't read it. However, why did the author of the review take the time of her readers to tell them that?

It isn't that I am jealous of one of my successors, just disappointed that her approach to a book review is so completely negative. She should have told us about a book that she enjoyed instead. In my *Bar News* reviews circa the '90s, I tried to reveal the value of reading a book that was somewhat of a modern classic so that my reader would want to ultimately read it, too. I hope I succeeded.

*Philip H. De Turk
Pinehurst, NC*

(Editor's note: Mr. DeTurk was a valued Bar News contributor between 1988 and 1995, producing an annual appraisal of a classic of legal fiction for the magazine's book issue. We hope we can get another such review in the future.)

Legal Services Lawyers Serve Clients, Not Agendas

Editor:

I read with interest the contribution of Mr. Roger B. Ley concerning proposed RPC 6.1 involving *pro bono* service (December *Bar News*, p. 9). As president of the board of Columbia Legal Services (CLS), I admit to a bias concerning this aspirational proposal, but that is not why I write.

Mr. Ley has unfortunately selected facts concerning CLS to support his assertions that are untrue or misleading. A few clarifications are in order.

At the time the Supreme Court adopted

the IOLTA rule, there was no CLS. IOLTA funds are conveyed, as your readers know, to the Legal Foundation of Washington. The organization makes decisions about where the funds are distributed. The indigent clients of CLS are beneficiaries of those funds, just as the indigent clients of various local bar association programs are also beneficiaries. CLS has no affiliates.

It's hard for me to imagine any circumstance where a CLS lawyer would need to consider the Second Amendment, since the scope of their work is civil and not criminal.

During my more than a dozen years of serving on boards of legal services organizations, I have yet to see any case undertaken or litigated for trivial reasons based upon any ideology. It would be kind of Mr. Ley to write to me directly and inform me of any.

I am aware of the post office delivery issue noted by Mr. Ley. I expect Mr. Ley receives his mail at a specific address. Unfortunately, when someone is homeless, they are unable to even receive job applications or get a driver's license to find work unless they have a specific address. The

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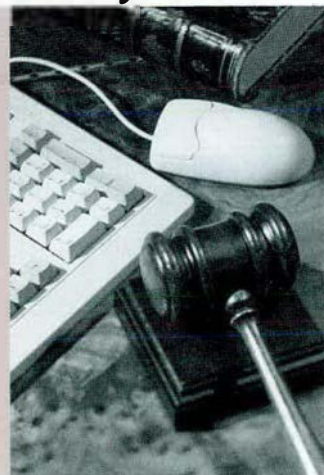
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result of the action that was filed was an agreement to provide a specific post office box that can be used in lieu of "general delivery."

While I fully recognize that Mr. Ley is entitled to his opinion, it does not appear that he has spent much time with legal-services attorneys. Had he done so, I expect his opinion of their abilities, dedication to their clients' interests (as opposed to their own interests), and level of advocacy might be different.

As I read the proposed rule, the intention of the BOG was to give options to attorneys who are privileged to practice law in this state. I see no requirement that money be contributed or contributed to CLS specifically. However, if Mr. Ley elected to contribute financial support to CLS, I would welcome it. He need not wait for any rule to be adopted.

*Michael Hanbey
Olympia*

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A surreal painting of a man in a suit standing in a cave. The cave walls are covered in large, stylized faces of animals, including a bear on the left and a pig on the right. A bright light source from above illuminates the man and a small tiger-like animal on the ground. The man is holding a briefcase and a folder.

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A Time for Introspection: What's Wrong with the Civil Justice System?

by Dick Manning
WSBA President

Then and Now

I thoroughly enjoy being a mediator — something I do a lot in a variety of cases. It always gives me an opportunity to talk about the way litigation *used to be*: a typical case might have had one simple set of interrogatories and one deposition per party, a two- or three-day trial (although many cases were settled on a telephone “handshake”), whether bench-tried or before a jury, and few appeals. In personal-injury cases, verdicts tended to be in the range of \$1,500 to \$25,000 — except in the big cases. What did one of these or similar disputes (e.g., breach of contract, construction, etc.) cost the client on an hourly fee basis after the post-trial motions? Try \$2,500 — maybe \$3,000 tops! Today, a simple motion in King County Superior Court may cost a party as much as the total cost of a case in years gone by. As one recent unsolicited caller threw at me in desperation when I was trying to get her some *pro bono* assistance: “Justice is only for the rich!” Except for the contingent-fee case, there are some seeds of truth in the caller’s exasperation.

It would be a copout for me to say “those were the good old days.” Yet, today it is not uncommon for litigators to engage in numerous rounds of discovery of all kinds, a variety of pre-trial motions (of all kinds), engagement of experts and their interviews, as well as a bountiful assortment of research and trial preparation — all of which frequently lead to litigation costs for each party that rival the amount in controversy. And that’s *before* trial! This is not criticism of litigators. This is the way the system has evolved — for many reasons, not the least of which is the due diligence demanded of lawyers by their litigation-prone clients.

Yet there is no question that much of the public is disaffected with what we trial lawyers do — born of the adversarial system we use in searching for the truth. Part of this disaffection is based on fact — and part on a misperception of how the justice system operates. Years ago, the American Judicature Society (AJS), a national association of judges, lawyers and citizens formed in 1911 to improve the administration of justice, conducted a survey of parties who had been through a trial to verdict or judgment. Seventy percent of the “win-

ners” responded they were dissatisfied with the process. I presume 100 percent of the losers felt the same way.

Speaking Out for Change

Many in our own legal community are urging us to re-examine the way we resolve civil disputes. Roberta Katz is a former member of one of Seattle’s most respected large law firms. While serving as general counsel for an internationally known technology company in 1997, she wrote the book *Justice Matters*, urging a dramatic reform of the civil justice system. Her position: The system is poorly suited to resolving most dis-

As one recent unsolicited caller threw at me in desperation when I was trying to get her some *pro bono* assistance: “Justice is only for the rich!”

putes in the modern world by its emphatic focus on litigation. And her position is certainly borne out by other studies and surveys, including one by the American Bar Association. The focus on *winning* (or on making someone else be the loser) has a lot to do with how much public trust and confidence is enjoyed by the legal profession. (Lawyers were ranked eighth out of nine professions in a 2002 ABA survey — only the media ranked lower.) Many people believe the system is too demeaning, complicated and expensive, and takes too long for a final outcome.

Katz views an urgent need to emphasize *problem-solving* by restructuring our courts according to practice areas — the *types of cases* courts handle — rather than geographic jurisdiction. Her concept for judicial determination when settlement cannot be achieved is to have the dispute submitted by lawyers and experts to jurors familiar with the subject matter involved. (It’s interesting to note that in the construction industry, this practice is done frequently with dispute review boards while construction is still under way, and with arbitration panels of experts when the dispute cannot be settled.) Supreme Court Justice Bobbe Bridge, in her commencement address to the Gonzaga University School of Law class of 2002, commented on Katz’s book:

The message of these alternative means of practice is clear: respond to the *real* needs of the client, not the search for the technically perfect answer, and develop a personal at

tachment to the outcome without losing your sense of objectivity. Understand why the client is in need of your help to begin with and be not afraid to follow a non-adversarial path. Be a problem-solver.

The Adversarial System: Legal Warfare

Our adversarial system of jurisprudence has a long history, and I am not suggesting we abandon it — it would be like throwing out the baby with the bath water. But isn't it time we engage in some constructive self-examination about how

the roots of this system have brought our attitudes to where they are today? Joseph Shaub, a Seattle family law practitioner, wrote an interesting and provocative article in the December 2002 issue of the King County *Bar Bulletin*. While tracing the history of the current system, he quotes Carrie Menkel-Meadow's treatise *Is Altruism Possible in Lawyering?* (Georgia St. Univ. L. R. 835 [1992]):

To say that lawyers should consider, let alone care, for the other side of a legal problem is probably close to blasphemous in our lawyering practices.... This

is what I wish to confront — the way our legal system asks us to wage war, without seeing the person on the other side. For lawyer's work, like soldier's work, has been justified by its role morality. We permit these specific actors to engage in behaviors that we would ordinarily condemn because their role, performed with a morally defensible situation, war or litigation, require it. We might examine how the imagery of war, scarcity, and zero-sum assumptions is the imagery of our legal system....

Imagine a system of *legal education and training* that creates experts in conflict resolution — not in the sense of the advocate who can promote one side and cut down the other — but in the service of more republican values. Imagine further that we lawyers seek to understand the other side's best arguments, not for the purpose of destroying them, but for the purpose of educating our clients about what is noteworthy and supportable in the other side's cause, *as well as their own*.

Collaborative Lawyers

Paul Lehto, an Everett lawyer who focuses on consumer law (and who is a member of the WSBA Board of Governors), is a passionate advocate of *collaborative lawyering*. He writes how collaborative law has replaced the traditional adversarial approach in family law practice in Medicine Hat, Alberta, Canada. There, lawyers and clients agree to work toward settlement. The clients are told beforehand that if an adversarial proceeding is to be filed later with the family court, then the lawyers must withdraw and the parties must engage trial lawyers. This creates an environment where the collaborative lawyers must focus on settlement and use creative problem solving skills. Many see this kind of approach to dispute resolution as the wave of the future — lawyers and others striving to take as much of the *contentiousness* out of dispute resolution as possible. (For more information, see <http://www.collabgroup.com>.)

I can tell you from my own experiences as a mediator in many different practice areas, there are three things most parties want: (1) a neutral they trust to *listen* to their viewpoint (the need to be heard *with empathy*); (2) not to be judged as wrong,

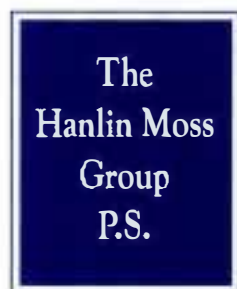
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or even necessarily right (they don't mind being asked questions which, if answered candidly, suggest some weakness in their position); and (3) resolution which fulfills their needs so they can put the matter behind them and move on. All successful mediators know this, and that's why relatively few mediations by these mediators fail.

What I've been talking about in this article is collaborative lawyering. Thankfully, many trial lawyers engage in collaborative lawyering in civil cases. There is also a trend under serious discussion in the *criminal* justice system, sometimes referred to as *restorative justice*, that partakes of some attributes of collaborative lawyering. That discussion will await another column.

Trial Lawyers Striving for Change

Collaborative lawyering is not new to our legal community. There are many different protocols — the Medicine Hat, Alberta, experiment being only one. Recently, the Washington Defense Trial Lawyers Association conferred a new award, Outstanding Plaintiff Trial Lawyer, to a well-known plaintiff personal-injury lawyer, Keith Kessler, of Stritmatter Kessler Whelan Withey Coluccio. (Similar awards were given a defense lawyer, Michael Runyan of Lane Powell Spears Lubersky; and a defense-litigation associate lawyer, John Gagliardi of Fain Sheldon Anderson & VanDerhoef). Keith, in being honored for his adherence to the highest professional standards for a civil plaintiff lawyer, was singled out by this defense association for advancing the cause of collegiality, professional decorum, and utmost ethical standards while practicing supreme advocacy for his clients. What Keith has done is uphold the passionate art of advocacy without demeaning his adversary. Well done, Keith!

To be sure, there will always be a place for a trial to resolve the irresolvable. But isn't it time to take a second look at our current legal culture? Can't we engage in a dialogue and chart a course that might help us serve our clients' needs — *the whole person* — better? Some lawyers are doing it now. Why not the rest of us? ☞

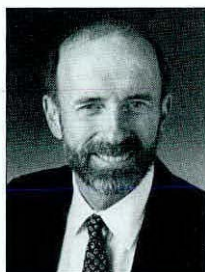
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Child Abuse Cases

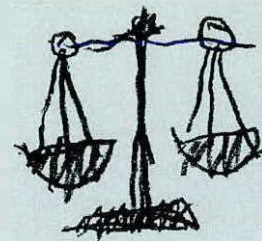
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**Sadly, no state grants a deceased or
injured animal standing to sue in its own name for
even the most monstrous torment.**

Lex Feles et Canis – Beyond Ferae Naturae: Practicing Animal Law in Washington

by Adam Karp

I believe that animals should be able to sue for heinous cruelties committed upon them. Washington law already acknowledges that animal suffering and injury are unacceptable, and that people who inflict such harm be held accountable. We have animal-cruelty laws, civil remedies for injury to service animals (RCW 49.60.370), and criminal penalties for injury to service animals (RCW 9A.11.170) and law enforcement animals. Harming an animal constitutes a class-C felony, just like an assault on a police officer (RCW 9A.76.200). Animals can be beneficiaries of trusts (RCW 11.118).

Sadly, no state grants a deceased or injured animal standing to sue in its own name for even the most monstrous torment. Humans can sue for their



pain and suffering because they actually feel pain and suffer. Nonhuman animals, although they may also feel pain and suffer, cannot seek compensation for its infliction on them.

If, as an ethical society, we want a legal system prepared to rectify all illegal harms through civil redress, we must compensate for every dimension of harm unlawfully inflicted. If I intentionally pepper spray your dog through the mail slot of your locked front door because I hate your family, I cause a number of harms, from emotional distress and economic loss to your family, to retinal burn and excruciating pain and suffering to your dog.

People who cause creatures with the capacity to feel pain or experience unnecessary hurt must pay for inflicting that harm.

People who cause creatures with the capacity to feel pain or experience unnecessary hurt must pay for inflicting that harm.

We will have otherwise failed to confer upon all creatures the dignity they deserve as sentient beings who ache, fear, and brave intolerable cruelties.

In short, the law must recognize that companion animals are more than mere chattel.

Skeptical? Consider an increasingly common example. Pyewacket, an aging Siamese cat, was sunning herself. Neighbors a few blocks over had been training Rottweilers to fight. Small animals and canine breeds disappeared by night, were captured, and used as bait to train Bane, Tank and Piggy. In order to instill a sense of respect for pain and domination, after Piggy whelped a litter, her owners drop-kicked her eight-week-old pups over a six-foot fence, then forced them to drag logging chains and run treadmills for hours until they collapsed. The pups slept outside in a roofless, chicken-wired enclosure.

Running loose one morning, Piggy and her pups scoured the neighborhood, yearning to quench their inculcated ire and thirst for blood.

Within moments, Pyewacket was drawn and nearly quartered by the six Rottweilers. The commotion attracted the aging feline's owners, a teenaged girl and her single father. Both ran to the sliding-

glass door. In horror, the girl, who had loved her cat like a baby for 12 years, collapsed to the floor, covered her ears, and wailed for divine intervention to spare her Pyewacket's life.

Quickly, her father ran outside to disperse the canine mob. The Siamese, more dead than alive, lay motionless — her lower jaw hanging by a thread of tissue. One eye was jet black, the other a narrow slit. Blood flowed from her nose and mouth. With nearly every bone in her ravished body broken, the father could barely lift her into the car for the emergency trip to the vet's office. Pyewacket died in transit.

What does the law say about valuing this precious creature who gave solace, compassion and support to your minor cli-

ent? As a kitten, Pyewacket was abandoned to a woman who gave her away. She sat cuddled around her littermates, mewling and scampering around the deep cardboard box until a three-year-old girl and her father approached and peered inside. From the first glance up at this child, she became the girl's best friend — the girl, her guardian.

At 17, the girl is now a clinically depressed teenager who suffers post-traumatic stress and endures recurrent, graphic nightmares of the violent taking of "her baby." She mourns daily, and occasionally breaks down when reality sternly contradicts her fantasy that Pyewacket will sidle up alongside her, purr with gratifying resonance, and knead her chest.

Questions arise: (1) Can I recover for the pain and suffering of this innocent feline?; (2) Can I obtain negligent infliction of emotional-distress damages for the girl, who was present during the fatal mauling of her beloved cat?; (3) What is the economic value of this cat? Is she more like a pencil (i.e., fungible), a family heirloom (i.e., intrinsic value), an automobile (which depreciates over time), an antique (which appreciates over time), or a child?; (4) What is the noneconomic value of this cat in terms of loss of parent-child consortium,

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mental anguish, or deprivation of companionship, friendship, protection and love?

A New Trend

Increasingly, across the nation, companion animal guardians are litigating the issue of damages and changing the way courts fully compensate those who lose their pets.

From the standpoint of an animal guardian, recompense for the loss of a companion should contemplate full value (i.e., beyond the depreciated market value) and explore the *relationship* also destroyed in the taking or impairing of the animal's life. This relationship is independent of, and engendered in addition to, the *per se* existence of the nonhuman animal.

A dog may, while sitting behind the bars of an animal-control shelter or pet-store glass, receive attention from many human visitors, but only a long term caretaker truly develops a connection with that specific animal. Strangers do not know the animal's preferences, have not earned the animal's trust, and may not care for the animal's best interests. Over time, this bond takes on a life in which strangers may not share unless they, too, devote similar energy, time and love to that unique being.



It is this relationship that the law is beginning to systematically recognize as a valid element of damage. With what "property" do we so affiliate ourselves? Some "love" their cars or computers; not many equate inanimate things with animals. Books and microwaves are inherently incapable of forming relationships. Cats, dogs, birds and other nonhuman animals have *identities*.

Consider this: people often spend much more to keep a pet alive than the pet actually cost. Providing compensation for veterinary bills in excess of the purchase price is comparable to providing reimbursement to a parent for medical bills paid on behalf of a child. RCW 60.56.025 provides for a lien for care of animals seized by law enforcement, without concern for fair-market value.

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Much is premised on the assumption that pets are property. Damage to property can be divided into economic damages and noneconomic damages.

Economic Damages

"Fair market value," or the price a reasonable seller not obliged to sell would obtain from a reasonable buyer not obliged to buy is the *status quo* measure of damages for all property, including companion animals. Where your personal property is damaged but repairable, you are traditionally entitled to the *restoration* cost. If destroyed, you can claim *replacement* cost. Some states recognize that family heirlooms, which may possess a personal value to a relative or intimate friend and not to the public generally, have an "intrinsic value" that often exceeds fair market value.

To make the human guardian whole for loss of a companion animal, many courts and legislatures have provided for recovery of loss of companionship — sentimental and aesthetic sums — as part of *economic* value on the following bases: that the human-companion animal bond approximates or, in some cases, bests that between humans; that inanimate objects like cars and clothing differ fundamentally from sentient beings like companion animals; and that the bonds formed are enduring, profound and pervasive, the significance of which has been documented in health studies.¹

Here's what courts have found:

As loss of companionship is a long-recognized element of damages in this State the court must consider this as an element of the dog's actual value to this owner.²

The law should reflect society's recognition that animals are sentient and emotive beings that are capable of providing companionship to the humans with whom they live. In doing so, courts should not hesitate to acknowledge that a great number of people in this country today treat their pets as family members. Indeed, for many people, pets are the *only* family members they have.... Even an heirloom of great sentimental value, if lost, does not constitute a loss comparable to that of a living being. This distinction applies even though

the deceased living being is a nonhuman.³

A pet is not an inanimate thing that just receives affection; it also returns it.... To say [a pet] is a piece of personal property and no more is a repudiation of our humanness.⁴

At least 14 appellate decisions from around the nation endorse the recovery of emotional-distress damages associated with the death of a companion animal.⁵

Animals are inherently unique and irreplaceable — notwithstanding efforts to

clone. In an important genetic and social sense, companion animals are not commercial products "manufactured" for marketing. We form relationships with companion animals, causing their value to appreciate with the deepening of the bond, in contrast to other market goods we purchase and use to obsolescence or destruction."

Washington cases, like *McCurdy v. Union Pacific R.R.* and *Mieske v. Bartell Drug Co.*, have held destruction of personality with no fair-market value, and incapable of restoration or replacement, entitles the owner to its "intrinsic value," which in-

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cludes elements of sentimentality.⁷

In *Mieske*, plaintiffs brought developed movie film for splicing onto larger rolls to Bartell Drug. Dozens of canisters filled with irreplaceable memories were subsequently lost or destroyed due to negligence. The defendant deemed rolls of raw negative as sufficient compensation. Plaintiffs argued that the memories, while contained on the film, had no market value and could not be replaced or restored. They added, however, that the memories were so unique that some other measure of damages must exist to ensure full compensation. The court agreed, affirming the jury's award of \$7,500 as the "actual value [of the film] to the plaintiff."

This "intrinsic value" measure of dam-

being transported by rail, the dog died from exposure to excessive heat. The defendant railroad testified that the dog was worth no more than \$750, while the plaintiff's experts appraised him at over \$100,000. The 1960 jury award of \$5,000 in compensatory damages was held not excessive.¹⁰

Peter the Great, on the other hand, did not fare as well. A California trial court granted a new trial after deeming a verdict of \$100,000 in compensatory damages and \$25,000 in punitive damages excessive. The canine Peter, who worked in the motion-picture industry, was killed when the defendant fired a weapon in the direction of the dog guardian's automobile, unaware he was inside.¹¹

This "intrinsic value" measure of damages for the loss of unique property has other names, such as "value to owner," "special value" or "sentimental value."

ages for the loss of unique property has other names, such as "value to owner," "special value" or "sentimental value." Intrinsic value often includes elements of loss of companionship between the pet and guardian, separate and distinct from any sentiment the guardian may possess for the dog. Consider the Kentucky case where Sheba, a German Shepherd, was brought by her guardian to a Lexington veterinary hospital for a routine spay. The veterinarian erred in the procedure, resulting in Sheba's death. The plaintiff sued for negligence, veterinary malpractice, infliction of emotional distress, and breach of contract. The jury trial resulted in a \$15,000 award in damages for intrinsic value.⁸

In another veterinary malpractice case, a vet and his clinic caused the death of an exotic serval cat by applying a bovine flea treatment toxic to felines. The defendant agreed to perform the necropsy, but "misplaced" the body. The case settled with the insurer for \$15,000.⁹

Or what about Pudsy, the "wonder dog of Ireland," who had the remarkable talent of adding, subtracting and dividing in any combination of up to 20 by registering a number of barks with the audience? Pudsy could apparently bark the number of spots appearing on a playing card merely by being shown the card. While

Interestingly, while many insurance companies like to depreciate an aging dog or cat like a Buick, one New York court reasoned: "The dog's age is not a depreciation factor in the court's calculations, for 'manifestly, a good dog's value increases rather than falls with age and training.'"¹²

When searching for the optimal formula of recompense, one method is to assign fair-market value at time of tort, including the animal's special perspicacities, characteristics, training and accolades, plus the value of the relationship formed between the animal and its guardians. A strict valuation method, if invoked, should attribute economic value at the latter point of an ownership's tenure, as opposed to the value society assigns to ownership at the time when first established — upon purchase or adoption. At the latter point there is no market value, but rather a value arrived at by closely scrutinizing the singular union between the guardians and companion animal.

Alternatively, once incorporated into a human family, the companion animal no longer has a market value, since its value is inextricably intertwined with the family. All animals, from the genetic level, are inherently unique and not like widgets manufactured for mass consumption. Animal cloning and fertility centers are social

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and marketplace testaments to this fact. Intrinsic, not fair-market, value applies.

The previous two methods value the relationship and emotional investment as elements of economic damage. A third alternative is to provide compensation as noneconomic damage, including loss of companionship, friendship, love, affection, solace, protection, and emotional distress or mental anguish.

Noneconomic Damages

This compensatory class consists of emotional distress, mental anguish, pain and suffering, loss of consortium and the like.

Whether styled as part of "intrinsic value" economic damages or an independent legal basis for noneconomic recovery, courts are increasingly honoring the poignancy and duration of the human-nonhuman bond and valuing it accordingly.

Washington courts have "liberally construed damages for emotional distress as being available merely upon proof of 'an intentional tort.'"¹³ Emotional distress damages may be recovered in circumstances involving intentional injury to property. "[T]his court has recognized that recovery may be had for 'sickness, suffering, mental anguish and bodily infirmities' result-

Washington courts have "liberally construed damages for emotional distress as being available merely upon proof of 'an intentional tort.'"¹³

ing from nuisance, in addition to property damage."¹⁴ The *Miotke* court awarded mental suffering as an element of damage in a public nuisance action, where the defendants' actions — namely dumping untreated sewage into the river — interfered with the Miotkes' riparian rights on their lakefront property, thereby depriving them of the use of the land and causing emotional distress.

Other instances where courts awarded emotional distress damages from an intentional tort involving personalty include *Cherberg v. Peoples Nat'l Bank*, 88 Wn.2d 595, 602 (1977) (available for willful breach of lease) and *Nordgren v. Lawrence*, 74 Wash. 305 (1913) (mental suffering available for wrongful entry by landlord into tenant's premises). "In this state, mental suffering may be taken into consideration in assessing damages, where the same is a result of a wrongful act, even though there may be no actual physical injury."¹⁵

In *Birchler*, the defendant, while grading and filling an undeveloped ravine, removed vegetation, destroyed fences, and encroached on the abutting properties of the plaintiffs.

A claim for damages from emotional distress is not an alternate or cumulative remedy for timber trespass that one may elect in lieu of a common law remedy or the statutory remedy, but merely another item of damages for a wrong committed as a result of the timber trespass.¹⁶

A hundred-year succession of Washington cases supports damages for emotional distress arising from intentional torts such as trespass generally. Emotional-distress damages may be recovered for intentional interference with property interests specifically.¹⁷

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from recklessly killing or maiming my six-year-old Basset Hound, Sherlock?

In a 1970s Florida case, the guardians to a dog who suffered severe burns after being placed on a heating pad at an animal hospital and left there for a day and a half received a \$1,000 award for their mental suffering upon learning of the dog's injury. This award was given independent of veterinary bills.¹⁸

A 1960s Texas case awarded the dog guardian \$200 for mental pain and suffering resulting from the unlawful police shooting of his pedigreed, registered three-year-old male Boxer.¹⁹ A recent Kentucky case involving the death of a beloved horse resulted in an astounding \$126,000 judgment for emotional distress alone.²⁰

Most states, however, restrict recovery of emotional distress for the loss of a pet, if they permit it at all, to intentional, reckless, wanton, malicious or outright criminal behavior. Mere negligence rarely suffices, particularly if the symptoms of emotional distress do not amount to a diagnosable mental disorder such as clinical depression, posttraumatic stress disorder, or shock.²¹

Loss of Companionship

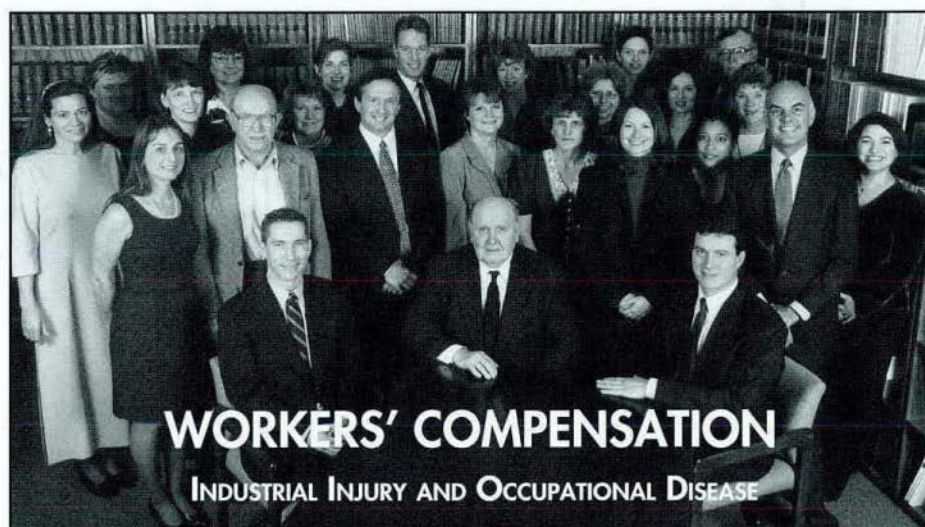
The independent tort for loss of companionship is similar to causes of action recognizing an impairment of a relationship, such as for intentional interference with contract or business expectancy.²² Oregon plaintiffs recently forwarded the theory of loss of companionship as a stand-alone tort in the 2000-filed case *Brock v. Rowe* on the basis that the relationship between a person and companion animal has at least as strong a claim to tort protection as commercial dealings.²³ King County District Court Judge Richard Bathum recently denied defendants' motion for partial summary judgment to dismiss the tort of loss of companionship.²⁴ This is Washington's first case permitting the plaintiff to advance this theory of recovery.

Loss of companionship suffered as a natural consequence of the reckless destruction of a companion pet is a tort that has come of age under common law. Tort development is a dynamic enterprise, not fixed with unwavering rules. Rather, it reflects the best product of human reason and intellectual development as applied to ordinary and extraordinary social phenomena presented before the courts.



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One may plausibly seek to extend the concept of loss of consortium provided by Washington statute and case law to companion animals. The Supreme Court has allowed a wrongful-death action for parental bereavement in the loss of a viable human fetus.²⁵ In light of *Moën*, a viable, indeed alive, sentient dog with a present attachment to the plaintiff should confer upon the bereaving guardian a status comparable to or greater than that given to a parent grieving over a fetus without an extant personality or similarly cognizable relationship.

From a statutory perspective, one must review RCW 4.24.010²⁶ and RCW 4.20.

020.²⁷ The intent of RCW 4.24.010 is "to provide a civil cause of action for wrongful injury or death of a minor child to a mother or father, or both, if the mother or father has had significant involvement in the child's life, including but not limited to, emotional, psychological, or financial support."²⁸

By liberally interpreting the language of RCW 4.20.010 and .020, one might construe the plaintiff as a parent or sibling of a deceased companion dog with no living canine "spouse" or children. RCW 4.24.010 explicitly allows for "damages for medical, hospital, medication expenses, and loss of services and support," as well as com-

panionship "for the loss of love and companionship of the child and for injury to or destruction of the parent-child relationship in such amount as, under all the circumstances of the case, may be just."

Provocative questions, these. There are more. If animals have rights or cognizable interests, those rights have implications in administrative, creditor-debtor, family, civil rights, veterinary, criminal, consumer protection, estate planning, insurance and constitutional law.

The Animal Law Section

In April 2002, after petition by the required number of WSBA members, the WSBA Board of Governors approved the formation of the third state-bar animal law section in the nation, following Michigan and Texas. Active attorneys may become voting members, while nonlawyers in the animal-services professions (such as veterinary, grooming, professional pet-sitting and training, animal control, humane societies, rescue organizations and cloning facilities) may join as nonvoting associate members. Section dues, which are \$25 per year, provide access to the Animal Law Section list serves (attorney members on one; attorneys and nonattorneys on the other), a quarterly newsletter, discounts at ALS seminars and CLEs, and plenty of intellectual stimulation. (The next section meeting will be January 30, 5:30 to 7:30 p.m., at Perkins Coie, 1201 Third Avenue, 48th Fl., Seattle.)

In July 2002, the New York State Bar Association created the fourth such section. Animal law sections at the county level have been created in San Diego and Los Angeles. As of August 2002, lawyers in Arizona, Connecticut, Florida, Illinois, Oregon and Pennsylvania were petitioning for creation of animal law sections.

Washington's first all-day Animal Law CLE, sponsored by the Animal Law Section and WSBA-CLE, will take place March 7, 2003, during "Super CLE Day" at the Washington State Convention and Trade Center in Seattle. ☺

Adam Karp is founder and chair of the WSBA Animal Law Section (www.wsba.org/animallaw), and is adjunct professor of animal law at Seattle University School of Law. He may be contacted at 206-903-1315 or adam@animal-lawyer.com (www.animal-lawyer.com).

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NOTES

1. See Sonia S. Waisman & Barbara R. Newell, "Recovery of Non-Economic Damages for Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend," 7 *Animal L.* 45 (2001).

2. *Brousseau v. Rosenthal*, 443 N.Y.S.2d 285 (N.Y.C. Civ. Ct. N.Y. County 1980).

3. *Bueckner v. Hamel*, 886 S.W.2d 368, 376-78 (Tex. App. 1994) (Andell, J., concurring).

4. *Corso v. Crawford Dog and Cat Hosp., Inc.*, 415 N.Y.S.2d 182 (N.Y.C. Cir. Ct. 1979).

5. See *Campbell v. Animal Quarantine Station*, 632 P.2d 1066 (Haw. 1981); *Peloquin v. Calcasieu Parish Police Jury*, 367 S.2d 1246 (La. App. 1979); *Lincecum v. Smith*, 287 S.2d 625 (La. App. 1973); *Gill v. Brown*, 695 P.2d 1276 (Idaho App. 1985); *Knowles Animal Hosp. v. Wills*, 360 S.2d 37 (Fla. Dist. App. 1978); *Animal Hosp. v. Gianfrancisco*, 418 N.Y.S.2d 992 (N.Y. Dist. Ct. 1979); *Richardson v. Fairbanks N. Star Bureau*, 705 P.2d 454 (Alaska 1985); *Brousseau v. Rosenthal*, 443 N.Y.S.2d 285 (N.Y. 1980); *La Porte v. Associated Independents, Inc.*, 163 S.2d 267 (Fla. 1964); *Corso v. Crawford Dog and Cat Hosp., Inc.*, 415 N.Y.S.2d 182 (N.Y.C. Cir. Ct. 1979); *Morgan v. Kroupa*, 702 A.2d 630 (Vt. 1997); *Paul v. Osceola County*, 388 S.2d 40 (Fla. Dist. App. 1980); *Soucek v. Banham*, 524 N.W.2d 478 (Minn. App. 1995); *Johnson v. Wander*, 592 S.2d 1225 (Fla. Dist. App. 1992).

6. See *Geordie Duckler*, "The Economic Value of Companion Animals: A Legal and Anthropological Argument for Special Valuation," 8 *Animal L.* 199 (2002).

7. *Mieske v. Bartell Drug Co.*, 92 Wn.2d 40, 45, 593 P.2d 1308 (1979) (excludes the type of sentiment "indulging in feeling to an unwarranted extent" or "affectedly or mawkishly emotional").

8. *Stephanski v. Wimpy*.

9. *Rappaport v. McElroy*.

10. *Mitchell v. Union Pac. R. Co.*, 188 F.Supp. 869 (S.D. Cal. 1960).

11. *Dreyer v. Cyriacks*, 112 Cal. App. 279 (1st Dist. 1931).

12. *Brousseau v. Rosenthal*, 443 N.Y.S.2d 285, 287 (N.Y.C. Civ. Ct. N.Y. County 1980) (citing *Stettner v. Graubard*, 82 Misc. 2d 132 (1975)).

13. *Birchler v. Castello Land Co., Inc.*, 133 Wn.2d 106, 116 (1997) (citing *Cagle v. Burns & Roe, Inc.*, 106 Wn.2d 911, 916 (1986)).

14. *Miotke v. Spokane*, 101 Wn.2d 307, 332 (1984) (citing *Riblet v. Spokane-Portland Cement Co.*, 45 Wn.2d 346, 353 (1954) (embracing the majority rule articulated by ALR annotators and stating that elements of personal damage, even absent actual bodily injury, indicate only a "difference ... in the degree or amount of damage sustained").

15. *Id.*, at 308.

16. *Birchler*, at 112-13.

17. *Id.*, at 117. See cases collected at Annot., "Recovery for Mental Shock or Distress in Connection with Injury to or Interference with Tangible Property," 28 A.L.R.2d 1070, 1091-93 (1953); Restatement (Second) of Torts sec. 929 (1977) (emotional distress damages permitted for trespass to land).

18. *Knowles Animal Hospital, Inc. v. Wills*, 360 S.2d 37 (Fla. Dist. Ct. App. 3d Dist. 1978), cert. denied, 368 S.2d 1369 (Fla. 1979).

19. *City of Garland v. White*, 368 S.W.2d 12 (Tex. Civ. App. Eastland 1963), writ refused n.r.e. (Oct. 2, 1963).

20. *Burgess v. Taylor*, 2001 Ky. App. Lexis 26.

21. *Hegel v. McMahon*, 136 Wn.2d 122 (1998).

22. "The elements of the tort of interference with business relationships are: (1) the existence of a valid contractual relationship or business expectancy; (2) knowledge of the relationship or expectancy on the part of the interferer; (3) intentional interference inducing or causing a breach or termination thereof; (4) resultant damage." *Cherberg v. Peoples Nat'l Bank*, 88 Wn.2d 595, 602 (1977).

23. *Brock v. Rowe*, No. C002535CV, Washington Co. Cir. Ct. Or. (tort of loss of companion-

ship allowed; based on dicta in *Norwest v. Presbyterian Intercommunity Hosp.*, 652 P.2d 318 (Or. 1982)).

24. *Spencer v. Tostenrude*, No. Y201329, King Co. Dist. Ct. Wash. Aukeen Div. (involving plaintiffs' 12-year-old feline mauled by defendants' four pit bull dogs).

25. *Moen v. Hanson*, 85 Wn.2d 597 (1975).

26. Action for wrongful death of child reserved for mother or father, if parent regularly contributed to support of child.

27. Spouses, children, and stepchildren are first-tier beneficiaries of the statute and may sue for wrongful death without establishing dependency; siblings and parents of deceased are second-tier beneficiaries and may sue if dependent on decedent and if no first-tier beneficiaries exist.

28. RCW 4.24.010 - intent.



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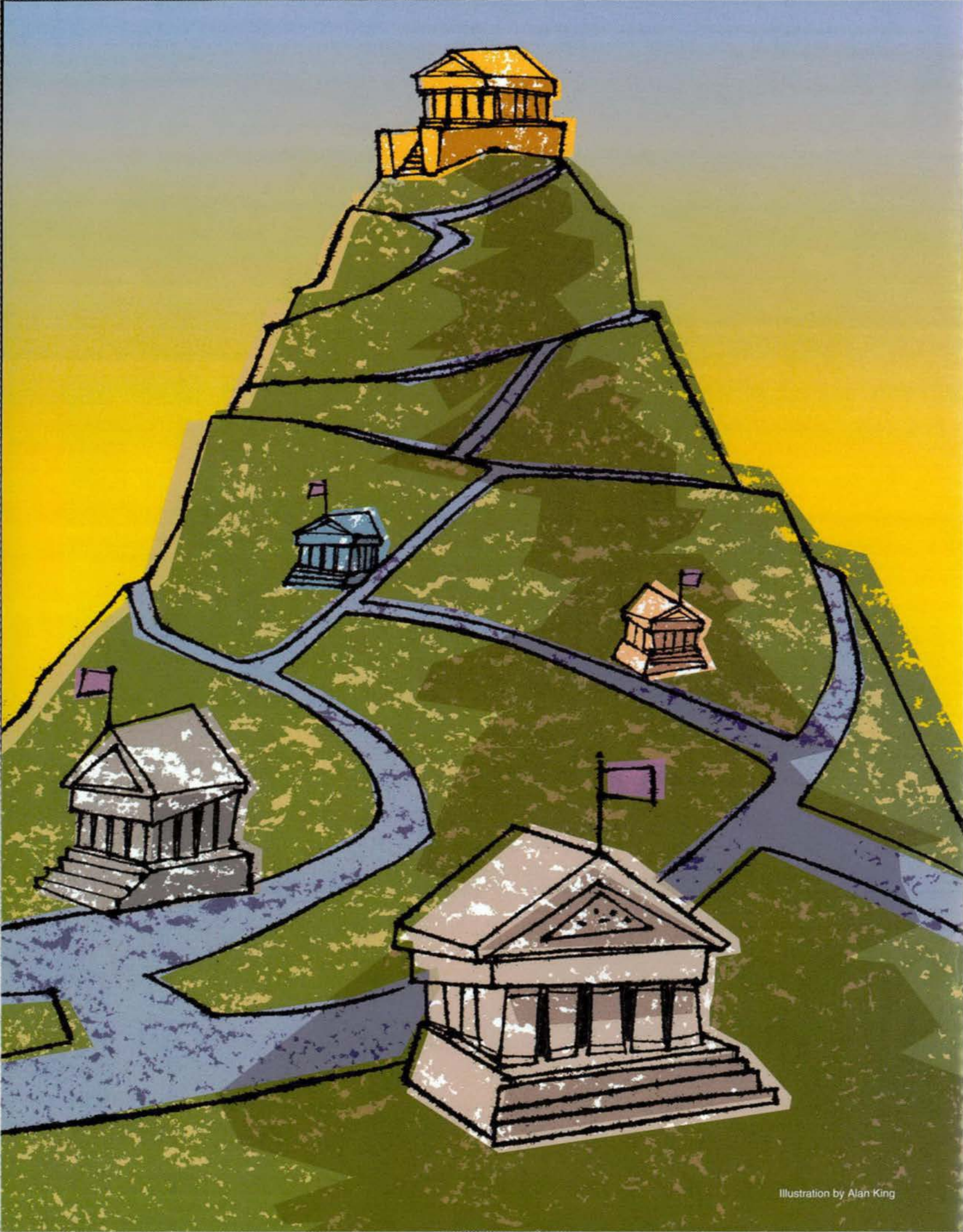
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The U.S. Supreme Court and Criminal Law: 2001 Term

(Part Two)

The Supreme Court held, in a 5-4 decision written by Justice Ginsburg, that a state may not impose a suspended sentence on an indigent defendant for whom it has not appointed an attorney if there exists any chance that the defendant could receive a prison sentence.

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

Right to Counsel

Mickens v. Taylor, 70 USLW 4216 (2002)

Mickens was convicted of first-degree murder for the killing of Timothy Hall, and sentenced to death. In his *habeas* petition, Mickens argued that he was denied effective assistance of counsel, in violation of the Sixth Amendment. The basis for this claim was his discovery, after trial, that his attorney had represented Hall, the victim in Mickens' murder case, on unrelated charges pending at the time of the murder. The attorney did not reveal to Mickens that he had previously represented the victim. This representation of Mickens' murder victim created, Mickens argued, a conflict of interest. In addition, the trial judge was aware of the situation but did nothing. The district court and the *en banc* 4th Circuit Court of Appeals both denied relief on the ground that Mickens had not established any actual adverse effect as a result of the dual representation.

The Supreme Court, per Justice Scalia, narrowly upheld the lower courts, holding that a defendant who claims his right to counsel has been violated by a conflict of interest must show the conflict actually had a negative effect on the attorney's representation. The Court noted that the rule in *Strickland v. Washington* (1984) is that a defendant alleging a Sixth Amendment violation must show a "reasonable probability" that the result would have been different. Here, the high court reasoned that a conflict of interest sufficient to warrant a trial-court reversal did not require the defendant to es-

by Craig Hemmens

establish prejudice, but he must at least establish that the conflict "actually affected" counsel's performance. Dual representation in and of itself is a "mere theoretical division of loyalties" and does not mandate a reversal. The dissenters pointed out that this was a capital case, and that any errors should be resolved in favor of the defendant. 5-4 decision.

Alabama v. Shelton, 70 USLW 4438 (2002)

Shelton was tried in an Alabama court on a misdemeanor assault charge. He was not offered state-appointed counsel, and chose to represent himself. He was convicted and sentenced to 30 days in jail, which the judge suspended, and was placed on two years' probation. Shelton appealed, arguing his Sixth Amendment right to counsel was violated by the trial court's failure to appoint an attorney for him, since he faced the possibility of prison time if his probation was revoked. The state supreme court reversed the suspended jail sentence on the ground that the Supreme Court decision in *Argersinger v. Hamlin* requires appointment of counsel for any offense "that actually leads to imprisonment." The state argued that since Shelton's sentence was suspended, the *Argersinger* rule did not apply. There was a split of opinion in the state and lower federal courts on whether actual imprisonment had to occur for the provision of counsel to be required.

The Supreme Court held, in a 5-4 decision written by Justice Ginsburg, that a state may not impose a suspended sentence on an indigent defendant for whom it has not appointed an attorney if there exists any chance that the defendant could receive a prison sentence. The majority noted that if Shelton had his probation revoked, the suspended sentence would be applied, and he would be incarcerated. Since the incarceration would be for the underlying offense, rather than the probation violation, the uncounseled suspended sentence was invalid, as it could potentially lead to imprisonment. The Court did not require that actual imprisonment have occurred for the right to counsel to apply. The Court refused the suggestion of *amici* that the better solution was not to require appointed counsel in all such cases, but to require appointed counsel at the probation revocation hearing, should that ever occur. The Court

noted this solution was not sufficient because probation-revocation hearings are informal proceedings and do not allow the defendant to challenge the validity of the underlying conviction. The dissent by Justice Scalia argued that this decision would impose an enormous burden on the states in dealing with misdemeanor defendants. 5-4 decision.

Bell v. Cone, 70 USLW 4447 (2002)

In a Tennessee court, Cone was convicted of murder and sentenced to death after a penalty phase in which the defense attorney put on no evidence, but did cross-examine some of the prosecution witnesses

and make a brief opening statement referring to the evidence of post-traumatic stress disorder (PTSD) brought forth during the trial.

On appeal, Cone claimed ineffective assistance of counsel, asserting that his attorney's failure to put on evidence during the penalty phase significantly increased the likelihood of Cone receiving a death sentence. The state court denied the appeal, so Cone filed a *habeas* petition with the district court. The district court denied the petition on the ground that the state court decisions were not "an unreasonable application of the law" as required under *Strickland v. Washington* (1984), al-

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lowing federal review of a state court interpretation of state law.

The 6th Circuit Court of Appeals reversed, finding that Cone's attorney had provided ineffective assistance of counsel because he did not subject the prosecution's request for the death penalty to "meaningful adversarial testing," and that the state's adjudication of Cone's appeal holding otherwise was an unreasonable application of the law.

Writing for a nearly unanimous court, the Chief Justice reversed the 6th Circuit and held that the "doctrine of presumed prejudice" applies only if a defense attor-

ney completely fails to oppose the prosecution's case. Failing to introduce mitigating evidence and waiving closing argument are specific errors subject to the general "performance and prejudice standard" of *Strickland v. Washington*. Each of the defense attorney's decisions, the majority claimed, was arguably reasonable. Justice Stevens filed a lone dissent, arguing the majority had misstated the facts and applied the wrong precedent. 8-1 decision.

Search and Seizure

United States v. Knights, 70 USLW 4029 (2001)

Knights was placed on probation for a minor drug offense. According to the terms of his probation, he was required to submit to a search at any time, even in the absence of a warrant, probable cause, or even reasonable suspicion, by either a probation or police officer. Shortly after he was placed on probation, Knights became a suspect in an arson investigation. A sheriff's deputy, aware of the search condition in Knights' probation order, conducted a warrantless search of Knights' apartment, where he found material implicating Knights in the arson.

The district court conceded that the deputy had "reasonable suspicion" that Knights was involved in the arson, but nonetheless determined that the search of Knights' residence violated the Fourth Amendment because it was conducted for "investigatory" rather than "probationary" purposes. The district court claimed that the search condition in the probation order allowed warrantless searches on less than probable cause only when the purpose of the search was to see if probation was being complied with, not for the investigation of another crime. The 9th Circuit Court of Appeals affirmed, despite the fact that the California Supreme Court had previously expressly rejected such a distinction.

The Supreme Court unanimously reversed the lower courts and upheld the search of Knights' apartment. Rather than trying to sort out whether the search was investigatory or probationary in nature, the opinion by Chief Justice Rehnquist focused on whether the search was "reasonable" under the Fourth Amendment. The Court held that this particular search, based on reasonable suspicion and authorized by a probation condition, was in fact reasonable.

Weighing the defendant's privacy interests against the government's interest in effective law enforcement, the Court upheld the search under the "totality of the circumstances" approach. The chief justice noted that probation serves several purposes, including rehabilitation of the defendant and protection of the public, and that probationers enjoy a lessened expectation of privacy — tilting the balance in favor of the government. While the Court several times focused on the specific facts of this case, some language in the opinion left open the possibility that

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searches of a probationer might be considered "reasonable" even in the absence of a specific search condition or reasonable suspicion. 9-0 decision.

***United States v. Arvizu*, 70 USLW 4076 (2002)**

A border-patrol agent observed a minivan driving along an unpaved, rarely traveled road in a remote area of southeastern Arizona, near the Mexican border. As the agent drove by the minivan, it slowed down appreciably. The agent saw two adults and three children inside. The driver did not look at the agent, but all three children repeatedly waved at him in unison. The minivan then turned onto a road just before reaching a border-patrol checkpoint.

At this point, the agent, suspecting drug trafficking, stopped the minivan and sought consent for a search from the driver, Arvizu. Arvizu consented to the search, which turned up two duffel bags

The Supreme Court unanimously reversed the lower courts and upheld the search of Knights' apartment.

containing a large quantity of marijuana. Arvizu was arrested and charged with intent to distribute.

The district court refused to suppress the evidence, but the 9th Circuit Court of Appeals reversed after examining the factors upon which the stop was based and concluding that each of them, viewed in isolation, was subject to an innocent explanation, thus failing to create the "reasonable suspicion" necessary to justify the stop of the vehicle. If the stop was invalid, then any consent obtained thereto was also invalid.

In a unanimous opinion by Chief Justice Rehnquist, the Supreme Court reversed the 9th Circuit and held that facts which are subject to innocent explanations when viewed in isolation may nonetheless be used in determining the existence of "reasonable suspicion" under the "totality of the circumstances" approach. The Court dismissed the lower court's concern that allowing police to use lawful actions

as part of the calculus in determining reasonable suspicion might give the police unbridled discretion to stop anyone at anytime. The Court acknowledged that each of the factors used to create reasonable suspicion could have an innocent explanation, but that examining each factor separately would be avoiding reality, and the "totality of the circumstances" approach favors looking at all the factors in conjunction with one another. 9-0 decision.

***United States v. Drayton*, 70 USLW 4552 (2002)**

Drayton and a companion were traveling on a bus from Florida to Detroit. When the bus made a scheduled stop in Tallahassee, the driver collected the passengers' tickets and then permitted three plainclothes police officers to board the bus. One officer went to the rear of the bus, another remained at the front, and a third began walking from the front to the back, displaying his badge to passengers and requesting permission to frisk them and search their baggage. None of the officers informed the passengers they were free to refuse to speak with them or consent to be frisked or have their belongings

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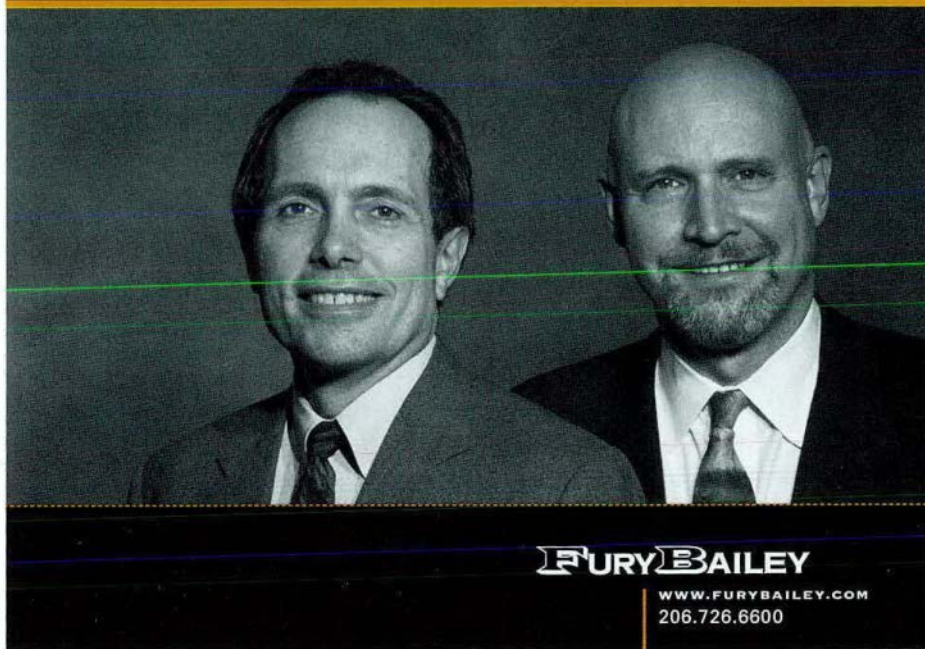
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searched. Drayton and his companion consented to a frisk, and drugs were found taped to their thighs. The district court denied a motion to suppress the evidence, but the 11th Circuit reversed on the ground that consent to search was obtained through coercion, as passengers in this situation would not feel free to disregard requests to search absent some indication that refusal was permitted.

The Supreme Court reversed the 11th Circuit and upheld the constitutionality of the police bus searches. The Court had previously held in *Florida v. Bostick* (1991) that the question of whether a bus passenger has been "seized" while rendering their consent to an invalid search is to be determined, not by reference to a *per se* rule that all bus searches are *per se* seizures, but by an examination of the "totality of the circumstances."

The majority opinion, by Justice Kennedy, asserted that the 11th Circuit ran afoul of the *Florida v. Bostick* precedent by treating all bus passenger-police encounters as seizures. Looking at the totality of circumstances, Kennedy determined that the situation was not coercive. The police were quiet, polite, and did not brandish any weapons. Thus, passengers should have felt free to leave and therefore were not "seized." Since the passengers were not seized, police could seek valid consent to search. Furthermore, the police are not required to tell passengers they can refuse consent. The dissent by Justice Souter argued that bus passengers in cramped quarters surrounded by officers would not in fact feel free to leave, and thus should be considered "seized" for purposes of determining whether their consent was validly obtained. 6-3 decision.

Board of Education of Independent School District #92 of Pottawatomie County, Oklahoma v. Earls, 70 USLW 4737 (2002)

About 70 percent of adults surveyed in a recent Gallup poll support drug testing of students in extracurricular activities. Following the Supreme Court's endorsement of a school drug-testing program for athletes in *Vernonia School District 47C v. Acton* (1995), a number of schools adopted drug-testing programs for students involved in sports and other extracurricular activities. The school board in Tecumseh, Oklahoma, adopted a drug-testing policy

in 1998 which applied to all students involved in extracurricular activities, from sports to choir to the Future Homemakers of America club. The school board considered testing all students, but decided to test only those involved in extracurricular activities, on the ground that these students had a lower expectation of privacy than students generally. The policy required students to take a drug test prior to beginning the extracurricular activity, be subject to random testing during the season, and be tested at any time based upon the existence of "reasonable suspicion."

Earls was a high-school honor student and self-described "goodie two shoes" who competed on an academic quiz team and tested negative for drugs, but filed suit seeking an injunction against testing on the ground that the policy was humiliating and in violation of her privacy interests. The 10th Circuit Court of Appeals struck down the testing program on the ground that the schoolboard had failed to

The Supreme Court reversed the 11th Circuit and upheld the constitutionality of the police bus searches.

establish an identifiable drug problem prior to instituting the testing program.

The Supreme Court reversed the lower court. In determining whether drug testing was reasonable under the Fourth Amendment, the Court balanced the privacy interests of students against the government's interest in drug testing. Writing for a narrow majority, Justice Thomas emphasized the "custodial" duties of schools, acting in *parens patriae*, to protect the safety and health of students. This custodial duty requires the reduction of the privacy interests of students in order for it to be effective. This duty, coupled with the fact that students in extracurricular activities have a lessened expectation of privacy, and the fact that the testing procedure is not overly intrusive, supports allowing the drug-testing program.

The majority rejected the approach of the lower court, saying there was no requirement that the school board first identify a drug problem before instituting the

drug-testing program. School drug tests fall under the "special needs" exception to the Fourth Amendment, abrogating the requirement of particularized, individual suspicion or probable cause. The dissent by Justice Ginsburg (in the majority in *Vernonia*) argued that the policy here was "perverse," as it actually targeted those students least likely to use drugs. The drug test approved in *Vernonia*, she pointed out, was limited to athletes, who were the leaders of the drug culture in that school, and who faced special health risks associated with drug use. There were no such findings here. 5-4 decision.

Department of Housing and Urban Development v. Rucker, 70 USLW 4206 (2002)

A provision of the 1988 Anti-Drug Abuse Act requires public housing agencies to include in leases a provision making any drug-related criminal activity on or off the premises by either the tenant, a guest of the tenant, or anyone "under the control of" the tenant grounds for eviction. The Department of Housing and Urban Development (HUD) instituted eviction proceedings against a number of residents of a public housing complex in Oakland, including four elderly ones. Two were evict-

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ed because their grandchildren who lived with them were caught smoking marijuana in the apartment complex parking lot. A third was evicted because her daughter was found with crack cocaine three blocks from the complex. A fourth was evicted because his caregiver was found with crack cocaine in the tenant's apartment.

The evictees filed suit against the housing authority in federal court, seeking an injunction barring the eviction of tenants who were themselves innocent of any wrongdoing. The district court issued an injunction, which was affirmed by the 9th Circuit *en banc* on the grounds that HUD's interpretation of the federal statute as permitting the eviction of "innocent" tenants was inconsistent with the intent of Congress.

The Supreme Court, in an 8-0 opinion penned by the chief justice, reversed the 9th Circuit, and held that the federal statute gives HUD the authority to evict public housing tenants based upon the drug-related activities of others, even if the tenant was personally unaware of the drug activity. The Court rejected the 9th Circuit's attempt to read the statute in such a way

as to require personal knowledge on the part of the tenant, holding instead that the plain language of the statute makes it clear that personal knowledge is not required.

As for the 9th Circuit's claim that "no-fault" evictions did not seem in line with Congress' intent, the Court pointed out that in fact Congress may very well have intended just such an event, as Congress has a goal of providing public housing that is safe and free of criminal drug use. 8-0 decision (Justice Breyer did not participate).

Sentencing

United States v. Cotton, 70 USLW 4429 (2002)

Cotton and several others were indicted by a federal grand jury for distribution of narcotics. They were convicted, and received a sentence based on the district court's finding that at least 50 grams of cocaine were involved, thus increasing the sentence from the statutory minimum. The quantity was not alleged in the indictment.

The defendants did not object at trial to the judge's finding of fact. While their appeal was pending, the Supreme Court decided *Apprendi v. New Jersey* (2000),

Cotton and several others were indicted by a federal grand jury for distribution of narcotics.

which held that any fact which increases the penalty for a crime beyond the statutorily prescribed maximum must be decided by a jury. On appeal, Cotton then argued that since the drug quantity was neither alleged in the indictment nor submitted to the jury, his sentence was invalid under *Apprendi* because the judge based the increased sentence on his finding (rather than the jury's) regarding how much cocaine was involved. The 4th Circuit vacated the sentence, citing *Apprendi*.

The Supreme Court unanimously reversed the lower court, and held, per Chief Justice Rehnquist, that the sentence was not rendered defective by the missing quantity in the indictment nor by the finding of fact by the judge instead of the jury. In federal courts, unobjected-to errors are governed by the "plain error" rule, which states that a claim of trial error raised for the first time on appeal will not be corrected unless the defendant proves: (1) there was an error; (2) the error was "plain"; (3) the error affected a substantial right; and (4) it is the type of error that affects the fairness of the proceeding.

The Supreme Court looked only to the fourth prong of this test, and found that such an error did not affect the fairness of the judicial proceeding. The Court also disagreed with the lower court's assertion that a failure to charge an element of the offense deprived the court of jurisdiction. This case is of tremendous significance, as it may provide a way to salvage the thousands of indictments which occurred pre-*Apprendi*. 9-0 decision.


Harris v. United States, 70 USLW 4655 (2002)


In *Apprendi v. New Jersey* (2000), the Supreme Court held that any factor (other than a prior conviction) that increases the maximum sentence for a crime must be treated as an element of the offense, rather than as a mere "sentencing factor." This means the jury, rather than the judge, must find the existence of this element beyond


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a reasonable doubt, as it does with every other element of the offense. This decision appeared on its face to be in conflict with another Supreme Court decision, *McMillan v. Pennsylvania* (1986), which held that mandatory minimum sentences based on judge-made findings of fact by a preponderance of the evidence are permitted.

Harris was convicted of selling narcotics, for which the mandatory minimum sentence is five years. The sentence is seven years, however, if the defendant carries a firearm while selling drugs, or 10 years if the firearm is used during the sale. At sentencing, the judge imposed a seven-year sentence, based on his finding of fact that Harris was carrying a weapon at the time of the drug transaction. On appeal, Harris argued that carrying the weapon is a separate offense, not part of the underlying drug offense, and must therefore be alleged separately in the indictment. The 4th Circuit Court of Appeals affirmed the seven-year sentence.

The Supreme Court, per Justice Kennedy, narrowly rejected extending *Apprendi*'s principle to federal sentencing guidelines and upheld the seven-year sentence. Kennedy argued in his plurality opinion that *Apprendi* applies only to facts that increase the maximum punishment for an offense. Facts which only increase the minimum sentence are not covered. Two justices who had dissented in *Apprendi* concurred with the judgment only; four justices who had been in the majority in *Apprendi* dissented, arguing, per Justice Thomas, that *Apprendi* applied to all instances where judges rather than juries serve as the finders of facts which increase the length of incarceration, and that the majority in this case was improperly narrowing the reach of the *Apprendi* precedent. 5-4 decision (plurality opinion).

Sex Offenders

Kansas v. Crane, 70 USLW 4117 (2002)
Under the terms of the Kansas Sexually Violent Predator Act, the state may seek civil commitment of an incarcerated sexual offender at the expiration of their prison term. In *Kansas v. Hendricks* (1997), the Supreme Court upheld the act against claims that it violated due process or constituted double jeopardy.

Crane pled guilty to a crime that qualified for potential civil commitment after incarceration, and the state sought civil

commitment when his prison term ended. One of the requirements for civil commitment is a showing that the defendant suffers from a "mental abnormality or personality disorder which makes the person likely to engage in repeated acts of sexual violence." At the commitment hearing, expert witnesses testified that Crane suffered from an antisocial personality disorder that affected his ability to control his behavior, but they did not claim he was entirely unable to control himself. On appeal, the state supreme court interpreted *Hendricks* as requiring a finding that the offender cannot control his behavior.

Writing for the majority, Justice Breyer

asserted the state court misinterpreted *Hendricks*, and that there is no requirement of a finding that an offender cannot control his behavior in order to justify civil commitment. Rather, a state must show not only that an offender is still dangerous, but that there exists at least a "serious difficulty in controlling behavior." Requiring a finding of a complete lack of control would be unworkable because mental-health experts generally do not talk in such absolute terms.

At the same time, Breyer rejected the state's argument that an offender may be committed without evidence of at least some lack of control. The dissent by Jus-

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tices Scalia and Thomas (author of the *Hendricks* opinion) said a separate psychiatric determination is unnecessary, and there is no requirement of a finding of any lack of control. They accused the majority of undermining and unduly restricting the *Hendricks* decision. 7-2 decision.

Summary

While there was no single case that garnered the national spotlight as *Bush v. Gore* did during the 2000 term, the Supreme Court's 2001 term was highlighted by several decisions that will have a significant impact on criminal justice. Major search-

and-seizure decisions, as well as important death-penalty decisions such as *Atkins v. Virginia*, raised more questions than they answered. For instance, at the beginning of the 2002 term, the Supreme Court refused to hear a challenge to a juvenile death-penalty statute, but four justices took the unusual step of dissenting from the denial and arguing that the decision in *Atkins v. Virginia* suggested it was time to re-evaluate the constitutionality of executing juvenile offenders.

Several other interesting cases have been accepted for argument during the 2002 term. The Court agreed to determine

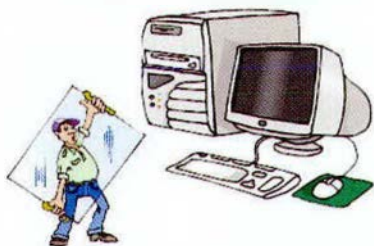
whether public libraries can be required to install software to block sexually explicit Internet sites (*United States v. American Library Association*). The high court is also considering a challenge to California's three-strikes law (*Lockyear v. Andrade*), and will revisit sex-offender legislation, this time determining the constitutionality of a sex-offender notification procedure (*Godfrey v. Doe*). The Court has accepted a case involving the issue of how to evaluate ineffective-assistance-of-counsel claims in death penalty cases (*Wiggins v. Corcoran*). Any of these decisions could have a major impact on criminal justice.

This is unquestionably the Rehnquist court, 2001 being his 30th year. Once referred to as the "Lone Ranger" for his frequent solitary dissents, he now finds his viewpoint in many areas adopted by a majority of the justices. His views have not changed, but those of the other justices have, and the Court has moved toward him. Rehnquist still loses regularly in some areas (such as privacy rights), but his views on the Fourth Amendment, federalism, and the role of federal courts in the appeals process for criminal defendants have all become mainstream (although just barely, as with the 5-4 federalism decisions). He did dissent from the three major death-penalty decisions.

Given the narrow margin in so many cases, the composition of the Supreme Court is of great importance. The current Court has been together for better than eight years, the longest such period of stability since the 1820s. The average age of the justices is near 68, ranging from Thomas (54) to Stevens (83). Several justices have reportedly been contemplating retirement for many years. With Republicans regaining control of the Senate in fall 2002, it is possible several members of the Court may elect to step down in the near future. President Bush would then have an opportunity to significantly reshape the Court. How this will affect future decisions is anyone's guess.

Craig Hemmens is an associate professor of criminal-justice administration at Boise State University. He has a J.D. from the North Carolina Central University School of Law and a Ph.D. in criminal justice from Sam Houston State University. He has published two books and more than 100 articles on criminal justice topics.

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Behind the Technology Curve: *Affordable Solutions for Lawyers without Lots of Money*

by Thad M. Guyer

Technological innovation supercedes and overwhelms cultural and personal preferences in law-office systems. Most lawyers are dragged to the new technology, then fall behind the steep learning curves, which minimizes their adaptability to the next wave of technological innovation. Sole practitioners and small firms with high spirits and low incomes may be at greatest risk.

More affluent law firms cope with the technology-curve dynamic by hiring support staff, if not technology employees, to stay on top of the curve. Courts and defense firms are at the leading edge of technological innovation and high-momentum deployment. The Administrative Office of the U.S. Courts has implemented Public Access to Court Electronic Records (PACER)¹ and Case Management/Electronic Case Filing (CM/ECF),² first in Oregon and Florida, now in 10 federal courts and approximately 50 state and bankruptcy courts. Large defense firms are at the forefront of "electronic trials" (DOAR Systems).³ If the small firm feels intimidated in the courtroom, it is with good reason.

To function in these electronic environments, acquisition of considerable computer knowledge is becoming a practice necessity for sole practitioners and small firms. For the technocapable firm, these law office and courtroom media offer expanded opportunity; for all others, the same media loom as barriers to court access. Since sole practitioners and small firm lawyers may well be unable to hire staff with high-tech inclination, it is increasingly for lawyers themselves to understand the nature of fast approaching technological challenges, and find solutions.

This is not to say that lawyers must understand how to use all the hardware, software and Web applications available. But it is to say that, like reading advance sheets

or legal literature, lawyers who can't afford to pay someone else need to keep up with the court and law office technology curve. The more hands-on time you put into technology, the more you will be able to cope when the milieu changes from the voluntary to the mandated.

I have been a sole practitioner and small-firm member for the last 24 years, and I have never been able to afford or retain technologically sophisticated staff. Instead, I have made it my role to teach

**This is not to say that
lawyers must understand
how to use all the hardware,
software and Web
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new technologies to my staff when I can, and to learn it myself when I can't. Like telling the scrivener that he had to learn to use the typewriter rather than handwriting motions in the early 1900s, often staff do not embrace technological innovation because it adds difficult learning to their existing workloads. Fax machines were embraced as fun and easy, but transitioning to Windows or Mac from DOS was not. Learning how to convert scanned documents to Adobe PDF images, and to "distill" or "paper capture" them for maximum use, will not happen in many small law offices unless you make it happen. The hardware, software and net applications used in my office are technologies I have learned before teaching them to my staff, and I am 52 years old. With each acquired skill, the easier it becomes to learn the next technological competence. (Note: The products I reference in the footnotes are not necessarily better than competing products.)

Electronic Courts

CM/ECF: In January 1996, the Administrative Office of the U.S. Courts began development of the Case Management/Electronic Case Filing (CM/ECF) system, a comprehensive case-management system that will allow courts to maintain electronic case files, offer electronic filing, and make all case information available immediately through the Internet. Eventually, CM/ECF will replace the current case management systems used by federal courts; federal and state agency forums will not be far behind. There are a number of significant benefits and features to look forward to:

- Courts will allow registered attorneys to file documents 24 hours a day, seven days a week.
- Paper, photocopy, postage and courier costs will be reduced.
- Full case information will be available immediately to attorneys, parties and the general public. This includes the ability to view the full text of all filed documents.
- Attorneys on the system will receive e-mail notices in CM/ECF cases, greatly speeding delivery, and eliminating costs of handling and mailing paper notices to courts and attorneys.
- Multiple parties will view the same case files simultaneously.
- Since CM/ECF uses Internet standard software, the out-of-pocket cost of participation for attorneys will be typically very low.

PACER is an electronic public-access service that allows users to obtain case and docket information from federal appellate, district and bankruptcy courts, and from the U.S. party/case index. Currently, most federal courts are available on the Internet to at least a minimal extent. Those few federal courts that are not available must be dialed directly using communication software (such as ProComm Plus, pcAnywhere or Hyperterminal) and a modem. Internet access is available for most fed-



eral courts by registering with the PACER Service Center (see <http://pacer.uscourts.gov>), the judiciary's centralized registration, billing, and technical support center. Each court maintains its own databases with case information.

DOAR is the primary provider of the advanced technology-based litigation support system used in federal and state courtrooms. DOAR provides integrated technology for automating evidence presentation and courtroom communications. In a rapidly increasing number of federal and state

courtrooms, this technology is being installed to allow high-tech persuasion power, but the reality is that this power is available only for a new generation of litigators who exert the effort to learn the technology. The system provides comprehensive multifunction support for all aspects of evidence display, complete with multiple digital and video inputs and up to 14 display outputs. Functions currently include:

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Some systems include a video-conferencing component that allows the remote appearance and cross examination of live witnesses. The system can connect directly to ISDN (Internet line) in the courtroom or in a conference room. These electronic courtrooms are normally operated by means of a simple remote control system that supports a multiplicity of evidence-presentation systems and software. Using the judge override switch, the bench retains total control of the electronic display prior to its presentation to the jury.

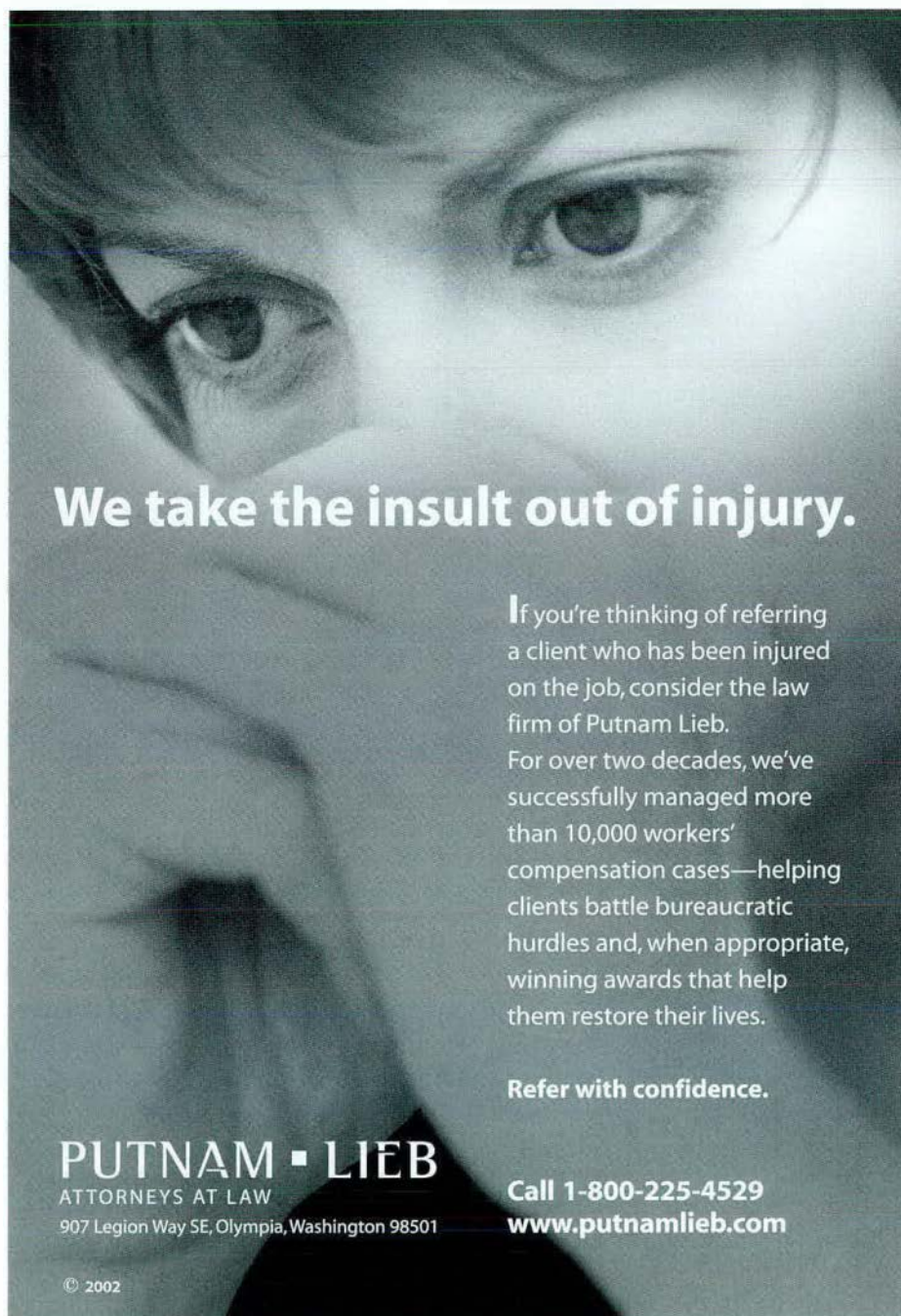
Because federal adjudicative agencies such as the Department of Labor and Merit System Protection Board normally hold hearings in federal courthouses, there will be increasing opportunities or requirements for administrative-law lawyers to use the DOAR system.

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these sheet-fed scanner/photocopiers scan documents at 30 or more pages per minute. The machines have an onboard computer that converts the images to PDF, TIFF or other formats, and routes them to your computer or server.¹

• Net file storage allows all electronic files to be stored on secure Web-based servers, rather than on CD-ROM or DVD disks and remote hard drives only. There are numerous inexpensive "Net storage" services that allow drag-and-drop uploads and downloads for firm computers. File folders can be individually password-protected to allow lawyers or clients to access files from any computer.⁵

• Reciprocity protocols are one of the simplest means to reduce paper by agreeing with adverse counsel that pleadings, motions and briefs will be sent to each other as e-mail attachments when filed. Most lawyers will readily agree to this reciprocity.

Communications and Faxing

The world of law-office computer communications, known as "telephony," has two key components: in-office software and Web-based applications. The future of all end-user computing is said to be in Web-based applications, where users don't own or even possess the "software" but use it via HTML and other Web-browser interfaces. Web users need not purchase software updates. Communications and faxing via the Internet have become inexpensive, versatile and effective. There are several kinds of Web-based telephony:

• IP phones are supplementing and, in some firms, even replacing traditional analog and digital phone lines. These "Internet phones" plug into the USB or analog ports of your computer and use the same DSL or cable line used for Internet and e-mail access.⁶ Numerous Web companies now provide the Web-based "call" applications at no monthly cost, and the user pays as little as two cents per minute anywhere in the United States, and seven cents per minute for international calls. Sound quality and performance are 90 to 100 percent of landline quality.⁷

• Conference-call Web applications allow law offices to avoid the high cost and inconvenience of operator-assisted or line-hogging methods. The conferencing Web

application places calls through traditional phones, but allows the originator to manage the call with a "call center" screen pop-up mouse. These calls cost as little as 10 cents per minute per participant, including phone charges, and allow up to 10 participants from anywhere in the coun-

Web-based communications and faxing have become inexpensive, versatile and effective.

try.⁷ Imagine a conference call with five lawyers costing only 50 cents per minute.

• Fax sending and receiving Web-based services allow you to fax any document from your computer, and to receive faxes in your e-mail box fully viewable on your computer screen. Documents that you did not produce, such as exhibits, are simply scanned for sending. You can then file these faxes in client folders on your computer.⁸

• "Messaging" and "chat" are no longer for recreation only, but are becoming serious business and law-office telephony. These are free text, voice- and video-communication applications that allow individuals and groups to interact on your desktop while you perform other functions, such as word processing or legal re-

search. These services indicate who is available at their computer for the quick question, the insider comment or important conference.⁹

• Telephone e-mail and voice-mail reply are excellent tools when you can't be near your computer. These low-cost, Web-based services allow you to call a toll-free number and prompt an electronic voice to read your e-mail (and even fax subject lines) to you. You can then reply by dictating a voice message into your phone that will be sent as a voice file to the originating e-mail account, where the recipient can listen to it on headphones, speakers or IP phone.¹⁰

Calendaring and Litigation Support

Free Web-based applications and sites are available for several other critical and common lawyer functions, including date reminders and calendaring, legal research and lawyer directories.

Web-calendaring applications are now far more than simply another place to enter appointments and due dates. These applications will automatically send e-mail notifications each day, and throughout the day, to remind you of appointments, events and tasks. These applications have two major advantages. First, the date reminder e-mail can be sent to you, your associates or assistants, and to other e-mail addresses you may be using, such as your home account. You can also give password access to others who are authorized to

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check or make entries or edits to your calendar. Secondly, these online calendars are available from any computer, for example, from the computer of a judge's assistant when you are unexpectedly resetting court dates.¹¹

Free legal-research Web sites are actually more convenient than Lexis or Westlaw for certain matters, and can result in time savings and convenience. Among the most convenient legal-research sites are those for state statutes and regulations, and the most recent U.S. Supreme Court cases.¹²

Online lawyer directories seem to be published by every state bar, and each now has a "member search" function on its Web site. These are far quicker, and more inclusive and updated than paging through a phonebook or paper directory. You can bookmark the most frequent directories to instantly find the name, address, phone, fax, e-mail and Web page of any lawyer. You don't even need to know the correct spelling, since the first name and a few letters of the last name will bring the information to your screen for easy cutting and pasting into letters and certificates of service.¹³

"E transcripts" of depositions are available in at least two forms. In addition to the ability of court reporters to send transcript files as e-mail attachments, there are dedicated Web-based applications for easy viewing and searching of deposition transcripts.¹⁴

Handheld and Travel Applications

Most lawyers have to travel on business, or worse, have to be prepared to do some work on vacation. On the road computing is sometimes a necessity that cannot be met by logging on to someone else's computer.

Roaming charges can be very expensive. One solution is a prepaid Internet card, similar to a phone card, for Internet use. Your provider sends you a disk, or allows an Internet download of the software or application. Some providers allow international Internet use at very low costs.¹⁵

Compact flash and smartmedia cards, commonly used with expensive digital cameras but often overlooked for other applications, have fast and powerful file-transfer features. These tiny cards (a third

the size of your business card) are basically computer chips encased in plastic, and plug into a very small card reader with a short USB cable. This solution is so cheap you can have a card reader at home and another at the office. The standard 128-megabyte card holds the same data as 40 floppy disks, and transfers the data to and from your computer 10 times as fast. Because they are basically external USB port disk drives, you can carry one in your pocket and plug it into computers anywhere to access thousands of pages of your documents.¹⁶

Handheld and palm computing have now transcended the gadgetry stage, and

**On-the-road computing
is sometimes a necessity
that cannot be met by
logging on to someone
else's computer.**

are no longer simple electronic date and address books. Many models have ports for flash and smartmedia cards. Besides use for basic calendar and address functions, these handhelds allow you to load a 1,000-page trial transcript and to "yellow accent" and excerpt it on the screen (in easy-to-read zoom sizes) while sitting in your lounge chair. You can also download your last one or two hundred e-mails to read on an airplane, complete with attachments. Scores of free and lowcost applications for handhelds may be downloaded from the Internet. Some of the more expensive models (which are well worth it) also have voice dictation and Internet access. These devices allow you to have all state and federal rules of evidence and procedure, statutes, cases, and anything else at your fingertips in the courtroom.¹⁷

Conclusion

With any technology, there are both real and imaginary problems with its use in the present and in the future. We lawyers worry about hackers breaking in to our Net storage files, but these are as secure as the lock on your office door. The determined thief will get whatever he or she

wants, whether it's paper or an electronic file. We worry about viruses, but we should also worry about floods, fires and misfiled paper. We are concerned that all electronic office files will be unreadable by newer platforms, and that the new developers will fail to develop "migration" programs to convert the old to the new. But high-tech computer developers are competitive, and know their products won't sell without this obvious solution.

We are frustrated at the prospect of forever having to chase new technology. This frustration is valid, but just like the infirmities of age, it is simply a battle you have to fight to stay atop your game and profession. High-minded lawyers fear that as courts and the legal profession move ever more toward the digital age, low income and disenfranchised people will be left out. Unless we advocate that this is unacceptable, it might indeed happen, but we can have both technological progress and enhanced access to justice. ✎

Thad Guyer is a member of the Oregon Bar, and is litigation director of the Government Accountability Project in Seattle. He remains a sole practitioner in Medford, Oregon, emphasizing civil rights and employment law, and family law for the Jackson County legal aid program.

NOTES

1. See <http://pacer.psc.uscourts.gov>.
2. See <http://pacer.psc.uscourts.gov/cmecf/>.
3. See <http://www.usa.canon.com/cpr/pdf/Brochures/IR5000ibrochure.pdf>.
4. See list of Web-based file storage services at <http://useful.webwizards.net/wbfs.htm>. (We use Yahoo Briefcase.)
5. See <http://www.yapgear.com>.
6. See <http://web.net2phone.com>.
7. See <http://j2.com> and <http://web.net2phone.com>.
8. See <http://j2.com>.
9. See <http://messenger.yahoo.com>.
10. See http://j2.com/services/email_by_phone.asp.
11. See <http://calendar.yahoo.com>.
12. See <http://www.findlaw.com/11stategov>.
13. See <http://pro.wsba.org> (Washington state); <http://www.osbcle.org/members/start.asp> (Oregon); and http://www.dlbar.org/find_a_member/index.cfm (Washington, D.C.).
14. See http://www.reallegal.com/etranscript_ATT.asp.
15. See <http://www.maglobe.com/home.htm>.
16. See <http://www.sandisk.com/consumer>.
17. See http://tlienew.hp.com/country/us/eng/prodserv/notebooks_handhelds.html.

Law, the Musical

by Jeff Tolman

Recently one of my partners had a show-cause argument in front of our court commissioner, Thurman Lowans, regarding a parent who had not returned her child after summer visitation for the beginning of school. As we discussed how to argue to the commissioner, it became clear that Rod Stewart had written all that needed to be said in *Maggie May*.

*Wake up, Thurman, I think I've got something to say to you;
It's late September and he really should be back at school;
All she did was take her kid, and do her very best to keep
him hid;
Thurman, we should have already seen his face;
She'll make a first class fool out of you,
if you let her do what she'd do;
She took the child and that's what really hurts....*

But, like most lawyers, we were afraid to try something so unconventional. It got me thinking, though, about how many legal songs there could be. Law and music together have so much potential. While my tear-jerking operetta *Even a Subpoena Couldn't Bring Her Back to Me* continues to unfold, just think of the songs that could be. A judge's lament about defendants avoiding confinement because there isn't enough jail space could easily be sung to the old Peter, Paul and Mary tune.

*If I had a slammer,
I'd sentence in the morning,
I'd sentence in the evening,
all over this town;
I'd incarcerate bad guys,
I'd incarcerate bad girls,
I'd incarcerate those who think they're above the law,
all, all, all, over this town....*

Defendants could sing a variation of the old Beatles' song to the prosecutor in hope of a lesser charge: *Please Plea Me*. The criminal calendar judge's musings about the change in attitude in court could be sung to the tune of the Righteous Brothers' *You've Lost That Lovin' Feeling*.

**Parties on the domestic
show-cause calendar often are
heard humming Kenny Rogers'
You Picked a Fine Time to
Leave Me, You Heel.**

*You never close your eyes any more
when I set your bail;
And there's no acceptance of guilt in
your mind when I send you to jail;
You're trying hard not to show it, but
Defendant, Defendant, I know it,
you've lost that responsible feeling....*

Parties on the domestic show-cause calendar often are heard humming Kenny Rogers' *You Picked a Fine*

Time to Leave Me, You Heel. As judges we often get defendants who owe fines to many courts, and we try to get across that our fine is the most important to pay. I have sometimes been tempted to sing *She's So Fine* with these words.

*You got a fine;
and you gotta pay mine;
There are lots of courts everywhere,
who put you in financial despair;
But it's your fine;
And it's gonna be forever;
If it takes some time;
You can pay the rest whenever....*

There are times when lawyers have to take a less-than-great case to trial. Their only hope is that the judge will see issues strongly in their favor. Those fact-finder lawyers could croon the Beatles number one hit *Hey Jude*.

*Hey, Judge, don't make it bad;
Take my sad case, and make it better;
Remember to open up your big heart,
then you can start,
to make it better....
Hey, Judge, don't be afraid;
The Appeals Court will help you all they can;
Whenever they see a way to affirm;
They will confirm that you are
the smartest, smartest, smartest....*

Even conservative, strict, constructionist appellate judges could have an anthem — sung to Garth Brooks's great song *I See Trends at Slow Paces*. Will I break into song the next time I'm trying to be persuasive on the motion calendar? Probably not. But, Commissioner Lowans, if you hear me humming, I'm thinking about it. ☞

The Trials of Lenny Bruce: The Fall and Rise of an American Icon

Reviewed by Robert C. Cumbow

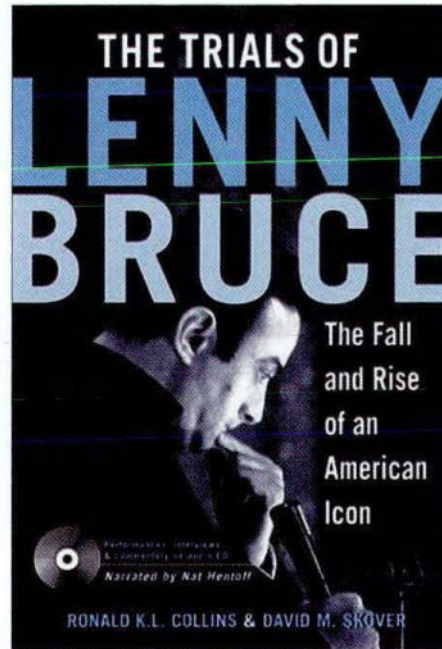
by Ronald K. L. Collins and David M. Skover; 562 pp. (449 pp. text; 113 pp. appendices, notes and index); hardcover, \$29.95; includes one-hour CD. SourceBooks, Naperville, IL, 2002.

Although *The Trials of Lenny Bruce* contains a good deal of detail about the life and times of Lenny Bruce, it is emphatically not a biography. More than anything else, this hugely readable book offers a journey through free speech jurisprudence in the '50s and '60s — years that proved crucial in forming the way we look at freedom of expression a half century later.

In their previous book, *The Death of Discourse*, authors Collins and Skover, both professors of law but working on opposite coasts, asked provocatively whether our unprecedented permissiveness toward expressive conduct furthers or trivializes the public discourse that is crucial to the democratic ideal of government by the people.

It's no accident, then, that the authors should have happened upon Lenny Bruce's travails as the topic of their next book. The cops, prosecutors and judges who sought to penalize Lenny Bruce for "indecent" were not Neanderthals (by and large); they respected the First Amendment and the limitations it placed on the regulation of speech. But they were asking, in their time, the same question that continues to haunt Collins and Skover: How free should free speech be?

Lenny Bruce's fast, free association patter, which later inspired George Carlin and Robin Williams, was at the time truly innovative, and separated Lenny from his contemporaries. His presentation style was the exact opposite of the studiously prepared and delivered routines of the most popular comedians of the era, Shelley Berman and Bob Newhart. But what made headlines (and case captions) was his satirical approach to religious, political, sex-



ual and moral hypocrisy, which diverged sharply from the ambling, dry, safe political commentary of his most similar contemporary, Mort Sahl.

Arranged roughly chronologically, though with some overlap, the book details Bruce's run-ins with obscenity laws in San Francisco, Los Angeles, Chicago and New York, from his first obscenity arrest in 1961, through his death in 1966. Focusing on the social impact of Bruce and his four trials, the authors bid fair to bring an awareness of Lenny Bruce's cultural and jurisprudential importance to a wider audience and to a new generation to whom Lenny's name is no longer a household word.

Like the authors' previous book, *The Trials of Lenny Bruce* is not just for students and practitioners of the law, but for any reader who cares about freedom and discourse. However, it certainly holds special interest for those who walk the path of law. The influence (and lack of influence) that key First Amendment cases of the era had on Bruce's trials, the procedural ups

and downs, and the views (then and now) of Lenny's prosecutors and defenders make endlessly entertaining and eye-opening reading.

The more Lenny ran afoul of the law, the more the law became "his routine," as the authors put it; and this explains the obsession with the workings of American justice that informed Bruce's later, angrier work — the work that gave meaning to his comment, "I'm too conscious of the law," and turned him into an institution ("I'm not a comedian; I'm Lenny Bruce"). His growing criticism of the system and of American hypocrisy became more bitter, less witty, and, in the words of the authors, "sounded more like law talk than comedy talk."

Litigators who read the book will surely see Lenny Bruce as the "client from hell." He took such an interest in his own cases that he insisted not only on managing his defenses but often on conducting them himself, presenting arguments at trial, and engaging in *ex parte* communications with judges he disagreed with. Eventually even the most passionately crusading First Amendment lawyers refused to represent him.

The authors carefully analyze the tactics of Lenny's various prosecutors, most notably Richard Kuh, the New York City attorney who, years later, would lose a campaign to become Manhattan's district attorney, in part because of his relentless pursuit of Bruce. One of these tactics — separating Lenny's "dirty words" from the context of his performance — was heavy with irony in light of the fact that Lenny himself deliberately sought to liberate such words from their meanings, and thus ultimately to destroy the power of words to shock or hurt. Although Lenny won some and lost some, he died before serving a day of the jail sentence he earned in that New York courtroom, and the date of his death, the authors decide, is "as good a marker as

any of the moment when words alone ... ceased to be targets of prosecution."

The book, like Lenny's life and trials, is filled with ironies, which the authors never cease to appreciate. The greatest irony is perhaps the way Lenny the man became Lenny the myth, and "Lennyolatry" eventually became politically correct — hence the "and Rise" of the book's subtitle. The authors give dispassionate and nonjudgmental space to the phenomenon of "we killed Lenny" revisionism, citing multifarious quotables to the effect that Lenny "was murdered ... by the Establishment," and "died of an overdose of police." Lenny was using narcotics, and getting arrested for it, long before the obscenity prosecutions ever started; though there is no doubt a grain of truth in the theory that his arrests, trials, and resultant bankruptcy contributed to a depression that exacerbated the drug habit that eventually killed him.

But whether the law killed him or not, there's no question that the authorities genuinely hounded Lenny to the extent that he could no longer make a living at his chosen profession. You won't find Socrates in the index to Collins and Skover's book, but the Lenny they portray is like no one so much as the great Attic philosopher, who so relentlessly challenged his contemporaries to look at themselves that they tried and executed him for it. And nowhere this side of *Apology* and *Crito* will you find a portrait of a man who so passionately believed in the very law that destroyed him: "I respect the law, and it will eventually vindicate me," he said; and later John Cohen wrote of Lenny that he had "apologized for the agents of his persecution."

One of the most exciting aspects of the book is its inclusion of a CD containing 48 excerpts from Lenny Bruce's own routines, from his trials, and from comments of others about him. The carefully chosen excerpts not only support the text but also stand on their own as a short tour through Lenny Bruce's most important and provocative work. The CD's first publication of excerpts from Lenny's own secret tapes (a recorder was concealed in his briefcase, no mean feat in the open-reel days) of Richard Kuh's near hysterical cross-examinations is a historic event in itself, even

though the poor recording conditions make the recordings almost unintelligible. The authors and their editors have delivered a handsome, supremely reader-friendly book, whose large, wide-set type makes the authors' direct, witty prose even more readable. The longish chapters are broken into subsections by frequent headings that amplify each episode and its significance. Photos, captions and epigraphs further break up and illuminate the text. Occasional lapses — such as the use of "loathe" for "loath" and "mettle" for "meddle" — suggest that both authors and edi-

tors relied on spell-check software rather than eyes-on proofreading. But such errors are infrequent enough that they don't get in the way of what is bound to be, for lawyers and nonlawyers alike, one of the most compelling and stimulating books of the past year. *✶*

Robert C. Cumbow is a shareholder with Graham & Dunn in Seattle, where he practices trademark, copyright, Internet, advertising and media law. He serves on the executive committee of the WSBA Intellectual Property Section.

Washington Corporate Law: Corporations and LLCs

Stewart M. Landefeld, Barry M. Kaplan, Steven R. Yentzer

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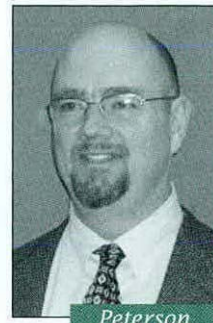
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Honors and Awards

Jillian Barron, a senior attorney with the Bellevue firm Sebris Busto James, has been elected chair of the employment law section of the Washington Defense Trial Lawyers.

Seattle lawyer David K.Y. Tang has been elected to a three-year term on the board of directors of the Federal Reserve Bank of San Francisco. Mr. Tang is a partner with Preston Gates & Ellis LLP.

Rosemary Daszkiewicz has been ap-

pointed to the Group Health Cooperative board of trustees. She is a partner in the Seattle firm Cairncross & Hempelmann, and chairs the firm's employment law group.

The Federal Bar Association of the Western District of Washington has elected the following officers and trustees: Kevin Swan, president; Todd True, vice-president; Steve Koh, treasurer; Beth Andrus, secretary; Allen Bentley, trustee; J. Richard Creatura, trustee; Dan Dubitzky, trus-

tee; Karen Jones trustee; and Paula Olson, trustee.

WSBA Governor Zulema Hinojos-Fall has been appointed a Presidential Classroom instructor, providing high-school student leaders an opportu-

nity to participate in a dynamic study of American government, current issues, and the inner workings of the federal government. Ms. Hinojos-Fall is an administrative law judge for the U.S. Equal Employment Opportunity Commission in Seattle.

Movers and Shakers

Gary Peterson has joined the Moscow, Idaho, Law Office of Duncan Palmatier, focusing on patent law. Mr. Peterson is admitted to practice in Washington, Idaho,

In Memoriam

Barbara Durham: Judge was pioneer for women's equality in the legal profession and on the bench

"I have a personal bias in favor of judges working their way up through the judicial system," Barbara Durham told a reporter, "so that when one gets to the higher court, one is familiar with the system, bottom to top." Durham was the only Washington judge to serve at all four levels of the state's courts, starting on the Mercer Island District Court in 1973 and retiring in 1999 as chief justice of Washington. The comment also reflects the absolute confidence Durham always displayed. From childhood she planned a career in law.

A debater and finance major at Georgetown, Durham spent a boring year with Merrill Lynch in New York before entering Stanford Law School. She joined the King County Prosecutor's Office in 1968, then went into private practice, serving as a part time judge on Mercer Island until she moved to a King County Superior Court seat. After three years there, Governor Ray appointed her to the Court of Appeals; four years later Governor Spellman appointed her to the Supreme Court. She was the second woman to serve on the court. Justice Durham was subsequently elected and re-elected the court's first woman chief justice by her colleagues.



Durham took a great interest in court improvement, sitting on numerous commissions and study groups and even advocating, unsuccessfully, reducing the court's size by two members and changing the way appellate judges are selected, to reduce the influence of politics and campaigning on judicial selection. During her tenure the first voter's pamphlet for judicial races appeared, and Supreme Court oral arguments were televised on TVW. Failing health forced her to resign from the court and decline appointment to the 9th Circuit Court of Appeals in 1999.

Durham was a conservative on criminal law issues and saw part of her role on the high court as bringing it back to the middle philosophically. But she was always keenly aware of her role as a pioneer in the law, from law school to the Supreme Court, and served as counsel and mentor to many women who followed in the profession. Her death occurred two weeks before Justice Mary Fairhurst made the Washington State Supreme Court one of the few in the nation with a majority of women members.

A memorial service and reception for Justice Durham will be held February 14 at 5:00 p.m. at the Washington Athletic Club in Seattle. Friends have established the Barbara Durham Fund for Research in Neurodegenerative Diseases. Contributions may be directed to Jeneil Lagasse, Department of Neurology, University of Washington, PO Box 356465, Seattle WA 98195. Justice Durham's husband, Dr. Charles Divelbiss, survives her.

Barbara Durham was born in Anacortes October 6, 1942. She died in Mount Vernon December 30, 2002, age 60.



Ferestien



Knack



Hicks



Anderson



Layton



Kagan

U.S. District Court for Idaho, and the U.S. Patent and Trademark Office.

Dana Ferestien, Mary Re Knack and Peter Hicks have been promoted to partner in the Seattle office of Williams, Kastner & Gibbs PLLC. Mr. Ferestien is a commercial litigator concentrating on contractual disputes, property rights, and business torts. Ms. Knack focuses on defense litigation related to health care, product liability,

PS as associates. Mr. Anderson focuses on civil litigation, and Mr. Layton works with the firm's government affairs group. Kenneth S. Kagan has been named shareholder in the firm. He focuses on criminal law, legal ethics and professional responsibility, and commercial litigation.

Lincoln C. Beauregard, Loren A. Cochran, Max E. Jacobs and Sue E. O'Reilly have joined the Tacoma office of Gordon

J. Markham Marshall has joined the Seattle office of Lane Powell Spears Lubersky as of counsel in the labor and employment group. Mr. Marshall is a fellow of the College of Labor and Employment Lawyers. Michelle A. Wong has joined the firm's Seattle office as an associate in the business group. She previously served as an extern in the Washington Court of Appeals.



Beauregard



Cochran



Jacobs



O'Reilly



Marshall



Wong

ity, mass tort and civil matters. Mr. Hicks focuses on insurance defense and employment-related litigation.

Steve Parkinson has joined Ater Wynne LLP in Seattle. He helps businesses resolve environmental problems, meet regulatory requirements, and defend against environmental claims and liability.

Jason W. Anderson and Timothy C. Layton (member of the New York, Virginia and Washington, D.C., bars) have joined the Seattle firm Carney Badley Spellman

Thomas Honeywell Malanca Peterson & Daheim as associates. Mr. Beauregard concentrates on litigation, including personal injury, civil rights and discrimination. Mr. Cochran focuses on media law, defamation, plaintiffs' litigation, personal injury and criminal defense. Mr. Jacobs practices civil litigation involving products liability, commercial matters, personal injury and civil rights. Ms. O'Reilly focuses on estate planning, business organization and transactions, and taxation.

Kenneth D. Stoker has joined the Spokane firm Waldo, Schweda, Montgomery PS.

David M. Knutson and Jody M. McCormick have become shareholders in the Spokane firm Witherspoon, Kelley, Davenport & Toole. Mr. Knutson focuses on business and tax, while Ms. McCormick concentrates on banking, real estate and creditor rights.

Thomas D. Adams has been appointed shareholder-in-charge of the Seattle office



Adams



Andrus



Fisher



Guess



Nunn



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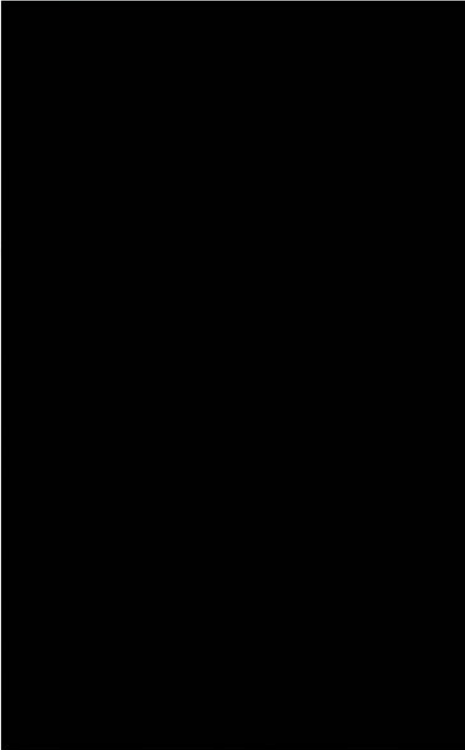
Disciplinary Notices

of Bullivant Houser Bailey PC. Mr. Adams has been a member of the firm for more than 16 years, focusing on commercial litigation and alternative dispute resolution.

Preston Gates & Ellis LLP has named six new partners in the Seattle office. **James A. Andrus's** practice includes a broad range of corporate finance transactions, including venture-capital investments, mergers and acquisitions, and general corporate matters. **Jonathan J. Fisher** focuses on mergers and acquisitions, as well as public and private securities offerings. **Philip M. Guess** focuses on commercial litigation, including derivative actions, large contractual disputes, large construction disputes, and class-action litigation. **Mark G. Jackson** concentrates on federal procurement counseling and litigation, including disputes arising from the award and performance of federal contract, government audits and investigations, and defective pricing. **Todd L. Nunn** practices general commercial litigation in state and federal court on behalf of corporate and municipal clients. **Matthew D. Wells** focuses on environmental and land use law counseling and litigation.

Bruce E. Dick has rejoined the Bellevue office of Perkins Coie LLP as a partner. He concentrates on the representation of technology companies, closely held businesses, and high net-worth individuals in connection with business formation and transactions. ↵

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule ELC 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, 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.



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E-mail:
questions@wsba.org

Consumer-Information Pamphlets Available

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

For a complete listing of pamphlets and pricing information, contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or see the WSBA Web site at www.wsba.org/consumer-information.

Note: A special discounted rate is available for qualified nonprofit organizations — ask the WSBA Service Center for details.

Law Week 2003

April 28 - May 2



A Lawyer or Judge in Every School

Visit www.lawweek.org or contact Lisa Harper
at 206-733-5944 or lisak@wsba.org.

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 the 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 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 the 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 WSBA annual business meeting in September 2003. The president-elect is expected to attend two-day board meetings held approximately every five to six weeks, as well as numerous sub-committee, section, regional, national and local meetings. In September 2004, at the 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, courts, media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time will need to be devoted to communication by letter, 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; Robert Boggs, Ray Gonzales, Bill Hyslop and Fawn Sharp.*

2003 Notice of Board of Governors Election

Nomination form deadline: March 3, 2003

Three positions on the WSBA Board of Governors will be up for election this year. These are 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.

Nomination forms are available from the WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; 206-727-8244; or the WSBA Web site (www.wsba.org/bog/notice.htm). The WSBA executive director must receive nomination forms 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.

Candidates' biographical statements 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.

WSBA Members on Active Military Duty

WSBA members who are on active duty in the U.S. military service may transfer to inactive status (if they are not otherwise engaged in the practice of law that requires them to be active members of the Bar). The WSBA bylaws provide that a member in military service who has been inactive for five years or less may, within 90 days after termination from active duty, transfer to active bar membership status by paying the current active membership fee and otherwise complying with the bylaws. For more information, see WSBA bylaws Art. II (C)(3) <http://www.wsba.org/bylaws/bylaws.doc>.

WSBA's Legal Services to the Armed Forces Committee Is Calling Volunteers

Mobilization of military personnel creates a great need for legal assistance in the areas of basic estate planning, powers of attorney and healthcare directives. WSBA's Legal Services to the Armed Forces Committee is spearheading an effort to gather names of WSBA members willing to serve our reservists and active armed forces and their families based in Washington by volunteering time *pro bono*. Volunteers will receive

training from legal staff at local military bases. Please contact Ken Luce, chair of the Legal Services to the Armed Forces Committee, at 253-922-8724 or guardhi@aol.com.

New Edition of Washington Civil Procedure Deskbook Released by WSBA-CLE

A fully revised, new edition of the three-volume *Washington Civil Procedure Deskbook* (edited by David D. Swartling) is now available. The deskbook contains everything you need to know for civil practice in Washington — comprehensive discussion of rules and procedure, plus concrete practice tips from experienced Washington practitioners. In addition to two diskettes containing sample forms, checklists and pleadings, this work provides complete coverage of commencement of the action; service of process; pleadings, motions and orders; parties; depositions and discovery; trials; judgment; provisional and final remedies; and general provisions. The deskbook is \$375, or \$337 if you sign up for automatic update service (plus \$9 shipping/handling and 8.8 percent sales tax for Washington orders). To order, see the WSBA Web site at <http://store.yahoo.com/wsbastore/301du.html> or call 206-733-5918.

License Fee Reminder

Licensing Packets

Licensing packets were mailed in December. These include your license-fee invoice, trust-account form and, if applicable, the MCLE reporting form (the C-2 Compliance Affidavit). 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 by the February 3, 2003, deadline, regardless of whether or not you receive the licensing packet. Failure to pay fees due by the deadline may result in late-payment penalties and possibly suspension. (See "Late Payment Actions" below.)

Lawyers' Fund for Client Protection (LFCP) Fee

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, payment of this fee is due with your license fee by the February 3, 2003, deadline.

Late Payment Actions

To avoid penalties and possible suspension, we encourage you to pay your mandatory license fee (as well as the LFCP fee for active members) by the February 3, 2003, deadline. If these annual fees are not paid by March 3, 2003, a 20 percent latepayment penalty will be imposed on your license fee. After April 1, 2003, the latepayment penalty will be increased to 50 percent. If your license fee or penalty assessment (for all members) or LFCP fee (for active members) remains 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 license fee and pen-

alty (triple the original license fee) and LFCP fee (for active members), as well as satisfy any outstanding MCLE compliance issues.

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.

More Information

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

MCLE Reporting

Group 2

Active WSBA members who are in reporting group 2 (active members admitted in 1976 through 1983; or in 1992, 1995, 1998 or 2001*) are reporting CLE credits this year 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. 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 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, your C-2 compliance affidavit was due to the WSBA on February 3, 2003. If you are in group 2 and have not yet met your CLE requirements or submitted your C-2 compliance affidavit, you will receive an automatic four month extension, but you must also pay a late fee. You must make up any needed credits before May 1, file the signed C-2, and pay the late fee. The late fee is \$150 the first year, and then increases by \$300 each consecutive reporting period that you file late (a reporting period is a three-year reporting cycle). For more information, see the WSBA Web site at www.wsba.org/faq/mcle.htm.

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.

ABA Midyear Meeting

Seattle will be the host city for the American Bar Association's 64th Midyear Meeting. It will be held February 5-11 at the Washington State Convention and Trade Center. For program and registration information, see <http://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 888847-0208.

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 Nestoroff at 206-223-6242.

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.

YMCA Mock Trial Seeks Volunteers

The state competitions for the YMCA Mock Trial Program will be held Friday, March 28, through Sunday, March 30, 2003, at the Thurston County Courthouse in Olympia. Volunteer raters are needed. For further information, please contact Mary Brown at wamocktrial@earthlink.net or 360-534-0155.

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.

Lincoln Day Banquet

The 95th annual Lincoln Day Banquet, sponsored by the Tacoma-Pierce County Bar Association, will be held February 19 at the Tacoma Sheraton Hotel. Dinner will be at 7:00 p.m., preceded by no-host cocktails at 6:00. Keynote speaker will be Chief Justice Frank J. Williams of the Rhode Island Supreme Court. Justice Williams is a noted Lincoln scholar, author of the book *Judging Lincoln*, and owner of a vast collection of Lincoln memorabilia. For information about the banquet, phone 253-272-8871.

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

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 all 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 2003/2004 *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., Ste. 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 _____

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.

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 April 28, coinciding with the nationally celebrated Law Day on May 1. To learn more about the program or to participate, visit www.lawweek.org or contact Lisa Harper at 206-733-5944 or lisak@wsba.org.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in January 2002 is 1.265 percent. The maximum allowable interest rate for February 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.

Learn More about Case-Management Software

The WSBA Law Office Management Assistance Program (LOMAP) office maintains a computer for members to re-

view 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.

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 percent) will be added to orders shipped within Washington.

BOG Meetings

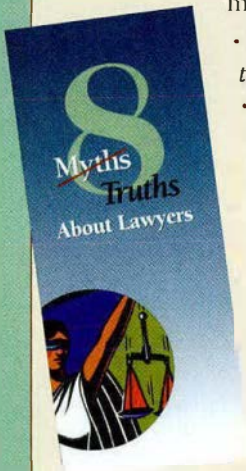
- February 6 – Seattle
- April 11-12 – Bellevue
- May 9-10 – Spokane

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 Donna Sato at 206-727-8244 or donnas@wsba.org. The complete BOG schedule is available on the WSBA Web site at www.wsba.org/hog/schedule.htm.

8 Myths Truths About Lawyers

Help us stamp out some of those myths about lawyers! The new *8 Myths Truths About Lawyers* brochure, developed by the Proud to Be a Lawyer Task Force, is available for purchase. The brochure tackles the following myths:

- *The United States has more lawyers than any other country.*
- *Lawyers are selfish and greedy.*
- *Lawyers stir up litigation for their own personal profit.*
- *Huge punitive damage awards are frequent and on the rise.*
- *The McDonald's verdict shows how foolish juries are.*
- *Lawyers who defend criminals are just promoting crime.*
- *When there's an accident, lawyers are among the first on the scene, soliciting business.*
- *The jury system is not worth keeping.*



The cost is \$35 per 100 (price includes shipping and handling).

Yes! I would like to order _____ packets @ \$35 per packet (100)

\$ _____

If in Washington, please add WA state sales tax @8.8% \$ _____

Total \$ _____

check enclosed (payable to WSBA)

MasterCard Visa

No. _____ Exp. date _____

Name as it appears on card _____

Signature _____

Please send to:

Washington State Bar Association, Order Fulfillment
2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330

MasterCard and Visa orders may also be placed over the phone by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Name _____	
Address _____	
City _____	State _____ ZIP _____
WSBA office use only: 40800C●MM	
date _____	check no. _____ amount _____

Local Hero Award Presented to Everett Attorney

Everett lawyer **Deane W. Minor** received the WSBA Local Hero Award at the December Board of Governors meeting. Mr. Minor is a family law practitioner known for his work in adoptions. Since the mid-1980s, Mr. Minor has volunteered with the Snohomish County Legal Services, and for the past several years, he has served on its board. His dedicated community service includes serving on the board of directors of the Everett Public Schools Foundation and the Everett School's Site Facilities Committee. In addition to giving presentations to local schools on legal subjects, he regularly allows students who are interested in becoming lawyers to "shadow" him for a day, so they can see what the practice of law is like. Mr. Minor is also an active and enthusiastic youth soccer coach who has on occasion coached more than one team at a time. He is a longtime member of the Everett Providence Foundation board, and has served on the board of Operation Improvement and the board of directors for his church.

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 is 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.

Resources on Sale for Half Price

The 2002-2003 *Resources* membership directory is now on sale for half price:

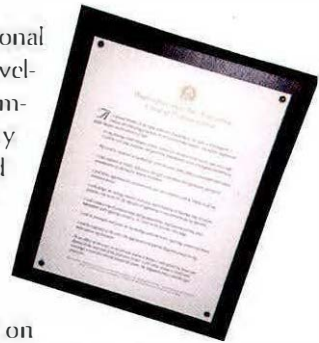
- \$9.00 – WSBA members (\$9.79 in WA)
- \$18.00 – non-WSBA members (\$19.58 in WA)

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

Note: The 2003-2004 edition will be available in the spring.

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:
 @ \$4 each (includes shipping) \$ _____

Creed mounted on a wooden plaque:
 @ \$20 each (includes shipping) \$ _____

If in Washington, add state sales tax @ 8.8% \$ _____
 Total \$ _____

- check enclosed (payable to WSBA)
- MasterCard Visa

No. _____

Exp. date _____

Name as it appears on card _____

Signature _____

Please send to:

Member and Community Relations
Washington State Bar Association
 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330

MasterCard and Visa orders may also be placed over the phone by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Name _____

Address _____

City/State/ZIP _____

WSBA office use only: 44200COMM date _____ check no. _____ amount _____
--

LAW OFFICES OF SHERRI M. ANDERSON, PLLC

is pleased to announce that

Christi M. Jackson

has joined the firm as an associate.

The firm's practice emphasizes complex family law matters.

1411 Fourth Avenue, Suite 1405
Seattle, Washington 98101
Telephone: 206-254-1234
Fax: 206-254-1359
www.smalaw.biz

FORSBERG & UMLAUF, P.S.

A Litigation Defense Firm

is pleased to announce that

Ann C. Heacox

and

Matthew R. Wojcik,

formerly with Williams Kastner & Gibbs, PLLC,

have joined the firm as associates.

Forsberg & Umlauf is a defense firm practicing in the areas of construction, maritime, professional liability, personal injury, property damage, commercial disputes, insurance coverage, asbestos, product liability, and other litigation defense matters.

900 Fourth Avenue, Suite 1700
Seattle, Washington 98104
Telephone: 206-689-8500
Fax: 206-689-8501
Email: firm@forsberg-umlau.com

David Mann and Mickey Gendler

are pleased to announce their joint enterprise in the practice of law. Pursuant to "coin flip" (appeal pending, *sub nom. Mann v. Gendler*, Florida Supreme Court No. 200202), the firm will be known as:

GENDLER & MANN, LLP

Michael W. Gendler
David S. Mann
Melissa S. Arias
David E. Ortman, law clerk

The firm emphasizes land use, environmental, real property, civil rights, and commercial litigation.

1424 Fourth Avenue, Suite 1015
Seattle, Washington 98101-2217
Telephone: 206-621-8868
Fax: 206-621-0512

Kyung J. Hahm,

former international tax manager at Deloitte & Touche LLP, is pleased to announce the opening of his new law firm.

LAW OFFICES OF **KYUNG J. HAHM, PLLC**

General business law; contract disputes and litigation; tax planning and litigation; tax credit and deduction analysis and defense; and international tax.

Pioneer Building
600 First Avenue, Suite 428
Seattle, Washington 98104
Telephone: 206-621-5338
Fax: 206-621-5339
E-mail: kyung@hahmlaw.com
www.hahmlaw.com

**ALISON CHINN
HOLCOMB**

Attorney at Law

is pleased to announce
the opening of a new practice
focused on criminal defense.

Market Place Two, Suite 200
2001 Western Avenue
Seattle, Washington 98121
Telephone: 206 812 0123

Referrals welcome

**Phillips McCullough
Wilson Hill & Fikso, PS**

is pleased to announce
its new firm name:

**McCULLOUGH HILL
FIKSO KRETSCHMER
SMITH, PS**

Real estate, land use, business,
construction law and estate planning.

John C. McCullough, G. Richard Hill, Robert B.
Fikso, Marc T. Kretschmer, Matthew P. Smith,
Elizabeth Fitzhugh, Courtney A. Kaylor

Market Place Tower, Suite 1130
2025 First Avenue
Seattle, Washington 98121
Telephone: 206 448-1818
Fax: 206-448-3444
www.mhfs.com

**GROFF MURPHY
TRACHTENBERG &
EVERARD PLLC**

is pleased to announce that

Richard J. Wickham

has joined the firm as an associate.

Mr. Wickham is a graduate of
Holy Cross College, and received his
law degree from
Notre Dame Law School.

Mr. Wickham's practice will focus
on commercial law, government contracts,
and construction litigation.

300 East Pine Street
Seattle, Washington 98122
Telephone: 206-628-9500
Fax: 206-628-9506
E-mail: rwickham@groffmurphy.com

Calendar

ANIMAL LAW

Animal Law – A Bird's-Eye View

March 7 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

BUSINESS LAW

WYLD: Advising the Small Business

February 20 – Seattle and Vancouver, WA. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

Employment Law Insitute

March 7 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Employment Law

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

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.

Estate Planning for the Small to Medium Estate

March 7 – Seattle; March 20 – Tacoma; March 26 – Spokane. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ENVIRONMENTAL LAW

Environmental and Land Use Law Section Winter CLE

February 12 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

GENERAL

Sexual-Misconduct Liability

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

Law Office Management Institute and Exposition

March 7 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Accounting for Lawyers

March 13 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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.

IMMIGRATION LAW

Northwest Regional Immigration Seminar

February 20-21 – Portland. CLE credits TBD. By the American Immigration Association, Oregon Chapter; <http://www.ailaoregon.com>.

INTELLECTUAL PROPERTY

Intellectual Property Institute

March 21 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LITIGATION

Products Liability

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

Experts

February 14 – Seattle. 3.25 CLE credits. By WSTLA; 206-464-1011.

Video Replay: Trial Stars

March 20 – Spokane. 6.25 CLE credits, including .5 ethics. By WSTLA; 206-464-1011.

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Stay here. Speak of familiar things a while.
— Wallace Stevens, "Debris of Life and Mind," *The Collected Poems* (1982)

Fifteen years ago this month I attended my first Board of Governors meeting as editor of *Bar News*. The betting was that I wouldn't last long. The board was going through its 15-year *Bar News* itch and nearly made the editor a staff position the summer before. I inherited a board committee sent to figure out what to do about the magazine. Fifteen years earlier, displeased with another editor, the board fired him and actually took the job in-house for a while. Eventually they went back to having a practicing lawyer edit the magazine.

When I laid down the pen in 1995, I'd lasted eight years and *Bar News* was nationally recognized as one of the best state bar magazines. It looked a bit ramshackle — we had no money for art or color — but the content was strong, and members vigorously debated issues in the letters section.

2003: Another 15 years, another BOG committee looking at the magazine, once again considering whether the now 68-year practice of an independent editor ought to be ended. Last fall, Editor Mark Panitch had to resign — before the Editorial Advisory Board (EAB) could seek and select a replacement. Someone was needed who could step in for a while and already knew the drill. With the possibility of the editorship being taken in house pending, there may or may not be a vacancy at all. So I'm back for a while, at the EAB's request. Call me "Your Interimcy."

Much has changed since the last time I became editor. In 1988 I was 32, recently admitted to practice, and working for a Vancouver firm. I wrote my application letter on a typewriter. The magazine was laid out by sticking waxed strips of copy onto big boards. There was no e-mail. Faxes were just coming into use.

Now I'm 47 and have been a lawyer nearly 20 years. I do almost all the editing and communication with authors by e-mail. The layout is done on computer, handed off to the printer on disk, and printed direct to plate — no large sheets of film any more.

Redux All Over Again

by Lindsay T. Thompson
Bar News Editor

I've changed, too. As editor I met lawyers all over the state and they are friends to this day. I know the difference between practice in Republic, Port Angeles, Walla Walla, Yakima and Cathlamet. I've been a small-town lawyer, a government lawyer, and a big city boutique-firm lawyer. Now I run my own firm, and sweat the challenges of cash flow and market-

ing, and the occasional dot-com crash. Having lost a parent to death and having nearly cashed my own chips in a bicycle accident, I have intimations of mortality I didn't a third of my life ago. I've served a term on the Board of Governors and seen how running

Let us walk together for a while and visit in the pages of our magazine.

the association looks from there.

But there are also constants in the life of the Bar and *Bar News*: our commitment to self-regulation, with its consequent obligation to serve the public that grants us that right; defense of the judiciary in a time of increasingly partisan campaigns and attacks from the media and legislative bodies. *Bar News* stands for helping members be better lawyers — to be more than the least we can be, better than just dispensing justice to those of whom we approve, pitching in rather than using the inadvertent *pro bono* we all do as an excuse for indifference to the needs of those who can't afford us. We must look at improving the profession as President Kennedy did going to the moon: "We do this, not because it is easy," he declared, "but because it is hard."

Another thing that won't change is how I report on association governance: as I see it, without fear or favor.

I don't know how long this gig will last, but I intend to make the most of it, and make *Bar News* the best I can. Let us walk together for a while and visit in the pages of our magazine. As one of my literary mentors, North Carolina journalist, editor and poet laureate Sam Ragan, wrote: "The journey goes on/And sometimes days/Are more important than years."

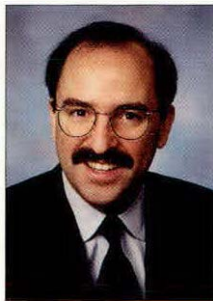
It's good to be back. 🐾

Lindsay Thompson is a shareholder of Thompson Gipe PC, in Seattle (www.thompsonlaw.com). He was Bar News editor in 1988-95, and a member of the WSBA Board of Governors in 1998-2001.

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