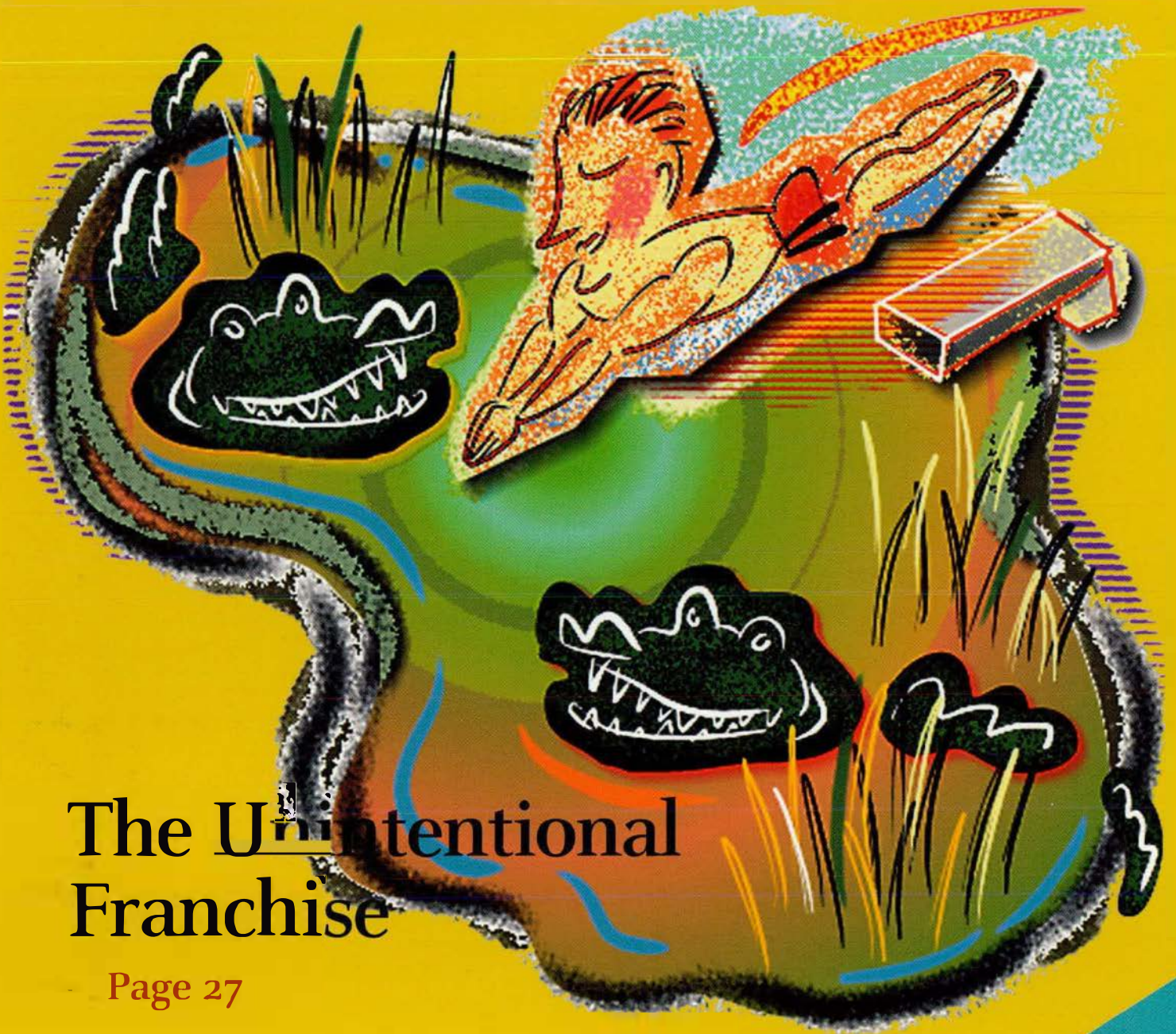


Washington State

BarNews

The Official Publication of the Washington State Bar • MARCH 2003



The Unintentional Franchise

Page 27

NEW!
Around the State P. 43

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

Before attorneys took on the renters' suit against the rumored "wealthy man about town," they wanted to verify his assets. The search yielded little until they found stories of his string of polo ponies through the LexisNexis collection of 12,000 news sources.



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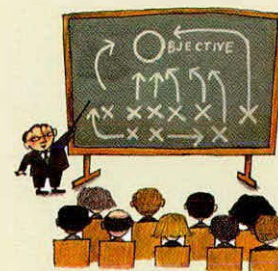
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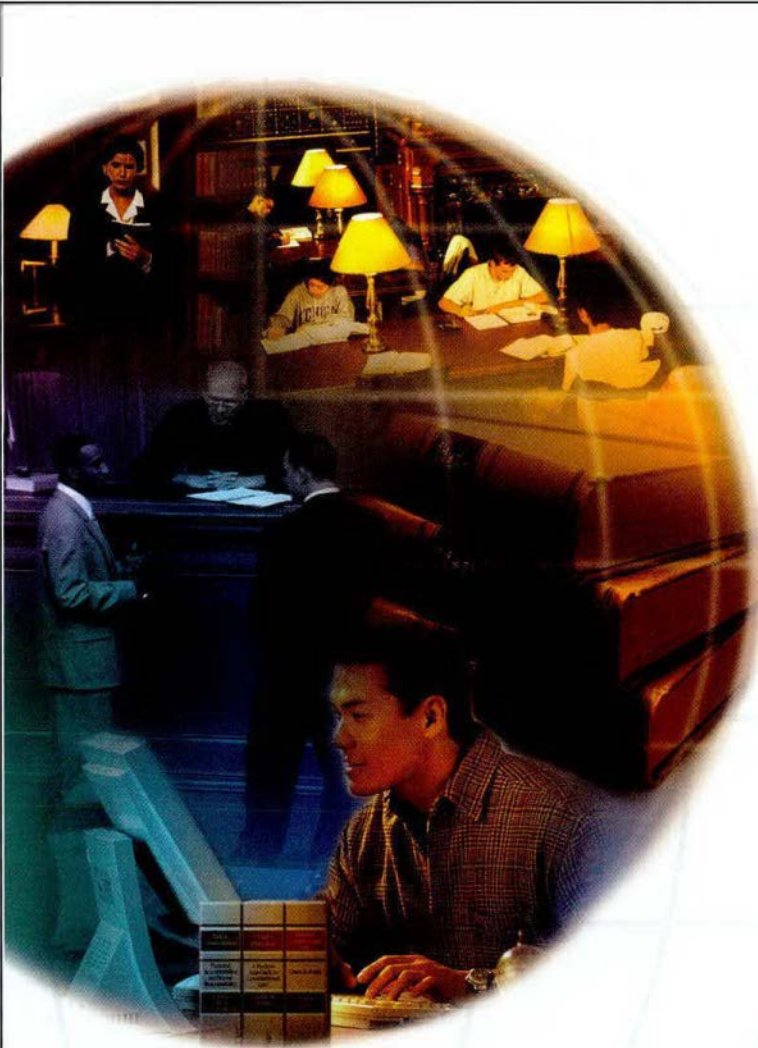
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They've got to be around here somewhere

Editor:

Thanks for the nice comments in the recent *Bar News* (Letters, February 2003) concerning my past book reviews. I did two others that were never printed and for which I did not receive any notes of thanks, rejection, or whatever. Nothing.

So I gave up. They may still be around the office. One of them concerned the biography of John Quincy Adams, who was an attorney. After his defeat for a second term, he not only went to Congress — the only president to have done so — but he argued in the famed *Amistad* case for the side of the slaves who had mutinied while on board. It was a good book and if the review is still in your office, quite timely.

The other title has been forgotten. I have neither with me in North Carolina nor any way to procure them. If I can find the book I will review Hamilton Basso's paean to the law in a small southern city written about 25 years ago, which I have never read and which Borders, for one, does not have in stock.

Thanks again for the words of encouragement. We codgers don't hear many of them anymore. Yes, I am now a codger, and I used to not know how to spell the word. However, I am a young codger.

Philip H. DeTurk
Pinehurst, NC

Arbitration vs. trial: feeling lucky?

Editor:

I enjoyed the article "Enforcing Consumers' and Employees' Legal Rights: 12 Myths about Arbitration" by Keith Maurer (January *Bar News*, p.30). One myth I was surprised to see omitted is: Plaintiffs prevail more often in litigation than they do in arbitration. I used to believe this myth, and assumed it was the main reason why plaintiffs often try to avoid arbitration clauses in agreements. However, I was surprised to learn recently that in the employment context, employee plaintiffs succeeded 63 percent of the time at arbitration versus only 14.9 percent of the time at trial, placing a serious question mark on popular wisdom (see Lewis L. Malby, "Private Justice: Employment Arbitration and Civil Rights," *Arbitration Now*; Paul H. Haagen, ed., American Bar Association, 1999). Nev-

ertheless, it also appears that while plaintiffs succeed more frequently before arbitrators, the size of the average award is greater at trial, potentially making the expected value of litigation larger. Malby points out that this factor can be accounted for by comparing the total amount received by all plaintiffs in arbitration (not merely those who prevailed) as a percentage of their initial "demands" with the comparable figure for litigants. He notes that the "adjusted outcome" for arbitration plaintiffs is 18 percent (i.e., arbitration plaintiffs on average received 18 percent

of their demands), while litigation plaintiffs received only 10.4 percent.

In light of this data, it seems plaintiffs should be informed by their counsel of the counterintuitive odds associated with arbitration and litigation. Risk-averse and risk-neutral plaintiffs might prefer arbitration to increase their chances of receiving some compensation instead of taking the gamble of going to trial. We might also see future defendants become less insistent on enforcing arbitration clauses (though, as Maurer's article points out, if costs of litigation are much higher than

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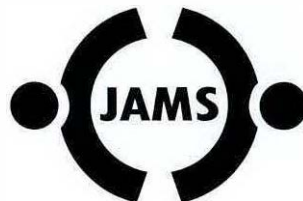
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costs of arbitration, that might decrease the defendant's incentives to opt for trial).

Steve P. Calandrillo
Assistant Professor

University of Washington School of Law
Seattle

Mindless bureaucracies always spoil Edenic past

Editor:

I've spent a bit of time thinking about CLEs lately. Letters and articles in *Bar News*, conversations with co-workers and colleagues, and the occasional odd flyer have me wondering if we haven't lost our focus on CLEs.

When I was admitted in 1988, I had the impression that CLEs were primarily about education. After all, it's right in the acronym. Back in those days, the process was simple. You had to get 15 credits a year, and could carry over 30. Then somewhere along the way, a percentage of audio/video credit was permitted. Then someone decided that the better route was 45 credits every three years, and to limit the carryover to 15 credits. Some, including myself, lost 15 credits we had previously been carrying over. And somewhere along the way, we were told we'd have to get a certain percentage of credits in studying ethics.

Accounting for CLEs used to be a simple matter. Now, when my reporting date comes around, I have to call my brother, an engineer, to help me with the math and calculations. I have .75 credits here, 2.25 there, carried over. But this is only part of the problem. Recently, an acquaintance advised me that she had to order up some CLE materials from the Bar to fulfill her last few credits. A dedicated, bright attorney, she is very busy and simply hadn't had the chance to nail down the last few credits. The Bar was great in helping her get the materials on time, but she learned something that makes little sense to me. When I asked why she didn't simply use some of the materials one of her co-workers already had on hand (he has a number of video and audio tapes), she was told that only the person who paid for the tapes could get credit.

CLEs have become the 800-pound gorilla, sitting in the corner of the room. While no one wants to acknowledge the

beast's presence, it keeps eating, growing out of control. Where the original goal appears to have been educating attorneys, the primary drive now appears to be financial, feeding the beast.

I think it's time to regain our perspective. Lawyers studied ethical issues before that requirement appeared on the horizon; we just didn't make a fuss about it. We studied it because most of us want to avoid ethical pitfalls, discipline and lawsuits. We got the CLE credits because we were required to, but also because it helped us learn about changes in the law, taught us

something new, or refreshed us in familiar areas.

I'd like to see the Bar return to the old CLE accounting system. Allow one-third in audio and/or video to accommodate busy or remote practitioners, but trust us to keep current on ethical issues. Keep the math simple. Give credit for self-study irrespective of who bought the tapes. Let's try a return to the old system for a few years, even if only as an experiment.

Tom Pacher
Coupeville

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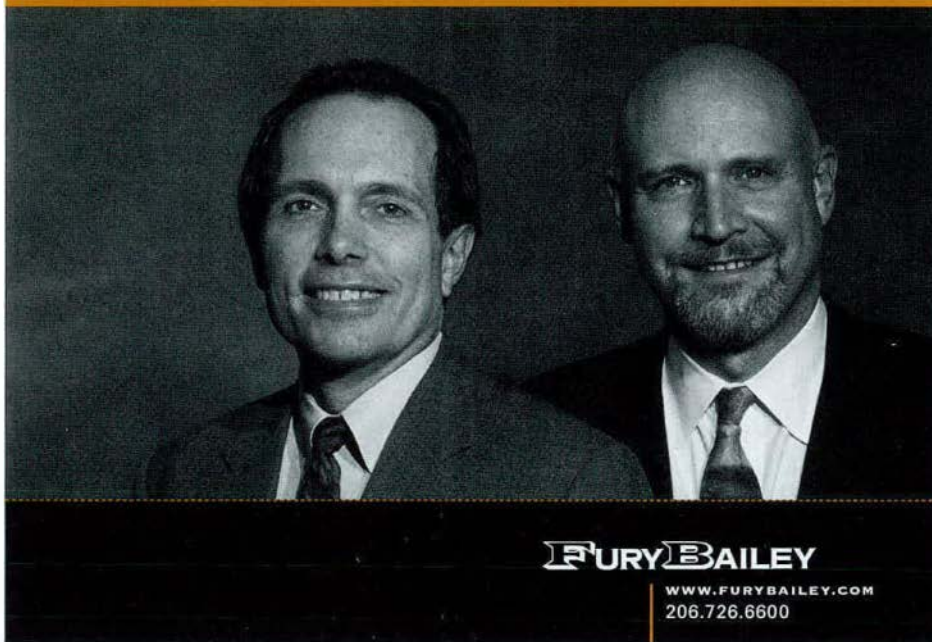
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And if private lawyers are the solution, why do we still have a problem?

Editor:

Last time I looked, the court was still dictating rules of conduct for lawyers. A rule regarding *pro bono* legal work surely is no different than the other rules dictating conduct, behavior and aspirations for the profession.

Mr. Ley's diatribe against a rule promoting *pro bono* legal work is not a challenge to the Court's authority or its neutrality; it is an attack on a fundamental civic virtue which any right-thinking citizen would gladly recognize and support. Mr. Ley wrote: "The *pro bono* concept implies that unpaid lawyers are just as good as private lawyers." Mr. Ley, concepts don't imply anything. *Pro bono* does stand for the classical civic and moral virtue that those who have the capacity, economically and personally, are bound to serve others. *Noblesse oblige* is a modern expression of Cicero's exhortation to those whose station and personal capacity give them greater resources to serve the public good. *Pro bono*, Mr. Ley, is the shortened form for *pro bono publico*.

All lawyers, Mr. Ley, are public lawyers, working in a legal system supported by the government and its people. For those of us who perform *pro bono* work, Mr. Ley, the system treats us no differently, and we treat our clients no differently. Mr. Ley, if you believe you must be paid privately in order to assure good work, so be it. However, those who serve the public good are doing good work regardless of the form or amount of compensation.

Mr. Ley, your elitist and xenophobic arguments are offensive, but I'll defend your right to express them, at no cost to you.

Michael Danko
Seattle

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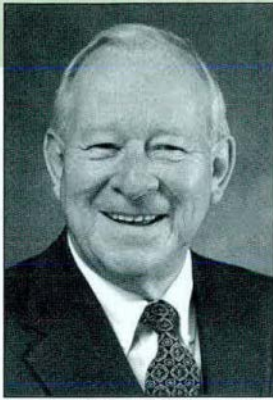
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The Crisis of Tort Reform — Let's Blame the Lawyers

by Dick Manning
WSBA President

There's an all-out attack raging in Olympia against the victims of neglectful health care providers under the guise of softening that industry's medical-malpractice insurance premiums. In the Legislature, it's called tort reform. If the Liability Reform Coalition (LRC) has its way, victims of medical negligence will be victimized twice.

Normally I tend to keep my mouth shut about these things (and some who read this will wish I had), but the cumulative impact of the tort reform being proposed is so onerous and unfair that I must speak out. These are my personal views (I have no vote except to break a tie) and do not necessarily reflect the beliefs of the WSBA Board of Governors, who, at the time of writing this column (January 2003), have not yet decided whether to take a position. But all who read this should be aware of what is happening to the victims and the lawyers who represent them.

Normally I tend to keep my mouth shut about these things ... but the cumulative impact of the tort reform being proposed is so onerous and unfair that I must speak out.

The Proposed Legislation and Constitutional Amendment

Senate Bill 5209 (related to actions arising out of health care professional negligence) would:

- impose a cap of \$250,000 on noneconomic damages;
- limit contingent fees of claimants' lawyers on a sliding-scale basis;
- require a 90-day advance claim notice to the health-care provider before filing an action;
- establish a one-year statute of limitations and a three-year statute of repose (no action allowed after three years from the negligent act);
- eliminate the collateral source rule including contractual reimbursement out of a victim's recovery;
- eliminate joint and several liability, including situations where the victim is totally fault-free;
- require the same burden of proof as in fraud cases — "clear, cogent and convincing evidence";
- allow health care providers to require mandatory arbitration of claims (providers would control the process of se-

lecting arbitrators); and

- provide for the court to require awards above \$50,000 to be paid in periodic payments, which would terminate upon the victim's death.

Senate Joint Resolution 8207 would refer to the voters an amendment to the constitution which would allow the Legis-

lature to impose caps on noneconomic damages in all personal-injury and death actions. Practically speaking, the effect of these proposals is to eliminate most medical malpractice actions. This is because the costs (not attorneys' fees) of marshalling medical evidence, witnesses and experts is so expensive (and not reimbursable to a successful victim), there will be little incentive to bring these actions except in

cases of extreme economic loss. The LRC knows this, and presumably that is why these legislative proposals are written in such a way as to dismantle the justice system a piece at a time without a total legislative prohibition against these kinds of actions. With the LRC's approach, one has to ask: How will health care providers be offered more incentive to avoid malpractice, now that the barriers to it are being lowered?

Those seeking tort reform blame high medical-malpractice insurance premiums on high jury verdicts. And who is it who invariably files a demand for a jury? Ask your insurance-defense attorney colleagues; they will candidly admit that with rare exceptions, the defense does it every time.

The Causes

Historically, tort-reform legislation seems to arise when insurance companies' investment portfolio income has gone into steep decline, an event usually preceded by expansive marketing efforts marked by cutthroat competition, unrealistically low premiums, and loose underwriting. History repeats itself, and this cycle of boom and bust has been endemic throughout the entire liability, property and casualty insurance industry. Greg Walsh and Peter Hammett, partners at Parker, Smith & Feek, one of the Northwest's largest and most respected insurance brokerage houses, confirm this in

their analysis of insurance industry data. As stated in one of their timely publications:

The liability insurance crisis of the mid-1980's changed the rules of the game. Change came quickly, without warning and was very painful for most insurance buyers. Once stabilized, the insurance industry again became a 'buyer's market' with relaxed underwriting standards, broadened coverage and highly competitive pricing in virtually all industry segments and coverage lines continuing through the 1990's.

Walsh and Hammett point out that the industry as a whole generally operates with underwriting losses, which are offset by investment income. I have observed that, historically, when securities markets fall and crisis sets in, insurance companies blame lawyers (as they did in the 1980s). To be sure, I am sympathetic to physicians, hospitals and other healthcare providers who are caught in the squeeze between rising costs of medical care (better than 25 percent attributable to paperwork administration), on the one hand, and diminishing reimbursements for patient treatment by Medicare, Medicaid and health-

care insurance companies, on the other. (It's interesting to note that in Washington state the Medicare reimbursement rate to providers for treatment of a specific illness is only a little more than half the reimbursement amount for the same patient treatment in Washington, D.C.) Most of the physicians I know are working harder and longer hours to keep up with costs. They need help, and all of us — health care professionals, legislators, lawyers, the pharmaceutical industry and others — should be looking at solutions which address the real causes of rising health-care costs.

Independent Research and Surveys — Lawyers Are Not the Problem

What and who is driving tort reform in this state? It doesn't appear to be litigation. The most recent statistics (released by malpractice insurance companies in this state for 2001) indicate:

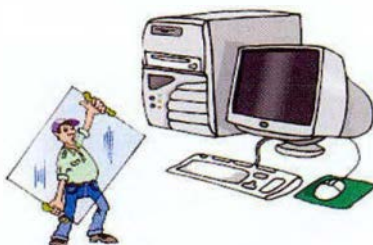
- * More than 400 malpractice actions were filed in 2001.
- * Out of all actions filed, only seven verdicts or settlements involved \$1 million dollars or more.
- * Punitive damages are not allowed in this state.

According to a study performed in 1998 by Ostrom & Kauder for the National Center for State Courts (unaffiliated with any trial-lawyer associations and nationally recognized as a valuable resource by all courts throughout the country), in medical malpractice actions:

- * Plaintiff's prevailed only 23.4 percent of the time.
- * The median value of those awards (including any punitive damages) was \$254,000.
- * In states that allow punitive damages, malpractice cases were only one percent of all punitive awards.

So it would seem that litigation awards (where victims have proven their damages in a court of law) are not driving tort reform. Nor does it appear that the vast majority of physicians are driving tort reform. On January 22, 2003, *The Seattle Times* released the results of a national survey published in *The Journal of the American Medical Association*. The survey showed the percentage of physicians some

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what or very dissatisfied with their profession because of increasing insurance premiums, decreasing income or diminishing control. The survey, conducted by Harvard Medical School, reached 12,000 general-practice and specialist physicians in 60 areas of the country. An in-depth study focused on 12 cities and included 500 Seattle physicians. Only 14.8 percent of the Seattle physicians expressed dissatisfaction, a slight decrease from a 1997 survey. Nationally, about 18 percent of all physicians expressed dissatisfaction, about the same percentage as in the 1997 survey, which surprised the researchers. The largest single source of dissatisfaction was "clinical autonomy" and "managed care plans." Interestingly, physicians tended to

Ideally, the industry benchmark is five percent. Most of this increase was in urban hospitals, with many rural hospitals having losses. But the trend — achieved through consolidations and cuts in unprofitable services — is a good one. So I ask again, is it really hospitals that are pursuing tort reform?

Insurance Premiums Will Continue to Rise with Damage Caps

Do caps on malpractice awards reduce premiums or at least keep them from increasing? Ask the doctors. Ask the insurance companies in California, Florida, Missouri, Nevada and West Virginia, states that have damage caps (some of these states have caps on the total award). Cali-

Is the LRC's motive to create a special, privileged class in the holy name of health care? And is the only way to accomplish this to get rid of all the lawyers?

be happier when they owned their own practices. So if most physicians are satisfied, who are these doctors in Olympia driving tort reform?

Dr. Bruce Landon, lead author of the Harvard Medical School survey report, provides a clue: "The study, which surveyed 500 doctors in the Seattle metropolitan area, was a more accurate measure of doctor satisfaction than counting doctors who show up at meetings or who answer surveys that specifically focus on problems." Using the latter methods, he said, "...you're more likely to hear from the disgruntled ones." So it isn't the vast majority of physicians. But they do have something to complain about: the Office of the Insurance Commissioner reports that 5.1 percent of physicians account for 54 percent of malpractice settlements and awards.

Could it be the hospitals in this state are pushing for reform? According to a report released by the State Department of Health (published in *The Seattle Times* on February 2, 2003), net operating income in Washington's primarily not-for-profit hospitals rose to \$225 million in 2002 (for-profit hospitals call this net operating profit). This was an increase of 66 percent from 2001, representing an operating margin of 2.8 percent on gross revenue.

ifornia premiums increased 190 percent after its Legislature adopted a \$250,000 cap on noneconomic damages in 1976. Of course, you don't hear a lot about California caps, because punitive damages are allowed there and are routinely sought and negotiated or litigated as part of a claim. The fact is that no premiums have ever been reduced and in most instances have been spiraling ever upward.

LRC — Show Us Valid Data That Victims Are to Blame

So we've come full circle: What and who is driving tort reform? And why are lawyers being demonized by the LRC media and lobbying efforts? I'm reminded of a quote from Shakespeare's Henry VI: "The first thing we do, let's kill all the lawyers," spoken by Shakespeare's character Dick the Butcher in plotting with the Jack Cade gang for the violent overthrow of the government. Is the LRC's motive to create a special, privileged class in the holy name of health care? And is the only way to accomplish this to get rid of all the lawyers? Is this effort representative of the belief of the vast majority of health-care professionals? I challenge the LRC for answers backed by valid data to the surveys and research reported here — and from sources not identified with the LRC and

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Putting the Shoe on the Other Foot

Besides health-care providers and insurance companies, the LRC is composed of companies engaged in every kind of business. The list includes Boeing; CPAs and Realtors; energy, construction, timber, architecture and engineering firms; and a variety of manufacturers. So should each of these businesses have their fees or prices capped and subject to a sliding scale? Should each be required to prove any claim by clear, cogent and convincing

evidence? Should joint and several liability be eliminated in any recovery by such companies? Should any of their claims be limited to a one-year statute of limitations? I can go on, but do I need to?

Solutions

There *are* solutions. But there is no one magic cure. Weeding out the relatively few health-care providers who give rise to most of the malpractice cases would be one. There should be legislation (there is in this state) allowing tortfeasors to express sincere apologies without such being admitted into evidence as an admission against

interest. When a Veterans Administration hospital in West Virginia instituted such a policy and offered prompt remediation/compensation, total litigation costs decreased dramatically.

Another solution would be to encourage the production of generic drugs to bring about significant decreases in the retail prices of prescription drugs, which are greatly driving up increases in overall health-care costs. Collaborative lawyering (see *Bar News* President's Corner, February 2003) in malpractice cases could significantly lower litigation costs for all parties.

State regulation of insurance companies could require that, while earning a reasonable profit, their financial records are subject to audit and rate regulation so that underwriting losses are minimized. This could smooth out the insurance-industry boom and bust that results in cyclical spiking of insurance premiums (and which is seized upon by the insurance industry to call for tort reform). California has recently adopted legislation to do just that.

To err is human. And after all, there is no medical malpractice award without medical negligence. Surely good minds (with good hearts) can find ways to provide relief to health-care providers without taking away the rights of an isolated group of victims. That's the least we can and should do. And it can be done by a coalition of satisfied physicians, other health-care providers, and federal and state agencies involved in the funding and delivery of health-care services that are interested in the real causes of rising insurance premiums and health-care costs. Get on the Internet (<http://dfind.leg.wa.gov/dfinder.cfm>) and let your legislator know how you feel! ✍

Dick Manning welcomes comment. He can be reached at jmb@seanet.com; fax 206-624-3865; or telephone 206-623-6302.

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“#%!? * Technology”

by Jan Michels

WSBA Executive Director

I used to say that the hardest part of management was managing people. No longer! I think the hardest part of management is managing technology. It can be singularly disastrous, infuriatingly complex and convoluted, and a “sucking vortex” for resources. A manager’s work in this area is never “done” and it’s usually three years behind! A manager cannot step in or personally resolve a nasty technology problem. Overall, managing technology is a “deadly embrace” (in technology terms — a situation with no way out). And if that isn’t enough, picture catching a virus or suffering damaging security or data breaches from a disgruntled employer or hacker. Remember the scandalous headlines about an executive who spent millions of dollars bringing an application online only to see it vaporize halfway through the funding and timeline. No, I’ll take people and their idiosyncrasies over technology enigmas anytime.

What led to this diatribe? I was frustrated in my efforts to “organize” the WSBA’s technology — with staff and an advisory committee — trying to assure that every need or demand has a home and is prioritized. I remember when technology was “a clever person who liked computers and wrote little “auto-magic” programs to help store and sort data. Recently the WSBA technology staff has had a series of “brainstorms” to avert later “blame-storms.” To be sure we’re pushing the most “futurist” horizons, we have added WSBA Governor Paul Lehto to our team. We have had the insight that “technology management” is composed of six or more business-management areas.

It should not be a surprise that for all the “auto-magic” solutions that technology offers, there is also a downside. So, partly to educate members about the technology that WSBA staff uses to support Bar business, and to offer a frame of reference about why technology is so difficult to manage, we offer our thoughts on the business-management areas of the technology challenge.

**I’ll take people
and their idiosyncrasies
over technology enigmas
anytime.**

Prologue: No longer is “anything you plug in” technology; and no longer is the data that technology “stores, presents or transmits” technology. It is a complex business tool — not an end in itself.

■ Internal Business-Application Management

At the WSBA, internal business applications include CLE registrations and MCLE tracking, accounting and general ledger, licensing and renewals, and discipline. Challenges come when upgrades and replacements are needed. These applications and the technology platform they run on can be expensive and confounding.

■ Desktops

An average ratio for centralized desktop support is one technology expert to 50 WSBA employees, but as desktop proficiency becomes a job requirement, the management challenge is to decide when and how to decentralize this support and how much proficiency at the desktop level to demand for various job positions.

■ Web Presence

A firm or organization Web site should be strategically designed to meet a business goal. But some sites evolve with information added randomly, like holiday decorations. Managing a Web site requires focusing on the goal, careful organization, constant upgrading and content management. The WSBA’s evolutionary style Web site is in the process of reinvention, to present content in an organized and user-friendly manner.

■ Communications Support

(List serves, bulletin boards, regular and broadcast e-mail, forums and panels)

This is a high-demand and high-growth area. The idea of the

WSBA becoming a "bounce point" for many forms of intermember communication is exciting, but decisions about whether to host these services in-house or through outside vendors requires management decisions about security, availability for use, infrastructure, firewalls, and hot-line support for problems.

■ **Meetings and Training Support**
(Distance learning, videoconferencing, interactive training programs, downloadable materials with hyperlinks)

While telecast learning, videoconferencing and Internet materials exist, no single technology can carry voice, video and files to a group simultaneously, except at elabo-

ately equipped studios. Whether and when to leap into this immature area of technology is a difficult decision.

■ **Interorganizational Hub**

This area concerns organizing the available electronic tools and assisting members in receiving the interlinking and access they need to practice law — somewhat analogous to the card file of an electronic library of resources.



How does a small or even a medium-sized law firm manage similar technology issues in-house? Can employers offer technology analysts, managers, programmers or network specialists the growth opportunities and excitement that will hold their interest?

Vendors may take umbrage with my saying so, but I feel I am at their mercy. A contract starts with a significant investment of hours (read money) while trying to reach a common language about what the client wants and what the vendor can commit to doing. Without thoroughly understanding the various areas that comprise technology management, any new tool, fix, enhancement or system migration in any one area may affect performance in others.

We plan to develop tools to help members analyze their business needs for internal applications and sort through the resources available to meet these needs. We want to assist members in evaluating in-house system applications, using application service providers, or purchasing "shrink wrapped" software. The advertising market is full of hype engineered to cause adrenalin to flow and anxiety to rise, while steering us toward certain products (see *Culture Jam: The Uncooling of America* by Kalle Lasn). Our technology team's best advice is to resist the first impulse to buy, and carefully consider the available choices; to concentrate energy on defining business needs; and to build enough expertise to make comprehensive, wise choices about managing technology.

Note: My spellchecker had many problems with the words I chose for this discussion — seems even our language about technology needs a new dictionary! ✍

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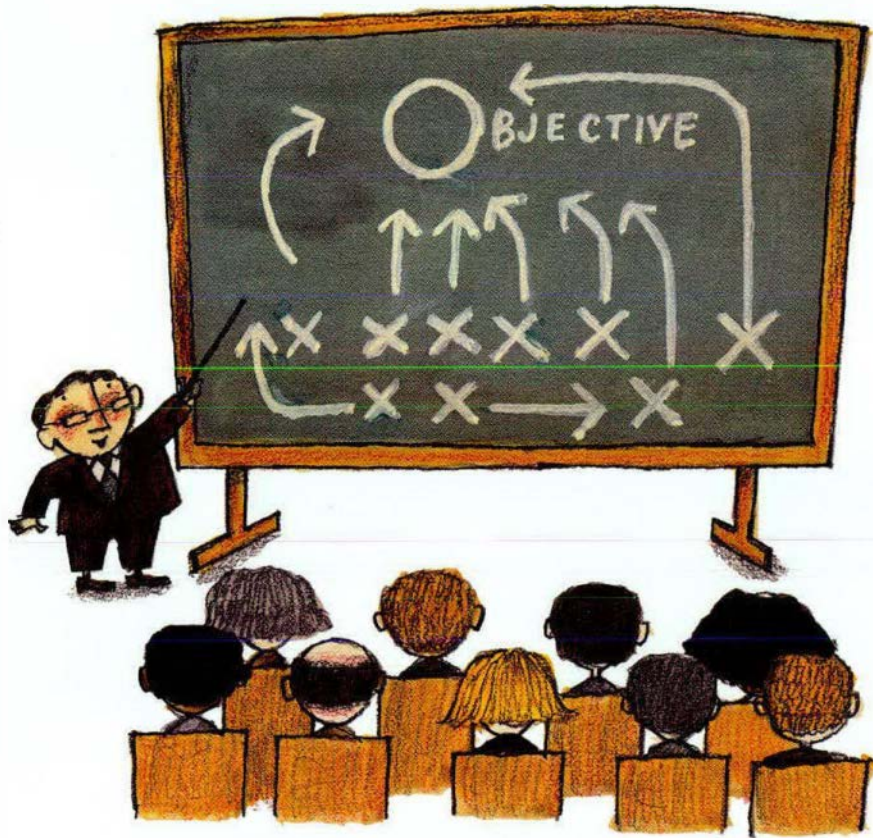
Also joining the firm as Associates in the Insurance Litigation Department are Melissa O'Loughlin White and Jamie Clausen.



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Top 10 Writing Errors for Law Students (*and Lawyers*) to Improve Upon in 2003

by Robert C. Cumbow

Subtle but important qualities and distinctions in English words, phraseology and usage enable us to wield our rich language with precision and power.

Along with journalists and legislators, lawyers are a breed of professionals whose success depends upon the effective and persuasive use of language. Subtle but important qualities and distinctions in English words, phraseology and usage enable us to wield our rich language with precision and power. And, of course, it behooves us to do so, since proprieties that don't make a lot of difference in everyday conversation can have critical impact in legal and legislative matters, where more precision is re-

quired and there is a great deal more at stake. It's thus with surprise and some alarm that I note a widespread and growing inability — or at least unwillingness — among law students and lawyers to grasp and control some of the most fundamental principles of the grammar and usage of their own language, the most precious tool of their chosen profession. Though not necessarily the worst mistakes, the following "top 10" are the ones I've observed most frequently in the exams and papers of second and third year

law students, and even in the correspondence and briefs of practicing lawyers. Whether these errors are due to ignorance or carelessness, lawyers must recognize them and strive to eliminate them from their prose if they wish to be taken seriously and to serve their clients well. Pointing them out here seems as good a way as any of setting errant lawyers and students on that task.

Using "s" and the apostrophe. For all the honor given to Strunk and White's *The Elements of Style* in secondary schools, higher education, and legal writing pro-

grams in law school and CLEs, the book's most fundamental principles are still too frequently ignored. Rule 1 of that book deals with the use of the apostrophe and the letter "s" in forming the possessive form of singular nouns. With very few exceptions, a singular noun — whether it ends in "s" or not — forms its possessive by adding an apostrophe followed by an "s." If the book belongs to Marie, it is Marie's book; if it belongs to Charles, it is Charles's book, *not* "Charles' book."

But if that fairly simple precept eludes even people bright enough to get into law school, it is no wonder that there is an in-

creasing use of this simple device to form not a possessive but an ordinary garden-variety plural. If the store is closed every Sunday, it is closed Sundays, not "closed Sunday's." A family named Smith should put "the Smiths" on the mailbox, not "the Smith's" — though "the Smiths'" might be perfectly acceptable, since what is meant is "the Smiths' house." The plural of CLE is CLEs, not "CLE's," and the past decade was the '90s, not "the 90's."

Indeed, this last point suggests why some writers get confused about the apostrophe-s and Strunk and White's Rule 1. It's easy enough to recall that you form a singular possessive by adding an apostrophe-s and a plural (of most nouns) simply by adding "s." But when the two are com-

One thing that makes a person's writing particularly hard on a reader's eye is the use of a hyphen instead of a dash.

bined in a plural possessive, it gets trickier. If a plural noun does not end in "s," you form its possessive in the normal way, by adding apostrophe-s: "the children's hour." But if the plural noun *does* end in "s," the possessive is formed by adding only an apostrophe: "the wolves' howling."

Another factor contributing to the growing misunderstanding of the use of the apostrophe-s is the fact that the apostrophe has another purpose besides indicating a possessive. It also is used to indicate the omission of one or more letters. "Can't" is a shortened form of "cannot," in which the apostrophe is used to show that two letters have been excised. The usage "the '90s," in the previous paragraph, uses an initial apostrophe to show the deletion of "19." Now we have two uses of the apostrophe to worry about; but we can generally tell them apart from context: "Natalie's driving us to the movie" uses the apostrophe to show the excision of the letter "i" from the phrase "Natalie is driving," while "We're going to the movie in Natalie's car" uses the apostrophe to denote the simple possessive.

All well and good, but what do we do with a word that may sometimes be a pos-



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sessive and other times a contraction, and is not so easy to distinguish in context? The troublesome word in this case is the pronoun "it." It's an exception to the rule of forming a possessive by adding apostrophe-s. That's because it's a pronoun, not a noun, and pronouns have their own ready-made, non-apostrophe possessives. The possessive form of "he" is "his," of "she" is "her," and of "it" is "its." Thus, when you see the construction "it's" (as you have twice in this paragraph), its apostrophe tells you that it is not a possessive but a contraction for "it is."

Keeping these simple rules straight doesn't involve nearly as much work as writing (or reading) the past five paragraphs. Form the possessive of a singular noun by adding apostrophe-s. Form the possessive of a plural noun ending in "s" by adding an apostrophe only. Form the possessive of a plural noun *not* ending in "s" by adding an apostrophe-s.

A hyphen is not a dash. One thing that makes a person's writing particularly hard on a reader's eye is the use of a hyphen instead of a dash. This is a hyphen: -. This is a dash: —. You can make a dash by hitting the hyphen key twice, or by inserting an "em-dash" from the "insert>symbol" or "insert>character" menu of most word-processing applications. Or, if you are really sophisticated, you can set up the "auto-correct" feature of your word processor to automatically replace two hyphens with a dash. (There are actually two types of dashes — an em-dash and an en-dash — each with its own appropriate usage, but we'll save that for another time.)

A hyphen is used to combine two or more words into a single unit for better understanding or to avoid ambiguity (examples: "recover" vs. "re-cover"; "unionized" vs. "un-ionized"). It is also used as a part of alphanumeric designations, such as phone numbers and apartment numbers (555-1212; Apartment 2-B). And, of course, it is used to signal that a word has been broken at the end of a line and continues on the next — though that has little importance today except to publishers, since computer users can now set their word-processing software to hyphenate automatically or not at all.

The dash, on the other hand, is not used to separate or join individual words, but to set off an entire phrase — a parentheti-

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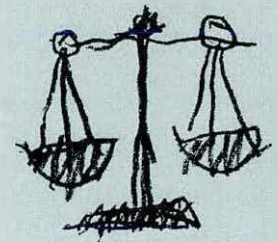
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cal thought — from the rest of the sentence. See how much harder that last sentence is to read if hyphens are used instead of dashes: *The dash, on the other hand, is not used to separate or join individual words, but to set off an entire phrase a parenthetical thought from the rest of the sentence.* Take pity on your reader, and don't use hyphens for dashes.

Punctuation with "however." Don't use a comma both before and after the word "however," since it will make your sentence unclear and difficult to read. One comma is o.k.; however, I find a semicolon to be

easiest on the eye. If you use a comma, put it before or after the word "however," depending upon which part of your sentence the "however" pertains to. Compare:

There was more to say; however, I just refused to say it. There was more to say, however; I just refused to say it.

Plurals from the ancient world. English contains a lot of words that have come to us directly from Latin or Greek. Some of these we now pluralize by adding an "s"; but many of them still form their plurals as they did in their original languages. You don't have to have studied Latin or Greek

to learn and remember the following:

"Data" is the plural of "datum." We never use "datum" anymore, but that doesn't give us the right to treat "data" as if it were singular. Say "these data," not "that data." You wouldn't say, "I need a data," so don't say "The data is missing." It should be "data are missing."

"Media" is the plural of "medium," which we *do* still use. When you talk about the media, as in "the entertainment media" or "the news media," you are talking about several different entities, so use a plural verb. "The media don't report judicial opinions accurately," *not* "The media doesn't report judicial opinions accurately." "Criteria" is the plural of "criterion." Don't use it as a singular. It's common to hear someone say "this criteria" or "that is the criteria." That's wrong. If you're talking about a single standard, say, "This is the criterion." If you mean several standards, then it's "These are the criteria."

Same rule with regard to "phenomena," which is the plural of "phenomenon." It's common to hear people get these exactly backward, saying "this phenomena" and "these phenomenon." Don't be caught doing that.

Of even greater urgency to lawyers — though *only* to lawyers — is the word "dicta," which is plural for "dictum." Say "in dicta" or "in a dictum," but don't say "in dictum."

Before leaving this subject, here is one word that is actually singular, though because it ends in "s," many English speakers make the mistake of assuming it is plural: kudos, which is Greek for praise. You wouldn't say "here are praise for my paralegal," so don't say "here are kudos," either. Harden the "s" at the end and use the word in the singular.

Begging the question. As long as I've just brought up words that have special significance to lawyers, this is as good a time as any to remind readers what "begging the question" means. It does *not* mean "calls into question" or "brings up the question." You often hear well-educated lawyers say something like: "The reliance of the definition of obscenity on community standards begs the question, 'Which community?'" That is not a correct use of the term "begs the question." Begging the question is the name of one of the many incorrect uses of logical argument known as



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fallacies. The fallacy of begging the question occurs when someone tries to prove a point by making an argument that assumes the very thing he is trying to prove. A very simple example is the person who claims he could not possibly have committed the wrong he is accused of for the simple reason that he is not the sort of person who would do that kind of thing. That, of course, is exactly what his accusers are trying to establish, so in using it as the basis for his argument, the accused is begging the question. Don't say "begs the question" when all you mean is that a certain thought *raises* a question.

A pronoun must agree in number with its antecedent — that is, the noun to which it refers.

Lead and led. Lead, as a verb meaning to guide or to show the way, is pronounced "lead." Its past tense, pronounced "led," is spelled led, not lead. "Lead" is pronounced "led" only when used as a noun, to identify a heavy metal. Similarly, the past tense of plead is pled or pleaded, not "plead."

Verbal agreements. Another thing an alarming number of lawyers get wrong is to use the term "verbal agreement" when they mean "oral agreement" or "vocal agreement." The word "verbal" means "in words." Thus written agreements are just as much "verbal agreements" as oral agreements are. If it was spoken rather than written down, it was an oral or vocal agreement.

De minimis. This one is simple. Just spell it right. It is *not* spelled "de minimus." There's no such thing as "in memorium," either. It's "in memoriam."

Loath. The word "loath" is an archaism that is coming back into popularity, for reasons unknown. It's an adjective meaning "reluctant" or "hesitant." I was loath to bring up a difficult subject during dinner. This one is simple, too. Just spell it right. It's "loath." Don't confuse it with "loathe," which is a verb meaning to hate.

Number agreement. A pronoun must agree in number with its antecedent — that is, the noun to which it refers. In the sentence "Lawyers should take good care of their language skills," the word "their" is plural because the word "lawyers" is plural. The sentence would make no sense if it read "Lawyers should take good care of his language skills." Similarly, the sentence "Every lawyer should take good care of their language skills" makes no sense, though we see and hear such constructions all the time, largely due to tortured efforts to avoid the out-of-favor but perfectly correct use of "his" as a non-gender-specific pronoun supporting an indefinite antecedent.

A statement like "Every student must hand in his paper on time," though correct, runs the risk of offending those who believe (wrongly) that such a statement assumes all students are male. It's always a good idea to avoid giving offense, of course; but you don't do that by substituting the plural pronoun "their." The singular "student" can't magically become a multiple "they" just four words later. Nowadays it's popular — and correct — to be egalitarian and use "his" sometimes and "her" other times. But the best way to avoid the problem is to recast the sentence in the plural: "Students must hand in their papers on time." Just remember: singular antecedent nouns can't take plural pronouns.

The Golden Rule

Some, though not all, of the above common mistakes are often not conscious errors at all, but are simple typographical errors or the result of carelessness. We have a remedy for that. It's called proof-reading. Carefully reread your own paper, exam, article or brief for form, grammar, spelling and typos. Do it yourself. *Don't* rely on spell checkers and grammar checkers. They aren't as smart as you are. ☺

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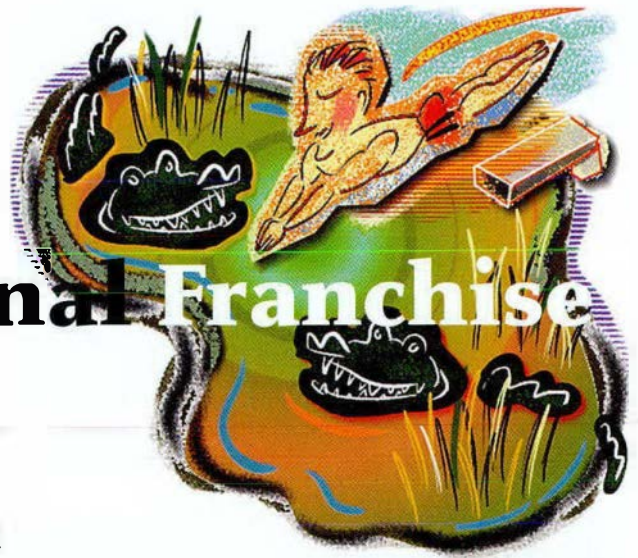
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The Unintentional Franchise



by Howard R. Morrill

The problems with unintended franchises, for franchisors at least, are the unintended consequences.

Unintended franchises are franchises nonetheless; it does not matter what the parties call their business arrangement. In Washington, there have been reported decisions finding franchises within, for example, a mini-market lease, a partnership agreement, a candy distributorship and an area directorship. As an Illinois appellate court noted in interpreting that state's franchise statute: "None of the criteria set forth in the statute make the subjective intent of the parties a determinative factor in identifying a franchise relation. Rather, by statutory definition, a franchise exists where an agreement meets three objective criteria."¹ Clearly this is an accurate statement of the law in Washington as well. The problems with unintended franchises, for franchisors at least, are the unintended consequences.

The Franchise Investment Protection Act

In Washington, franchises are governed by the Franchise Investment Protection Act (FIPA), Chapter 19.100 R.C.W. FIPA was one of the first and most comprehensive franchise statutes in the nation, regulating both the sale of franchises and the relationship of the franchisee and franchisor. Since 1991, the three definitional elements of a "franchise" under FIPA have been: (1) a franchise fee; (2) the grant of the right to enter into a business of distributing goods or services using the grantor's marketing plan; and (3) the substantial association of the franchisee's business with the grantor's name and marks.² As in Illinois, nothing in FIPA makes the subjective intent of the parties' determinative — a business arrangement is a franchise if the elements of a franchise are present.

When one refers to “unintended franchises,” one is necessarily referring to franchises that are sold in violation of FIPA’s registration and disclosure requirements. FIPA requires that franchise offerings be registered with the Department of Financial Institutions in Olympia, unless an exemption from registration applies.³ FIPA also requires full disclosure in connection with franchise sales.⁴ A franchise required to be registered must be sold using a mandatory disclosure document.⁵ FIPA declares it “unlawful” to sell a franchise in violation of any of these statutory provisions.

The Intended “Unintended” Franchise

So how are these unintended franchises created? In many cases, they are created with full knowledge that the particular relationship involved looks an awful lot like a franchise. It is very common in practice to see contracts that disclaim the existence of a franchise, and some of these agreements may even contain explicit waivers of any franchise statute’s protections. Often it is readily apparent from the documents creating the relationship that the business arrangement is indeed a franchise, the disclaimers notwithstanding. In

those cases, it is very clear that the franchise was “unintended” only in the sense that the franchisor did not intend to have FIPA apply — in all other respects the intent was to create a franchise. That franchisor may find itself in an especially difficult position, particularly if its franchisees ever become disgruntled.

FIPA provides that a franchisor and all that franchisor’s management personnel may have personal civil and criminal liability. A franchisee may be able to obtain both rescission and damages.⁶ The state of Washington may seek fines and/or jail time.⁷ The personal liability of a franchisor’s principals is not a matter of piercing any corporate veil; it is more proper to say that FIPA does not allow for the corporate veil to be present in the first place. It is a “person” who violates FIPA, and by broadly defining “person,” FIPA casts a wide net.⁸

FIPA also authorizes exemplary damages of as much as three times actual damages.⁹ In practice, although there are no reported decisions concerning an exemplary award under FIPA, it seems intuitively appealing that a judge might be persuaded to make such an award in the face of clear evidence that a franchisor considered the application of FIPA and simply chose an evasive course of action instead of compliance. (Every case in which this writer has convinced a trial court to make an exemplary award had evidence of some deliberate and considered evasion of FIPA.) Finally, the franchisee’s purported contractual waiver of FIPA’s protections is utterly unenforceable.¹⁰

However, many unintended franchises really were completely unintended, at least subjectively unintended. There are many “license agreements,” “distributorships,” “joint ventures” and “dealerships” that are clearly franchises, but were entered into without any apparent consideration of franchise law. Consider the following illustrative hypothetical, which is an amalgam of several real-life examples:

A “Family” Deal

Bob and Mary built a very successful Seattle area chain of four barbecue restaurants. They built the chain, location by location, over the course of about 15 years, and acted as general managers of the entire operation for another decade. Their son Mike and a longtime employee and family friend, Julie, worked in the restaura-

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rants during their high-school and college years. Eventually both Mike and Julie graduated and began managing individual restaurants in the chain. "Mary's Barbecue Hut" became well-known and popular throughout the community.

Much of the success of the restaurants was due to Bob's homemade barbecue sauces. Bob had been in and around restaurants his entire working life, and he had always been interested in tinkering with the recipes. He had developed several different barbecue sauces through simple trial and error and years of experimentation. Known only to Bob, the recipes had struck a responsive chord with the public. Bob and Mary promoted the restaurants chiefly through radio spots featuring Mary's comically off-key singing. Mary became something of a minor local celebrity in the process.

FIPA provides that a franchisor and all that franchisor's management personnel may have personal civil and criminal liability.

Although Bob and Mary had been approached many times about franchising Mary's Barbecue Hut, the idea had never appealed to them. Every franchise promoter they spoke to talked of incredible, rapid expansion. Bob and Mary were concerned about quality-control issues and the time commitments associated with multiple and near simultaneous franchise openings scattered throughout the state and beyond. They felt uncomfortable with the vague platitudes they heard when they asked specific questions, so they rejected franchising and stuck with the business they knew best.

Recently, Bob and Mary decided they wanted to reduce their workload and enjoy some of their well-earned success. However, they did not want to completely retire. They devised a plan that would provide them a smaller but continuing role.

Their plan had a certain elegant simplicity. Mike and Julie, now seasoned veterans in the business, would each cease being employees of the chain and would

instead take over operation of two of the restaurants, running them as their own under the Mary's Barbecue Hut banner for a 10-year term. Bob would continue to produce the sauces, and he and Mary would help train employees, and provide advice and consultation on an "as needed" basis to Mike and Julie for an hourly fee. Bob and Mary would also continue to own the recipes, the Mary's Barbecue Hut name and marks, and the radio spots. Mike and Julie would buy the sauces from Bob and Mary, and pay them two percent of restaurant sales as well. Mike and Julie would be entitled to place advertising using the library of existing radio commercials.

A simple "operating agreement" containing the features described above was created to put this arrangement into place. Mike and Julie each entered into separate operating agreements with Bob and Mary. The parties started doing business under the operating agreements, none of them ever considering whether these agreements were also franchises.

On these facts, it seems clear that unintended franchises have been created. All three statutory elements — franchise fee, marketing plan and name — are present. First and foremost, there are parties doing business in "substantial association" with the "Mary's Barbecue Hut" name, a

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name that does not belong to them. Second, there is an explicit percentage charge based upon sales — a “franchise fee” by definition.¹¹ In addition, payments for consultation and advice — payments for services, in other words — are also franchise fees.¹² Finally, there are promotional radio spots, an obligation to provide training by Bob and Mary, proprietary recipes, and advice and consultation. Any one of these items standing alone might be sufficient to constitute Bob and Mary’s “marketing plan”; together, they seem to weigh heavily in favor of finding that a marketing plan is present.¹³

At this point, it seems worth pointing out that certain facts in the hypothetical could be altered to make it harder to find particular franchise elements. For example, suppose Bob and Mary did not collect any direct fees based upon sales or for their advice and consultation, but instead continued to collect all the restaurants’ revenues and to pay Mike and Julie “commissions” of some amount based upon sales. Would changing the direction of the cash flows in this way negate the franchise-fee element? The answer should be no, for at least two reasons. First, a franchise fee may still be present in the prices Mike and

Julie pay for the barbecue sauces. This is referred to as a “hidden franchise fee” in the caselaw, and it is worth noting that the burden of proving a franchise fee is not present if the sauce prices should fall on Bob and Mary.¹⁴ Second, and more fundamental, as long as Mike and Julie still bear the risk of business loss and are not employees, the direction of the cash flow is not really determinative of the economic reality of the arrangement.

some companies that discover they have franchised accidentally may take the attitude that all they really have to do is wait for a statute of limitations to run. Some may even make their franchisees aware of the potential violations, just in case a discovery rule might apply.

This strategy ignores a couple of things. One, as was pointed out above, is the underlying illegality of the transaction. A violation of FIPA is also a violation of the fun-

Under longstanding illegality precedent, it should be difficult or impossible to bring any contract claim based upon what the unintentional franchisor now realizes is a franchise agreement.

Why Does Any of This Matter?

But if everyone is happy with a business arrangement, why does anyone care whether it is also a franchise? Well, as discussed above, the fact that everyone is happy does not really change the fact that Washington state (or the FTC) could take action. But it is probably less likely that such action would be taken in the absence of any complaining franchisees. Therefore,

damental public policy of this state.¹⁵ Under longstanding illegality precedent, it should be difficult or impossible to bring any contract claim based upon what the unintentional franchisor now realizes is a franchise agreement. The affirmative defense of illegality is not affected by any statute of limitations. Second, even if the franchisees cannot bring claims in connection with the unlawful sale to them of their

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franchises, they do have the benefit of the "franchisee bill of rights" contained in RCW 19.100.180. They cannot therefore be terminated without good cause, charged more than a bona fide wholesale price for supplies, or restricted in their right to form an association — to name just three examples. It may prove impossible to treat the franchisees differently as well, due to FIPA's anti-discrimination provision.¹⁶ So, in our Mary's Barbecue Hut hypothetical, it may be impossible for Bob and Mary to prefer their son to their family friend in any material way.

The \$64 Question

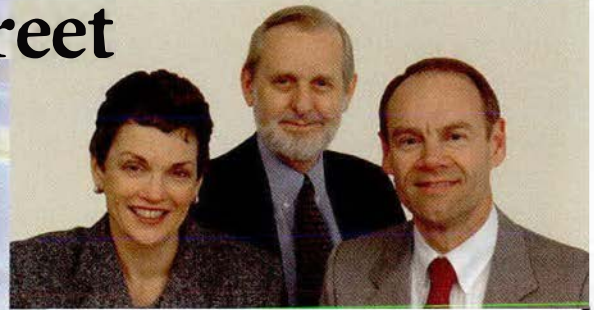
If you discover that your client has unintentionally franchised, you have to decide what, if any, course of action to recommend. Many clients will be reluctant to do anything for the same reasons that caused them to reject intentional franchising in the first place — cost and effort. Still, the time to attempt to cure the problem is never likely to be better than while the franchisees are reasonably content. The cost of not taking some action may be significantly higher than the cost of even a belated attempt at compliance. ☛

Howard R. Morrill is a shareholder in the Seattle law firm Bundy & Morrill, Inc. PS. Formed in 1990, the firm's practice consists primarily of representing franchisees and franchisors. Mr. Morrill is a 1987 graduate of the University of Washington JD/MBA program.

NOTES

1. *Brenkman v. Belmont Marketing, Inc.*, 410 N.E. 2d 500, 503 (Ill. App. 1980).
2. RCW 19.100.010(4).
3. RCW 19.100.020(1).
4. See, RCW 19.100.170.
5. RCW 19.100.080.
6. RCW 19.100.190(2).
7. RCW 19.100.210.
8. See, RCW 19.100.010(13).
9. RCW 19.100.190(3).
10. RCW 19.100.220(2).
11. See, RCW 19.100.010(12).
12. *Id.*
13. See, RCW 19.100.010(5).
14. See, RCW 19.100.220(1).
15. See, RCW 19.100.220(3).
16. See, RCW 19.100.180(2)(c).

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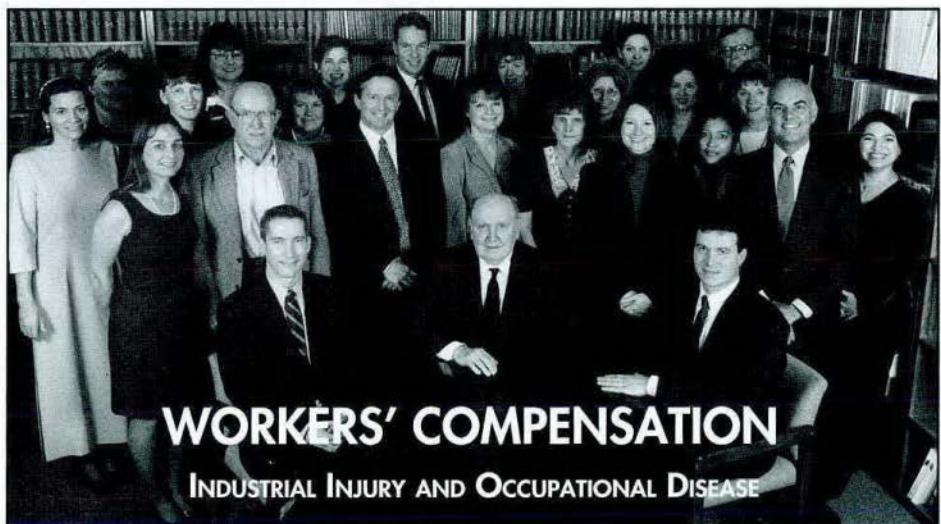
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15. See, RCW 19.100.220(3).
16. See, RCW 19.100.180(2)(c).



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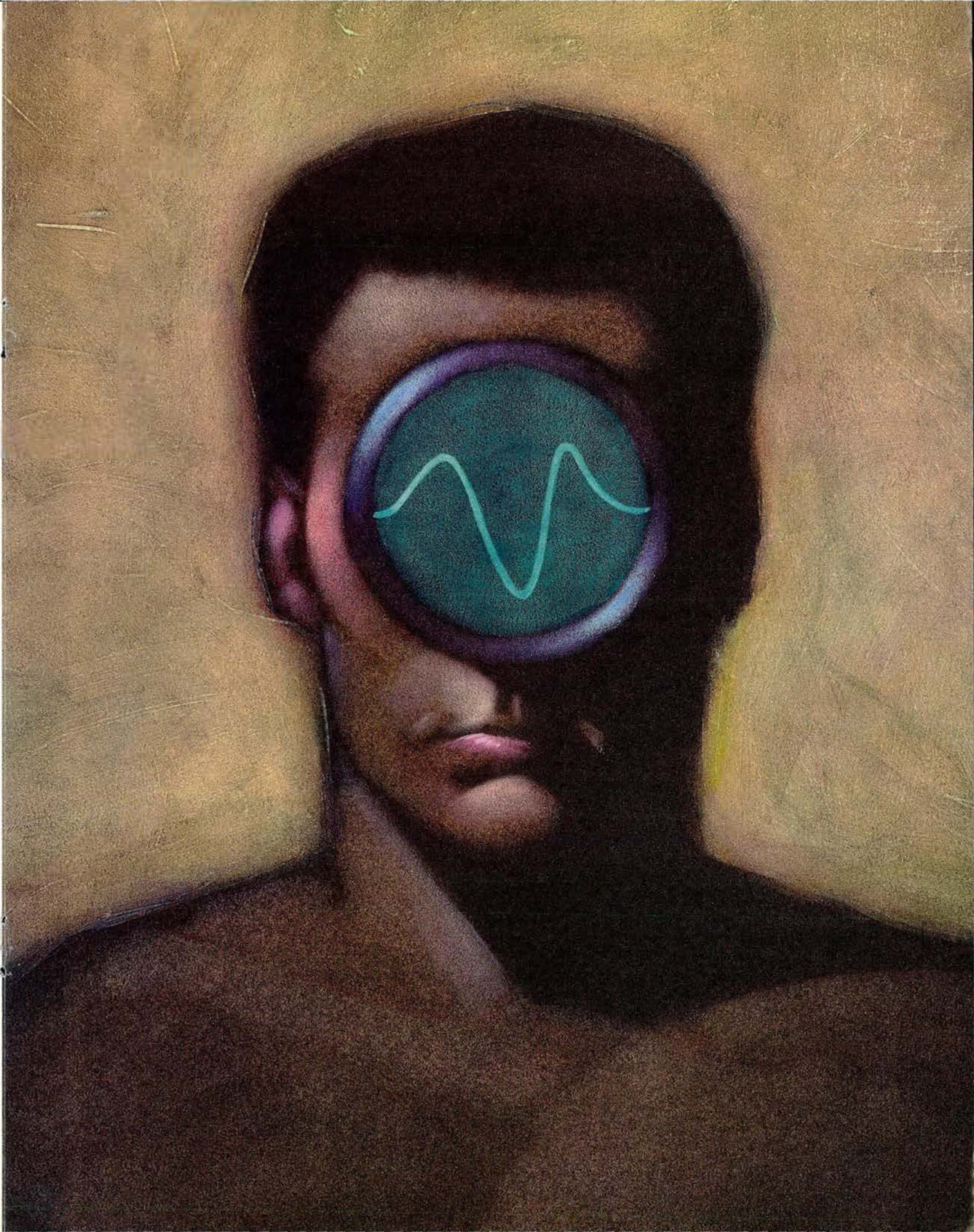
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Varieties of Thought Disorder *in the* Criminal Context

by Delton W. Young, Ph.D

There are two broad classes of cognitive impairment potentially severe enough either to comprise a mental defense or to raise questions of competence. The simplest form of such impairment is mental deficiency (retardation) — neurologically based, stable impairment in the capacity to perceive, comprehend, reason and communicate. The assessment of mental retardation (usually indexed by an IQ below 70) is relatively straightforward, with several highly regarded tests for assessment of intellectual skills and academic achievement.¹ When courts find defendants not competent to stand trial, it is most often because of such intellectual limitations. This article will focus, however, on the other class of cognitive impairment, where there are disturbances in perceiving, thinking and communicating in intellectually normal individuals.

A substantial proportion of defendants prosecuted in criminal and juvenile courts have histories of psychiatric disorder of one kind or another. Indeed, in recent years both juvenile and adult correctional facilities have witnessed large increases in the number of inmates suffering diagnosable mental or emotional disorders. These span nearly



the full range of psychiatric conditions, including mood disorders such as depression and bipolar disorder, anxiety disorders, attention-deficit disorder, substance abuse, post-traumatic stress, developmental disorders, and even schizophrenia.

It can be difficult for both prosecutors and defense attorneys to discern what role, if any, a defendant's psychiatric disorder may have played in the behaviors leading to criminal charges. Whether a given mental condition might legitimately form the basis of a mental defense is complicated, first, by the challenges of applying psychiatric concepts and terminology to the lan-

guage of criminal statutes. Second, there is the still-notorious unreliability of psychiatric diagnosis, with different experts rendering different diagnoses. Finally, there is the problem of inferring the defendant's mental state at the time of the offense from an evaluation conducted weeks or months after the fact. Lurking in the background of some mental defenses is the possibility that the individual is faking symptoms in an effort to escape responsibility.

Psychiatric disorders can impose an immediate challenge, too, as the defense attorney grapples with the manifestations

of the client's disorder. Troubling attributes may include impaired reasoning and communication skills, and self-defeating behaviors such as failing to appear for hearings, lack of motivation, and dishonesty. Deficiencies in communication and understanding may raise doubts about whether the client's capacities meet the Dusky standard for competence to stand trial.²

Regardless what psychiatric disorder is diagnosed or suspected, the essential element in any defendant's condition — one that may play a major role in the prosecution and defense — is impairment in the defendant's capacity to think and perceive normally, commonly known as cognitive impairment. Any mental defense or question of competency will turn solely upon the matter of cognitive capacities. Extreme or erratic emotional forces, severe impulsivity, overwhelming passion, and even horrific experiences of violence or trauma cannot form the basis of a defense or claim of incompetence unless accompanied by demonstrable cognitive impairment.

The generic term for impairment in cognitive processing in intellectually normal individuals is "thought disorder." Thought disorders occur in several varieties and can range in severity from clinically significant to severe and disabling. When a thought disorder entails a failure of the ability to distinguish external reality (reality testing), then the term "psychotic" is applied. Where there is such a distinct failure of reality testing, a case might be made for the defendant lacking the capacity to distinguish right from wrong or to perceive the nature and quality of his acts (insanity defense). Similarly, psychotic states might preclude the capacity to form the requisite mental state of intent as defined in the criminal statute (diminished capacity).

The duration of psychotic states can vary considerably depending on the illness, ranging from days or weeks, to months or even years. Transient psychotic episodes refer to the phenomenon of brief periods wherein the individual's thinking is compromised to such a degree as to earn the designation "psychotic." While such episodes can occur in a variety of psychiatric disorders, they most often result from drug or alcohol intoxication in combina-

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tion with other conditions (e.g., borderline personality disorder or post-traumatic stress disorder). Mental defenses can be based upon such transient states, but there are obstacles. First, it can be difficult to document the specific impairments in cognitive functioning at the time of the alleged offense when such a state occurs only under certain circumstances. Second, in

The duration of psychotic states can vary considerably depending on the illness, ranging from days or weeks, to months or even years.

Washington, if voluntary ingestion of drugs or alcohol is involved, the insanity defense may be excluded, depending upon the severity of the thought disorder in the absence of intoxication.³

Thought disorder can be divided into two broad classes: (1) disturbances in the content of thinking and perceiving (hallucinations and delusions), and (2) disturbances in the form of thinking (formal thought disorder).

Hallucinations and delusions are often referred to as "first-rank" symptoms of psychosis because they are strong indicators of a breakdown of reality testing. Hallucinations are perceptual disturbances wherein internal mental events (e.g., fears, wishes, fantasies) are mistaken for external reality. Auditory hallucinations are the most common symptom of psychosis, and they occur in a wide variety of psychiatric disorders — severe mood disorders (e.g., major depression, bipolar disorder), schizophrenia and others. Auditory command hallucinations direct the individual to specific actions; hence, these are sometimes described in insanity defenses. Visual hallucinations are uncommon and, when they do occur, are often the results of neurological conditions. Other forms of hallucination (tactile, olfactory and kinesthetic) are even less prevalent and seldom play a role in criminal defense.

Criminal deeds surely can be the product of hallucinations. The difficulty is that



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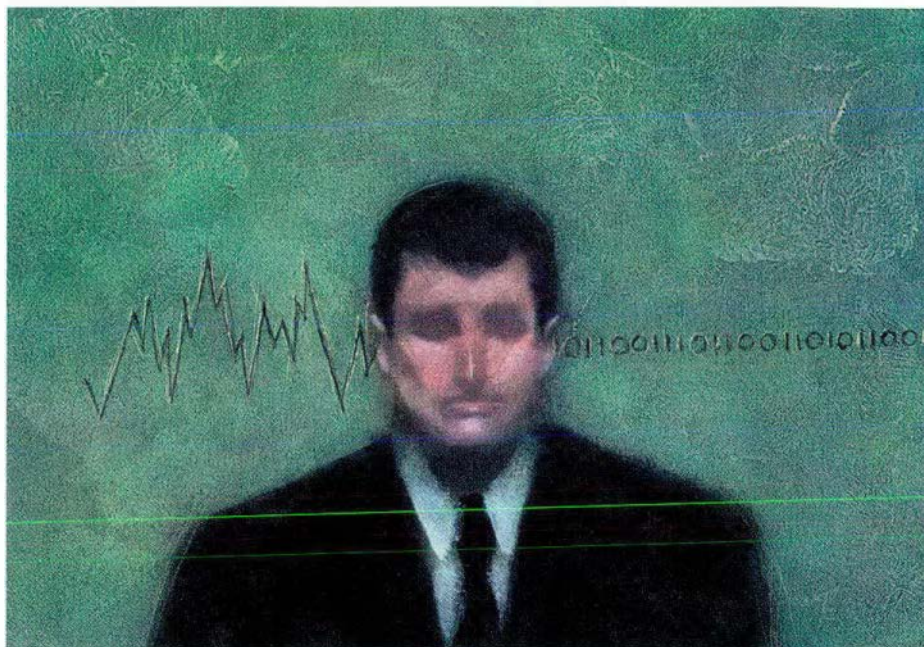


Melton L. Crawford, Katrin E. Frank, Kenneth A. MacDonald, Andrea Brenneke
Jesse L. Wing, Maria C. Fox and
Harold H. Green (Of Counsel)

such mental events are entirely subjective, and no test can objectively verify specific hallucinatory content. On the other hand, thorough clinical evaluation can confirm a history and symptomatology that is consistent with a given hallucinatory content, and the defendant's behavior and speech around the time of the alleged offense can also support the defense claim of such hallucinations.

The other kind of thought disorder involving cognitive content is delusions. Delusions are false beliefs that are rigidly held despite strong evidence to the contrary. Disconfirming information is reinterpreted by the patient to fit and sustain the delusion. In many cases, delusional thinking is obvious shortly after the defendant begins to tell his story. Delusions are often chronic, sometimes persisting for years, and they occur in several types: delusions of grandeur ("I am a Cherokee prince"); delusions of jealousy usually involving infidelity of one's sexual partner; delusions of persecution ("I am being harassed by corporate malefactors"); and other less common forms.

Delusions can occur in many different psychiatric disorders, and the particular



beliefs can range from plausible to bizarre. Because individual behavior is closely tied to one's beliefs, delusions have the power to produce behaviors that violate social and legal norms. Even when specific criminal acts clearly are the product of delusions, however, the insanity defense is commonly confronted with a crucial weak link. This is because even in the midst of delusion-driven acts, the individual often

seems to retain some recognition — perhaps a weak recognition — of social norms and limits. Many flagrantly delusional patients who commit criminal acts behave as if they know they have done something wrong. They may proceed to run away, hide, disconnect phone cords, etc. — all acts that at trial may be taken as evidence of knowing the wrongfulness of the acts in question.

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The other broad class of thought disorder, formal thought disorder, involves disruption in the individual's capacity to think and reason coherently. Formal thought disorder is observed through the patient's speech and communication processes. Such disordered speech may be pressured, tangential, circumstantial; or employing loose or remote associations, idiosyncratic reasoning, or even autistic logic.

Formal thought disorder may be observed in many different psychiatric conditions. Whether any given instance of formal thought disorder entails a clear failure of reality testing (i.e., psychotic) depends upon its severity. Severe formal thought disorder can undermine the individual's capacity to understand and to reason normally. The result can be markedly impaired capacity to read social situations and meanings, and to plan one's actions and anticipate consequences. Bizarre or even criminal behavior can result.

When defense attorneys raise doubts about their clients' competency to stand trial, it is sometimes because of communication deficits occasioned by formal thought disorder. Formal thought disorder can be assessed through interviews and mental-status examination by documenting the disordered form of the client's reasoning and explanations. It also can be assessed through more objective, structured methods of psychological testing.⁴

Where thought disorder plays some role in the defendant's behavior, evaluation by a forensic mental-health expert can usually document the nature, severity and history of such disorder. Proper evaluation, as always, should rely not only upon multiple sources of information, but multiple types of sources (documentation, interviews, collateral contacts, various types of psychological testing, etc.). Evaluation that is well-grounded and thorough can provide the defense with a robust formulation about the defendant's thought disorder and likely mental status at the time of the alleged offense. The more difficult task is to establish the connection between the defendant's mental status and the particular acts for which he is charged in a way that conforms to the statutory definition of the mental defense. As always, the role of the expert is not to offer an opinion on the ultimate issue (e.g., insanity), but to

provide the trier of fact with clear and scientifically grounded information that is relevant to that ultimate issue. *Z*

A past Bar News contributor, Dr. Young is a forensic psychologist with Interlake Psychiatric Associates in Bellevue. He has served on the clinical faculties at Harvard Medical School and the University of Washington Department of Psychiatry and Behavioral Sciences. He is the author of Wayward Kids: Understanding and Treating Antisocial Youth.

NOTES

1. For individuals 16 years and older, the Wechsler Adult Intelligence Scale, 3rd Edition (WAIS-III) is the most widely respected instrument. For juveniles age six through 16, the Wechsler Intelligence Scale for Children, 3rd Edition (WISC-III) is standard.
2. Dusky v. U.S., 362 U.S. 402 (1960).
3. RCW 10.77.010(7); State v. Wicks, 98 Wn.2d 620, 657 P.2d (1983).
4. The Rorschach Inkblot Test, with its empirically validated Exner scoring system, is particularly sensitive to formal thought disorder, and is nearly impossible to either malingering symptoms that are not present or to conceal existing thought disorder.

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Financial Highlights for Fiscal Year 2002

The WSBA's financial results for fiscal year 2002 (Oct. 1, 2001, through Sept. 30, 2002) were better than budget. Revenues were in excess of expenses in all four categories of activities.

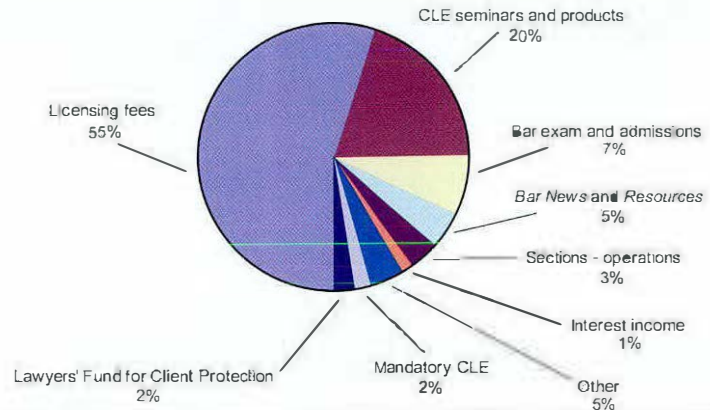
Our financial statements were audited by an independent public accounting firm, and we received an unqualified opinion on our financial statements from the auditors.

Strategic Financial Goal

The WSBA's strategic financial goal is to be fiscally responsible — to operate a well managed and financially sound association, to be accountable to our members and the public, and to use our resources wisely in ways that accomplish our mission. We account for our revenues and expenses in four categories:

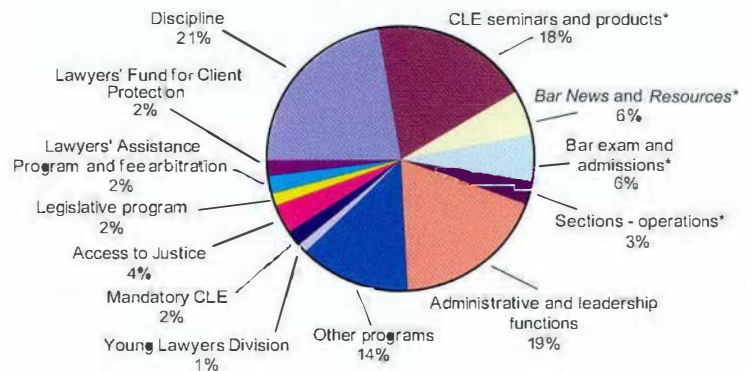
- The general fund consists of our regulatory functions and most services to members and the public. It is funded by member license fees and revenues from services.
- CLE programs and products are entirely self-funded by seminar registration fees and sales of deskbooks and other publications.
- The WSBA's 24 sections are a voluntary activity for WSBA members and are fully self-supporting through section dues and fees for section products and services. No member license fees were used for section activities, and all net income from sections is carried forward in each section's net assets for use by that section in future years.
- The Lawyers' Fund for Client Protection (LFCP) may be used for relieving a loss sustained by a person due to the dishonesty of, or failure to account for money entrusted to, a member of the WSBA in connection with the member's practice of law. It is funded by an annual assessment on all active WSBA members.

Percentage of 2002 Revenues Collected from Various Sources



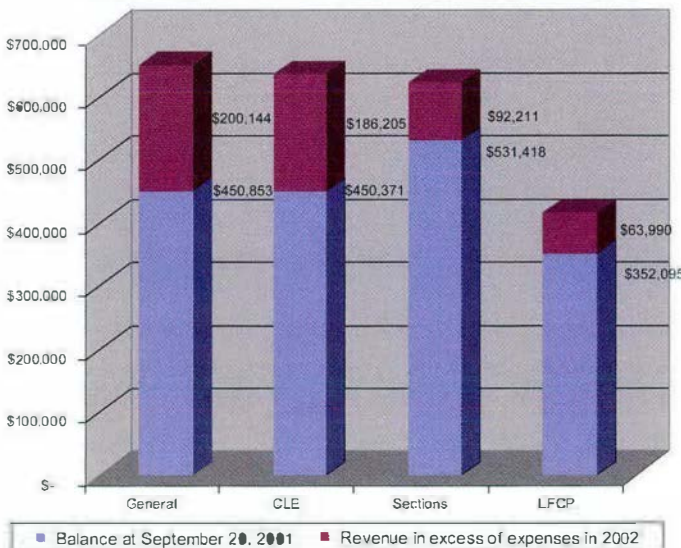
Percentage of 2002 Expenses Used by Activity

(* Activity is self-funded)



Regulatory activities are funded by member license fees. Many programs are entirely or substantially self-funded.

WSBA Net Assets at September 30, 2002, by Category



The accumulation over time of revenues in excess of expenses is called net assets, commonly referred to as reserves. Each category of activities has accumulated net assets for use in future years.

Financial Results for Fiscal Year 2002

All four categories had revenues in excess of expenses, thereby contributing to their individual net assets. (See page 39.)

- The general fund budgeted for revenues over expenses of \$88,000, and actual results were \$200,144.
- The CLE fund budgeted for revenues over expenses of \$77,000, and actual results were \$186,205.
- The sections budgeted for \$170,000 expenses over revenues (in order to use past accumulated reserves to benefit their members), and actual results were revenues over expenses of \$92,211.
- The LFCP fund budgeted for revenues over expenses of \$85,000, and actual results were \$63,990.

Financial information is available on the WSBA Web site at www.wsba.org/finances. Please direct questions to Director of Finance and Administration Pat Dieken at patd@wsba.org or 206-727-8241. The audited financial statements and auditor's report can be mailed to you upon request.

Statements of Activities

	Year ended September 30, 2002			Year ended September 30, 2001		
	Revenues	Expenses	Revenues over (under) expenses	Revenues	Expenses	Revenues over (under) expenses
Unrestricted						
Access to justice	\$78,293	\$487,610	\$(409,317)	\$32,055	\$351,768	\$(319,713)
Administration	71,740	833,201	(761,461)	173,600	1,367,926	(1,194,326)
Alternative dispute resolution	5,150	64,142	(58,992)	3,400	72,603	(69,203)
Attorney license fees	7,681,392	–	7,681,392	6,986,097	–	6,986,097
Audits (random and for cause)	–	111,164	(111,164)	–	99,838	(99,838)
Bar examination and admissions	1,021,522	766,984	254,538	834,028	699,229	134,799
Bar leaders support	2,014	235,086	(233,072)	39	190,276	(190,237)
<i>Bar News</i>	502,172	693,237	(191,065)	516,005	679,658	(163,653)
Communications	53,921	286,831	(232,910)	29,178	278,841	(249,663)
Discipline	102,532	2,934,357	(2,831,825)	75,783	3,173,964	(3,098,181)
Human resources	–	160,224	(160,224)	–	175,417	(175,417)
Information technology	–	845,627	(845,627)	–	–	–
Law Office Management Assistance Program	36,509	177,213	(140,704)	91,054	152,244	(61,190)
Lawyers' Assistance Program	35,802	282,958	(247,156)	38,913	344,758	(305,845)
Leadership	8,731	406,247	(397,516)	10,004	424,162	(414,158)
Legislative	–	208,359	(208,359)	–	253,302	(253,302)
Limited practice officers	23,722	19,776	3,946	–	–	–
Loss prevention	23,515	26,112	(2,597)	–	–	–
Mandatory continuing legal education	293,523	244,431	49,092	261,060	205,206	55,854
Member benefits	–	10,137	(10,137)	–	–	–
Membership records	43,803	414,431	(370,628)	57,292	432,349	(375,057)
Office of General Counsel	21,250	317,760	(296,510)	–	241,645	(241,645)
Professional Responsibility Program	–	122,928	(122,928)	–	117,520	(117,520)
Public Legal Education	21,569	102,898	(81,329)	17,099	102,069	(84,970)
<i>Resources</i> directory	129,660	51,629	78,031	137,638	62,132	75,506
Sections – administration	113,230	92,441	20,789	133,524	121,175	12,349
Technology Bill of Rights	77,224	77,224	–	35,714	35,714	–
Web site	24,963	62,309	(37,346)	2,400	92,810	(90,410)
Young Lawyers Division	43,736	164,513	(120,777)	22,007	147,774	(125,767)
Other	–	16,000	(16,000)	–	8,754	(8,754)
Unrestricted – General	\$10,415,973	\$10,215,829	\$200,144	\$9,456,890	\$9,831,134	\$(374,244)
Unrestricted – Sections operations	\$471,421	\$379,210	\$92,211	\$373,672	\$406,354	\$(32,682)
Unrestricted – Continuing Legal Education						
Publications	\$631,540	\$539,314	\$92,226	\$714,295	\$625,460	\$88,835
Seminars	2,121,622	2,027,643	93,979	2,087,626	2,177,514	(89,888)
Unrestricted – Continuing Legal Education	\$2,753,162	\$2,566,957	\$186,205	\$2,801,921	\$2,802,974	\$(1,053)
Temporarily Restricted						
Lawyers' Fund for Client Protection	\$333,561	\$269,571	\$63,990	\$333,401	\$231,337	\$102,064
Total	\$13,974,117	\$13,431,567	\$542,550	\$12,965,884	\$13,271,799	\$(305,915)

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The Board's Work

by Lindsay Thompson

Bar News Editor

Olympia, January 17-18, 2003

"An intelligent officer, with ten or twelve chosen men, fit for the enterprise, and willing to undertake it, taken from our posts, where they may be spared without inconvenience, might explore the whole line, even to the Western Ocean, have conferences with the natives on the subject of commercial intercourse, get admission among them for our traders, as others are admitted, agree on convenient deposits for an interchange of articles, and return with the information acquired, in the course of two summers. Their arms and accoutrements, some instruments of observation, and light and cheap presents for the Indians, would be all the apparatus they could carry, and with an expectation of a soldier's portion of land on their return, would constitute the whole expense. Their pay would be going on, whether here or there. The interests of commerce place the principal object within the constitutional powers and care of Congress, and that it should incidentally advance the geographical knowledge of our own continent, cannot be but an additional gratification. The nation claiming the territory, regarding this as a literary pursuit, which is in the habit of permitting within its dominions, would not be disposed to view it with jealousy, even if the expiring state of its interests there did not render it a matter of indifference. The appropriation of two thousand five hundred dollars, for the purpose of extending the external commerce of the United States," while understood and considered by the Executive as giving the legislative sanction, would cover the undertaking from notice, and prevent the obstructions which interested individuals might otherwise previously prepare in its way."
— Thomas Jefferson, *Confidential Letter to Congress*, January 18, 1803, proposing the creation of the Lewis & Clark expedition

January — the season of legislation. The Board of Governors has decamped to Olympia every January since the mind of men runneth not to the contrary, there to launch its legislative program and meet with the Supreme Court on matters of common interest.

Getting bills passed is, of course, an art and not a science, and one much affected this year by everyone's fixation on budget matters. It looks certain longtime alliances on many programs of interest to the WSBA, the courts, and the access to justice community will be frayed by the competition for scarce dollars. Funding will, in fact, be a zero-sum game for many, and may well require the sort of sleight of hand President Jefferson used to get his cherished exploration underway two centuries ago. The expedition had a major impact on our being here at all now, and *Bar News* will be looking at its effects throughout the coming years.

Meeting with the Supreme Court is another annual task. It's largely ceremonial. The WSBA and Court interact in a variety of ways during the year. The January meeting gets both bodies together to talk over matters of common interest, and problems in the administration of the courts, the Bar (which is a branch of the court) and access to justice.

Most years the BOG and the Court have dinner on Thursday night, then meet Friday morning to talk about things. By a process mysterious not even all board members know it, some governors make presentations to the Court on things. The rest sit and look gubernatorial. The meeting is a private one, which is just as well. There have been years in the past when liaisons to the board got to sit in, and in those years the meeting was even duller. But according to some who were there, this year's Court confab went well, everyone seems to get along, and that is reckoned to be a good thing.

Overall, this year's meeting was a slight snooze. Nothing big on the agenda. With the Court meeting taking up half of Friday, the open session only ran three hours Friday afternoon, and the board got through the Saturday agenda early, finishing just after 10:00 a.m. instead of the anticipated noon rising.

President Dick Manning proposed the formation of a study group to look into creating public seats on the Board of Governors — with Governor Howard Graham chairing, Governors Carlson and Hinojos-Fall, Appeals Court Judge Marlin Appelwick and Young Lawyers Division representative Elizabeth Li as members. This

is an idea floated in 2001 as part of the creation of at-large seats on the board, and to some makes perfectly good sense. To others it falls under the heading of Nothing Should Ever Be Done for the First Time. The study group is also part of a gratifying trend not to appoint task forces — which have to have every conceivable interest group represented on them and move with the speed of sludge, cost a lot, and generally come back with recommendations that have been processed to the point of coming out purée of mush. Study groups are more flexible and can act faster and cheaper. The Citizen Member Study Group will come back to the BOG with a plan of action by June.

Seattle lawyer Bill Neukom chairs the Washington state delegation to the American Bar Association's House of Delegates. As about a quarter of WSBA members are also ABA members, readers may more readily attach the name to the man who was Microsoft's general counsel for 18 years, he of the snappy bow ties. He gave the BOG a report on items of interest on the ABA's midyear meeting agenda in early February.

Judge Appelwick got the board excited with a presentation of a planned Web site put together by the Council for Public Legal Education, intended to give the public free access to lots of useful law knowledge in a highly accessible format. It's set for a spring launch, but looked pretty impressive as a mock-up. We'll come back to it as a story once it is closer to startup.

LASER is a program some lawyers and educators started that aims to teach high-school students dispute-resolution skills. The WSBA has given it some modest staff and funding support, and the board reaffirmed that support in a resolution. They also appointed Governor Kerr to its board.

One of the fun bits of the yearly trek to Olympia is the annual holiday reception the Government Lawyers Bar Association puts on. President Jim Johnson commented he wasn't quite sure what holiday the reception marked, having overshot Christmas and New Year's a bit, but to most observers it was the Mary Fairhurst Holiday. The government lawyers were celebrating the election of one of their own to the Supreme Court. Dick Manning presented Justice Fairhurst with the associa-

tion's Local Hero Award, given at each BOG meeting to a lawyer who has done good things in the community and profession. Manning read a citation drawn from the Government Lawyers' nomination of Fairhurst, she made some characteristically gracious and thoughtful remarks, and the food was great, by the way. You never want to miss the spread at a Government Lawyers' party.

Saturday the govs appointed Ron Mattson to the Court Independence Response Team, a Supreme Court body that

provides a forum for resolving conflicts between judicial and legislative bodies at all levels. WSBA Legislative Affairs Director Gail Stone gave the govs a long report on the session just getting underway. There are indications tort reform will be a priority, at least in the Senate, and the usual bills to eliminate judicial review, and the filing fee bill, will be making their way. The BOG legislative committee meets weekly to plot strategy as the session continues.

Eileen Concannon, who chairs the Glass Ceiling Task Force, gave a report on

the committee's work developing an action plan to change some of the problems its report identified. In brief, the statewide study the group did shows that: "The demographic makeup of the legal profession resembles a pyramid: the large base is composed of women and men in roughly equal numbers as they leave law school. Once in a firm, women begin to play a smaller role, both numerically and functionally, until the top of the pyramid is overwhelmingly male. Between joining a firm as an entry-level associate and partnership, the number of women attorneys in law firms decreases by more than 50 percent. Women are likely to leave firms for public-sector service or solo practice, which may indicate the relative sense of comfort and acceptance they experience in private firms."

There are disparities between the number of women in firms in eastern and western Washington, and some minorities included in the scope of the study also have numbers and influence below what one might expect. Law firms are seen as having adapted to the influx of women by hiring them, but the governing structures of law firms have not adapted much to bring women into all aspects of firm life.

The board praised the thoroughness of the study (read the report at www.wsba.org/2001/glassceiling.htm) and voted \$1,500 to support the group's ongoing work. Governor Brenneke proposed creating a WSBA liaison committee to work with the group, and the board okayed the idea. She will chair it; Governors Kerr, Hinojos-Fall and Your Correspondent, a former governor, will work on it.

Note for readers: The Board's Work is not the official minutes of the BOG's meetings and actions. I report on what I find interesting or important. Jan Michels, WSBA executive director, keeps the official minutes. Errors, biases and idiocies expressed here are the editor's, alone.

Note, also, that meetings of the BOG are open to members and the general public. You can speak up and everything. So few members ever take the BOG up on it that when they do show up with opinions on things, the influence they have can be remarkable. Give it a try. And, as Alice Longworth said, if you don't have anything good to say about anybody, come sit by me. ☺

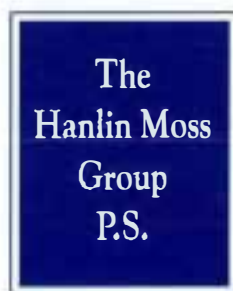
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Around the State

Benton-Franklin County Report

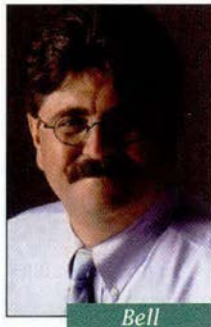
by Stephen T. Osborne

Gerald Roach was sworn in as the new Franklin County District Court judge on January 13, 2003. A 1977 graduate of Gonzaga law school, Gerry obtained an LLM in tax from NYU in 1978, and worked with his brothers Pat and Tom in Pasco for the last 24 years. Gerry and his wife, Maria, have five children. Gerry succeeds H.W. "Pete" Felsted, who held the position for an incredible 29 years. Pete is looking forward to traveling and spending more time with his family, particularly his many grandchildren. Pete was honored at a reception hosted by his staff on December 20, 2002, in his courtroom in the historic Franklin County Courthouse.

John Schultz, senior partner at Leavy, Schultz, Davis & Fearing, was recently recognized at the second annual Legal Aid Awards Banquet. John has been instrumental in organizing a yearly CLE that has raised over \$40,000 for the Benton-Franklin Legal Aid office. Also recognized at the luncheon was attorney Sal Mendoza, who was lauded for his *pro bono* work, having taken on three very difficult cases in the last year. The keynote speaker, Chief Justice Gerry Alexander, provided a very interesting description of his recent visit to the U.S. Supreme Court.

Visitors to the offices of Flynn, Merriam and Palmer in Kennewick receive an involuntary tour of the conference room, where the bust of some unknown person occupies a place of honor. The statue is reputed to have been awarded to Jay Flynn, last year's WSTLA Trial Lawyer of the Year. Jay can be found in that room regularly buffing said bust and telling anyone willing to listen about the exploits that led to his award.

Finally, lightning has struck again. Your intrepid reporter has been called to active duty for Operation Enduring Freedom, along with a number of other Seattle Tacoma area JAG officers. A similar call in 1991 resulted in a four-month tour of the largest sand trap in the world. I am happy to report that only a minority of the people learning of my call to active duty suggest that someone my age should be in a veterans' home, and not on active duty. ☞



Bell



Daszkiewicz



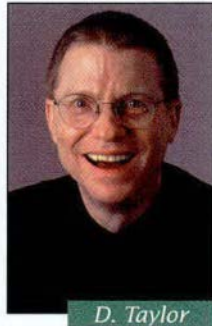
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Whatcom County Report

by Mick Moynihan

So much has happened since our last contribution to Lindsay's Letters. Debra Lev is happily serving as the newly elected Bellingham Municipal Court judge while otherwise idling her time with her triplets, who turned one year old in February. Pete Smiley was chosen to be the new muni court commissioner out of a huge field of well-qualified applicants.

Matt Elich has settled in comfortably as the newest district court judge, and he and Judge Ira Uhrig selected Tony Parise as the court commissioner to replace Matt. After his retirement, Ed Ross was feted and roasted at a party on January 8.

With Tom Seguine finally getting elected prosecutor in Skagit, and taking Dona Bracke with him, there will be some movement in the prosecutor's office with a couple of new positions available.

John Slater has announced that he is going to retire from the practice of law, and since that is all that he has been doing since 1952, I assume he is going to open a new office and start practicing law. John said that for his 50 years of paying dues, the Bar Association sent him a pin and a free dinner at McDonald's.

As in most other counties of the state, musical chairs is pretty popular and on-

going. Tom Fryer moved over to the Nelson Brinson law firm while his wife, Lee Grochmal, is on maternity leave from the public defender after the birth of their son Reid in November.

Greg Thulin left Carpenter Hardesty to starve on his own while his wife, Kim Thulin, formerly of the Skagit prosecutor's office, has an appealing job with the Whatcom County prosecutor. More to follow. ☞

Honors and Awards

The following lawyers from the Seattle firm Cairncross & Hempelmann have been named "top lawyers" by *Seattle* magazine: Scott Bell, Rosemary Daszkiewicz, John W. Hempelmann III, John R. Rizzardi, Staci Snyder Jones, Dawson Taylor, W. Frank Taylor and Daniel C. Vaughn.

The following lawyers are new members of the Washington chapter of the American Board of Trial Advocates: Earl F. Angevine, John A. Barlow, James A. Berg, Andrew C. Bohrsen, John P. Bowman, John R. Creatura, Jeffrey C. Grant, Dennis J. LaPorte, Fred N. Meyers, Simeon Osborn, Chris L. Otorowski, Janet L. Rice, Rebecca S. Ringer, Charles E. Siljeg, Jeff A. Smyth, Edwin J. Snook and Jeffery I. Tilden.

Benjamin G. Wolff has been named



Roth



Sheldon



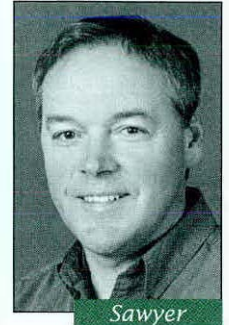
Collier



Ashbaugh



Goldman



Sawyer

one of the 45 best lawyers under 45 by *The American Lawyer*. Mr. Wolff is a partner with Davis Wright Tremaine, splitting his time between the Portland and Seattle offices.

The following lawyers from Williams, Kastner & Gibbs have been named "top lawyers" by *Seattle* magazine: Sheena R. Aebig, Jerry A. Creim, John P. Evans, Paul Arley Harrel, Douglas A. Hofmann, Jeffrey R. Johnson, Mark M. Myers, Mark D. Schedler, Christopher K. Shank, David H. Smith, Richard D. Thaler, Kristina C. Udall, Sheryl Willert and Daniel Woo.

Seattle lawyer James S. Rogers has been selected by his peers for inclusion in the 20032004 edition of *The Best Lawyers in America*.

John R. Rizzardi has been named president of the Turnaround Management Association. Mr. Rizzardi is chair of the creditors' rights and bankruptcy group at the Seattle firm Cairncross & Hempelmann.

Michael J. Gamsky and Todd G. Glass have become shareholders in the Seattle office of Heller Ehrman White & McAuliffe LLP. Mr. Gamsky focuses on mortgage-backed securities transactions, and Mr. Glass represents public utilities before federal and state regulatory agencies.

Movers and Shakers

James A. McPhee has joined the Spokane firm Workland & Witherspoon as an associate focusing on employment, health care and business law, as well as civil and commercial litigation.

Neil M. Fox has joined the Seattle firm Cohen & Iaria as of counsel. His practice emphasizes criminal defense, including appeals, post-conviction work, extradition, international human rights, and international discovery.

Harold E. Snow Jr. has been elected a member of the Seattle firm Ryan, Swanson & Cleveland. Mr. Snow is chair of the firm's estate planning and probate group.

Gabrielle C. Roth and Brian S. Sheldon have joined the Spokane firm Phillabaum, Ledlin, Matthews & Gaffney-Brown. Ms. Roth is an associate concentrating on civil litigation, and business and employment law. Mr. Sheldon is a partner and focuses on civil litigation and insurance matters.

Ryan W. Collier has joined the Salem, OR, firm Clark Lindauer Fetherston Edmonds & Lippold LLP as a partner. He focuses on contested-case probate and trust administration, and estate planning.

David S. Law has joined the Seattle firm Skellenger Bender, concentrating on family law.

Denise L. Ashbaugh, Jessica L. Goldman and Scott R. Sawyer have joined Summit Law Group in Seattle. Ms. Ashbaugh practices litigation in both state and federal courts. Ms. Goldman focuses on commercial litigation, insurance coverage, and media law. Mr. Sawyer counsels insurers on coverage issues and complex litigation.

S. Shawn Tacey and Thaddeus P. Martin IV have become partners in Gordon Thomas Honeywell Malanca Peterson & Daheim LLP. Mr. Tacey works in the firm's Seattle office, concentrating on corporate finance, mergers and acquisitions, software licensing, and business law. Mr. Martin focuses on plaintiffs' personal injury in the firm's Tacoma office.

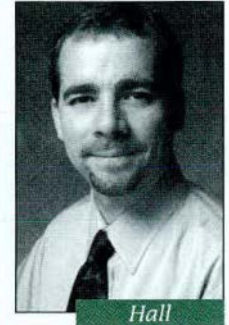
Bradley A. Evens and John J. Houlihan Jr. have been elected members in the Seattle firm Short Cressman & Burgess PLLC. Mr. Evens focuses on family law, real estate and commercial litigation, and Mr. Houlihan concentrates on environmental law. Roberta Farris has joined the firm as

of counsel concentrating on land use and development, real estate and natural resources. Ryan D. Rein has joined the firm as an associate in the business and tax law, and estate planning groups.

Bruce E. Heller, Berrie J. Martinis, Alan M. Mitchel and William E. Perry have become partners in the Seattle office of Garvey Schubert Barer. Mr. Heller focuses on labor and employment law. Ms. Martinis concentrates on commercial and residential real estate transactions. Mr. Mitchel focuses on corporate finance and securities, and mergers and acquisitions.



Sparrow



Hall

Mr. Perry concentrates on international law. Ruth S. Sparrow has joined the firm as of counsel in the affordable housing and federal taxation groups.

Bradley E. Hall has joined Betts, Patterson & Mines PS in Seattle as an associate in the complex litigation group.

J. Bradley Buckhalter has joined the Tacoma office of Williams, Kastner & Gibbs as an associate practicing civil litigation.

James L. Robart has been named managing partner of Lane Powell Spears Lubersky LLP. He has served as co-managing partner since 1998, and has been with the firm since 1973. Mary Jo Heston, Steve D. Jensen, Kimberly M. Meyers, James E. Niemer, Gwendolyn C. Payton



Robert



Heston



Jensen



Meyers



Niemer



Payton



Sweeney



Zeringer

and Emilia L. Sweeney have been promoted to partner in the Seattle office. Ms. Heston concentrates on bankruptcy and creditors' rights. Mr. Jensen and Ms. Meyers focus on labor and employment law. Mr. Niemer concentrates on construction disputes and professional liability. Ms. Payton focuses on intellectual property and commercial litigation. Ms. Sweeney practices commercial litigation. Brian Zeringer has been promoted to of counsel in the firm, focusing on product liability.

In Memoriam

Melvin F. Buol — *Seattle real estate lawyer*

A devoted UW football fan, Melvin Buol was born in Seattle and graduated from the UW School of Law in 1952 as a member of the Order of the Coif. He spent a decade with Hall, Cole & Lawrence before moving to Keller Rohrback, and there he spent the rest of his career. "He excelled in the preparation of real estate documents," the firm Web site recalled. Buol retired in 1996. Survivors include his wife, four children, eight grandchildren, and one great-grandchild. Melvin F. Buol died in Seattle December 21, 2002, aged 73.

William A. Gissberg — *Longtime legislator and environmentalist was also WSBA lobbyist*

Everett native Bill Gissberg was a championship basketball player in high school and college, landed ship commander in the Pacific in World War II, and was a lawyer-legislator known for his effectiveness as chair of the Senate Judiciary Committee.

Gissberg graduated from UW School of Law in 1948, joined the Bar the next year, and three years later, aged 30, was elected to the state Senate from Snohomish County. He served 20 years in the Legislature and won praise from friends and foes alike for his independence of mind. After he lost election as senate majority leader by two votes, former Senator Martin Durkan recalled asking Gissberg why those two senators didn't support him. "I didn't want to owe them anything," Gissberg replied, "so I didn't ask them."

Characterized by Durkan as "a 'oner' among loners," Gissberg was nevertheless an effective advocate. Longtime friend and attorney Thomas Owens remembered Gissberg in action: "The big budget has been voted down — reconsideration has been voted. Now, the bill is on final passage for the second time. If it's lost again, the budget process must start all over — two more weeks in session. The vote is taken, Verne Sawyer (the reader) sings out, 'Mr. President, 21 yeas, 28 nays.' Under the Senator's direction, President Cherberg holds the gavel in the air. Giss

goes to work up and down the aisles, and then, 'Mr. President, Senator _____ changes his vote from nay to aye.' 22 yeas, 23, 24, and finally, 25. President Cherberg bangs the gavel. 'Having received a constitutional, etc.,' the bill passes and the session ends. Giss goes back to an Everett law practice."

Words like "legendary" and "monumental" were often used to describe the lawyer-legislator. Recruited to run for Congress in 1962, he turned down the chance after one look at the polluted Potomac: no good fishing there. A devoted environmentalist, Gissberg lived to see a park in Snohomish County named for him.

After retirement Gissberg served as examiner for the Pollution Control Hearings Board. Leaving that post in 1978, he was hired by the WSBA as a lobbyist for the state's lawyers and proved highly effective defeating anti-lawyer and anti-consumer legislation. He left the lobbying job a year later, but served on a part-time basis into the mid-80s, mainly reviewing bills, "at which he was a master," his WSBA successor, John Fattorini, recalled. Gissberg's reminiscences are part of the Washington State Oral History Program (see <http://www.secstate.wa.gov/oralhistory/gissberg.pdf>). Survivors include his wife, Helen, seven children, seven grandchildren and two siblings.

William A. Gissberg was born September 17, 1922, in Everett. He died December 30, 2002, in Marysville, aged 80.

Larry Heron — *Longtime Pacific County resident was among the last of the state's lay judges*

Larry Heron worked as a vaudeville booking agent to pay for two years at UW before starting a 25-year career in retail sales with Sears. During World War II he served in the Coast Guard.

In 1967 Heron and his wife moved from Seattle to Ocean Park. Discovering an interest in politics, Heron ran twice for local office before being elected a district court judge for Pacific County in 1973. He also served as municipal court judge for Ilwaco and Long Beach, and performed over 600 weddings before he retired in 1984. Heron returned to Seattle in 1997. Survivors include his wife, two children and two grandchildren.

Larry Heron died in Seattle December 13, 2002, aged 83.

Robert N. Munn — *Attorney and businessman loved his family, reading, music and his dogs*

Redmond resident Robert N. Munn was a Seattle native who took degrees from the University of Washington and University of Puget Sound School of Law. After joining the Bar in 1980 he worked in private practice and later joined Interstate Distributor Company in Tacoma as director of risk management. Survivors include his mother; wife, Sherry; two children; one grandchild and two sisters.

Robert N. Munn died December 29, 2002, aged 53.

C. John Newlands — *Tacoma community leader*

A Seattle native, John Newlands served as a naval officer on Pacific theater destroyers. He graduated Phi Beta Kappa from UW and was a member of the Order of the Coif at UW School of Law. He joined the Bar Association in 1948 and served as assistant attorney general in the state tax commission for four years.

In 1952 Newlands went into practice with Reuben Carlson, retiring in 1986 as a senior member of the firm now known as Eisenhower & Carlson PLLC. Survivors include his wife, Helen; three children; five grandchildren; one great-grandchild and a sister.

C. John Newlands was born in Seattle June 29, 1920. He died in Tacoma December 30, 2002, aged 82.

James E. Newton — *His planned one-year SEC job turned into a career*

Seattle lawyer James Newton took a job with the Securities & Exchange Commission in 1936, planning to stay a year. He retired 37 years later, in 1973, having been regional administrator for the agency the last 24 years of his stay.

His influence was significant. Newton helped write the Alaska securities law at statehood, and worked on revisions of the Montana and Idaho statutes.

Phi Beta Kappa at the University of Michigan, Newton took his law degree from Harvard and moved to Seattle to join Oldman, Walkinshaw & Jarvis. After retir-

ing from the SEC in 1973 he joined Davis Wright Todd Riese & Jones as special counsel for the next 15 years. He was active in Planned Parenthood, the vestry at St. Mark's Cathedral, and the State Securities Advisory Committee. Survivors include a daughter, five grandchildren and six great-grandchildren.

James Edward Newton was born in Superior, Wisconsin, February 18, 1904, and died in Seattle January 16, 2003, a month before his 99th birthday.

Ernest Scott Jr. — *Government lawyer had varied career*

Ernest Scott loved retirement. He listened to music, watched boxing matches, cheered the Dallas Cowboys, watched the ponies at Longacres and experimented with photography. His last years he spent playing games and eating Popsicles with his granddaughter Dominique.

Scott's service as a Marine in the Korean War earned him two Purple Hearts. After graduating from Texas Southwestern University School of Law, he joined the Department of Labor and worked in Washington, D.C., and San Francisco. In 1970 he moved to Seattle to become an assistant U.S. attorney. Later he returned to the Labor Department and retired from its service in 1992. He was a member of the Loren Miller Bar Association, among other organizations.

Mr. Scott's survivors include his wife, two sons, granddaughter and a large extended family.

Ernest Scott Jr. was born in Crowley, Louisiana, July 16, 1933, and died in Seattle January 13, 2003, aged 69.

Richard A. Shagrín — *West Pointer took up law as a second career*

Richard A. Shagrín grew up in Ohio and was educated at Western Reserve University before graduating from the U.S. Military Academy in 1940. Retiring from the Army 30 years later with the rank of colonel, Shagrín went to law school at the University of Toledo, graduating in 1973.

He joined the Washington State Bar Association in 1974 and became a community leader in Seattle's Wallingford area. Shagrín was president of the Wallingford Chamber of Commerce and a board member of WSPA, an advocacy

agency for the disabled. Survivors include his wife, two children, four stepchildren, one grandchild, and a number of step-grandchildren.

Richard A. Shagrín was born in Cleveland, Ohio, June 2, 1916, and died November 18, 2002, in Seattle, aged 86. He was buried at West Point.

Donald E. Spickard — *Seattle native was WSBA Award of Merit winner, business executive, and advocate for the advancement of women and minorities*

Donald Spickard's 32 year career at Safeco Insurance made him an expert in surety law; the last 13 years he spent there were as vice president of all surety operations. His education at Stanford was interrupted by Navy service in World War II. After the war he took his law degree from UW and joined the legal department at Safeco. In 1948 he and his wife bought a house in Madison Park that they lived in the rest of their lives.

Spickard campaigned for the advancement of women and minorities at Safeco, and encouraged them to get into contracting work. He chaired the King County Bar's Civil Rights Committee, the Seattle Public Defender Association, the Seattle Public Schools Advisory Committee on Year-Round Schools, and the WSBA Client Security Fund. The Washington State Bar Association conferred its highest honor, the Award of Merit, on Spickard in 1971.

Retiring from Safeco after his wife Mary Alice was diagnosed with cancer in 1980, Spickard later married UW professor Joan Connelly Ullman. He developed a consulting firm in surety matters and was a frequent expert witness in civil litigation well into the 1990s.

Survivors include his wife, two sons and four grandchildren.

Donald Elliott Spickard was born in Seattle February 29, 1920, and died in Seattle January 15, 2003, aged 82. ♣

NOTE: Electronic photos for the *Around the State* section of Bar News must be received in TIFF or JPEG format at 300-dpi resolution. Please call Amy Hines at 206-727-8214 with any questions.

Disciplinary Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 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 name and address.

Suspended

Richard A. Alcorn (WSBA No. 7973, admitted 1977), of Phoenix, AZ, was suspended for six months by order of the Supreme Court, effective April 25, 2002. This reciprocal discipline was based on a six-month suspension imposed by the Supreme Court of Arizona.

Mr. Alcorn agreed to represent a doctor in a medical malpractice case. The hospital was dismissed from the case on summary judgment. The doctor's insurer was insolvent and the doctor did not have assets to support the expected judgment. Just prior to trial, plaintiffs' counsel proposed, and Mr. Alcorn agreed, to the following plan: 1) the plaintiffs would give the doctor a covenant not to execute; 2) the parties would agree to go through the entire jury trial with plaintiffs presenting all their evidence; 3) the plaintiffs would agree that at the close of their case, they would voluntarily dismiss with prejudice all claims against the doctor, and not bring any new claims; and 4) the parties would agree to keep this agreement confidential. The parties proceeded to trial and did not disclose the agreement to the trial judge, even under questioning.

Following the plaintiffs' 10 day presentation to the jury, the parties made a motion to dismiss with prejudice. Prior to ruling on the motion, the judge stated: "I don't want any sweetheart deals that I am not fully informed about anywhere ... and I don't want it crafted in some way or another that is — that would be misleading to me."

Mr. Alcorn assured the judge that there were no sweetheart deals. The judge then dismissed the case with prejudice. The judge learned of the agreement during a motion for a new trial in the claim against the hospital. The judge imposed sanctions

against the lawyers involved.

Mr. Alcorn's conduct violated Arizona ER 3.3(a)(1), prohibiting false statements of law or fact to the tribunal; and 8.4(c), prohibiting conduct involving fraud, deceit or misrepresentation.

Felice Congalton represented the Bar Association. Mr. Alcorn represented himself.

Suspended

Frederic E. Cann (WSBA No. 15962, admitted 1986), of Portland, OR, was suspended for six months by order of the Supreme Court, effective July 4, 2002. This reciprocal discipline was based on a six-month suspension imposed by the Supreme Court of Oregon. Mr. Cann has been reinstated to active practice in Washington.

In 1996, Mr. Cann agreed to represent the personal representative of an estate. In May, Mr. Cann decided to purchase a piece of property from this estate. The estate was financially troubled, and Mr. Cann believed that the sale would benefit the estate. Mr. Cann did not want to purchase the property in his own name, so he arranged for Mr. S to act as the purchaser. At the time of the purchase, Mr. Cann did not obtain the personal representative's consent to the conflict of interest after a full disclosure. In 1998, Mr. Cann told the personal representative that he was the actual purchaser. The personal representative approved the sale to Mr. Cann.

Mr. Cann's conduct violated Oregon DRs 1-102(A)(3), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation; 102(A)(4), prohibiting conduct prejudicial to the administration of justice; 5-101(A), prohibiting representing a client if the lawyer's judgment will be affected by the lawyer's financial, business, property or personal interests, unless the client consents after full disclosure; and 5-104(A), prohibiting entering a business transaction with a client if the client's interests differ from the lawyer's, and if the client expects the lawyer to exercise professional judgment for the client's protection, unless the client consents after a full disclosure.

Felice Congalton represented the Bar Association. Mr. Cann represented himself.

Suspended

Stephen T. Carmick (WSBA No. 11365, admitted 1980), of Chehalis, was suspended for 60 days by order of the Supreme Court, effective July 10, 2002. Mr. Carmick has been reinstated to active practice. This discipline was based on his lack of candor with the court, and communication with a represented party in 1994 and 1995. For more information, please see the published Supreme Court opinion.

In July 1994, Mr. Carmick agreed to represent the father in negotiations for interest payments on a judgment for past due child support under URESA. The court granted a \$15,037.40 judgment in 1985. The father paid the face amount of the judgment, but interest was still owing. In June 1994, the father contacted the Lewis County prosecutor's office to find out the amount then owing. Prosecutor A calculated the amount as \$11,000, but the father believed the correct amount was lower. Prosecutor A agreed to release the lien in exchange for the father's title company, tendering \$11,000 to the Lewis County Superior Court.

Mr. Carmick reviewed the court file. Almost all the pleadings in the court file referenced prosecutor B. Instead of contacting prosecutor B, Mr. Carmick contacted the mother directly. During this conversation, Mr. Carmick did not disclose that \$11,000 had been deposited with the court. Additionally, Mr. Carmick told the mother that neither of the prosecutors she was working with were available; however, both prosecutors later testified that they had been available.

In July 1994, Mr. Carmick sent the mother an offer to settle for \$5,000. He implied that she would have a difficult time collecting any more than this amount, and directed her to sign and return the settlement agreement and any documents she had received from the prosecutor's office. On July 25, Mr. Carmick filed the signed settlement pleadings and a notice of appearance. He did not serve the notice of appearance on the mother or the prosecutors working on the case. In August, Mr. Carmick presented an *ex parte* order disbursing \$6,000 to his client and \$5,000 to the mother. Mr. Carmick told the judge that the mother and prosecutor B had approved the order. The judge entered

the order and the funds were disbursed. Later, prosecutor B learned of Mr. Carmick's actions and filed a motion to vacate the order, based on fraud. Mr. Carmick withdrew from the representation.

Mr. Carmick's conduct violated RPCs 3.3(f), requiring lawyers to inform the tribunal of all relevant facts the lawyer knows should be disclosed in *ex parte* proceedings to permit an informed decision, whether or not the facts are adverse; 3.5(b), prohibiting lawyers from communicating *ex parte* with a judge, juror, prospective juror or other official except as permitted by law; and 4.2, prohibiting lawyers from communicating about the subject of the representation with a party the lawyer knows to be represented, without the other lawyer's consent.

Jonathan Burke represented the Bar Association. Kurt Bulmer represented Mr. Carmick. The hearing officer was Michael L. Lewis.

Suspended

James R. Watt (WSBA No. 12177, admitted 1981), of Issaquah, has been suspended for two years by order of the Supreme Court approving a stipulation, effective May 29, 2002. This discipline is based on his practicing law while his license was suspended, conflicts of interest, and lack of diligence in representing clients. These acts occurred from 1996 through 1998. (Mr. Watt is to be distinguished from James R. Watts of Portland, Oregon [WSBA No. 33317].)

Matter 1: In December 1997, the Supreme Court suspended Mr. Watt's license to practice law for failure to comply with continuing legal education requirements. Despite several notifications from the Office of Disciplinary Counsel, Mr. Watt continued to practice law while his license was suspended.

Mr. Watt's conduct violated RPCs 5.5(a), prohibiting lawyers from practicing law in a jurisdiction where doing so violates the regulations; and 8.4(d), prohibiting conduct prejudicial to the administration of justice; and RLD 8.2 (now ELC 14.2), prohibiting lawyers from continuing to practice when their licenses are suspended.

Matter 2: In 1989, Mr. Watt began representing a client in a condominium de-

velopment project. Part way through the project, Mr. Watt agreed to oversee the construction. Mr. Watt did not fully disclose the terms of the business agreement to the client in writing. Mr. Watt also did not allow the client an opportunity to seek independent counsel.

Mr. Watt's conduct violated RPC 1.8, prohibiting lawyers from entering a business transaction with a client unless the terms are fair to the client, the client consents in writing after a full disclosure, and the client is given a reasonable opportunity to seek independent counsel.

Matter 3: In March 1996, Mr. Watt agreed to represent a husband and wife in a potential lawsuit regarding a home sale. The clients sold their home, and shortly thereafter the roof began leaking. In April 1996, the buyers sued the clients for the cost of replacing the roof. By this time, the husband had been transferred to Riyadh, Saudi Arabia. The husband sent a letter to the court requesting relief under the Soldiers' and Sailors' Civil Relief Act.

In July 1996, the wife was served with a default judgment. Mr. Watt told the clients he would file a motion to vacate the default. He then told the clients that a hearing was scheduled for November 12, 1996, but in fact he never filed the motion. On November 19, 1996, the clients learned that Mr. Watt's phone was disconnected.

Mr. Watt's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; and 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters.

Matter 4: In 1992, Mr. Watt agreed to represent a client in a defamation suit. Mr. Watt filed the lawsuit in 1992, and the court set trial for December 1994. The court later struck this trial date because neither side had conducted any discovery. Mr. Watt did not take any other action on the client's case until after the client filed the grievance with the Bar Association. The court reset trial for late 1996. Again, defendant's counsel filed a motion to strike the trial date because no discovery had been conducted. Mr. Watt did not attend the hearing, and the court granted the motion and assessed attorney's fees.

Mr. Watt's conduct violated RPCs 1.3, requiring lawyers to diligently represent

their clients; and 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters.

Leslie Allen represented the Bar Association. Frank R. Siderius represented Mr. Watt. The hearing officer was Edward Dunkerly.

Suspended

Lois M. Wood (WSBA No. 17878, admitted 1988), of West Boylston, MA, has been suspended for 15 months by order of the Supreme Court approving a stipulation, effective July 19, 2002. This discipline is based on her lack of diligence in representing a client in 2001.

Ms. Wood represented a client in post-conviction proceedings. In July 2000, she filed a personal restraint petition, which the court denied. The client's wife paid Ms. Wood \$750 to prepare and file a motion for discretionary review. Ms. Wood negotiated the check, but did not file the motion. Ms. Wood told the wife that the court lost the motion. In January 2001, the client contacted a new lawyer, who obtained an electronic copy of the motion from Ms. Wood's home computer. The new lawyer revised the motion and filed it with a request to extend the filing deadline. The court denied the motion to extend time.

Ms. Wood's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to keep their clients reasonably informed about the status of their matters; 1.5, requiring lawyers' fees to be reasonable; and 8.4(c), prohibiting lawyers from engaging in conduct involving dishonestly, deceit, fraud or misrepresentation.

Joanne Abelson represented the Bar Association. Ms. Wood represented herself.

Reprimand

Hari L. Alipuria (WSBA No. 26899, admitted 1997), of Tacoma, received a reprimand on July 26, 2002, based on a stipulation approved by the Disciplinary Board in May 2002. This discipline is based on his failure to competently and diligently represent two clients in 1999.

Matter 1: In 1998, Mr. Alipuria agreed to represent a client in a wrongful-termination case. Mr. Alipuria filed the client's lawsuit in federal court. In May 1999, Mr. Alipuria demanded that the client meet

him at his office the next day. When the client arrived, Mr. Alipuria told the client they would be traveling to Seattle to answer questions for opposing counsel. Opposing counsel deposed the client for five hours. Mr. Alipuria did not attend six witness depositions noted by opposing counsel.

On June 24, 1999, Mr. Alipuria received opposing counsel's summary judgment motion. On July 9, he contacted the client for phone numbers of potential declarants to support a response to the summary judgment. Mr. Alipuria was not able to contact the witnesses prior to the time the response was due. Although he prepared a response, he did not file it because he could not contact the witnesses. The court dismissed the client's case. Mr. Alipuria did not provide the client copies of documents upon request. He also submitted the client's original documents to opposing counsel during discovery.

Matter 2: In April 1998, Mr. Alipuria agreed to represent the wife in a marital-dissolution action. Mr. Alipuria filed the dissolution petition in November 1998. The sheriff was unable to serve the husband, but the husband sent a letter directly to Mr. Alipuria. An independent contractor employed by Mr. Alipuria signed an affidavit indicating that she served the husband, but Mr. Alipuria doubted the accuracy of the affidavit. Mr. Alipuria told the client that the dissolution would be finalized on a date sooner than the required 90 days after service of the petition. Then, he continued the hearing to February 10, 1999. Mr. Alipuria did not finalize the dissolution because he could not verify that the husband had been served.

Mr. Alipuria's conduct violated RPCs 1.1, requiring lawyers to provide competent representation; 1.3, requiring lawyers to diligently represent their clients; and 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters.

Sachia Stonefeld Powell represented the Bar Association. Mr. Alipuria represented himself.

Reprimand

Arthur H. Boelter (WSBA No. 9213, admitted 1979), of Seattle, received a reprimand

on July 26, 2002, based on a stipulation approved by the Disciplinary Board in May 2002. This discipline is based on his lack of diligence, and failure to adequately supervise assistants in 1998 and 1999.

In October 1998, Mr. Boelter agreed to represent a client in a bankruptcy proceeding. The client worked in Kuwait, so communication was by fax. Mr. Boelter assigned the client's case to a contract lawyer in his office, who filed the bankruptcy petition in November 1998. In January 1999, the court dismissed the petition because neither the client nor the lawyer attended the 341 Meeting of Creditors. Mr. Boelter's office did not forward the dismissal order to the client. The contract lawyer filed a motion to vacate the dismissal and a motion to have the first creditors' meeting by written interrogatory. The hearing on these motions was continued several times and then stricken by the bankruptcy trustee. In May 1999, the trustee returned the client's \$3,085 payment. After the court closed the client's case, Mr. Boelter sent the client a bill for \$2,893.33.

Mr. Boelter's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 5.1, requiring lawyers having direct supervisory authority over another lawyer to make reasonable efforts to ensure that the other lawyer conforms to the RPCs; and 5.3, requiring lawyers having direct supervisory authority over nonlawyers to make reasonable efforts to ensure that they conform to the RPCs.

Barbara Duffy and Jonathan Burke represented the Bar Association. Kurt Bulmer represented Mr. Boelter.

Reprimand

Mark A. Erikson (WSBA No. 23106, admitted 1993), of Vancouver, WA, received two reprimands on July 26, 2002, and two years of probation based on a stipulation approved by the Disciplinary Board in May 2002. This discipline is based on his failure to avoid a conflict of interest.

Matter 1: In early 1999, Mr. Erikson agreed to represent two clients in a claim against a developer. In July 1999, the clients told Mr. Erikson they could not afford to continue the litigation. Mr. Erikson decided to secure his current and future legal fees with a deed of trust on the two

parcels of real property that were the subject of the litigation. Mr. Erikson did not advise the clients of the conflict of interest, nor obtain their written consent to continuation of the representation. In August 2000, the associate who had worked on the client's case left Mr. Erikson's office and opened his own practice. The associate then settled the case. Mr. Erikson had to agree to the settlement because he held a deed of trust on the property.

Mr. Erikson's conduct violated RPCs 1.7(b), prohibiting lawyers from representing a client if the representation may be materially limited by the lawyer's responsibilities to another client, a third person, or the lawyer's own interests, unless the client consents in writing after a full disclosure; 1.8(a), prohibiting lawyers from entering a business transaction with a client or knowingly acquiring an ownership, possessory or security interest adverse to a client unless 1) the terms of the transaction are fair and reasonable to the client and are fully disclosed to the client in a reasonable manner, 2) the client is provided a reasonable opportunity to seek independent counsel, and 3) the client consents; and 1.8(j), prohibiting lawyers from acquiring a proprietary interest in the cause of action or the subject matter of the litigation the lawyer is conducting, except for 1) a lien granted by law to secure the lawyer's fees or expenses, and 2) a reasonable contingent fee in a civil case.

Matter 2: In 1999, Mr. Erikson agreed to represent a husband and wife in a damages claim against the city of Vancouver, WA, for sewer backups. An associate with Mr. Erikson's firm filed the clients' complaint after the statute of limitations had expired. When the associate left, the clients decided to stay with the firm. In July 2000, Mr. Erikson sent the file to the former associate, who refused to accept the clients or the file. Mr. Erikson also sued the builder of his home (the wife's brother) for installing faulty siding.

In August 2000, Mr. Erikson filed and served a notice of intent to withdraw from the client's case. The notice states that all further correspondence should be sent to the former associate as successor counsel; however, the former associate did not represent the clients. After filing the notice of intent to withdraw, Mr. Erikson did not

further work on the case. A damage statement and interrogatory answers were due during that time. The clients were not able to find substitute counsel.

Mr. Erikson's conduct violated RPCs 1.3, requiring lawyers to represent their clients with reasonable diligence and promptness; 1.15(d), requiring lawyers, when withdrawing from a client's case, to take reasonable steps to protect the client's interest; and 8.4(d), prohibiting lawyers from engaging in conduct that is prejudicial to the administration of justice.

Matter 3: California lawyer K worked for Mr. Erikson from September 1999 through October 3, 2000. She was sworn into active practice in Oregon on October 4, 2000, and in Washington on December 7, 2000. Mr. Erikson's fee agreement with K included 50 percent of the hourly fees billed for her work. Mr. Erikson identified K on his letterhead as "Of Counsel, Licensed in California." Formal Opinion 178 indicates that only lawyers who are active members of the Washington State Bar Association may be listed as "of counsel."

Non-Disciplinary Notices

Interim Suspensions

Dan P. Danilov (WSBA No. 170, admitted 1958), of Seattle, has been ordered suspended from the practice of law pending the outcome of disability proceedings by order of the Supreme Court, effective December 12, 2002.

Robert Kuvara (WSBA No. 3603, admitted 1963), of Kent, has been ordered suspended from the practice of law pending the outcome of disciplinary proceedings, by order of the Supreme Court, effective October 15, 2002.

S. Don Phelps (WSBA No. 21247, admitted 1991), of Olympia, has been suspended from the practice of law pending the outcome of disciplinary proceedings, by order of the Supreme Court, effective December 2, 2002.

Interim suspensions are pursuant to ELC title 7 and are not disciplinary sanctions. ☞

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 subcommittee, 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*

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. Pamphlets available are:

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

Pamphlets are priced as follows:

Quantity (per topic)	Cost (per set)	Quantity (per topic)	Cost (per set)
25	\$9	100	\$25
50	\$15	500	\$90
75	\$20		

To place an order, please call the WSBA Service Center at 800945-WSBA or 206-443-WSBA, or send an e-mail to questions@wsba.org. Prices include shipping and handling, but do not include 8.8% state sales tax. Payment may be made by check, MasterCard or Visa.

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

WYLD President-Elect Elections

Filing deadline: June 2, 2003

Young lawyers interested in serving as president-elect of the WYLD are invited to submit a statement of eligibility and qualifications for this position. The president-elect automatically succeeds to the position of WYLD president upon completion of a one-year term commencing October 1, 2003.

To be eligible for the position of president-elect, candidates must have a principal place of business in Washington and must be a member of the WYLD at the time of taking office for the president-elect position. Additionally, the bylaws require that the president and president-elect have principal places of business in different counties. Therefore, this year's candidates may not have a principal place of business in King County.

Any active member of the Washington State Bar Association is also a member of the Washington Young Lawyers Division until December 31 of the year in which he

or she turns 36, or until December 31 of the fifth year in which he or she has been admitted to practice, whichever is later.

Individuals intending to stand for election must send their statement of eligibility and qualifications to Lisa Harper, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; lisak@wsba.org; or fax 206-727-8319.

WYLD Trustee Elections

Filing deadline: June 2, 2003

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

- **King District** — representing King County (two positions available)
- **Peninsula District** — representing Clallam, Grays Harbor, Jefferson, Kitsap and Mason counties
- **Pierce District** — representing Pierce County

To be eligible for one of these positions, a candidate must reside or have his or her principal place of business in the district he or she wishes to represent, and must be a member of the WYLD for at least the first two full years of the position. Elected trustees will serve three-year terms commencing October 1, 2003.

Any active member of the Washington State Bar Association is also a member of the Washington Young Lawyers Division until December 31 of the year in which he or she turns 36, or until December 31 of the fifth year in which he or she has been admitted to practice, whichever is later.

Individuals intending to stand for election must send their statement of eligibility and qualifications to Lisa Harper, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; lisak@wsba.org; or fax 206 7278319.

Commission on Judicial Conduct

Application deadline: April 25, 2003

The WSBA Board of Governors is seeking applicants interested in serving a four-year term on the Commission on Judicial Conduct. Two positions are available — one as a member and one as an alternate. Incumbents are eligible for reappointment and must submit a letter of interest.

The goal of the commission is to maintain confidence and integrity in the judicial system by seeking to preserve both judicial independence and public accountability. The public interest requires a fair and reasonable process to address judicial misconduct of disability, separate from the judicial appeals system that allows individual litigants to appeal legal errors. The commission reviews new complaints, discusses the progress of investigations, and takes action to resolve complaints. The commission consists of 11 members who serve four-year terms — six nonlawyer citizens, three judges and two lawyers. The lawyers must be admitted to practice in Washington and are selected by the WSBA. The four-year term will commence June 16, 2003. Please submit a letter of interest and résumé to WSBA Bar Leaders Division, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; or e-mail barleaders@wsba.org.

ABA House of Delegates

Application deadline: April 15, 2003

The WSBA Board of Governors is accepting letters of interest from members interested in serving on the ABA House of Delegates, representing Washington. There are three positions available (in August 2003) and one new position "pending ABA approval." A written expression of interest is required for any incumbents seeking reappointment.

The control and administration of the ABA is vested in the House of Delegates, the policymaking body of the ABA. The house, which has approximately 500 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required. The WSBA's allowance is \$500 per year per delegate. Members appointed to the House of Delegates serve a two-year term, which begins at the close of the ABA annual meeting (August 2003).

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

ABA Accepting Award Nominations

Nomination deadline: April 4, 2003

The American Bar Association Government and Public Sector Lawyers Division is seeking nominations for three awards designed to recognize the extraordinary achievements of public lawyers. The Hodson Award for Public Service, the Nelson Award for Outstanding Service to the ABA, and the Dorsey Award for Outstanding Public Defender or Legal Aid Lawyer will be awarded at the ABA Annual Meeting in San Francisco in August 2003. The Hodson Award recognizes outstanding accomplishments by a government or public sector law office. The Nelson Award recognizes outstanding contributions to the ABA by an individual government or public-sector lawyer. The Dorsey Award honors an outstanding public defender or legal-aid lawyer. Nominations are due April 4. For more information, contact Theona Salmon at 202-662-1023 or salmont@staff.abanet.org, or see the Government and Public Sector Lawyers Division Web site at <http://www.governmentlawyer.org>.

2003 WSBA Award Nominations Sought

Each year, members of the Washington State Bar Association are asked to identify those members of our profession and the public who deserve the legal profession's recognition. Nominations are sought for the following awards:

Award of Merit

This is the WSBA's highest honor. It was first given in 1957. In general, the Award of Merit is given for long term service to the Bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is given to individuals only — both lawyers and nonlawyers.

President's Award

As the name implies, this award is given for special accomplishment or service to the WSBA during the term of the current president.

Board of Governors' Award for Professionalism

This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism in the practice of law. Professionalism is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

Angelo Petrus Award for Lawyers in Public Service

This award is named in honor of the late Angelo R. Petrus, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors. The selection criterion is a significant contribution by a lawyer in government service to the legal profession, the system of justice, and the public.

Excellence in Legal Journalism Award

This award recognizes that describing the context, facts and players involved in our system with fairness and sensitivity requires intelligence, knowledge, dedication and high skill levels. This award is given to a journalist and his organization who set the standard for relevance, clarity, accuracy and understanding in reporting.

Pro Bono Award

This award is presented to a lawyer, nonlawyer, law firm or local bar association for outstanding efforts in providing *pro bono* services to the poor. This award is based on cumulative efforts, as opposed to a lawyer's or law firm's *pro bono* hours or financial contribution.

Outstanding Judge Award

This award may be presented to a judge from any level of court. It is presented for outstanding service to the bench and for special contribution to the legal profession.

Courageous Award

This award is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession.

Affirmative Action Award

This award is made to a lawyer or law firm making a significant contribution to affirmative action in the employment of ethnic minorities, women, and the disabled in the legal profession within the state of Washington.

Outstanding Elected Official in the Legislative Branch

This award is presented to an elected official for outstanding service to Washington residents, with special contributions to the legal profession. The recipient has demonstrated a commitment to justice beyond the usual call of duty.

Lifetime Service

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

It is important to note that presentation of any WSBA award is made only when there are truly deserving recipients. Some years, no award is given in some categories. If you know of someone who fits the criteria set forth above, please send a letter of nomination and relevant information by May 1, 2003. Send nominations to the WSBA Executive

Director, Attn: Awards; 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; fax 206-727-8319; or e-mail oed@wsba.org.

2003-2004 WSBA Application for Committee, Board and Panel Appointments

Appointment application forms have been mailed to all active WSBA members. The WSBA Board of Governors makes appointments based on these forms. Current members of committees, boards and panels who are interested in reappointment must submit an application each year. Please visit www.wsba.org/forms/committeepreference.htm to submit the form online. All applications must be received by March 30, 2003. Please direct your questions to barleaders@wsba.org.

WSBA Civil Rights Committee Survey

The WSBA Civil Rights Committee has proposed that the WSBA sponsor a full-day CLE with a specific focus on Title 42, Section 1983 of the U.S. Code (civil action for deprivation of rights). The committee is conducting a survey to gather information about interest in such a topic. If this topic is of interest to you and you would likely attend such a CLE, we'd appreciate hearing from you. Please send an e-mail to civilrights@wsba.org with "Yes to 1983" in the subject line. This seminar would be priced at \$199 for approximately 6.5 general credits, and is tentatively scheduled for September 2003. For more information about the WSBA Civil Rights Committee, see the WSBA Web site at www.wsba.org/civilrights.

Law Office Management Institute and Expo

The Law Office Management Institute and Expo will be held March 7 at the Washington State Convention and Trade Center. Up to six general and 1.75 ethics CLE credits are available. For more information, contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA, or questions@wsba.org; or see the WSBA Web site at www.wsba.org/cle/2003/03626.htm.

ABA Techshow

The ABA Techshow will be held April 3-5 at the Sheraton Chicago Hotel and Towers. WSBA members are eligible for a \$100 registration discount by mentioning code number PP15. For more information, call 800-888-8300, ext. 9191, or see <http://www.techshow.com>.

2003 Bar Leaders and Access to Justice Conference

The 2003 WSBA Bar Leaders Conference and Access to Justice (ATJ) Conference will be held at the WestCoast Wenatchee Center June 7-8. Registration brochures will be mailed in April. For bar leaders registration information, contact Desiree Ogden at 206-733-5932 or desireeo@wsba.org. For ATJ registration information, contact Sharlene Steele at 206-727-8262 or sharlene@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.

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); www.wsba.org/bylaws/bylaws.doc.

Western States Bar Conference

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

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.

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 health-care directives. The WSBA's Legal Services to the Armed Forces Committee is spearheading an effort to gather names of WSBA members willing to serve Washington-based reservists and active armed forces and their families by volunteering their time. 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.

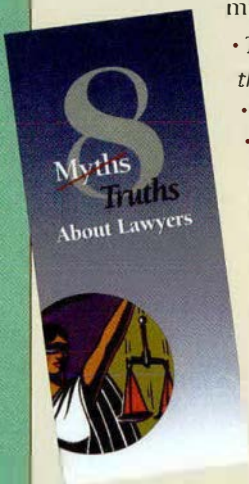
Keep in Touch

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 your

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 Fulment
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: 40800-COMM		
date _____	check no. _____	amount _____

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.

YMCA Mock Trial Seeks Volunteers

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

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in February 2003 is 1.209 percent. The maximum allowable interest rate for March 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.

Local Hero

Washington State Supreme Court Justice Mary E. Fairhurst has received the WSBA Local Hero Award. As the Board of Governors meets around the state, the Bar recognizes local lawyers who have made extraordinary contributions to their communities. In January 2003, Mary Fairhurst became a member of the Washington State Supreme Court.

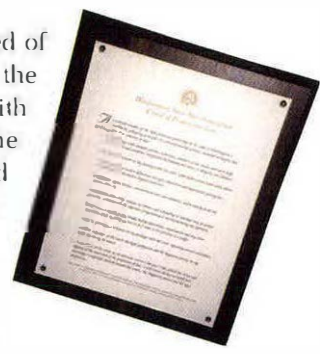
She began her legal career in the Supreme Court as a judicial clerk, working with Chief Justice William H. Williams in 1984, and Justice William C. Goodloe until 1986. She then served 16 years as an assistant attorney general. Justice Fairhurst served as WSBA president from 1997 to 1998, and on the Board of Governors from 1993 to 1996. She is a past president of Washington Women Lawyers, and received the organization's Passing the Torch Award in 1998. Justice Fairhurst is active in her community, working for children's causes. She served two years on the Girl Scouts Board of the Pacific Peak Council. She raised money and awareness for the YMCA Youth and Government program, and helped create the Lawyers and Students Engaged in Resolution (LASER) program. Justice Fairhurst planned and facilitated a youth-violence summit, and organized and moderated conferences dealing with sex offenders in the community.

Loren Miller Bar Association Scholarship Dinner

The Loren Miller Bar Association's Philip L. Burton Memorial Scholarship Dinner will be held on May 30, 2003, in the Grand Ballroom of the Westin Hotel in downtown Seattle. The reception will be 5:30 p.m. to 6:45 p.m.; the dinner, 7:00 p.m. to 9:00 p.m. The cost is \$75. Please RSVP to LMBA President Karen Murray at 206-624-8105, ext. 247. The theme of the dinner is "Equal Justice for All." The keynote speaker will address the issue of justice before and after 9/11 and our roles as lawyers in responding to this crisis.

Creed of Professionalism

The WSBA's aspirational Creed of Professionalism, developed by the Professionalism Committee with input from members around the state, and approved by the Board of Governors, has as its purpose 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 _____

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

Calendar

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.

Learn More about Case-Management Software

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

BOG Meetings

April 11-12 – Bellevue

May 9-10 – Spokane

June 6 – Wenatchee

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/bog/schedule.htm.

Resources on Sale for Half Price

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

\$9 – WSBA members (\$9.79 in WA)

\$18 – 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.

Please check with providers to verify approved CLE credits. To announce a seminar, please send information to: WSBA Bar News Calendar
2101 Fourth Avenue, Suite 400, Seattle, WA 98121-2330

fax: 206-727-8319; e-mail: comm@wsba.org

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

ADR

11th Annual ADR Conference

April 11-12 – Shoreline. 10 CLE credits, including 2.75 ethics. By UW-CLE; 800-CLE-UNIV.

ANIMAL LAW

Animal Law – A Bird's-Eye View

March 7 – Seattle. 7.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

Employment Law Institute

March 7 – Seattle. 6.5 CLE credits. By WSBA CLE; 800-945-WSBA or 206-443-WSBA.

Employment Law

March 14 – Seattle. 6.25 CLE credits. By WSTLA; 206-464-1011.

ESTATE PLANNING

Estate Planning for the Small- to Medium-Sized Estate

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

Federal and Washington Estate Tax Returns

April 2 – Seattle. 7 CLE credits, including .75 ethics. By WSBA-CLE and RPPT Section; 800-945-WSBA or 206-443-WSBA.

GENERAL

Accounting for Lawyers

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

New Developments Affecting Non-Profit and Tax-Exempt Organizations

March 19 – Seattle. 6.5 CLE credits pending. By UW-CLE; 800-CLE-UNIV.

Eyewitness Memory: Science in the Courtroom

April 26 – Seattle. 6.5 CLE credits pending, including 1 ethics. By UW-CLE; 800-CLE-UNIV.

INDIAN LAW

Eastern Washington Indian Law Conference

March 14 – Gonzaga University. 6.25 CLE credits pending. By UW-CLE; 800-CLE-UNIV.

INTELLECTUAL PROPERTY

Intellectual Property Institute

March 21 – Seattle. 6.75 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LAW OFFICE MANAGEMENT

Law Office EXPO, Management & Technology Institute

March 7 – Seattle. 6 CLE credits, including 1.75 ethics. By WSBA-CLE and Puget Sound Chapter of ALA; 800-945-WSBA or 206-443-WSBA.

LITIGATION

Post-Enron Liability Issues

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

Strategies for an Information Age

April 11 – Seattle. CLE credits TBD. By WSTLA; 206-464-1011.

Civil Litigation Institute

April 24 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Damages

April 30 – Seattle. CLE credits TBD. By WSTLA; 206-464-1011.

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Gertrude, Mr. Stevens and I Plan Some Picaresque Adventures

by Lindsay T. Thompson
Bar News Editor

Some men and women are inquisitive about everything, they are always asking, if they see anyone with anything they ask what is that thing, what is it you are carrying, what are you going to be doing with that thing, where did you get that thing, how long will you have that thing, there are many men and women who want to know anything about everything.

— Gertrude Stein, *The Making of Americans* (1925)

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They confine themselves
To rightangled triangles.
If they tried rhomboids,
Cones, waving lines, ellipses —
As, for example, the ellipse of the half-Moon,
Rationalists would wear sombreros.

— Wallace Stevens, "Six Significant Landscapes,"
Harmonium (1937), in *The Collected Poems* (1990)

Sometimes it does you good to dump all your assumptions in a bag, cinch it up, and give them a good pummeling. Not only does it clear out a good many spavined and underperforming ones, it makes the unchallenged ones sing for their supper and helps us avoid getting stuck in the past.

Lawyers are prone to getting stuck, mental wheels spinning like an SUV highcentered on a snowplowed-shut Seattle side street. Between being busy; buffeted by bales of new laws, regs and statutes; clients doing unaccountably stranger things all the time; and a sense of being generally "media saturated," you just want to dig in your heels and shout, "Whoa!"

Lawyers also suffer from being quick studies. The ability to master any subject often leads them to think they already know everything worth knowing. This, too, contributes to a hardening of the assumptions.

Then one day you look up. Things Have Changed. A Lot. This leads to consternation and/or adaptation, or a general denial coupled with an urge to shoot the messenger. (Thus the letters to the editor section at the front of this periodical. You can be a grumpy lot. We'll talk about writing more interesting letters to the editor in a future essay.)

Returning to this gig after eight years, I thought it a good thing to get out a sack and pummel away at what I thought I knew about the Bar Association and you, my colleagues, generally, before I start filling the magazine with stuff I think you'll

love but may actually drive you barking mad. So first I asked for a statistical breakdown of our membership as of January 1, 2003.

Boy howdy, was I surprised. A full third of you have been admitted since I left the editorship in 1995. No resting these wilted laurels.

I've also drifted into middle age somehow. I'm smack in the middle of the middle cohort of WSBA members — the 32 percent of us between 41 and 50. Another 33 percent are over 50; the other, Annoyingly Youthful Bunch — 35 percent — is under 40. Our most senior member took the oath in 1927; our youngest is 20 years old.

This translates into wildly divergent generational points of view, to add to difference in member perceptions based on whether you're male or not; an ethnic or other minority; a government, corporate or private practice lawyer; big firm or small; eastern or western Washington based; plaintiff or defense; from Seattle or anywhere but.

One result of these trends is that we don't seem to know each other very well. For its part, *Bar News* has contributed to this, losing, over the years, feature after feature that helped us hang together as a community of colleagues.

It's a problem I'm going to be working hard to address as editor. For one thing, this month I've brought back "Around the State," a collection of monthly reports from county and other bar associations on what's going on in their areas and groups, in their own words. We'd like to hear from all the county and specialty bars from time to time — write as often or as little as you like, in your own voice. I'm not so much interested in pressreleased, predigested spin as I am in what's important to you where you live.

We're going to start profiling members as well, names drawn from a hat rather than those who are well known for being well known. And we're going on the road, launching a 39-month series of profiles of practice in every county in Washington. We're starting with Garfield County (two lawyers) and working our way along numerically to King in three years and a bit.

I'm hoping to avoid the chirpy travelogue style I grew up with in *National Geographic* ("Walla Walla County: Wheat and Wine, Sun and Scholarship [What Prison?]"). Help me get started. Write and tell me what it's like where you work; who's interesting to talk with; the good, the bad, and the unintended *pro bono* of practice; things you love; things you'd change. E-mail is grand because I don't have to retype it; send it to tradelaw@hotmail.com. Letters will be cheerfully received at 200 W. Mercer Street, Suite 207, Seattle WA 98119-3994. ☞

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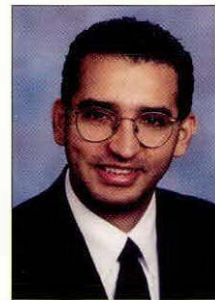
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